



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

### **4. Terrorist financing and financing of proliferation**

Effectiveness and technical compliance



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## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

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### Key Findings

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

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

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

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

## 4.1 Background and Context

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

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

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

## 4.2 Technical Compliance (R.5-8)

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

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

### (a) Prosecuting TF consistent with the risk profile

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

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

**Table 4.1. TF Investigations and Prosecutions**

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

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

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

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

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

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

### *(b) Identified and investigation of TF cases*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- The Immigration Act 1959/63.

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

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

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

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

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

**Table 4.2. Statistics on the rehabilitation program**

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

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

### Overall conclusions on Immediate Outcome 9

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

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

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

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

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

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

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

### (a) *Implementing targeted financial sanctions*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Box 4.3. Case study: Malaysian national designated by UN

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

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

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

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

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4.59. Malaysia has a centralised and closely monitored system of government controls over Zakat<sup>1</sup> across the whole of Malaysia. The government administers all zakat collection and disbursement to NPOs through specialist federal authority in close cooperation with the IRB. This is a significant risk mitigation step for potential TF risks in that stream.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Overall conclusions on Immediate Outcome 10**

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

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

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

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

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

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

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

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

### 4.5 Effectiveness: Immediate Outcome 11 (PF financial sanctions)

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

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

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

#### (b) Observations on context

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

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

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

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

### *(c) Implementing TFS to combat of financing of proliferation*

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

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

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

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

### Extent of implementation

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

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

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

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

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

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

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

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

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

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

***(d) FIs and DNFBPs compliance with targeted financial sanctions***

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

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

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

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

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

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

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

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

## Vigilance Measures

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

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

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

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

4

**Monitoring and ensuring compliance by RIs**

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

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

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

**Overall conclusions on Immediate Outcome 11**

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

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

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

**4.6 Recommendations on Terrorist Financing and Financing of Proliferation**

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

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

## 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

### Recommendation 5 - Terrorist financing offence

a4.1. Malaysia was rated largely compliant with the former SR II. The 2007 MER concluded that the provisions in AMLA and offences in the Penal Code were broadly compliant with SR II. The MER noted that the offence of providing or collecting property to terrorist individuals or groups is indirectly criminalised. The MER recommended that Malaysia adopt a direct approach to criminalising this conduct for effectiveness reasons. In its 2011 progress report Malaysia advised that it is of the view that the existing regime is sufficient. No amendments have been made to Malaysian law. The new R.5 is largely unchanged from SR II.

a4.2. **Criterion 5.1** - The 2007 MER (paras 208-211) concluded that s.130N of the Penal Code is compliant with the TF Convention. This section of the Penal Code is unchanged since that time. Assessors note, however, that while Malaysia has criminalised the conduct set out in the treaties annexed to the TF convention, the TF offence may not extend to such conduct in every circumstance.

a4.3. **Criterion 5.2** - The 2007 MER concluded that the offence of providing or collecting funds for a terrorist act is comprehensively criminalised (paras 208-211). The offence of providing property to or collecting property for a terrorist organisation(s) or individual terrorist(s) is indirectly criminalised in s.130Q of the Penal Code (para 213). The 2007 MER recommended that Malaysia adopt a direct approach to criminalising this conduct to avoid potential problems prosecuting the conduct in practice. Malaysia has not done this as it believes the existing regime is sufficient (2011 detailed progress report). In the Evaluation Team's view, s.130Q is technically compliant and the suggestion in the 2007 MER related to effectiveness which is now relevant under IO9. Sections 130G and 130O of the Penal Code also cover some aspects of providing and collecting property. The offences apply even in the absence of a link to a specific terrorist act or acts.

a4.4. **Criterion 5.3** - The offences in the Penal Code apply to 'any property', 'financial services or facilities' and 'any terrorist property'. The definitions of property and terrorist property are broad enough to cover both legitimate and illegitimate property. The phrase 'financial services or facilities' is not defined however it is used broadly enough to apply to legitimate and illegitimate property.

a4.5. **Criterion 5.4** - The 2007 MER concluded that the offences do not require that the funds were actually used to carry out or attempt a terrorist act(s) (para 214). There is nothing in the law that requires the funds to be linked to a specific terrorist act.

a4.6. **Criterion 5.5** - The provisions of the offences and the Evidence Act 1950 confirm that intent and knowledge can be inferred from objective factual circumstances.

a4.7. **Criterion 5.6** - The 2007 MER (para 216) concluded that proportionate and dissuasive criminal sanctions apply to natural persons convicted of TF. The judiciary has the discretion to impose an appropriate sentence up to the maximum based on proportionality considerations.

a4.8. **Criterion 5.7** - The 2007 MER (para 216) concluded that the TF offences apply to both natural and legal persons and that this does not preclude parallel criminal, civil or administrative proceedings. It found that the penalties were proportionate and dissuasive. It did not expressly address whether such measures are without prejudice to the criminal liability of natural persons, however they appear to be.

a4.9. **Criterion 5.8** - The 2007 MER (para 214) concluded that the ancillary offences are appropriately covered.

a4.10. **Criterion 5.9** - The 2007 MER (para 215) concluded that TF offences are predicate offences for ML.

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a4.11. **Criterion 5.10** - The 2007 MER (para 215) concluded that the TF offences apply where the act of financing takes place in a different country to the one in which the terrorist group is located or the terrorist act will occur. The TF offences do not require the person to be in the same country as the terrorist(s)/terrorist organisation(s) or where the terrorist act(s) occurred/ will occur.

### *Weighting and conclusion*

a4.12. Malaysia's laws generally comply with R.5 however there is a minor deficiency in the application of the TF offence to all conduct set out in the treaties annexed to the TF Convention.

a4.13. **Malaysia is rated largely compliant with R.5.**

### **Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing**

a4.14. Malaysia was rated largely compliant with SR III in the 2007 MER. The new R.6 is largely unchanged from SR III.

a4.15. **Criterion 6.1** - The Ministry of Home Affairs (MOHA) is the competent authority responsible to propose persons or entities to the 1267/1989 and 1988 Committee for designation. Any proposal for designation will be made by MOHA through the Ministry of Foreign Affairs (MOFA) and Malaysia's Permanent Representative in the UN. Malaysia has used the procedures to co-sponsor an Al Qaeda designation at the UN.

a4.16. The mechanism for identifying targets for designation involves the RMP providing information on entities or persons who meet the criteria for designation set out in the relevant UNSCRs to MOHA. MOHA has a role in reviewing the information and consulting with the other relevant authorities, if necessary. If MOHA finds that the target meets the designation criteria, the proposal is provided to MOFA for deliberation at the Cabinet level before the designation is forwarded to the UNSC Committee.

a4.17. The evidentiary standard that RMP applies is a 'reasonable basis' to believe that the target is involved in any of the activities listed under UNSCR 1267 and the relevant successor resolutions. The process is not conditional on the existence of a criminal proceeding.

a4.18. RMP submits any proposals for designating targets using standard forms that Malaysia has prepared to support the mechanism for review. The forms call for as much relevant information as possible to be included.

a4.19. **Criterion 6.2 (a, c & e)** - The Minister of Home Affairs is the competent authority responsible and empowered for designating persons or entities, including non-Malaysians, that meet the specific criteria for designation as stipulated in UNSCR 1373, whether the designation is made following a domestic process initiated by Malaysian authorities or is based on a foreign request. Any request by foreign countries to designate an individual or persons in accordance with the UNSCR 1373 must be made through MOFA which will then forward the request made by the foreign country for MOHA's consideration. The MOFA would pass on any request to foreign partners supported by information obtained by MOHA.

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a4.20. **Criterion 6.2 (b & d)** - The RMP may submit a proposal for designation to the MOHA, if there is a 'reasonable basis' to believe that the target meets the designation criteria under UNSCR 1373. The competent authority will determine the designation in the case where s/he 'is satisfied on information given to him by a police officer' that the entity meets the designation criteria. Any proposal for designation or the designation itself is not conditional upon the existence of a criminal proceeding.

a4.21. **Criterion 6.3 (a & b)** - The RMP may use powers of investigation and compulsion to produce documents and other things provided in the Criminal Procedure Code (CPC) to collect or solicit information to identify persons and entities that meet the criteria for designation. Collection of information and the proposal for designation against a person or entity by MOHA is conducted without involvement of or prior notice to the person or entity identified for designation.

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a4.22. **Criterion 6.4** – The 2014 amendments to the AMLA (s.66C(2)) establish a system of automatic domestic designation in Malaysia upon UN designation, which brings the freeze and prohibition obligations immediately into force. There is no longer a requirement for the Minister to make an order or decisions in relation to persons and entities designated under UNSCR 1267/1988 and 1989.

a4.23. **Criterion 6.5 (a)**- The freezing obligations, property subject to a freeze and prohibitions on providing funds or financial services to entities designated under UNSCR 1267 and 1373 are set out under AMLFA 66B(3) and the Penal code. The freezing obligations apply *ex-parte*. The freezing obligation set out in 66B(3) covers citizens of Malaysia and bodies incorporated in Malaysia. This includes all licensed RIs in Malaysia, as licensed or registered FIs and DNFBPs are required to incorporate in Malaysia as part of the market entry controls. The freezing obligations for foreign corporates and non-citizens who are not RIs are contained in the Penal Code prohibition on dealing with property of a designated entity (s.130Q). The effect of this prohibition is a mandatory freeze as it extends to anyone who ‘deals in’ the property, which is broadly cast to cover acquiring, possessing, converting, concealing, transacting, etc.

a4.24. **Criterion 6.5(b)** – The scope of property subject to freeze and the prohibitions on dealing in the AMLA (66B) extends to assets of every kind and legal documents or instruments in any form that are owned or controlled directly or indirectly by the designated individuals or entities. This would cover funds that are wholly or jointly owned or controlled by the designated persons and those acting on behalf or at the direction of such persons. The Penal Code prohibitions and freeze obligations extend to funds derived or generated from property owned or controlled by or on behalf of the designated entity, including funds derived or generated from such property.

a4.25. **Criterion 6.5(c)** – Comprehensive prohibitions on dealing with property of designated entities and providing financial services are set out in the Penal code and apply to all persons (including legal persons) within Malaysia and Malaysian nationals outside of the territory. Equivalent prohibitions are set out at s.66D(3) of the AMLA to cover all Malaysian citizens and bodies incorporated in Malaysia.

a4.26. **Criterion 6.5 (d - f)** - The AMLA and related mechanisms include processes for communicating designations (MOHA and relevant regulators), guidance for RIs, obligations on RIs and other entities to report freezing actions and measures which protect the rights of *bona fide* third parties.

a4.27. **Criterion 6.6 (a)** - The MOHA’s website makes available forms for listed persons to submit de-listing requests. The AMLA provides for the Minister to consider application before submitting them to the UN Sanctions Committees. These procedures, including the role of the UNSCR 1988 Focal Point mechanism and the role of the UNSCR 1989 Office of the Ombudsperson are on the MOHA website.

a4.28. **Criterion 6.6 (b)** - The AMLA includes procedures and legal authorities to delist and unfreeze funds of entities designated pursuant to UNSCR 1373. This may occur within the first 60 days if there is evidence that the basis for listing was not present, or arising out of review every six months or legal protections to allow court-sanctioned procedure to review listing.

a4.29. **Criterion 6.6 (c)** - A listed individual or entity aggrieved with MOHA or other authorities’ decision, action or omission in relation to the exercise of their duties or functions may make an application for judicial review. An application for judicial review can only be filed if the High Court grants leave to commence judicial review proceedings. Having obtained leave to commence judicial review proceedings, the aggrieved person can institute a substantive application for judicial review

a4.30. **Criterion 6.6 (d & e)** - Any request for de-listing to the Focal Point needs to be submitted through MOFA, but Ombudsperson requests are transmitted directly. Information pertaining to procedures for de-listing requests to the UN is published on MOHA’s website.

a4.31. **Criterion 6.6 (f)** - An individual or entity inadvertently affected by a freezing mechanism due to ‘false positives’ may seek clearance from MOHA to verify that they are not the designated individual or entity. After considering the claim, MOHA informs the relevant regulatory and supervisory authorities and other agencies regarding its verification (or not) of a false positive. The relevant regulatory and supervisory authorities will notify the RI to ensure RIs can unfreeze the property without delay.

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a4.32. **Criterion 6.6 (g)** - The MOHA (via its website) and individual regulators have mechanisms for communicating de-listing actions and to guide those entities which may have frozen funds on their obligations to unfreeze funds and other property.

a4.33. **Criterion 6.7** - Access to funds or other assets is regulated by the AMLA and is at the discretion of the Minister of Home Affairs in cases where the Minister deems it is necessary for basic or extraordinary expenses. The implementation procedures of the Part VIA of AMLA provide that the MOFA should seek approval by the UN sanctions committees for access to frozen funds for basic expenses. The implementation procedures do not explicitly address the issue of extraordinary expenses, though Malaysia notes that the procedure is the same and would reflect UNSCR 1452.

a4.34. **Malaysia is rated compliant with R.6.**

### Recommendation 7 – Targeted financial sanctions related to proliferation

a4.35. Targeted financial sanctions relating to the financing of proliferation is a new FATF Recommendation added in 2012.

a4.36. **Criterion 7.1** - Targeted financial sanctions related to financing the proliferation of WMD are set out under Malaysia's Strategic Trade Act (STA) 2010, Strategic Trade (United Nations Security Council Resolutions) Regulations (STA Regulations) 2010 and the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order (STA Order) 2010. The STA provides for control over the export, transshipment, transit and brokering of strategic items, and other activities that may be related to proliferation of WMD consistent with Malaysia's international obligations. The operative provisions related to targeted financial sanctions are set out in subsidiary legislation issued as a Regulation under s.55 of the STA, which provides a broad basis to issue regulations as subsidiary legislation, including sanctions for non-compliance.

a4.37. The STA Regulation requires a step for the Minister of International Trade and Industry to make a domestic designation of persons and entities designated by the UN, by including them on the 1st Schedule to the STA Order. The schedule to the STA Order lists out designated individuals in Part 1 and entities in Part 2. Given the extensive process to be pursued prior to designation under the STA regime, domestic designation by the Minister cannot be done without delay. At best the process may be able to be completed in 20-30 days. Recent practice indicates that much more time was required for domestic designations to be updated (five to six months). A number of interim measures are taken to alert RIs immediately on listing, but legal powers to take freezing action are not available until the domestic designation is complete.

a4.38. **Criterion 7.2(a)** - Section 3(2) of the STA Regulation sets out the measures to be taken for freezing of funds and other assets of and persons and entities designated under the STA Order. There is nothing in the mechanism which requires prior notice.

a4.39. **Criterion 7.2(b)** - While s.3(1) of the STA Regulation suggest a wider application, the enforceable freezing obligation set out in s.3(2)(b) covers citizens of Malaysia and bodies incorporated in Malaysia, but does not extend to persons or FIs in Malaysia if they are not citizens. The obligations are generally extensive, however there is a limitation on the scope of coverage of the entities obliged to take action. The freezing obligations and prohibitions set out in s.3(2)(b) cover citizens of Malaysia and bodies incorporated in Malaysia. This ensures all RIs in Malaysia are covered, as licensed or registered FIs and DNFBPs are required to incorporate in Malaysia as part of the market entry controls. It is not clear foreign nationals or foreign legal persons in Malaysia who have not otherwise obtained incorporation as a Malaysian legal person would be subject to the full range of freeze obligations and prohibitions on dealing. The type of property to be frozen extends to funds derived or generated from property owned or controlled directly or indirectly by a designated person.

a4.40. **Criterion 7.2(c)** - Section 3(2)(b) sets out a prohibition on providing funds and financial services, but only for Malaysian citizens and bodies incorporated in Malaysia and only in relation to designated persons. Individuals and entities which are not Malaysian but operating in Malaysia may not be subject to these obligations.

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a4.41. **Criterion 7.2(d)** - Mechanisms for communicating designations include gazettal of the schedule to the STA Order. BNM, SC and LFSAs have issued some guidance on freezing obligations. The Strategic Trade Secretariat (STS) is working with BNM, SC and LFSAs to develop further guidance.

a4.42. **Criterion 7.2(e)** - The STA Regulation requires a citizen or Malaysian corporate to report to the ST Controller in case assets are frozen. BNM, SC and LFSAs have instructed their regulated entities to submit a parallel report to them in case of a freeze.

a4.43. **Criterion 7.2(f)** - The STA Regulation includes measures which protect the rights of *bona fide* third parties acting in good faith when implementing the obligations for freezing property. Section 52(A) of the STA read with s.3(2)(b) of the UNSCR Regulation establish protections from suit and other legal proceedings outside the STA.

a4.44. **Criterion 7.3** - BNM, LFSAs and SC supervise compliance with the STA obligations for asset freezing. Sanctions are clearly available in the STA Regulation for non-compliance.

a4.45. **Criterion 7.4 (a)** - Malaysia issued procedures for de-listing, unfreezing funds, accessing funds and communicating de-listing on 4 November 2014. These were prepared by the STS, MOFA and other relevant authorities to address the due process aspects of the targeted financial sanctions against the financing of proliferation of WMD. Any application for de-listing to the UN Security Council will be submitted through the MOFA to the Focal Point / UNSC Committee based on information provided by STS and other authorities.

a4.46. **Criterion 7.4 (b)** - Individuals or entities affected by a freezing mechanism due to 'false positives' may seek clearance from the STS to verify that they are not the designated individual or entity. STS will seek assistance from BNM in this regard. After considering the claim, STS informs the relevant regulatory and supervisory authorities and other agencies regarding its verification (or not) of a false positive. The relevant regulatory and supervisory authorities will notify the RI to ensure RIs can unfreeze the property without delay.

a4.47. **Criterion 7.4 (c)** - Access to funds or other assets is regulated by the November 2014 procedures and is at the discretion of the Minister in cases where the Minister deems it is necessary for basic or extraordinary expenses. This is in keeping with the exemption conditions set out in UNSCRs 1718 and 1737.

a4.48. **Criterion 7.4 (d)** - The STS website and individual regulators have mechanisms for communicating de-listing actions and to guide those entities which may have frozen funds regarding their obligations to unfreeze funds and other property.

a4.49. **Criterion 7.5** - In accordance with the Procedures on Freezing, Seizure and Forfeiture of Property under the AMLA, RIs are permitted to continue collecting or receiving payments from the customer, however the account will continue to remain frozen. Malaysia has also indicated that funds may be credited to a frozen account, however the funds will become frozen once received.

### *Weighting and Conclusion*

a4.50. The delays with translation of UN designations into domestic freezing obligations plus the gap on the scope of who is obliged to take freezing are given greatest weight.

a4.51. **Malaysia is rated partially compliant with R.7.**

### **Recommendation 8 – Non-profit organisations**

a4.52. Malaysia was rated partially compliant with SR.VIII in the 2007 MER as there was no ongoing strategy to identify and mitigate TF risks within the NPO sector; limited outreach to the NPO sector by authorities; and inadequate mechanisms for information exchange with foreign counterparts. The requirements for R.8 are largely similar to those of the former SR.VIII.

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a4.53. Malaysia's NPO sector comprises societies (44 826 entities, 95% of total NPOs), companies limited by guarantee (1 928 entities, 4% of total), Labuan foundations/Islamic foundations (18 entities, 0.04% of total) and associations formed for charitable purposes (270 entities, 0.5% of total). There are separate legal, licensing/registration and oversight regimes for each type of NPO. The main statutes dealing with the establishment and regulation of NPOs in Malaysia are the Societies Act 1966 (SA), Companies Act 1965 (CA), Labuan Foundations Act 2010 (LFA), Trustees (Incorporation) Act 1952 (TIA) and the Income Tax Act 1967 (ITA). The main NPO supervisors/regulators are the Internal Revenue Board (IRB), the Registrar of Societies (RoS) for registered societies, the Companies Commission of Malaysia (CCM) for CLGBs, the LFSA for Labuan foundations/Labuan Islamic foundations and the Legal Affairs Division of the Prime Minister's Department (BHEUU) for trustees of bodies and associations formed for charitable purposes.

a4.54. The NPOs under the purview of the ROS and CCM account for a significant portion of financial resources under the sector and a substantial share of the sector's international activities in Malaysia. The NPOs registered under LFSA and BHEUU, constitute a small financial share in the sector and do not have presence or receive funds from abroad. Information on LFSA and BHEUU controls are included for completeness, rather than the purpose of compliance ratings.

a4.55. **Criterion 8.1(a)** - Several reviews of the adequacy of laws and regulations related to NPOs have been undertaken or are ongoing.

a4.56. **Criterion 8.1(b)** - Malaysia's domestic review of the NPO sector considered information on the structure and activities of the sector, exposure to international activities, indicators of TF, LEAs' experience, and controls on NPO. Supervisors and LEAs provided data and validated outputs based on their expertise. The review assisted NPO regulators in assessing TF risks of their regulated entities. Malaysia's NPO regulators provided information on NPOs activities, size and other relevant features to the 2013 NRA's focus on TF risks in the NPO sector. NPO risk of abuse for TF and mitigation of TF risk was considered as part of the review into Labuan foundations.

a4.57. **Criterion 8.1(c)** - The NRA (including a review of the NPO sector) is subject to review by the NCC every three years. The NCC has agreed for ad hoc reviews of the NRA in the event of emerging risks and the ROS, CCM and LFSA will conduct ad hoc review of the NPOs sector as necessary.

a4.58. **Criterion 8.2** - Under the NCC committee on NPOs (SCONPO), CCM and RoS organised the 'National Seminar on AML/CFT 2013 - Towards Better Governance of NPOs', which was also attended by NPOs supervised by BHEUU. CCM and RoS have conducted other AML/CFT awareness raising programs. LFSA conducted its first outreach program for the new Labuan charitable foundations in September 2014. Prior to this LFSA's priority had been outreach to trust companies which act as the secretary and manage Labuan foundations.

a4.59. **Criterion 8.3** - The transparency and integrity of and public confidence in NPOs is facilitated by Malaysia's legal and supervisory framework. The public is able to inspect any documents (with the exception of accounts) submitted by NPOs under the SA (efforts are underway to allow the public to search information through a dedicated website). RoS prohibited house to house fundraising and street collections by NPOs in 2012 unless a specific license is granted by the RMP. Information submitted to CCM by CLGBs is accessible by the public on-line and onsite. CLGB fundraising activities involving the public require ministerial approval. All Labuan foundations are required to have a trustee in the form of a Labuan trust company. Similar requirements apply to Labuan Islamic trusts. As trust companies are RIs under the AMLA, record-keeping and CDD requirements apply to them. NPOs supervised by BHEUU are required to supply relevant information when applying to incorporate a trustee under TIA however these records are not publically available. RMP has recently implemented a system of licensing charitable collection agents, which is done at a local level to ensure effective oversight and accountability.

a4.60. **Criterion 8.4(a)** - All NPOs applying for tax exemption must provide the information required under criterion 8.4(a) to the IRB. All NPOs, regardless of their tax exemption status, are required to submit tax returns to the IRB. Registered societies must maintain the required information under the SA and that information is publicly available. CLGBs are required to disclose this information in the registration document and update any changes via prescribed forms. This information is publicly available, both on-line and onsite.

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Secretaries of Labuan foundations and Labuan Islamic foundations are required to keep accurate records of their trusteeship. That information is not publicly available. BHEUU keeps accurate records of trusteeship of NPOs registered under the TIA. Appointment of new trustees and reappointment of trustees is subject to approval from the Minister in the Prime Minister's Department.

a4.61. **Criterion 8.4(b)** - The ITA requires NPOs applying for tax exemption to submit audited financial statements with a detailed breakdown of income and expenditure. Under s.14 of the SA, annual returns (including income and expenditure statements) of societies (including of any branches) are required to be submitted to the RoS within 60 days after the end of each calendar year or following their Annual Meeting. CLGBs are required to prepare and lodge their audited financial statements with CCM under s.169(1) of the CA, including a detailed breakdown of income and expenditure. Under s.59 of the LFA, Labuan foundations are required to keep proper accounting records. Section 15 of the TIA requires trustees to submit audited financial statements to the Minister on or before 30 June of each year.

a4.62. **Criterion 8.4(c)** - By virtue of their constitution, societies need to ensure that funds are spent consistent with the purpose and objectives. Under s.49 of the SA, RoS can deregister committee members of NPOs found acting against their constitution. Under s.24(1) of the CA, CLGBs must comply with their licensing conditions which require them to maintain proper accounting records and demonstrate good internal controls to ensure their funds are utilised in accordance with stated purpose and objectives. Section 11(2) of the LFA provides that a Labuan foundation must manage its affairs in accordance with its constituting documents and relevant provisions of the LFA. Pursuant to s.107(2) of the LIFSSA, the LFA also applies to any Labuan Islamic foundations. In addition, Shariah principles apply. Section 15(4) of the TIA provides that NPOs must ensure that their funds are spent in a manner consistent with the purpose and objectives.

a4.63. **Criterion 8.4(d)** - NPOs in Malaysia need to be either registered with RoS, BHEUU or LFSA or incorporated under the CA (CLGBs).

a4.64. **Criterion 8.4(e)** - Licensed persons conducting charitable collection must disclose their beneficiary NPOs under the terms of the 2012 Circular. Section 14(1) of the SA requires societies to list the names and addresses of affiliated NPOs. Section 14(2)(d) enables RoS to request an audited account (which may include details of beneficiaries) from a society at any time. Sections 167(1A) and 167(2) of the CA require a company to make appropriate accounting entries within 60 days of the completion of a transaction (including the names of beneficiaries and associated NPOs). Labuan foundations (under s.8(2) and the First Schedule of the LFA) must keep records of matters in relation to their charters (which detail founders and beneficiaries). Labuan NPO can have an associated NPO when it establishes a subsidiary or associated company and this require an insertion to the NPO's existing charter. Such changes in the charter are required to be lodged by the NPO's secretary with LFSA pursuant to s.17(1)(1) of Labuan Foundation Act. Under s.15 of the TIA trustees must keep accounts of all monies received and paid (including to beneficiaries) on behalf of the trust. However, there is no provision for trustees to know associated NPOs.

a4.65. **Criterion 8.4(f)** - The SA does not contain record keeping obligations for societies. However, in accordance with their constitution office bearers of societies are required to keep relevant records (but the period of time records need to be kept is not prescribed). Record keeping obligations of CLGBs are set out in s.167(2) of the CA. Accounting and other records need to be kept for a period of 7 years. Labuan foundations and Labuan Islamic foundations are required to keep their records for 6 years (pursuant to s.82 of the LFSSA 2010). Record keeping obligations of NPOs supervised by BHEUU are set out in s.15 of the TIA 258, however the period of time records need to be kept is not prescribed.

a4.66. **Criterion 8.5** - Under s.13 of the SA, a registered society can be de-registered for a number of reasons. Sections 54 and 54A provide penalties for fraud, false declaration, misappropriation and furnishing false information. Between 2011 and 2013 more than 4,000 societies were de-registered by RoS. If a CLGB is found to be operating against national security or public order, it may be subject to civil proceedings. Penalties are set out in ss.132, 364(2) and 367 of the CA. CCM has targeted programs to monitor compliance by NPOs. LFSA monitors the compliance of Labuan foundations upon submission of their annual returns. Under s.78 of the LFA, LFSA can impose administrative penalties (at a maximum of RM 500 (USD 149) per day and RM 10 000 (USD 2 987) in total) on any person failing to comply with the provisions of the Act, compound penalties and deregister foundations. The financial penalties available are not dissuasive, but the ability of the regulator

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to compound penalties may add to their effectiveness. Under s.17 of the TIA, the Minister has the power to revoke or suspend a certificate of incorporation if a body is found in breach of any provision. BHEUU has carried out monitoring and sanctioning.

a4.67. **Criterion 8.6(a)** - RMP has close cooperation with NPO regulators and has staff seconded to the RoS to facilitate real-time information exchange, including real time TF risk information. Malaysia's NPO regulators have signed a Note of Understanding (NOU) involving RoS, CCM, LFSAA and BHEUU dated September 2014 to support information exchange. Coordination and information sharing also takes place through the NCC committee on NPOs (SCONPO) which was established in May 2008. SCONPO is comprised of CCM (lead agency), RoS, IRB and BNM. As part of the NCC, it does not require formal legal arrangements or MoUs for domestic cooperation. No specific information regarding domestic cooperation by BHEUU was provided.

a4.68. To date, there have been no TF investigations involving NPOs in Malaysia. Section 63 of the SA empowers RoS to enter and search premises and inspect all documents. CCM is empowered to enter premises, search and seize documents under s.7(11) and 69A of the CA. Under s.28B of the LFSAA, LFSAA can share, publish or disclose information.

a4.69. **Criterion 8.6(b)** - Section 14(2) of the SA allows RoS to compel any society to furnish in writing any information deemed required by it. Section 64 empowers RoS to enter, search, seal and confiscate any documents relevant to the search, as well as taking statements for further proceedings. CCM is empowered to enter premises, search and seize documents under s.7(11) and 69A of the CA. Under s.28B of the LFSAA, LFSAA can compel RIs to submit any information on the identity, affairs or accounts of any of its customers. Section 28B of the LFSAA allows LFSAA to compel Labuan foundations, and corporations related to a Labuan foundation, to submit information to LFSAA. Apart from s.15 of TIA 258 which provides for trustees to keep accounts and render audited annual returns of accounts, BHEUU requests information on the management of trusts through an administrative form. The TIA 258 does not have a specific provision for access to information.

a4.70. **Criterion 8.6(c)** - Pursuant to Regulation 17 of the Societies Regulations 1984, RoS is able to promptly share information with LEAs such as the RMP and the MACC. LEAs have direct access to the CCM database. However, the sharing of investigation outcomes is on a case-to-case basis and subject to consent by the in-house Legal Advisor. Under s.28B(6) of the LFSAA, the LFSAA is able to disclose relevant information to domestic LEAs where there is a reasonable suspicion that a criminal offence has been, is being or is about to be committed. Section 28B(6) of the LFSAA should be read together with other provisions in the LFSAA including s.17A of the LFSAA which allows a member, an officer etc. of LFSAA to disclose information if he is required by any court or under any written law. CCM could share information promptly by using various other mechanisms including the interagency committees such as the Committee on Combating White Collar Crime platform, which does not require consent by legal advisor. No information on information sharing mechanisms was provided in relation to BHEUU.

a4.71. **Criterion 8.7** - The points of contact for international cooperation at Malaysia's NPO supervisors are provided at Article 14 of the MoU signed by the four supervisors in September 2014. In addition, RoS has established contact points and procedures to deal with international information requests. RoS has existing working relationships with its counterparts in Singapore and the UK. LFSAA has procedures in place for receiving and vetting requests. LFSAA's prosecution unit handles all requests for information, either formally through the MLA route or under an existing MoU/legal agreement.

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### *Weighting and Conclusion*

a4.72. There are some minor gaps in public access to records on NPOs, explicit record keeping requirements in all cases and gaps in the range of sanctions available to NPO regulators.

a4.73. **Malaysia is rated largely compliant with R.8.**

## Table of Acronyms

AGC	Attorney General’s Chambers
ALB	Association of Labuan Banks
ALTC	Association of Labuan Trust Companies
AML/CFT	Anti-Money Laundering and Counter Financing of Terrorism
AMLA	Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001
AMLA	Regulations -Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2006
AMLDD	Anti-Money Laundering Division (IRB)
APG	Asia/Pacific Group on Money Laundering
ARIN-AP	Asset Recovery Interagency Network – Asia Pacific
ASC	Association of Stockbroking Companies Malaysia
ASEAN	Association of Southeast Asian Nations
BHEUU	Legal Affairs Division, Prime Minister’s Department
BNI	bearer negotiable instrument
BNM	Bank Negara Malaysia
BO	beneficial owner
BVAEA	Board of Valuers, Appraisers and Estate Agents Malaysia
CA	Companies Act 1965
CADS	cash declaration system (BNM FIED database)
CBA	Central Bank of Malaysia Act 2009
CCID	Commercial Crime Investigation Department, Royal Malaysian Police
CCM	Companies Commission of Malaysia (also known as SSM)
CID	Crime Investigation Division, Royal Malaysian Police
CLBG	Companies Limited by Guarantee
CONG	Compliance Officers Networking Group
CMSA	Capital Market and Services Act 2012
CMSL	Capital Market Services Licence
CPC	Criminal Procedure Code
CT	counter terrorism
CTR	cash threshold report
DDFOPA	Dangerous Drugs (Forfeiture of Property) Act 1988
DFI	development financial institution
DNFBPs	designated non-financial businesses and professions
DPP	Deputy Public Prosecutor
DTA	double taxation agreement
EA	Extradition Act 1992

## TABLE OF ACRONYMS

Egmont	The Egmont Group of Financial Intelligence Units
ETP	Economic Transformation Programme
FGJAM	Federation of Goldsmiths and Jewellers Associations of Malaysia
FI	financial institution
FIED	Financial Intelligence and Enforcement Division (The FIU)
FINS	FIED's online reporting system allowing two way secure communication with RIs
FSA	Financial Services Act 2013
GIFCS	The Group of International Finance Centre Supervisors
GTP	Government Transformation Programme
IBC	International Business Company
IBFC	International Business and Finance Centre
IC	Identity Card
IFC	International Financial Centre
IFSA	Islamic Financial Services Act 2013
INTERPOL	International Criminal Police Organisation
IOSCO	International Organisation of Securities Commissions
IRB	Inland Revenue Board
ISA	Internal Security Act 1960
ISIL	Islamic State of Iraq and the Levant
ISP	Interim Strategic Plan
ITA	Income Tax Act 1967
JAT	Jemaah Anshorut Tauhid
JI	Jemaah Islamiyah
LCA	Labuan Companies Act 1990
LEA	Law Enforcement Agency
LFSA	Labuan Financial Services Authority
LFSAA	Labuan Financial Services Authority Act 2010
LFSSA	Labuan Financial Services and Securities Act 2010
LIBG	Labuan Investment Banks Group
LIIA	Labuan International Insurance Associations
LIFSA	Labuan Islamic Financial Services Act 2010LLP – Limited Liability Partnership
LLPA	Limited Liability Partnership Act 2012
LLPLLPA	Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 LTA - Labuan Trust Act 1996
LTCA	Labuan Trust Companies Act 1990
LTTE	Liberation Tigers of Tamil Ealam
MACC	Malaysian Anti-Corruption Commission
MACCA	Malaysian Anti-Corruption Commission Act 2009
MACMA	Mutual Assistance in Criminal Matters Act 2003

MACS	Malaysian Association of Company Secretaries
MAICSA	Malaysian Institute of Chartered Secretaries and Administrators
MBC	Malaysian Bar Council
MDIC	Malaysia Deposit Insurance Corporation Act 2011
MDTCC	Ministry of Domestic Trade, Cooperatives and Consumerism
MER	Mutual Evaluation Report
MIA	Malaysian Institute of Accountants
MIBA	Malaysian Investment Banking Association
MICPA	Malaysia Institute of Public Accountants
MITI	Ministry of International Trade and Industry
ML/TF	Money Laundering and Terrorism Financing
MoF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MMoU	Multilateral Memorandum of Understanding
MSB	money services business (comprising MVTs and money changers)
MVTs	money or value transfer service
NCC	National Co-ordination Committee to Counter Money Laundering
NCID	Narcotics Crime Investigation Department, Royal Malaysian Police
NPO	non-profit organisation
NRA	national risk assessment
NTP	National Transformation Policy
OGBS	Offshore Group of Banking Supervisors (now GIFCS)
PEP	politically exposed person
PF	proliferation financing
RBA	risk-based approach
RSF	Risk-Based Supervisory Framework
RI	reporting institutions
RM	Malaysian Ringgit
RMC	Royal Malaysian Customs Department
RMP	Royal Malaysia Police
RMP AMLA Unit	Anti-Money Laundering Unit, Royal Malaysian Police
RoS	Registrar of Societies
SA	Societies Act 1966
SB	Special Branch, Royal Malaysian Police
SC	Securities Commission of Malaysia
SCA	Securities Commission Act 1993
SCONPO	Sub-Committee on Non-Profit Organisations
SOP	standard operating procedure

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SOSMA	Security Offences (Special Measures) Act 2012
SRB	self-regulatory body
SRO	self-regulatory organisation
STA	Strategic Trace Act 2010
STS	Strategic Trade Secretariat
SuRF	Supervisory Risk-Based Framework
TA	Trustee Act 1949
TC	technical compliance
TCA	Trust Companies Act 1949
TCSP	trust and company service provider
TF	terrorist financing
TFS	targeted financial sanctions
TIA	Trustee (Incorporation) Act 1952
TIEA	Tax Information Exchange Agreement
UBO	ultimate beneficial owner
UNSCR	United Nations Security Council Resolution
VAEAA	Valuers Appraisers and Estate Agents Act 1981
WCO	World Customs Organisation
WMD	weapons of mass destruction