



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

5. Preventive measures

Effectiveness and technical compliance



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5. PREVENTIVE MEASURES

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Key Findings

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

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

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

5.1 Background and Context

(a) Financial Sector and DNFBPs

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

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

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

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(b) Preventive Measures

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

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

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

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

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

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

5.2 Technical Compliance (R.9-23)

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

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

5.3 Effectiveness: Immediate Outcome 4 (Preventive Measures)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) CDD and record-keeping

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Enhanced measures

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

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

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

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

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

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

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

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

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

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

(d) Reporting suspicious transactions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Internal controls

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

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

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

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

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

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

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

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

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

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

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

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

Overall conclusions on Immediate Outcome 4

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

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

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

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

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

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

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

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

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

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

5.4 Recommendations on Preventive Measures

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

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

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5. PREVENTIVE MEASURES

Preamble: Scope of FIs, DNFBPs and AML/CFT regulatory instruments

a5.1. The full range of FIs and DNFBPs are subject to AML/CFT preventive measures under the AMLA and subsidiary instruments. The competent authority three main financial regulators (BNM, SC and LFSA) have issued almost identical enforceable guidelines between September 2013 and January 2014 to specify in detail the requirements contained in the AMLA, prior to the coming into effect of the AMLATF Amendment Act in 2014.

a5.2. As indicated in the 2007 MER assessment, Malaysian case law confirms that the guidelines issued by the competent authority are enforceable. Each guideline clearly articulates which provisions are enforceable and which are purely intended to guide implementation. While the provisions in the guidelines are similar in the key components, they do address, where appropriate, the characteristics of each sector.

a5.3. Section 5 of the AMLA states that 'the competent authority' (which is BNM under the Act) shall, upon consultation with the relevant supervisory authority, issue directions or guidelines to FIs on the undertaking of CDD measures to inter alia, specify additional CDD measures to be undertaken by FIs and DNFBPs. Sectoral guidelines issued by BNM, LFSA and SC reflect this power and draw on the rule making powers in the relevant sectoral statutes.

BNM AML/CFT Guidelines

- Banks and deposit-taking institutions (effective date: 15 September 2013) – Sector 1
- Insurance and takaful (effective date: 15 September 2013) – Sector 2
- Money services business (effective date: 15 September 2013) – Sector 3
- Electronic money and non-bank affiliated charge and credit card business (effective date: 15 September 2013) – Sector 4
- DNFBPs and other non-financial sectors (effective date: 1 November 2013) – Sector 5

LFSA AML/CFT Guidelines

- Banking sector (effective date: 30 December 2013)
- Capital markets and other business (effective date: 30 December 2013)
- Insurance and takaful (effective date: 30 December 2013)
- Trust Company Sector (effective date: 30 December 2013)

SC AML/CFT Guidelines

- Capital market intermediaries (issued: 15 January 2014)

a5.4. A broader category of financial activities, including those carried out by DNFBPs, are covered under the First Schedule of the AMLA, which include the activities listed above and in the Glossary to the FATF Recommendations. These include:

- Activities carried out by banks, investment banks, insurers carrying on life business, financial advisers, insurance broker, issuer of designated payment instrument and approved money broker under the Financial Services Act 2013.

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- Activities carried out by Islamic banks, international Islamic banks, takaful operator carrying on family takaful business, international takaful operators carrying on family takaful business, Islamic financial adviser, takaful broker and issuer of designated Islamic payment instrument under the Islamic Financial Services Act 2013.
- Activities relating to building credit business, development finance business, factoring and leasing business.
- Activities of dealing in securities, dealing in derivatives or fund management carried out by a holder of a licence under the Capital Markets and Securities Act 2007.
- Activities carried out by a licensee under the Money Services Business Act 2011.
- Activities carried out by a prescribed institution under the Development Financial Institutions Act 2002.
- Activities carried out by Lembaga Tabung Haji (includes deposit taking) under the Tabung Haji Act. 1995.
- Activities carried out by a licensee in relation to postal financial services as defined under the Postal Services Act 2012 (money orders, postal orders, postal drafts, postal cheques, postal travellers' cheques, giro, cash-on-delivery, collection of bills, savings service, subscription to newspapers and periodicals and any other form of financial service).
- Activities carried out by a casino activity as defined in the Common Gaming Houses Act 1953.
- Activities carried out by members as defined in the Accountants Act 1967.
- Activities carried out by an advocate and solicitor as defined in the Legal Professions Act 1976, the Advocates Ordinance Sabah 1953 and the Advocates Ordinance Sarawak 1953.
- Activities carried out by a licensed secretary of a company pursuant to the Companies Act 1965.
- Activities carried out by a licensee as defined in the Pool Betting Act and a racing club as defined in the Race Club (Public Sweepstakes) Act 1965.

Table A5.1. The types of FIs and DNFBPs falling under the three supervisors

Supervisor	Types of FIs and DNFBP
BNM	Commercial banks ; Islamic banks; Lembaga Tabung Haji (deposit taking fund for Muslim pilgrims); Insurance and takaful (Islamic insurance); Money services businesses: money changing, remittance business and wholesale currency business; Development financial institutions; Payment systems: electronic money and non-bank charge and credit card issuers; Casino; Accountants; Lawyers and advocates; Dealers in precious metals and stones; Company secretaries (onshore); totalizer agency; pools betting; racing clubs
SC	Capital markets services intermediaries (e.g. dealing in securities, advise on corporate finance, investment advice, fund management, dealing in derivatives, dealing in private retirement schemes).

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Table A5.1. The types of FIs and DNFBPs falling under the three supervisors (continued)

Supervisor	Types of FIs and DNFBP
LFSA	Labuan Banks, Labuan Investment Banks , Labuan Islamic Banks, Labuan Islamic Investment Banks, Labuan Insurance and Insurance Related, Labuan Takaful and Takaful Related, Labuan Capital Market : mutual funds (public and private); fund managers; fund administrators; Trustees; Custodian, Labuan Financial Business (building credit business; credit token business; development finance business; leasing business; factoring business; money-broking business, Labuan international trading commodity) , Labuan Islamic Financial Business (Islamic building credit business; Islamic credit token business; Islamic development finance business; Islamic leasing business; Islamic factoring business; Islamic money-broking business, Labuan Securities Licensee, Labuan Trust Companies, Sukuk, Islamic Mutual Funds (Private and Public Fund), Fund Managers and Fund Administrators, Trustees and Custodian.

a5.5. As a result of the 2013 NRA it was assessed that general insurance (including takaful) is low risk due to the nature of the products sold and is no longer subject to the AML/CFT obligations under the guidelines. Similarly, custodians of cash and liquid securities are not subject to AML/CFT obligations based on low risk because (a) the business is carried on by other institutions that are already subject to these obligations and is limited to business conducted with fund managers and (b) they do not interact directly with customers of fund managers.

Recommendation 9 – Financial institution secrecy laws

a5.6. Malaysia was rated partially compliant with former R.4. The 2007 MER found that Offshore Banking Act inhibited the ability of LFSA legally to acquire customer information in the normal course of its supervisory role and that there were legal constraints on BNM and LFSA to share customer information with foreign counterparts.

a5.7. **Criterion 9.1** - A duty of confidentiality and secrecy is imposed by the financial and regulatory laws on directors, officers, auditors, agents etc. of licensed FIs with respect to customers and the affairs of such institutions. A similar duty is also imposed on the supervisors of such institutions, but with exemptions as provided for in the law, including with respect to sharing of information with foreign counterparts and domestic LEAs which they obtain in the course of their supervisory functions. For purposes of the STR obligations of all entities covered under the AML/ATFA, the secrecy and restrictions on disclosure imposed by any law or otherwise are overridden.

a5.8. In 2010, the Offshore Banking Act (OBA) was repealed and the Labuan Financial Services and Securities Act (LFSSA) which includes provisions for banks, was enacted. In 2010, the LFSA Act was also amended to address information access restrictions in the predecessor OBA. Section 17A of the LFSA Act contains broad secrecy and disclosure restrictions that can cover information obtained in the course of the LFSA supervisory functions (e.g. ‘...any record, book, register, correspondence, document, material or information, relating to the business and affairs of the Authority in the performance of his duties or the exercise of his functions ..’). Exemptions to the secrecy provisions under s.17A are disclosures when required by a court or written law. There are pecuniary and imprisonment penalties for violations of secrecy provisions.

a5.9. Section 28B(1) allows the LFSA to require FIs to submit to it a wide range of information for purposes of its supervisory functions including information , then imposes restrictions on divulging that information care of Section 28B(5) of the Act. Section 28B (6) allows the LFSA to divulge information submitted to it under s.28B(1) to a range of recipients including home supervisors, LEAs, under MOUs, on order of the courts, etc. but only with respect to information obtained under s.28B(1), that is, customer and beneficiary identification information “or” the general information submission requirement under item (c).

a5.10. Sections 28(E) and 28(F) combined with s.29P provide very wide powers for LFSA investigating officers to obtain the widest range of information and things from Labuan RIs and share any such materials

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or information, but only in the context of the investigation of a breach of regulatory offence set out in the Act and acts in the schedule to the LFSAA. The threshold for obtaining this information is reasonable suspicion by an investigating officer. Section 29P of the LFSAA clearly puts aside any secrecy obligations, regardless of MOU, home supervisor relationship or any other provision and empowers LFSAA to share the widest range of information held by LFSAA with any authority vested with supervisory and regulatory or enforcement powers situated within or outside Malaysia. The disclosure to a supervisory or regulatory authority in the context of s.29P of the LFSAA is not limited to home supervisory authority, but is limited to information obtained by an investigating officer when there is a suspicion of a breach of a regulatory offence.

a5.11. Some basic supervisory information which does not reasonably give rise to suspicion of an offence and which is not requested by a home supervisor or a party to an MOU would still be captured by secrecy obligations. This appears to be a relatively minor gap, and would include information that the LFSAA does not request and may obtain on its own or itself generate through the examination process that may be of interest to other competent authorities and information which is not collected in the context of suspicion of an offence.

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a5.12. Some basic supervisory information which does not reasonably give rise to suspicion of an offence and which is not requested by a home supervisor or a party to an MOU would still be captured by secrecy obligations. This appears to be a relatively minor gap.

a5.13. **Malaysia is rated largely compliant with R.9.**

Recommendation 10 – Customer due diligence

a5.14. Malaysia was rated largely compliant with former R.5. The 2007 MER noted uncertainties about current levels of implementation; varied interpretations of the obligation to identify beneficial ownership; no obligation on securities firms to close accounts when they have doubts about the identity of existing customers; and uncertainty about the extent to which insurers can verify CDD undertaken by agents.

a5.15. Since then, a number of enhancements have been made to the legal and regulatory framework, particularly through the issuance of updated guidelines reflecting the revised FATF Recommendations, including risk-based elements. The main CDD requirement is established in the AMLA (Amendment) Act of 2013 (passed in June 2014). Section 16(2) states that FIs shall undertake CDD measures in the circumstances listed in the Act, e.g. establishment of business relations, conduct of transactions, etc. Therefore, the basic requirement that the CDD obligation be established in law has been met.

Detailed CDD requirements

a5.16. **Criterion 10.1** – Section 16(1) of the AMLA prohibits FIs from opening or operating an anonymous account or any account in a fictitious, false or incorrect name. This prohibition also applies to the establishment or conduct of business relationships in a similar manner. In addition, s.18 states that no person shall open, operate or authorize the opening or operation of an account, or establish, conduct or perform any business relationship, transaction or activity with a FI in a fictitious, false or incorrect name. Provisions are also made for persons that are commonly known by two or more names.

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a5.17. **Criterion 10.2** – Section 16(2) of the AMLA and the sectoral guidelines require FIs to conduct CDD when: (a) establishing or conducting a business relationship; (b) carrying out a transaction or activity for occasional or 'usual' customers; (c) when any transaction or activity exceeds the thresholds specified by the applicable supervisor (see below); (d) there is suspicion of ML or TF, but does not state that this applies regardless of any threshold or exemption but which can be so implied. The guidelines elaborate on the requirements of the Act and state that CDD should be conducted when there is suspicion regardless of the amount; and (e) when there is doubt about the veracity or adequacy of previously obtained identification data. This requirement in the Act (s.16 (2) and (7) in particular) is also elaborated in the guidelines. For instance, guideline 13.1.1 (c) and (d) for banks requires CDD for occasional transactions and cash transactions

of RM 50 000 (USD 14 937) and above. For occasional transactions this also includes ‘... situations where the transaction is carried out in a single transaction or several transactions in a day that appear to be linked;’ The one day period is not a material gap (and not a specific FATF requirement) but is limiting because structured linked transactions can occur on different days that can exceed the established thresholds during e.g. one week or month. A longer period for aggregating linked transactions may be more appropriate, both with respect to the occasional and cash transactions requirements in the Guidelines. This could also be included under s.16(7) that establishes the requirement of linking multiple transactions and activities but no timeframe for aggregating ‘series of transactions’ that are or appear to be linked (as required under c10.2(b)). This would better support the identification and reporting of structured suspicious transactions that occur over several days but not daily. For insurance/takaful companies the BNM guidelines require structured transactions to be linked for purposes of the threshold established for simplified CDD only and not for other cases. For LFSA supervised insurance /takaful entities the guidelines provide for split transactions below the established thresholds for simplified CDD only, and they only apply in cases of structured premium payments with respect to multiple policies per policy holder. It can therefore be interpreted that CDD is required on all transactions including occasional irrespective of the amount, other than for simplified CDD purposes. Other sectoral guidelines do not contain provisions for aggregating linked transactions for purposes of established thresholds for occasional transactions.

a5.18. The AMLA does not specifically require CDD for occasional wire transfers but under s.10(2) it requires CDD for all occasional transactions, presumably regardless of the amount. However, this requirement is established in the guidelines without any threshold with respect to FIs, except for insurance and takaful companies and other entities that do not generally engage in wire transfer business. Only BNM has included thresholds in some of the sectoral guidelines as follows:

- Banks and deposit-taking institutions: RM 3 000 (about USD 896) for currency changing transactions and RM 50 000 (about USD 14 937) for occasional transactions including linked transactions.
- Insurance and takaful: none.
- Money changing and wholesale currency: RM 3 000-10 000 (USD 896-2 987) identification information only and above RM 10 000 (USD 2 987) a copy of the identification also.
- Electronic money and non-bank charge and credit card entities: for transactions RM 3 000 (USD 896) and for customer purses when balance is RM 5 000 (USD 1 494) or above.

a5.19. For FIs supervised by the LFSA, there are no specific thresholds for occasional transactions except in cases described under c10.2 above.

a5.20. **Criterion 10.3** - Section 16(3) of the AMLA requires FIs to ascertain the identity of customers, including their domicile, legal and representative capacity, occupation or business purpose whether the person is an occasional or usual customer. In this regard, FIs shall verify such information using reliable means or from an independent source document, data or information which can include identity card, passport, birth certificate, driver’s license, constituent document, or any other official or private document. The sectoral guidelines provide the full details on CDD measures and documentation including address, nationality, contact details, employment, etc. FIs can accept other forms of official documents providing they bear a photograph and their authenticity can be verified. Copies of original documents should also be obtained but where biometric identification is used, verification is deemed satisfied. When there is doubt, FIs shall request other official documentation bearing a photograph.

a5.21. **Criterion 10.4** - Section 16(3) of the AMLA and the sectoral guidelines require FIs to identify persons purporting to act on behalf of a customer. This includes identification of the legal and representative capacity. FIs shall take reasonable steps to obtain and record information on the identify of any person on whose behalf an account is opened or a transaction is conducted if there is doubt that a person is not acting on his own behalf. Section 16(3)(b) requires FIs to verify the ‘representative’ and ‘legal’ capacity of a person which should allow the FI to establish if the person is authorized to act on behalf of another. FIs must verify that persons acting on behalf of customers are authorized.

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a5.22. **Criterion 10.5** - Section 16(7) of the AMLA states that the CDD measures applicable to persons includes any person who is a nominee, agent, beneficiary, beneficial owner or principal and any other person specified by the competent authority in relation to a transaction or activity. Consequently, the CDD obligations imposed by the Act cover beneficial owners. More directly, each of the guidelines have more detailed requirements for beneficial owners which mirror the FATF requirements.

a5.23. **Criterion 10.6** - Section 16(3) of the AMLA requires FIs to identify and verify, inter alia, the business purpose of a customer. The requirements to understand and obtain the purpose and intended nature of the business relationship are contained in each of the sectoral guidelines at a level of detail which mirrors the FATF standard.

a5.24. **Criterion 10.7** - Section 16(4) of the AMLA includes a high-level requirement on FIs to conduct ongoing due diligence on all accounts, business relationships, transactions and activities. The full CDD requirements to scrutinize transactions for consistency with knowledge, business and risk profile of customers, source of funds and updating and reviewing CDD data, particularly for higher risk clients are established in the sectoral guidelines consistent with FATF requirements.

a5.25. **Criterion 10.8** - The sectoral guidelines contain detailed CDD requirements for legal persons and arrangements consistent with the FATF standards with respect to CDD for legal persons and arrangements' nature of business and the ownership and control structure.

a5.26. **Criterion 10.9** - Detailed requirements consistent with the standards are established in the respective sectoral guidelines to identify and verify legal persons and arrangements using the required information.

a5.27. **Criterion 10.10** - Section 16(3)(e) of the AMLA requires FIs to take reasonable steps to verify the identity of natural persons who own or exercise effective control over a customer that is not a natural person. The definition of natural 'person' under s.16(7) includes beneficiaries and beneficial owners. Obligations which mirror the FATF requirements are contained in the sectoral guidelines.

a5.28. **Criterion 10.11** - The specific CDD requirements for legal arrangements including trusts (settlors, trustee(s), protectors) are detailed in the sectoral guidelines at a level of detail which mirrors the FATF requirements.

a5.29. **Criterion 10.12** - The AMLA has broad requirements, but the insurance/takaful guidelines have specific requirements that are set out in a way which mirrors the FATF requirements (s.13.4.2 refers). In addition to general CDD to be undertaken, s.13.4.2 requires that the following CDD measures on the beneficiary of policies apply as soon as the beneficiary is identified/designated (the beneficiary is defined as 'the natural or legal persons, or a legal arrangement, or category of person, who will be paid the policy proceeds when or if an insured event occurs, which is covered by the insurance policy): (a) for a beneficiary that is identified as specifically named natural or legal persons or legal arrangements – taking the name of the person; (b) for beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information (e.g. under a will of testament) concerning the beneficiary to satisfy the reporting institutions that it will be able to establish the identity of the beneficiary at the time of the payout; and (c) for the purposes of (a) and (b), the verification of the identity of the beneficiary must occur latest at the time of the payout.

a5.30. **Criterion 10.13** - The guidelines for the insurance and takaful sectors include requirements which mirror the FATF requirements to include beneficiaries of life insurance policies as a relevant risk factor to determine enhanced CDD measures, including verification of identity at the time of payout.

a5.31. **Criterion 10.14** - A number of the guidelines (e.g. banks) have provisions that are consistent with the FATF requirements to permit delays in the verification of identity under controlled circumstances. Other guidelines do not permit any delays in the timing of completion of verification in the CDD process, perhaps because their business does not, in practice, give rise to such situations.

a5.32. **Criterion 10.15** - The sectoral guidelines contain risk assessment, management and control provisions especially for the banking and capital markets sectors where such circumstances may arise.

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a5.33. **Criterion 10.16** - The sectoral guidelines establish this requirement in language which mirrors the FATF standard. The guidelines do not define existing customers as being those at the date new national requirements are brought into force. The guidelines do, however, indicate their date of effect and the requirements to comply shall take effect immediately. A common reading of the term 'existing customers' in these circumstances would appear to be those customers of any FIs at the date the guidelines entered into force.

a5.34. **Criterion 10.17** - The AMLA (s.16(5)(b)) requires that the competent authority (FIU) issue directions or guidelines to FIs on undertaking additional CDD measures. The sectoral guidelines repeat those obligations and also require FIs to perform enhanced CDD where ML/TF risks are higher.

a5.35. **Criterion 10.18** - The AMLA (s.16(5)(b)) requires that the competent authority (FIU) issue directions or guidelines to FIs on undertaking additional CDD measures. The sectoral guidelines repeat those obligations and set out the application of simplified CDD measures where lower risks have been identified through an adequate risk analysis, but are not acceptable where there are suspicions of ML/TF. This is in keeping with the standards.

a5.36. **Criterion 10.19** - Sectoral guidelines which mirror the FATF requirements govern situations where FIs cannot comply with the applicable CDD measures.

a5.37. **Criterion 10.20** - Sectoral guidelines which mirror the FATF requirements allow FIs to not pursue CDD measures if doing so could tip-off a customer, and to immediately file an STR in such cases.

a5.38. **Malaysia is rated compliant with R.10.**

Recommendation 11 – Record-keeping

a5.39. Malaysia was rated compliant with former R.10 in the 2007 MER.

a5.40. **Criterion 11.1** - Section 13 of the AMLA establishes the record keeping requirements, supported by the sectoral guidelines. Section 13(10) requires FIs to keep all transaction records involving domestic and foreign currencies exceeding such amount as the competent authority specifies. Note that the Act refers to a narrower type of transaction (domestic and foreign currency) but there is no such restriction in the guidelines, which covers all transactions and would for practical purposes cover all international transactions. Records should be kept for at least 6 years after transactions are completed.

a5.41. **Criterion 11.2** - Section 13(3) lists the types of records that could be kept including identification, address including for beneficiaries, account identification and transaction details. The guidelines expand on these and include business correspondence. The guidelines specify that records should be kept for at least 6 years following completion of a transaction including occasional transaction, and business relationships. The retention period can be extended if LEA so requires. The requirement to retain the results of analysis is contained in the guidelines (s.17).

a5.42. **Criterion 11.3** – In relation to the requirement to maintain records in such a manner as to enable the reconstruction of individual transactions for evidentiary purposes, s.17(2) of the AMLA establishes that, in addition to the record keeping requirements under s.17(1), the “reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify under s.14...” Section 14(1)(a) of the Act refers to the reporting of transactions (presumably for purposes of large currency or CTR) as follows: ‘any transaction exceeding such amount as the competent authority may specify’. Section 17 (1) provides for a broad range of records to be retained for the statutory period which (along with the threshold currency recordkeeping requirements under s.13) may be sufficient in practice for the reconstruction of individual accounts but does not mirror the FATF wording in the specific obligation under c11.3 that ‘such records be sufficient to reconstruct individual transactions’. The latter obligation is under s.17(2) as an additional obligation to the statutory record retention period under s.17(1) using the FATF wording, but which unfortunately limits its application by attaching the requirement to transactions that exceed the amount to be specified under s.14. The guidelines specify that records shall be

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maintained in such a form as that is admissible as evidence in court and be available to supervisory and LEAs in a timely manner. This is a minor drafting shortcoming.

a5.43. **Criterion 11.4** - The guidelines establish that records should be made available to supervisory and LEAs, this refers to competent authorities as including 'all public authorities' (including independent financial supervisors) with responsibilities for combating ML/TF. These would include other agencies that do not have law enforcement mandate e.g. intelligence services.

Weighting and Conclusion

a5.44. A minor drafting shortcoming relating to thresholds is noted above.

a5.45. **Malaysia is rated largely compliant with R.11.**

Recommendation 12 – Politically exposed persons

a5.46. Malaysia was found partially compliant with former R.6 in the 2007 MER, largely because PEPs were not covered for the securities sector. R.12 has been expanded to include domestic PEPs.

a5.47. **Criterion 12.1** - For foreign PEPs. FIs are required under para. 14 of the Guidelines to put in place risk management systems to determine whether a customer or beneficial owner is a PEP. Upon such determination, enhanced CDD should be applied as specified in para. 13.5 (banks) of the Guidelines. (the paragraph references in the guidelines for some of the other sectors vary e.g. 13.6 for insurance but have similar provisions. The banking guidelines are used in this section to illustrate the deficiency identified). Such enhanced CDD require that senior management approval be obtained before establishing or continuing a business relationship with a PEP, and obtaining source of funds and wealth (para. 13). Enhanced CDD under para. 13.5 does not however, cover enhanced monitoring of the relationship as required under c12.1, except updating more regularly identification data of customers and beneficiaries (para 13.5.2). Ongoing CDD is covered under para. 13.6 for banks, (13.7 for insurance, etc.) which includes enhanced CDD in cases of higher risk. However, para. 14 on PEPs do not require application of the ongoing and enhanced CDD provisions of para. 13.6. d for foreign PEPs in all cases unless higher risk scenarios are identified.

a5.48. **Criterion 12.2** - FIs are required to take reasonable measures to determine if a customer is a domestic PEP or who holds a prominent function in an international organization, and where higher risk is assessed, to take enhanced measures as established under para. 13.5 of the Guidelines. This paragraph requires enhanced CDD similar to foreign PEPs including obtaining senior management approval for business relationships, establishing source of wealth/funds and enhanced ongoing monitoring (Guidelines: para. 14). The same deficiency that applies to foreign PEPs with respect to enhanced monitoring applies to domestic PEPs, that is, the enhanced CDD and monitoring provisions under para. 13.6 are not referenced in para. 14 for domestic PEPs, unless higher risk scenarios are identified.

a5.49. **Criterion 12.3** - The definition of PEPs in the Guidelines covers family members or close associates of all PEPs, therefore the above requirements extend to them.

a5.50. **Criterion 12.4** - Insurance and takaful are required to take reasonable measures to determine whether beneficiaries or where required the beneficial owner of the beneficiary are PEPs. This should occur latest at the time of pay out. In higher risk cases, enhanced CDD should be applied to include senior management approval and obtaining source of funds and wealth. RIs should consider filing an STR.

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Weighting and Conclusion

a5.51. The direction to treat foreign PEPs as high risk customers is only implicit and may be a minor shortcoming.

a5.52. **Malaysia is rated largely compliant with R.12.**

Recommendation 13 – Correspondent banking

a5.53. Malaysia was rated largely compliant with for R.7 in the 2007 MER. The evaluation team had uncertainties about the level of implementation.

a5.54. **Criterion 13.1** - With one exception, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the requirements under the FATF standards in relation to establishing and maintaining correspondent relationships. This exception is that the provisions apply to RIs dealing with respondent banks only rather than the wider concept of respondent institution. In addition, sections 13.4.18 and 19 of both guidelines require RIs to be satisfied that a counter party is properly regulated and supervised and that the counter-party's CDD process is adequate and mechanisms to identify and verify customers are reliable.

a5.55. **Criterion 13.2** - With the one exception referred to in 13.1 above, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the FATF requirements for 'payable-through accounts'.

a5.56. **Criterion 13.3** - With the one exception referred to in 13.1 above, the BNM and LFSA guidelines (sections 20 and 19 respectively) contain enforceable provisions that are identical to the FATF requirements to prohibit relationships establishing or continuing with shell banks.

a5.57. **Malaysia is rated largely compliant with R.13.**

Recommendation 14 – Money or value transfer services

a5.58. Malaysia was rated partially compliant with former SR VI. The 2007 MER found that large scale unregulated remittance channels existed, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; there was limited implementation of CDD, record keeping and compliance provisions of AMLA as it was not invoked until March 2007 for certain non-bank remittance operators; there was limited implementation of AML/CFT compliance monitoring and sanctions by BNM over remittance operators; and that Malaysia had not ensured that all MVT service operators were subject to applicable FATF Recommendations.

a5.59. Since the previous MER there has been a new regulatory regime and relicensing of the whole MSB sector and continuing crack downs on unlicensed remitters. MSBs include MVTS and money changers.

a5.60. **Criterion 14.1** - MVTS providers in Malaysia are required either to be approved MSBs under s.11 of the Financial Services Act 2013 (FSA) or s.11 of the Islamic Financial Services Act 2013 (IFSA) to issue designated payment instruments (banking and non-banking institutions); be approved under s.11 of the FSA or IFSA to issue designated payment instruments and be licensed under s.7 of the Money Services Business Act 2010 (MSBA) for remittance services (non-banking institutions which also carry out remittance services); or be licensed under s.7 of the MSBA for remittance services (other institutions that carry out a remittance business only).

a5.61. **Criterion 14.2** - Persons who conduct MVTS without having obtained approval under s.11 of the FSA or IFSA are subject to imprisonment for a term not exceeding ten years or a fine not exceeding RM 50 million or both if convicted. In addition, s.4 of the MSBA makes it an offence for any person conducting a money services business without a licence. Upon conviction, such a person is liable to imprisonment for a term not exceeding 10 years or a fine not exceeding RM five million or both.

a5.62. Malaysia has taken a series of measures to identify illegal MVTS activity. Between 2012 and September 2014 BNM conducted onsite surveillance visits to 409 companies, of which 68 were found to be conducting illegal MSB activities. These companies were subject to enforcement action. See IO3 for further details.

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PREVENTIVE MEASURES

a5.63. **Criterion 14.3** - MVTS providers are subject to supervision by BNM. MVTS providers are RIs under AMLA and are subject to the AML/CFT requirements set out in the Act and guidelines (Sector 1 for FIs, Sector 3 for MSBA licensees and Sector 4 for e-money issuers).

a5.64. **Criterion 14.4** – Section 42 of the MSBA requires MSB licensees to obtain the approval of BNM prior to the appointment of an MSB agent. Para 9.1.2(e) of the MSB Guidelines on the Agent Oversight Framework requires a principal licensee to maintain an up to date record (accessible by BNM) of all agents appointed. In addition, BNM maintains a register of MSB agents approved for appointment which is published on BNM’s website.

a5.65. **Criterion 14.5** - Para 10 of the relevant sectoral guidelines clarifies that third parties do not include agents. Agents are regarded as synonymous with the RI they provide services for and as such are subject to the AML/CFT compliance program of the reporting institution. Banks and non-bank FIs involved in the provision of MVTS are required to establish an oversight and monitoring process to ensure the proper conduct of their agents (paras 8.7 -8.8 and Appendix III of the Guidelines on Electronic Money refers).

a5.66. **Malaysia is rated compliant with R.14.**

Recommendation 15 – New technologies

a5.67. Malaysia was rated compliant with former R.8 in the 2007 MER.

a5.68. **Criterion 15.1** - The guidelines (para. 15, etc.) contain provisions that mirror the FATF requirements for RIs in relation to new technologies.

a5.69. Malaysia identifies and assesses the ML/TF risks that may relate to new technologies through a number of mechanisms. The 2012 and 2013 NRA’s and sectorial risk assessments of FI’s and DNFPB’s included indicators on complexity of products and services offered and deliver channels, including in relation to new technologies. The NRAs also assessed the risk of sectors that work with new and developing technologies, such as electronic money and non-bank card issuers. Each supervisory authority’s risk-based AML/CFT supervisory framework takes new technologies into account when assessing the level of inherent ML/TF risk. Supervisors also engaged with LEAs at the policy and operational level on issues related to possible risks arising from new technologies. The FIU conducts strategic analysis on ML/TF risks that may arise from new products or business practices, which is shared with RIs. In addition, a specialised Technology Risk Specialist Unit within BNM is mandated to detect and conduct macro-surveillance on emerging technology risks in the financial sector.

a5.70. **Criterion 15.2** - The guidelines (para. 15, etc.) contain direct provisions on new technologies that mirror the FATF requirements as well as risk profiling and mitigation requirements.

a5.71. **Malaysia is rated compliant with R.15.**

Recommendation 16 – Wire transfers

a5.72. Malaysia was rated largely compliant with former SR VII. The 2007 MER noted gaps with implementation and inspection powers were yet to be used with the majority of MSBs (MVTS and money changers). The FATF requirements for R.16 have been updated compared to SRVII.

a5.73. Malaysia’s updated sectoral guidelines mirror the FATF requirements of R.16. In particular, paragraphs 18 and 19 of the applicable guidelines apply to most FIs except for insurance companies which do not generally engage in this business and are therefore not covered in the guidelines. These paragraphs establish the wire transfer obligations which are applicable to both cross-border and domestic wire transfers, including for serial and cover payments. These requirements also apply to the CFT provisions established under para. 31 of the guidelines.

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- a5.74. **Criterion 16.1** - The guidelines require the applicable FIs (ordering institutions) to ensure that wire transfers exceeding RM3,000 (about USD896) are accompanied by full originator information, including beneficiary information.
- a5.75. **Criterion 16.2** - The guidelines mirror the FATF requirements relating to the treatment of batched or bundled transactions. (para. 18.2).
- a5.76. **Criterion 16.3** - The guidelines mirror the FATF requirements relating to any *de minimis* threshold. (para. 18.2).
- a5.77. **Criterion 16.4** - The guidelines mirror the FATF requirements relating to verification of information when there is suspicion of ML or TF. (para. 18.2).
- a5.78. **Criterion 16.5** - The guidelines mirror the FATF requirements relating to domestic wire transfers. (para. 18.2).
- a5.79. **Criterion 16.6** - The guidelines mirror the FATF requirements in relation to information accompanying domestic wire transfers. (para. 18.2).
- a5.80. **Criterion 16.7** - The guidelines mirror the FATF requirements for ordering institutions (para. 18.1).
- a5.81. **Criterion 16.8** - The guidelines mirror the FATF requirements to not progressing if there is a failure to implement controls. (para. 18.1).
- a5.82. **Criterion 16.9** - The guidelines mirror the FATF requirements covering intermediary institutions ensuring originator and beneficiary information accompanies a wire transfer. (para. 18.3).
- a5.83. **Criterion 16.10** - The guidelines mirror the FATF requirements, including the recordkeeping requirement of 6 years or more. (para. 18.3).
- a5.84. **Criterion 16.11** - The guidelines mirror the FATF requirements for intermediaries' responsibilities to identify cases of a lack of originator or beneficiary information. (para. 18.3).
- a5.85. **Criterion 16.12** - The guidelines mirror the FATF requirements for intermediaries' responsibilities for risk-based actions in case of a lack of originator / beneficiary information. (para. 18.3).
- a5.86. **Criteria 16.13 - 15** - The guidelines mirror the FATF requirements covering beneficiary institutions' responsibilities to identify and take risk-based measures to act in case of a lack of originator / beneficiary information and to identify the beneficiary if it has not been done previously (para. 18.4).
- a5.87. **Criteria 16.16 & 17** - The guidelines mirror the FATF requirements covering MVTS responsibilities which may conduct wire transfers. (para. 19).
- a5.88. **Criterion 16.18** - Para. 18 of the guidelines together with para. 31 for combating TF per UNSCRs, require FIs conducting wire transfers to comply with the freezing and customer rejection requirements established in para. 31. In Malaysia these are persons listed by the UN or orders made by the Minister of Home Affairs under sections 66B or 66C of the AMLA to implement 1373.
- a5.89. **Malaysia is rated compliant with R.16.**

Recommendation 17 – Reliance on third parties

- a5.90. Malaysia was rated partially compliant with former R.9. The 2007 MER found the potential for reliance on unregulated third parties and a lack of limitations with respect to jurisdictions where introducers may be based.

PREVENTIVE MEASURES

a5.91. **Criterion 17.1** - The guidelines set out provisions which allow RIs to rely on third parties to conduct CDD or to introduce business, but the ultimate responsibility and accountability of CDD measures shall remain with the RI relying on the third parties. Third parties may perform CDD to identify and verify customers, beneficiaries and obtain information to understand the purpose and nature of the business relationship. Reliance on third parties for the conduct of ongoing CDD is not allowed under the guidelines.

a5.92. The guidelines do not contain provisions for RIs relying on third parties to immediately obtain the necessary CDD information relating to the identification and verification of a customer's identity, identifying the beneficial owner.

a5.93. The guidelines require FIs to satisfy themselves that the third parties can provide CDD information and copies of relevant documentation immediately upon request, have adequate CDD and recordkeeping requirements, and that they are properly regulated and supervised by their respective authorities. An attestation or written confirmation may be obtained from third parties that these requirements have been met. Such reliance shall be governed by arrangements establishing the rights and responsibilities of the respective parties.

a5.94. **Criterion 17.2** - RIs are prohibited from relying on third parties located in higher risk countries identified as having ongoing or substantial ML/TF risks. Institutions are required to have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from jurisdictions that have been identified as having strategic AML/CFT deficiencies that pose a ML/TF risk to the international financial system. In addition, the risk assessment and management requirements established by the guidelines support this requirement.

a5.95. **Criterion 17.3** - The guidelines mirror the FATF requirements.

Weighting and Conclusion

a5.96. There is a minor deficiency as the guidelines do not specify that RIs relying on a third party should be required to immediately obtain the necessary CDD information.

a5.97. **Malaysia is rated largely compliant with R.17.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

a5.98. Malaysia was rated largely compliant with former Rec15 and compliant with former Rec22 in the 2007 MER. For R.15 there were certain implementation uncertainties.

a5.99. **Criterion 18.1** - The guidelines require FIs to have a compliance program, screening procedures for hiring and ongoing training of employees and an independent audit functions to test an institution's AML/CFT framework. The roles and responsibilities of the board of directors, senior management, compliance officers and employees are clearly spelt out.

a5.100. **Criterion 18.2** - Guidelines issued by BNM, LFSa and SC have included the requirements to implement group-wide programs. This includes a framework for AML/CFT compliance programs at the group level, appointment of a group compliance officer at management level, policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management, the provision of customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes and safeguards on the confidentiality and use of information. Holding companies provide and implement AML/CFT programs as per the need of branches and subsidiaries in the group. Group compliance officers appointed by the holding company make group-wide assessments for the implementation of a single AML/CFT strategy.

a5.101. **Criterion 18.3** - FIs and groups are required to ensure that their foreign branches and subsidiaries apply AML/CFT measures in a manner that is consistent with the AML/CFT requirements in Malaysia. Where

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the minimum AML/CFT requirements of the host country are less stringent than those of Malaysia, the RI must apply Malaysia's requirements, to the extent that host country laws and regulations permit.

a5.102. **Malaysia is rated compliant with R.18.**

Recommendation 19 – Higher-risk countries

a5.103. Malaysia was rated largely compliant with former R.21. The 2007 MER noted uncertainty as to effective implementation of enhanced and ongoing CDD and monitoring and limited scope for country-specific countermeasures.

a5.104. **Criterion 19.1** - All three AML/CFT regulators have issued appropriate guidelines to implement the revised FATF requirements on higher-risk countries. BNM and LFSAs guidelines require enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Government of Malaysia as having ongoing or substantial ML/TF risks. SC has issued guidelines that require supervised entities to conduct enhanced CDD when there is a 'Public Statement' from the FATF or when FATF calls on its members to apply counter measures.

a5.105. **Criterion 19.2** - Guidelines issued by the three regulators require a range of actions to be taken against higher-risk countries, based on risk and whether or not FATF has called for action. A policy to disallow the opening of offices/branches/subsidiaries of FIs hailing from higher-risk countries is uniformly followed by all regulators. Malaysia can apply countermeasures when called for by FATF, as well as independent of such a call based on the risk involved in any relationship or transaction with the higher-risk country.

a5.106. **Criterion 19.3** - BNM issues periodic circulars to its regulated sectors on countries that have strategic deficiencies in their AML/CFT regime. LFSAs places such information on its website while SC publishes this information through the electronic licensing application system and its website.

a5.107. **Malaysia is rated compliant with R.19.**

Recommendation 20 – Reporting of suspicious transaction

a5.108. Malaysia was rated partially compliant with former R.13 and SR IV. The 2007 MER noted that not all predicate offences were included in the schedule of the AML law and an explicit TF-related STR obligation was not available. Effectiveness was lacking in certain sectors.

a5.109. **Criterion 20.1** – Section 14(1)(b) and (c) of AMLA requires RIs to promptly report transactions suspected to involve proceeds of an unlawful activity, instrumentalities of an offence or relate to TF. As the STR obligation in the AMLA is not linked to the ML offence, the minor deficiencies with predicate offences remaining in R.3 do not affect R.20 as the STR obligation relates to all crimes, not just predicates for ML.

a5.110. The September 2014 AMLA amendments substantially address the deficiencies highlighted in the 2007 MER, including the reporting of suspicious transactions related to TF independent of an unlawful activity. The amendments also make the 'structuring of transaction' an offence.

a5.111. Guidelines issued by all three regulators provide further detailed obligations and necessary guidance regarding the reporting of suspicious transactions. The guidelines issued by BNM and the other regulators require RIs to file an STR when a transaction, including an attempted transaction, appears unusual, has no clear economic purpose, appears illegal, involves proceeds from an unlawful activity or indicates that the customer may be involved in ML/TF, regardless of the amount involved. These requirements are supplemented by detailed guidance on the reporting mechanism and examples of red flags/ triggers for reporting a transaction.

a5.112. **Criterion 20.2** - Section 14(2) of AMLTFA provides that an 'attempted transaction' shall be taken as a 'transaction' for reporting purposes under s.14 of the Act.

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PREVENTIVE MEASURES

a5.113. **Malaysia is rated compliant with R.20.**

Recommendation 21 – Tipping-off and confidentiality

a5.114. Malaysia was rated largely compliant with former R.14. The 2007 MER noted that there was a lack of clarity about the tipping-off offence.

a5.115. **Criterion 21.1** - Protection against criminal and civil liability is provided under s.24 of AMLA.

a5.116. **Criterion 21.2** - AMLATFA includes a clear prohibition on disclosure of the fact that an STR or related information is being sent to the FIU and Section 14A makes disclosure a punishable offence. Section 14A(2) creates an additional safeguard against further dissemination of information received under s.(1).

a5.117. **Malaysia is rated compliant with R.21.**

Designated non-financial businesses and professions

Preamble: Scope of DNFBPs

a5.118. As outlined in the 2007 MER, the AMLA designates the following DNFBPs as RIs: casinos, accountants, advocates and solicitors, company secretaries, trust companies, notaries public, real estate agents, offshore trust companies and a significant number but not all dealers in precious metals and stones.

a5.119. A minor deficiency exists in the scope of coverage of dealers in precious metals and stones, with the AMLA requirements and guidelines issued by BNM for DNFBPs not applying to businesses registered in East Malaysia (Sabah and Sarawak) and also dealers which are not companies. At present only dealers in precious metals and stones registered as companies within Malaysia and registered as businesses in Peninsula Malaysia are captured as RIs. At the time of the onsite visit Malaysia estimated 345 dealers in precious metals and stones which were not captured as RIs. These are mainly sole traders operating small retail outlets. Malaysia assesses dealers in precious metals and stones to be low risk due to the low usage of cash, that payments are primarily made using cards through FIs and absence of criminal or ML investigations involving the sector. It is also acknowledged that little information is held by the authorities about the sector and its risks, which could comprise wholesalers as well as retail outlets.

Table A5.2 Number of DNFBPs subject to FIED's supervision as at 31 December 2014

DNFBP	Number of institutions	Licensing/Registration Body (see R.28)	AML/CFT Supervisor
Lawyers	4 753	Malaysian Bar Council (MBC)	FIED
Accountants	2 782	Malaysian Institute of Accountants	FIED
Casino	1	Ministry of Finance (MoF)	FIED
Gaming Institutions	6	MoF	FIED
Dealers in precious metals/stones	1 600	No specific licensing or registration requirement.	FIED
Notaries public	275	AGC	FIED
Company secretaries	12 359	CCM or prescribed (e.g. accountants or lawyers)	FIED (with CCM)

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**Table A5.2. Number of DNFBPs subject to FIED's supervision as at 31 December 2014
(continued)**

DNFBP	Number of institutions	Licensing/Registration Body (see R.28)	AML/CFT Supervisor
Real estate agents	1,764	Board of Valuers, Appraisers and Estate Agents Malaysia (BVAEA)	FIED
Trust companies (onshore)	28	CCM	FIED (with CCM)
Offshore trust companies	38*	LFSA	LFSA

*as at 30 September 2014

Recommendation 22 – DNFBPs: Customer due diligence

a5.120. In the 2007 MER Malaysia was rated partially compliant for R. 12 due to gaps with record keeping, PEPs and a number of related measures.

a5.121. With the exception of the minor scope limitation in the coverage of dealers in precious metals and stones, the full range of DNFBPs plus gaming institutions are covered by the obligations in the AMLA and the guidelines.

a5.122. The analysis for Recommendations 10, 11, 12, 15 and 17 is largely applicable to DNFBPs as they are RIs for the purposes of the AMLA. The obligations in the AMLA apply to DNFBPs in the same way as to FIs. BNM has issued binding a regulatory instrument for all DNFBPs except TCSPs in Labuan. The LFSA has issued its own guidance for the TCSPs that it regulates. These two guidance documents follow the guidance for FIs very closely. The analysis for the AMLA is not repeated here, but relevant coverage of the guidelines for DNFBPs will be spelled out.

a5.123. **Criterion 22.1** - CDD requirements are set out in the BNM and LFSA guidelines (s.13) which fulfil the CDD requirements in R.10.

a5.124. Malaysia and Labuan have frameworks in place to support TCSPs and company secretaries conduct of ongoing CDD on the companies they create.

a5.125. Pursuant to the Labuan Trust Companies Act, every Labuan company must appoint a Labuan licensed trust company as its resident secretary. The resident secretary maintains knowledge of the purpose of the business through its responsibility to lodge company documents, including statutory returns with LFSA, its regular interactions with the board of directors at board and annual meetings and through any changes to the company's memorandum. Oversight of financial operations (e.g. source of funds) occurs as accounting and other business reports must be kept at the company's registered office; the trust company office. By virtue of the circulars on beneficial ownership issued by LFSA in 2014, the resident secretary must be aware of and update the beneficial owners register whenever there is a change in beneficial ownership.

a5.126. Onshore TSCPs and company secretaries maintain their knowledge of the purpose and intended nature of a company's business through their interactions with the board of directors and presence at meetings where company operations and activities are discussed, through their requirement to lodge statutory forms including annual reports and financial statements and through any changes to the company's memorandum.

a5.127. **Criterion 22.2** - The AMLA and the BNM and LFSA guidelines contain obligations that largely fulfil the DNFBP record keeping requirements, although the minor deficiencies described in R.11 is applicable.

a5.128. **Criterion 22.3** - BNM and LFSA guidelines (s.14) include obligations for DNFBPs as described at R.12 when dealing with PEPs. The minor deficiencies described in R.12 are also applicable to DNFBPs.

PREVENTIVE MEASURES

a5.129. **Criterion 22.4** - The BNM Sector 5 guidelines and the LFSA TCSP guidelines (s.15) contain enforceable provisions which meet the requirements to assess the risks of new products and business practices.

a5.130. **Criterion 22.5** - DNFBPs are required to comply with reliance on third party provisions outlined in s.16 of both the BNM and LFSA guidelines. The gaps described in R.17 also apply in relation to DNFBPs.

Weighting and Conclusion

a5.131. Minor gaps in record keeping and PEPs provisions, plus the very minor scope issue are noted.

a5.132. **Malaysia is rated largely compliant with R.22.**

Recommendation 23 – DNFBPs: Other measures

a5.133. Malaysia was rated partially compliant with the former R.16 in the 2007 MER as the obligations did not extend to dealers in precious metals and stones, not all predicate offences were covered for STR reporting and there was no explicit obligation for TF related STRs.

a5.134. Since 2007 dealers in precious metals and stones have been captured under AMLA, however the scope limitation as outlined in R.22 above applies for all criteria under R.23.

a5.135. **Criterion 23.1** - The AMLA (s.14) was amended in 2014 to require TF-related STRs and attempted transactions and applies to all DNFBPs. The guidelines restate the obligations.

a5.136. **Criterion 23.2** - The AMLA (s.19) and the guidelines require DNFBPs to have an appropriate compliance programs, implement group-wide program and ensure their foreign branches and subsidiaries apply AML/CFT measures in a manner that is consistent with Malaysia's regime. BNM guidelines (s.22) and LFSA guidelines (Ss.21 & 23) refer.

a5.137. **Criterion 23.3** - BNM and LFSA guidelines set out requirements on higher risk countries for DNFBPs (s.18). In addition, BNM issues periodic circulars on countries that have strategic deficiencies in their AML/CFT regime. The LFSA places such information on its website.

a5.138. **Criterion 23.4** - The AMLA obligations for tipping-off and confidentiality are applicable to DNFBPs.

Weighting and Conclusion

a5.139. Malaysia's laws and guidelines set out appropriate measures for DNFBPs, however the scope limitation in relation to dealers in precious metals and stones impedes full compliance.

a5.140. **Malaysia is rated largely compliant with R.23.**

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Table of Acronyms

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

TABLE OF ACRONYMS

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

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

TABLE OF ACRONYMS

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