

Asia/Pacific Group
on Money Laundering

ASIA/PACIFIC GROUP
ON MONEY LAUNDERING

APG MUTUAL EVALUATION REPORT ON

Malaysia

Against the FATF 40 Recommendations (2003) and 9 Special Recommendations

As Adopted by the APG Plenary
25 July 2007

PREFACE - INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF MALAYSIA

The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Malaysia was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Malaysia, and information obtained by the Evaluation Team during its on-site visit to Malaysia from 29 January to 9 February 2007, and subsequently. During the on-site the Evaluation Team met with officials and representatives of all relevant Malaysian government agencies and the private sector. A list of the bodies met is set out in Annex 3 to the mutual evaluation report.

The evaluation was conducted by a team of assessors composed of APG experts in criminal law, law enforcement and regulatory issues. The Evaluation Team consisted of:

Legal Expert

Ms Elizabeth Ryan, Senior Assistant Director, Commonwealth Director of Public Prosecutions, Australia

Financial/Regulatory Experts

Mr Richard Chalmers, Adviser, International Strategy & Policy Coordination, Financial Services Authority, United Kingdom

and

Mr Peter Dench, Adviser, Financial System Oversight, Financial Stability Department, Reserve Bank of New Zealand

Law Enforcement Expert

Mr Muhammad Yusfidli Adhyaksana, Prosecutor, Attorney General's Office, Indonesia

APG Secretariat representative

Mr David Shannon, Executive Officer

The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

This report provides a summary of the AML/CFT measures in place in Malaysia as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Malaysia's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

Table of Contents

Executive Summary **5**

1 General **15**

1.1. GENERAL INFORMATION ON MALAYSIA 15

1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM 20

1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP 21

1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS 30

1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING 32

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES **44**

2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2) 44

2.2 CRIMINALISATION OF TERRORIST FINANCING (SRII) 50

2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3) 56

2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III) 62

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26) 67

2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28) 73

2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX) 84

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS **89**

3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING 93

3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8) 93

3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9) 105

3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4) 107

3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII) 108

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21) 112

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV) 114

3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22) 121

3.9 SHELL BANKS (R.18) 125

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO's ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25) 127

3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI) 148

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS **152**

4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12) 152

4.2 SUSPICIOUS TRANSACTION REPORTING (R.16) 159

4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25) 161

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20) 166
5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS 170
5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33) 170
5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34) 177
5.3 NON-PROFIT ORGANISATIONS (SR.VIII) 180
6 NATIONAL AND INTERNATIONAL CO-OPERATION 189
6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31) 189
6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I) 192
6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V) 194
6.4 EXTRADITION (R.37, 39, SR.V) 201
6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V) 204
7 OTHER ISSUES 211
7.1 RESOURCES AND STATISTICS 211
7.2 OTHER RELEVANT AML/CFT MEASURES OR ISSUES 212
7.3 7.3 GENERAL FRAMEWORK FOR AML/CFT SYSTEM (SEE ALSO SECTION 1.1) 213
8 TABLES 214
9 ANNEXES 229

EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Malaysia as at the date of the on-site visit in February 2007 or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Malaysia's levels of compliance with the FATF 40+9 Recommendations.

Background Information

2. Malaysia is a federation of 13 states and three federal territories and is a constitutional monarchy with a common law system of law.

3. Malaysia's coordinated strategy to implement an effective AML/CFT system is a part of Malaysia's efforts to pursue the National Vision Policy (2001-2010) to attain developed nation status by 2020. One of the five key thrusts of the National Mission is 'to strengthen the institutional and implementation capacity' which addresses corruption, good governance, business ethics, AML/CFT etc. Malaysia has sought to build a shared culture of AML/CFT compliance amongst government and private sector stakeholders.

4. A range of significant money laundering and terrorist financing risks in Malaysia are being addressed through the implementation of the *Anti-Money Laundering and Anti-Terrorist Financing Act 2001* (AMLA) and other AML/CFT measures. Malaysia has long porous land and sea borders and its open economy and strategic geographic position influence the money laundering and terrorist financing situation in Malaysia.

5. Drug trafficking is noted by the authorities as the main source of illegal proceeds in Malaysia. Authorities highlight illegal proceeds from corruption as a significant money laundering risk in addition to a range of predicate offences that generate significant proceeds of crime including fraud, criminal breach of trust, illegal gambling, credit card fraud, counterfeiting, robbery, forgery, human trafficking, extortion and smuggling.

6. Money laundering techniques identified in Malaysia include placing criminal proceeds into the banking system, using nominees or family members, setting up of front companies, purchasing of insurance products, purchasing real property (in particular vehicles and real estate), purchasing high value goods, investment in capital markets, use of gatekeepers and the use of money changers.

7. Malaysian authorities have highlighted risks from terrorist groups and terrorist financing. A number of terrorist organisations have been active on Malaysian territory, and authorities have taken concerted action against Jemaah Islamiah and its members and have identified and frozen terrorist assets held in the Malaysian financial system. Terrorist financing in Malaysia is predominantly carried out using cash and relies on networks of trusted members of terrorist organizations. To date, no charges for offences relating to terrorism financing have been laid.

8. Malaysia has a significant informal remittance sector.

9. Malaysia's anti-money laundering legislation, the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* (AMLA) is federal legislation that has application throughout the States and Federal Territories, including Labuan. Bank Negara Malaysia (BNM) is the competent authority for implementation of the AMLA, and, therefore, has powers to introduce measures that affect both domestic and offshore institutions.

10. Malaysia takes a staged approach to implementing the AML/CFT regime across various sectors, business and professions, initially with suspicious transaction reporting (STR) obligations and then with customer due diligence (CDD), internal controls and record keeping obligations. The staged approach to AMLA implementation is guided by vulnerability of particular industries.

11. A wide range of financial institutions and financial markets exist in Malaysia.

12. Malaysia's offshore sector, the Labuan International Offshore Financial Centre (IOFC) includes offshore banking, investment banking, insurance and insurance related services, investment holding, trust, funds management, leasing and factoring.

13. The full range of DNFBPs exist in Malaysia.

14. BNM, the Securities Commission (SC) and the Labuan Offshore Financial Services Authority (LOFSA) issued AML/CFT guidance shortly after the introduction of the AMLA. This has been supported by additional guidance provided by industry bodies. Since November 2006 updated guidance has been issued to all the institutions subject to AML/CFT regulation by the BNM, SC and LOFSA. This included "Standard Guidelines" issued by BNM and applicable to all institutions in the 1st Schedule to AMLA (including offshore), and "Sectoral Guidelines" issued by relevant competent authorities. The implementation date for guidelines has varied from sector to sector.

Legal Systems and Related Institutional Measures

15. The Malaysian money laundering offence is generally in keeping with international standards. However neither offences of piracy or counterfeiting non-artistic goods are included as predicate offences for money laundering. Criminal sanctions for money laundering under AMLA are not proportionate or dissuasive.

16. Statistics in relation to AMLA indicate a gradually increasing commitment to the investigation and prosecution of offences under that Act. Money laundering investigations cover a broad range of predicate offences, with the exception of narcotics offences. While confiscation measures are widely used to confiscate the proceeds and instruments of narcotics offences, money laundering offence provisions appear not to be used in favour of the *Dangerous Drugs (Forfeiture of Property) Act 1988*, or *DD* (FOP).

17. Malaysia's terrorist financing offences are comprehensive, albeit they only came into force in March 2007 through amendments to the Penal Code. The offences are able to capture a comprehensive range of financing activities, and to apply to a broad range of terrorist intentions and activities. However they would be enhanced by the

inclusion of an offence provision which directly criminalises the provision or collection of property for the support of terrorist individuals or groups.

18. Criminalisation of terrorist financing prior to March 2007 was based on offences under section 125A of the *Penal Code*, and section 59 of the *Internal Security Act* 1960 [the ISA] which were only able to capture a narrow range of terrorist financing activities. A concern is that investigation of terrorist financing activity which occurred prior to March 2007 would still have to rely on these provisions.

19. Malaysia's mechanisms for provisional measures, identification and tracing of property and confiscation are found in the Acts dealing with specific predicate offences. Of these, the AMLA and laws relating to narcotics and corruption comprehensively provide for provisional measures and the confiscation of property which is the proceeds and instrument of their respective predicate offences. These measures are being used to freeze and confiscate property in money laundering, corruption, narcotics and some Customs Act matters.

20. With regard to confiscation in other cases including cases of serious economic crime, legislative measures exist within specific Acts, and the Criminal Procedures Code. It appears that confiscation as a legal tool in economic cases is being extensively pursued with the use of s 407 of the Criminal Procedures Code (CPC).

21. Malaysia introduced comprehensive laws and procedures for freezing of terrorist-related property in March 2007. While the new legislation comprehensively provides for the freezing of terrorist funds and for the implementation of UN SCR 1267 and, to a large extent, SR 1373 it is too soon to determine the effectiveness of its implementation.

22. Prior to March 2007 Malaysia applied an interim procedure to implement UN SCR 1267 and took prompt action to freeze terrorist assets using this interim measure. Previous laws and mechanisms to implement Malaysia's obligations under UN SCR 1373 were very limited in scope and effectiveness.

23. Malaysia's financial intelligence unit (FIU) is established in BNM and is adequately funded, well structured and resourced and sufficiently autonomous to effectively serve as the national centre for receiving, analysing and disseminating financial information. In a relatively short time since its establishment the BNM FIU has become fully effective in these core functions. The staff of the FIU are highly skilled, demonstrate high integrity and are well trained. The Malaysian authorities have taken a staged approach to develop the size and structure of the FIU and the FIU takes a lead role in the region, providing training, technical assistance and mentoring to other APG members, in particular among ASEAN countries.

24. Malaysia has designated investigation agencies responsible for properly investigating money laundering and terrorist financing. Malaysia has systematically sought to develop its AML investigative capacity, in particular within the Royal Malaysia Police (RMP), Anti-corruption Agency (ACA) and SC. Nearly every law enforcement agency has established a unit dedicated to combat money laundering and agencies have worked to build AML/CFT investigative capacity and train staff. The Royal Malaysian Customs (RMC) has now designated the Special Investigation Branch (SIB) to develop a specialised AML Unit.

25. There are, however, varying levels of awareness of AML/CFT issues. The majority of investigations undertaken thus far related to cases of 'self-laundering'. There is an absence of investigation capacity for cross-border and customs-related money laundering offences.

26. No terrorist financing investigations have yet taken place and there is a need to enhance the skills, training and resources to detect and investigate terrorist financing.

27. Malaysia's system for declaring cross-border cash and travellers' cheques movement is based on exchange controls. This system is deficient and is not being implemented in practice in a way that meets the requirements or achieves the objectives as set down in the FATF Recommendations.

Preventive Measures – Financial Institutions

28. The customer due diligence (CDD) regime in Malaysia shows a high degree of technical compliance with FATF standards; however a number of issues are noted.

29. The level of implementation of requirements to identify and verify beneficial ownership of corporate customers is unclear. While the legal provisions are in line with FATF standards, there are some concerns that implementation by the financial institutions may not yet be in compliance with the legal requirements.

30. Despite the requirements to identify the beneficial owners of legal arrangements, in practice there appears to be a system that amounts to self-certification of beneficial ownership by the trustee.

31. While insurers have been notified of their responsibilities to ensure that the agents comply with the CDD requirements, there appears to be a lack of any systematic process for implementing this requirement, and there is no independent verification of compliance by the agents. It is also unclear what obligation an agent may have to retain customer documentation for which it alone is responsible.

32. In cases of failure to verify identity, there are no explicit provisions in the guidelines for the securities industry obliging institutions to close any existing accounts where they can no longer be satisfied about the identity of the client.

33. There are no specific obligations imposed on the securities sector when dealing with clients who may be politically exposed persons (PEPs).

34. In relation to financial institutions relying on third party introductions, there is a degree of uncertainty about who may act as an eligible introducer when relying on third-party introducers. A related issue is the apparent absence of any limitation on the jurisdiction from which the introducer may originate.

35. LOFSA is impeded from properly acquiring customer information in the normal course of its duties, and sharing such information with domestic and foreign counterparts, due to conditions of confidentiality. While it is apparent that LOFSA is

able to acquire such information in practice, in principle the current law precludes such access and subsequent effective sharing with foreign counterparts.

36. Legal provisions governing general record-keeping requirements within Malaysia comply with the FATF standards and implementation appears to be effective.

37. Wire transfer rules in Malaysia follow the obligations laid down in the FATF standards, however the rules are relatively new, and the current level of compliance has not yet been established.

38. Comprehensive requirements for enhanced and on-going CDD and monitoring of transactions are set out in the guidelines issued by the BNM and SC in November 2006 and early 2007 respectively.

39. There is an absence of powers to compel reporting institutions to adopt more rigorous measures where a country does not sufficiently apply the FATF Recommendations.

40. In relation to the STR reporting obligation under the AMLA, the scope of the obligation is limited by the definition of *unlawful activity*, which is tied to the list of predicate offences in the second schedule of the AMLA. There is, therefore, technically no obligation to report transactions linked to offences that are included within the FATF list of required predicates, but which have yet to be added to the AMLA schedule.

41. There is no explicit obligation to report transactions suspected of being linked to terrorist financing, other than when the financing is the proceeds of an unlawful activity.

42. The quality of STR reporting has steadily improved over time for most sectors. However a number of sectors show low levels of reporting and there have been sudden spikes in reports brought about by specific awareness sessions, which indicates weaknesses in some sectors. Financial institutions appear to receive valuable feedback from the FIU on STR reporting

43. Money changers show a low level of STR reporting with no apparent explanation. There are concerns that the money changer sector has significant risks for money laundering. Although BNM has powers under section 25 of the AMLA to authorise an examination of a reporting institution there have been no routine AML/CFT compliance examinations of money changers to date

44. Offshore financial institutions have shown a low level and reducing trend of reports across the sector since 2003. This is attributed by LOFSA and the institutions themselves to the restrictions on activities of the institutions (e.g. no cash transactions are permitted), the structure of the market (mostly wholesale) and to a high degree of awareness among the institutions of the money laundering threat.

45. As a matter of practice, financial institutions in Malaysia consistently apply AML/CFT procedures and controls across all branches, foreign branches and/or subsidiaries. In each branch and subsidiary, a designated compliance officer is required to be appointed, who reports in turn to the group or head office compliance officer.

46. Obligations to establish compliance programs only came into force in early 2007 for certain categories of financial institutions, including some non-bank remittance operators, non-bank charge and credit card issuers, the building society, and money lenders, funds managers and unit trust management companies. This has not yet occurred for a few other minor categories of non-bank institutions.

47. Provisions in the *Banking and Financial Institutions Act 1989* (BAFIA) and *Offshore Banking Act 1990* (OBA) prevent the operation of shell banks in Malaysia and banks appear to have implemented measures to prevent the correspondent bank accounts they provide to other banks being misused by shell banks.

48. The effectiveness of implementation of the AML/CFT compliance monitoring and supervision has varied across the financial sector. The relevant BNM and SC supervision and enforcement divisions appear to have adequate powers for supervision. They are adequately structured, staffed and funded to carry out their prudential and AML/CFT monitoring, supervision and enforcement functions, although the SC has progressively become involved in AML/CFT compliance actions in tandem with the staged invocation of the AMLA on the capital market.

49. LOFSA has adopted sound principles for on-site and off-site prudential supervision, however there appear to be relatively limited resources within the LOFSA committed to AML/CFT monitoring and supervision, having regard for the number of institutions it supervises, which appears to be hampering the LOFSA's ability to ensure AML/CFT compliance by offshore financial institutions.

50. The BNM FIU does not currently appear to have adequate resources committed to its compliance monitoring responsibilities in respect of DNFBP and certain categories of non-bank financial institutions.

51. A range of proportionate and dissuasive enforcement powers and sanctions is available to the supervisory authorities, though most actions taken to date appear to be of an administrative nature.

52. While competent authorities have issued comprehensive guidelines to all covered sectors, in some instances guidance has not been updated consistent with current AML/CFT requirements.

53. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Malaysia.

54. Malaysia's economy is characterised by large remittance flows due to a variety of factors including the size, diversity and continued growth of its economy as well as large populations of overseas foreign workers and Malaysians living or working abroad. Malaysia's payments and remittance system includes a significant informal remittance sector that is not subject to AML/CFT controls and which may pose vulnerabilities for misuse for money laundering and terrorist financing.

55. Full AML/CFT requirements only came into effect for all licensed non-bank remittance operators in late 2006 or early 2007 and their implementation is not clear for those operators other than BSN and Pos Malaysia and there has been only a limited degree of compliance monitoring.

56. While Malaysia has taken a number of steps to build incentives to encourage remittance through formal channels, the reliance on sanctions against non-licensed activities does not appear to be effectively ensuring that remittance is undertaken only through channels with proper AML/CFT controls.

Preventive Measures – Designated Non-Financial Businesses and Professions

57. CDD obligations for DNFBPs were only recently introduced and an assessment of the effectiveness of their implementation is not possible at the stage of writing this report. CDD requirements are not yet invoked for dealers in precious metals and stones.

58. The STR obligation has been extended progressively to the DNFBPs since 2003. Domestic trust companies and registered estate agents were include most recently (August 2006). All STRs must be reported directly to the FIU, and there is no provision for involvement in the process by the relevant SROs. Dealers in precious metals and stones are not yet obliged to report STRs and there is no set date for their inclusion.

59. The extremely low level of STRs from the professions, and the nature of the reporting from the casino sector give rise to serious questions about the effectiveness of the current STR regime for DNFBPs. Unlike the CDD requirements, the obligation to file STRs has been in place for the casino since 2003, and for the lawyers, accountants and company secretaries since 2004/05. Therefore, it might be expected that the level of implementation would be more clearly established.

60. The BNM has conducted outreach to the respective DNFBP SROs. An AMLA Task Force has been formed by the SROs of each of the respective professions. The SROs have issued guidance to the relevant reporting institutions, however in each case the industry guidance is now out of date.

61. The BNM FIU is responsible for monitoring and ensuring the DNFBPs compliance with AML/CFT requirements under the AMLA, and has adequate powers and sanctions for those purposes, although the FIU has weak supervisory resources at present. Off-site compliance monitoring by BNM to date has been targeted at only a small proportion of the large number of entities in the DNFBP sector, primarily through the self-assessment questionnaire

62. With no on-site reviews of either the casino or other DNFBP, and given the very recent invocation of full AMLA requirements for trust companies and licensed real estate agents, it is difficult to assess whether AML/CFT risks in the DNFBP sector are being effectively managed and controlled. The FIU supervision resources appear to be thinly stretched considering the large number of entities it supervises directly, as well its other responsibilities including monitoring the outcomes of AML/CFT compliance actions by other supervisory authorities and follow-up actions.

63. Likewise, the LOFSA appears to require further steps to be implemented to ensure a robust supervision framework is in place for offshore trust companies.

64. Licensed gaming entities and pawnbrokers have been brought into the AMLA regulatory net and insurance financial advisers are slated for inclusion.

Legal Persons and Arrangements & Non-Profit Organisations (NPOs)

65. Malaysia has a national system of recording and making available information on companies, which must be updated in a timely fashion. Company service providers, external company secretaries, trust companies, fund managers, accountants and lawyers are subject to obligations under AMLA to obtain, verify and retain records of the beneficial ownership and control of legal persons on whose behalf they act. Similar obligations extend to capital market intermediaries, although there is a need for clarification of their obligations to identify and record beneficial ownership details.

66. In-house company secretaries are not specifically obliged to maintain records indicating whether or not a shareholder holds shares beneficially. Nor is there any statutory obligation on companies to maintain in their register, information as to whether shares are held beneficially and if so, details of the beneficial owner.

67. While beneficial ownership information is intended to be readily available to competent authorities arising from the obligations upon financial institutions and DNFBPs, there are concerns about the effectiveness of this procedure as a means of providing accurate and timely information about the beneficial ownership of legal persons. Beneficial ownership information will only be held by financial institutions and DNFBPs in those cases where the company makes use of financial services. Additionally, there are concerns with implementation in this area by the financial institutions and DNFBPs.

68. There are limited obligations on entities to maintain information about the beneficial ownership of trusts. There is no system of central registration of trusts, and in the case of trusts that are administered by trust companies; registration of the trust company with the Companies Commission of Malaysia (CCM) or LOFSA does not impose any obligation on the trust company to submit such information.

69. Information on beneficial ownership may be accessed from financial institutions where the trustee maintains a deposit account on behalf of the beneficiary. However this procedure would only be of limited value and would be insufficient to enable competent authorities to obtain adequate timely beneficial ownership information for trusts.

70. In the case of trusts which are administered by trust companies or trust company service providers, these entities are obliged under AMLA to identify beneficial ownership and to maintain records in relation to it. These obligations have only recently been imposed upon domestic trust companies

71. Malaysia's invocation of the full AMLA obligations upon domestic trust companies and trust company service providers is a positive step.

72. A system of central registration of NPOs is in place with the Registrar of Societies (ROS) and the CCM, through which information is available as to the purposes and objectives of registered NPOs, and the identity of their senior officers and board members. Non-compliance can be sanctioned by the ROS and the CCM and statistics indicate such action is in fact taken, albeit mainly for failures to lodge annual returns. Regarding financial records, companies limited by guarantee are obliged under the *Companies Act 1965* to maintain such records, but there are no such obligations in the case of NPOs registered with the ROS. All NPOs that carry out activities that generate income or have chargeable income are obliged under tax laws to maintain records of financial transactions, which are available to the ROS on request.

73. While a task force was formed to conduct the NPO sector review, there does not appear to be an ongoing policy and strategy aimed at identifying and addressing TF risks in the NPO sector.

74. There appears to be a need to further raise awareness with the various oversight bodies to be vigilant against the potential for misuse of NPO funds for terrorist purposes. There is a need for further outreach initiatives to the NPO sector to increase awareness amongst NPOs and the public of AML/CFT issues and risks.

75. There is a need for the ROS and Inland Revenue Board (IRB) to establish additional AML/CFT capacity including liaison with other relevant agencies, outreach and training. There is a need for the IRB, ROS and CCM to share information regarding NPOs of concern directly with their foreign counterparts.

National and International Cooperation

76. The National Coordination Committee to Counter Money Laundering (NCC) provides an excellent structure to bring together policy and implementing ministries and agencies to ensure that Malaysia implements an effective national AML/CFT system in keeping with the international standards. There is, however, a need for a dedicated policy focus to support AML/CFT implementation with border enforcement agencies and to enhance cooperation between AML/CFT supervisors.

77. Malaysia has ratified the Vienna and Palermo Conventions and has made a public commitment to accede to the Terrorist Financing Convention.

78. Malaysian laws and procedures regarding mutual legal assistance are comprehensive and are available in relation to all serious offences. The obligations of mutual legal assistance apply to terrorist financing and terrorist offences in the same manner as they do to other serious offences. Two potential impediments are the requirement for dual criminality even for non-intrusive measures, and the prohibition of requests where the material sought is not considered to be of sufficient importance to an investigation. Malaysia takes a flexible approach to the principle of dual criminality and to date Malaysia has not refused a request for assistance on this ground. Both requirements have the potential to impede the effectiveness of Malaysia's response to mutual assistance requests and requests to enforce foreign forfeiture orders.

79. In general Malaysia appears to provide mutual assistance in a cooperative and effective manner. The Attorney General's Chambers (AGC) appears to operate effectively as a central authority to streamline the processing of mutual assistance requests.

80. Malaysia's legislative scheme for extradition broadly meets all essential criteria. A small concern is the requirement for establishment of a prima facie case in extradition matters. It was submitted that in the majority of cases fugitives have waived their right to a formal hearing. While the effect of waiver will be to reduce litigation costs and time, the requesting country must still prepare the extradition request on a 'prima facie case' basis, and officers of the AGC must initially consider and process the material on this basis.

81. Malaysia has demonstrated a strong commitment to share information with foreign counterparts, in particular through the FIU, the SC and law enforcement agencies.

82. BNM and LOFSA are impeded from fully cooperating with foreign counterparts due to very specific prohibitions on the disclosure of information relating to customers of those institutions supervised by BNM and LOFSA under the BAFIA and LOFSAA. The limitations affecting LOFSA were referenced in the 2001 APG report on the Labuan IOFC, and they have still to be addressed.

Table 1: Ratings of Compliance with FATF Recommendations

Table 3: Authorities' Response to the Evaluation (if necessary)

MUTUAL EVALUATION REPORT

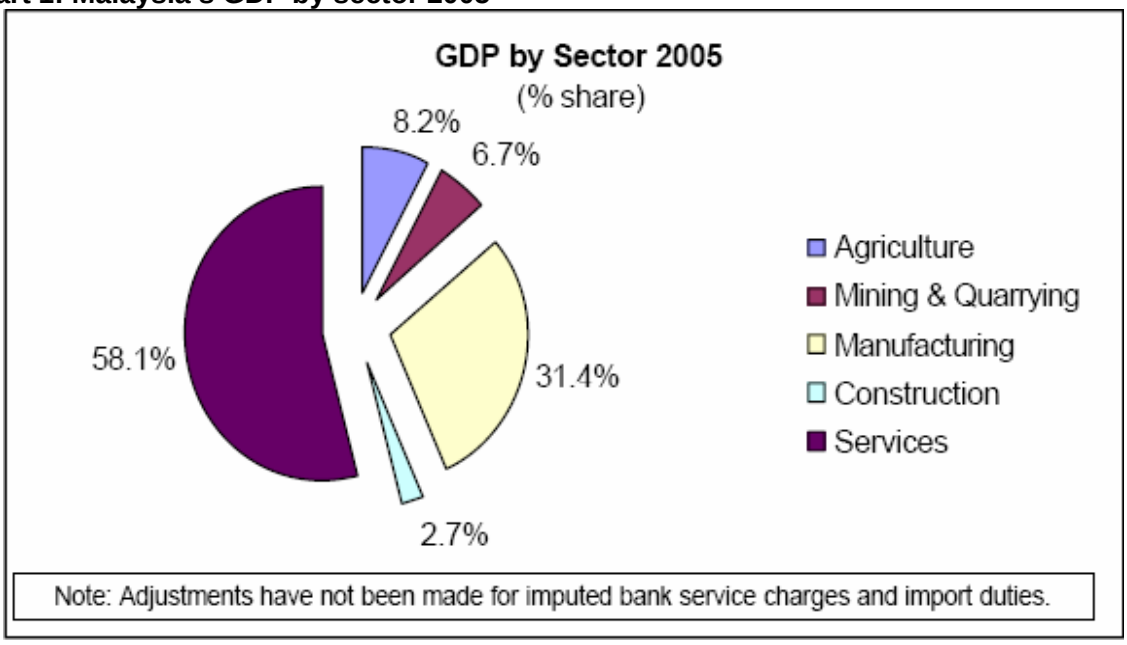
1 GENERAL

1.1. GENERAL INFORMATION ON Malaysia

1. Malaysia has a land area of approximately 329,000 km² and a population of approximately 26 million people. Malaysia shares land borders with Indonesia (1782 km), Thailand (506 km) and Brunei Darussalam (381 km). Additionally, Malaysia and Singapore share a short "land border" with two crossing points.

2. Malaysia's economy has been steadily expanding over recent years. In 2005 real GDP grew 5.3%, while inflation was at 3% and unemployment at 3.5%. Malaysia's GDP by sector for the year 2005 is as follows:

Chart 1: Malaysia's GDP by sector 2005



3. Malaysia is a federation of 13 states and three federal territories. Malaysia is a constitutional monarchy with the Malaysian Parliament consisting of the Yang Di-Pertuan Agong (YDA) (His Royal Highness) as the head of state, the Dewan Negara (Senate) and the Dewan Rakyat (House of Representatives).The Malaysian Constitution sets out the federal system of government and processes for the exercise of powers by the Legislature, Judiciary and Executive.

4. The Prime Minister and his Cabinet exercise the federal executive power. The Prime Minister is chosen from amongst the members of the House of Representatives.

5. The legal system in Malaysia is based on written laws and the principles of English Common law adapted to local circumstances, case law and local customary law. Among the written laws are the Federal Constitution together with the constitutions of

the 13 states, legislation enacted by the Parliament and State Assemblies, and delegated or subsidiary legislation made by bodies under the powers conferred on them by Acts of Parliament or State Assemblies. Muslim law, which is limited to family and inheritance matters, is applicable only to the Muslim population and is administered by a separate system of courts.

6. By virtue of Act 121(1) of the Federal Constitution, judicial power in the federation is vested on two High Courts, namely the High Court in Malaya and the High Court in Sabah and Sarawak, and the inferior courts. The Federal Court with its principal registry in Kuala Lumpur is the highest court in Malaysia. The Chief Judge of the Federal Court heads the Malaysian judiciary and he exercises direct supervision over all courts. The President who heads the Court of Appeal and the two Chief Judges who head the High Courts in Malaya and in Sabah and Sarawak also sit in the Federal Court and are responsible to the Chief Judge. Judges are appointed by the YDA on the advice of the Prime Minister.

Structural Elements for Ensuring Effective Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) System

7. Malaysia is pursuing the National Vision Policy (2001-2010) in order to attain developed nation status by 2020. The National Mission, a policy and implementation framework, outlines the country's priorities for the next 15 years, along with the Ninth Malaysia Plan (9MP). The 9MP translates the five key thrusts of the National Mission that must be realised in order to achieve the country's vision, goals and objectives into programs and results. One of the five key thrusts is 'to strengthen the institutional and implementation capacity' which addresses issues such as corruption, good governance, business ethics and efficiency of the public service delivery system.

a) The respect of principles such as transparency and good governance

8. Under the 9MP Malaysia is continuing to focus on good governance in the public and private sectors to enhance transparency and to eliminate opportunities for malpractice and abuse of power. Malaysia is taking steps to review laws, rules and regulations and enforcement measures undertaken by various regulatory bodies in order to enhance corporate governance. This includes issuance of guidelines to prescribe broad principles, minimum standards and specific requirements for corporate governance.

9. The Malaysian legal framework has in place systems for ensuring transparency of administrative and statutory decisions. Judicial review of legislative acts is conducted in the Federal Court at the request of the YDA. The courts in Malaysia also have the power to pronounce on the legality of executive acts of government, the validity of any law passed by the Parliament and the meaning of any provision of the Constitution.

b) A proper culture of AML/CFT compliance shared and reinforced by government, financial institutions, designated non-financial businesses and professions, industry trade groups, and self-regulatory organisations (SROs)

10. The Malaysian government emphasises the importance of good coordination, cooperation and communication among various parties involved in AML/CFT and has sought to build a shared culture of AML/CFT compliance. Given the staged

approach to implementation of AML/CFT measures across various sectors, a shared culture of AML/CFT compliance varies across different sectors and some government agencies. Overall there is strong coordination among domestic agencies involved in AML/CFT as well as engagement, dialogue and consultation with SROs and associations of the private sector to work to strengthen a culture of AML/CFT. Authorities have supported nationwide AML/CFT awareness programs. The FIU has also collaborated with the respective training institutes to create appropriate training modules and to provide training to reporting institutions in respect of their reporting obligations.

11. Industry groups have initiated national AML/CFT efforts. For example, the Institute of Bankers Malaysia has established the Compliance Officers Networking Group (CONG), which is an informal consultative forum to bring together compliance officers to discuss and share AML/CFT issues and concerns. Members of the CONG participate in creating industry standards, suggesting best practices and reinforcing the necessity for compliance and cooperation with the authorities and amongst themselves in order to minimise the potential of being exploited by money launderers and terrorist financiers. Insurance associations have followed the banking sector in setting up their own CONGs.

c) Appropriate measures to prevent and combat corruption, including, where information is available, laws and other relevant measures, the jurisdiction's participation in regional or international anti-corruption initiatives (such as the United Nations Convention against Corruption) and the impact of these measures on the jurisdiction's AML/CFT implementation

12. Malaysia is addressing anti-corruption and integrity as a national priority. Malaysia has a comprehensive legal framework and well resourced specialist investigation and prosecution agencies to proactively combat corruption across Malaysia. Eight offences of the Anti-Corruption Act 1997 are predicate offences for the AMLA. Malaysia also conducts training and awareness campaigns to the public and private sector in its effort to detect and prevent corruption.

13. Malaysia's Anti-Corruption Agency (ACA) has a strategic focus on utilising AML tools to tackle the profit motive behind bribery and corruption. This involves close cooperation with the FIU and use of AML/CFT provisions to combat the laundering of proceeds of corruption.

14. The ACA has set up the Malaysia Anti-Corruption Academy (MACA) as a regional hub for capacity and capability building of domestic and international law enforcement officers.

15. Malaysia signed the United Nations Convention against Corruption on 9 December 2003. Legislative and administrative measures are being taken to meet the terms of all mandated provisions in the Convention prior to its ratification. Malaysia endorsed the Anti-Corruption Action Plan for Asia/Pacific in 2001 and is a member of the ADB/OECD Anti-Corruption Initiative for Asia-Pacific.

16. Malaysia is a member of the FATF/APG Anti-Corruption/AML Issues Project Group which further explores the relationships between AML/CFT and anti-corruption

efforts, and in particular, ways in which corruption can undermine AML/CFT implementation.

d) A reasonably efficient court system that ensures that judicial decisions are properly enforced

17. The judicial system of Malaysia comprises the Federal Court, the Court of Appeal, the High Courts and subordinate courts namely, the Sessions and Magistrates' Courts. Trials are conducted without a jury.

18. Significant delays are noted in the court system and complex matters may take over five years and up to 7-10 years. The two money laundering convictions obtained so far took between 3 and 4 years.

19. The court is responsible for ensuring that judicial decisions are properly enforced. Please see section 283 of the Criminal Procedure Code on provisions as to sentences of fines.

20. Money laundering offences are tried in the Sessions Court. The Sessions Court criminal jurisdiction extends to all offences other than offences punishable with death. In civil matters, it has jurisdiction where the amount in dispute does not exceed RM100,000. Malaysia has established a Sessions Court in Kuala Lumpur to specialise in commercial crime cases, including money laundering.

21. The Magistrates' Courts deal with minor civil and criminal cases.

22. The jurisdiction of a High Court is original, appellate and been conferred general supervisory and revisionary jurisdiction over all subordinate courts. In the exercise of its original jurisdiction, it has unlimited criminal and civil powers. The High Courts hear civil and criminal appeals from the Magistrates' and Sessions Courts. The High Courts also possess the power to refer any points of law arising in the appeal for the decision of the Court of Appeal if it feels that it is in the public interest and of paramount importance.

23. The Court of Appeal has jurisdiction to hear and determine any appeal against any High Court decision on criminal matters and has jurisdiction to hear and determine civil appeals generally for cases where the amount or value of the subject matter of the claim is at least RM250,000. Where an appeal has been heard and disposed of by the Court of Appeal, it has no power to review the case, i.e. to re-open, re-hear or to re-examine its decision for what ever purpose.

24. The Federal Court is the highest court in Malaysia. It sits to hear civil and criminal appeals from decisions of a High Court or to hear disputes on any matter between any State and the Federal Government. It can also pronounce on the validity of any federal or state legislation as being in excess of powers. The Federal court may also determine constitutional questions arising in proceedings of the High Court but referred to the Federal Court for a decision.

e) High ethical and professional requirements for police officers, prosecutors, judges, etc. and measures and mechanisms to ensure these are observed

25. The Malaysian judiciary, prosecutors and law enforcement officers are subject to codes of conduct, ethical and professional standards. Judges are subject to the Judges' Code of Ethics 1994 (JCE). The Prime Minister or the Chief Judge can make representation to the YDA to appoint a tribunal to investigate into any alleged violation of the JCE.

26. The Public Prosecutor prosecutes wherever it appears that there is sufficient evidence to support the offence and where the offence or the circumstances of its commission is or are of such a character that a prosecution is required in the public interest.

27. The professional standards and conduct of various law enforcement agencies are set out in their respective enabling legislation. The Police Act 1967 (PA) provides for the duties and powers of police officers and disciplinary regulations. Following a Commission of Inquiry in 2005 a number of integrity reforms have been introduced within the RMP. Besides the enabling legislation, the conduct of the enforcement officers is governed by their respective internal codes of conduct. For example, the ACA's internal code of ethics specifically promotes high level of integrity and inculcates positive values.

f) A system for ensuring the ethical and professional behaviour on the part of professionals such as accountants and auditors, and lawyers. This may include the existence of codes of conduct and good practices, as well as methods to ensure compliance such as registration, licensing, and supervision or oversight

28. Malaysia has a well established system of associations of professions to bring together various professionals under agreed rules of practice and conduct. These associations are supported by legislative provisions. A number of professional associations include codes of conduct and measures to ensure compliance.

29. All licensed accountant must register with the Malaysian Institute of Accountants (MIA) in order to practice. Membership requirements include holding specific qualifications and a minimum of 3 years working experience in areas related to accounting. The MIA is empowered to investigate unprofessional or unethical conduct of the MIA members and to take disciplinary action against its members to ensure high standards of professionalism and professional conduct.

30. Each advocate or solicitor in Peninsular Malaysia becomes a member of the Malaysian Bar once he/she qualifies and holds a valid practising certificate. The Legal Profession Act 1976 (LPA) and associated regulations and rules governs the admission to the Malaysian Bar, set standards of conduct and learning of the legal profession in Malaysia. The Malaysian Bar is empowered under section 94 of the LPA to take disciplinary actions against its members for any misconduct.

31. Advocates in Sabah and Sarawak are governed by the *Advocates Ordinance Sabah 1953* and *Advocates Ordinance Sarawak 1953* respectively and can apply for membership in the Sabah Law Association and Advocates Association of Sarawak respectively. These two associations have Enquiry Committees and upon the

findings of these committees, disciplinary proceedings against the advocates for misconduct will be initiated in the High Court of Sabah and Sarawak.

32. In Malaysia, a person can only act as company secretary if he/she is licensed by the Companies Commission of Malaysia (CCM) or is a member of the prescribed bodies.[1]

33. The Malaysian Institute of Chartered Secretaries and Administrators (MAICSA) has prepared a series of Good Governance Guides to provide valuable information and guidance on governance issues to company secretaries.

1.2. GENERAL SITUATION OF MONEY LAUNDERING AND FINANCING OF TERRORISM

34. A range of significant money laundering and terrorist financing risks in Malaysia are being addressed through the implementation of the AMLA and other AML/CFT measures. Malaysia has long porous land and sea borders and its open economy and strategic geographic position influence the money laundering and terrorist financing situation in Malaysia.

35. Authorities note that drug trafficking is the main source of illegal proceeds in Malaysia. Malaysia is primarily used as a transit country to transfer drugs originating from the Golden Triangle and Europe, which among others, include heroin, amphetamine type substances and ketamine.

36. Malaysian authorities also highlight illegal proceeds from corruption as a significant money laundering risk.

37. In addition to the above and in keeping with wider regional experience, enforcement agencies in Malaysia highlight a range of predicate offences as generating significant proceeds for laundering in Malaysia. These include fraud, criminal breach of trust, illegal gambling, credit card fraud, counterfeiting, robbery, forgery, human trafficking, extortion and smuggling.

38. Smuggling of goods subject to high tariffs is a major source of illicit funds. Authorities identified risks from trade-based money laundering through Customs' efforts to investigate invoice manipulation.

39. Authorities have identified a range of money laundering techniques being used by criminals in Malaysia, including placing criminal proceeds into the mainstream banking system, using nominees or family members, setting up of front companies, purchasing of insurance products, purchasing real property (in particular vehicles and real estate), purchasing high value goods, investment in capital markets, use of gatekeepers and the use of money changers. Authorities note the use of cash transactions to conceal money trails.

[1] Prescribed bodies are professional bodies or any other body which has for the time being been prescribed by the Minister of Domestic Trade and Consumer Affairs by notification in the *Gazette.* The prescribed bodies are Malaysian Institute of Accountants, Malaysian Bar, Malaysian Institute of Chartered Secretaries and Administrators, Advocates Association of Sarawak, Sabah Law Association, Malaysian Association of Chartered Secretaries and Malaysian Institute of Certified Public Accountants.

40. Malaysian authorities have highlighted risks from terrorist groups and terrorist financing. A number of terrorist organisations have been active on Malaysian territory, and authorities have taken concerted action against Jemaah Islamiah and its members and have identified and frozen terrorist assets held in Malaysia.

41. Authorities have identified that terrorist financing in Malaysia is predominantly carried out using cash and relies on networks of trusted members of terrorist organisations, with only selected members being aware of the amounts and the disbursement of terrorist funds. Terrorist financing activity in Malaysia is predominantly done without the use of financial institutions. To date, no one has been charged for offences relating to terrorism financing under the AMLA or the Penal Code.

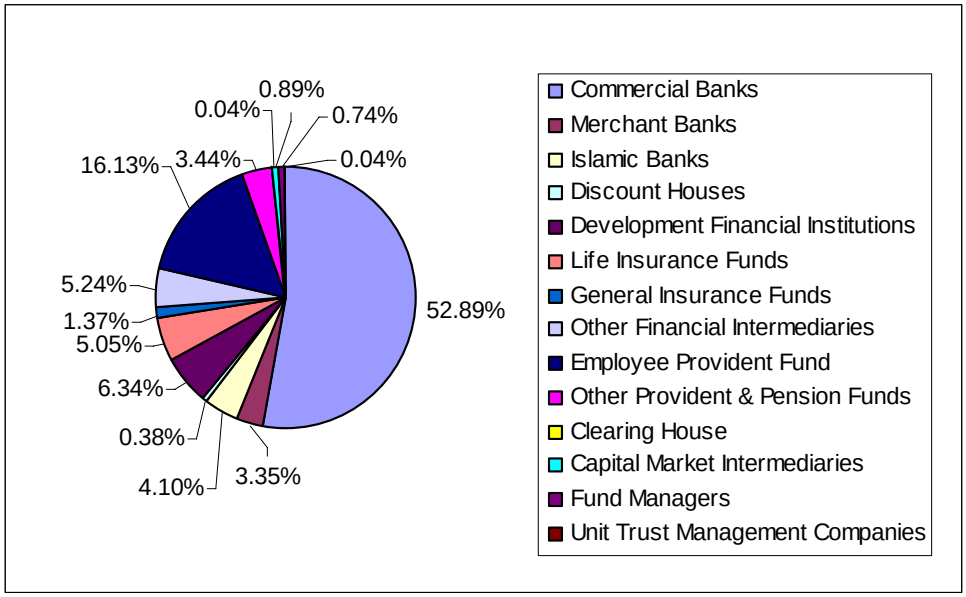
42. Common with the regional experience, Malaysia's payment and remittance sector includes a significant informal remittance sector that is not subject to AML/CFT controls and which may be vulnerable for misuse for money laundering and terrorist financing. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Malaysia. These low cost informal services predominantly serve low income and illegal immigrant populations in particular, but may also pose risks for ML and TF.

1.3. OVERVIEW OF THE FINANCIAL SECTOR AND DNFBP

43. The total assets of the financial system (excluding BNM) as at end of 2006 amounted to RM1.8 trillion (equivalent to approx. USD521.4 billion).

44. The following chart sets out the types of financial institutions that are authorised to carry out the financial activities listed in the Glossary of the FATF 40 Recommendations.

Chart 2: Assets of the Financial System (excluding BNM) as at end of 2006



Type of financial activity (see 40 Recs Glossary)	Type of financial institutions that are authorised to perform this activity in Malaysia
Acceptance of deposits and other repayable funds from the public	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. *e.g.: Commercial banks, investment banks.* *2.* Islamic banking business as defined in the Islamic Banking Act 1983. *e.g.: Islamic banks* *3.* Business activities carried out by the prescribed institutions as defined in the Development Financial Institutions Act 2002. *e.g.: Bank Simpanan National, Bank Kerjasama Rakyat Malaysia, Bank Pertanian.* *4.* The Lembaga Tabung Haji *(Pilgrims Fund Board).* *5.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. *e.g.: Offshore banks* *6.* Building credit business, development finance business, factoring business and leasing business as defined in the Banking and Financial Institutions Act 1989. *e.g.: Malaysia Building Society Berhad, Sabah Credit Corporation.*
Lending (including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting))	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. *2.* Islamic banking business as defined in the Islamic Banking Act 1983. *3.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. 4. Building credit business, development finance business, factoring business and leasing business as defined in the Banking and Financial Institutions Act 1989. . 5. Business activities carried out by the prescribed institutions as defined in the Development Financial Institutions Act 2002 *6.* Activities carried out by a moneylender as defined in the Moneylenders Act 1951 and the Money Lenders Ordinance [*Sabah Chapter 81*]. *7.* Pawnbroking business as defined in the Pawnbrokers Act 1972.

Financial leasing	1. Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. Islamic banking business as defined in the Islamic Banking Act 1983. Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. *e.g.: Offshore banks.* *2.* Building credit business, development finance business, factoring business and leasing business as defined in the Banking and Financial Institutions Act 1989. *e.g.: Leasing businesses.*

The transfer of money or value (including financial activity in both the formal or informal sector (e.g. alternative remittance),	*1.* Activities carried out by any person, who has obtained permission to operate remittance services under the Exchange Control Act 1953. *e.g.: Commercial banks, Bank Simpanan Nasional, Pos Malaysia Berhad and non-bank remittance operators.* *2.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. *e.g.: Offshore banks.*
Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	1. Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. *2.* Islamic banking business as defined in the Islamic Banking Act 1983. *3.* Business activities carried out by the prescribed institutions as defined in the Development Financial Institutions Act 2002*.* *4.* Postal financial services as provided under subsection 24(3) in the Postal Services Act 1991*. e.g.: Pos Malaysia Berhad.* *5.* Issuance of designated payment instrument and operation of payment system as provided under the Payment Systems Act 2003*. e.g.: E-money issuers, non-bank affiliated charge and credit card issuers.*
Financial guarantees and commitments	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. 2. Islamic banking business as defined in the Islamic Banking Act. *3.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996.*e.g.: Offshore banks.* *4.* Business activities carried out by the prescribed institutions as defined in the Development Financial Institutions Act 2002*.* 5. Building credit business, development finance business, factoring business and leasing business as defined in the Banking and Financial Institutions Act 1989. *e.g.: Sabah Credit Corporation.*
Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.) (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities; (e) commodity futures trading.	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. 2. Islamic banking business as defined in the Islamic Banking Act 1983. *3.* Dealing in securities, as defined in the Securities Industry Act 1983, but not including the activity of providing investment advice by an investment adviser as defined in the Securities Industry Act 1983.*e.g.: Stock brokers.* *4.* Futures broking business and futures fund management business as defined in the Futures Industry Act 1993. *e.g.: Future brokers.* *5.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996.*e.g.: Offshore banks.* 6. Activities carried out by a listing sponsor and a trading agent as defined in the Labuan Offshore Securities Industry Act 1998.*e.g.: Offshore listing sponsors, offshore trading agents.*

Participation in securities issues and the provision of financial services related to such issues.	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. 2. Islamic banking business as defined in the Islamic Banking Act 1983. *3.* Dealing in securities, as defined in the Securities Industry Act 1983, but not including the activity of providing investment advice by an investment adviser as defined in the Securities Industry Act 1983. *e.g.: Stock brokers.* *4.* Activities carried out by a listing sponsor and a trading agent as defined in the Labuan Offshore Securities Industry Act 1998. *e.g.: Offshore listing sponsors, offshore trading agents.* *5.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996.
Individual and collective portfolio management (covers mgt. of collective investment schemes such as unit trusts, mutual funds, pension funds)	*1.* Management of unit trust scheme or prescribed investment scheme as defined under the Securities Commission Act 1993 by a management company. *e.g: Unit trust management companies.* *2.* Dealing in securities, as defined in the Securities Industry Act 1983, but not including the activity of providing investment advice by an investment adviser as defined in the Securities Industry Act 1983. *e.g.: Fund management companies.* 3. Activities carried out by Lembaga Tabung Haji established under the Tabung Haji Act 1995 *[Act 535].* *4.* Activities carried out by a listing sponsor and a trading agent as defined in the Labuan Offshore Securities Industry Act 1998. *e.g.: Offshore listing sponsors, offshore trading agents.*
Safekeeping and administration of cash or liquid securities on behalf of other persons	1. Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. 2. Islamic banking business as defined in the Islamic Banking Act 1983.
Otherwise investing, administering or managing funds or money on behalf of other persons.	1. Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. 2. Islamic banking business as defined in the Islamic Banking Act 1983. *3.* Dealing in securities, as defined in the Securities Industry Act 1983, but not including the activity of providing investment advice by an investment adviser as defined in the Securities Industry Act 1983. *4.* Activities carried out by a listing sponsor and a trading agent as defined in the Labuan Offshore Securities Industry Act 1998. *e.g.: Offshore listing sponsors, offshore trading agents.* *5.* Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. *e.g.: Offshore banks.*
Underwriting and placement of life insurance and other investment related insurance (including insurance undertakings and insurance intermediaries (agents and brokers))	1. Insurance business, insurance broking business, adjusting business and financial advisory business as defined or provided in the Insurance Act 1996*. e.g.: Insurance companies (life & general business), reinsurance companies (life & general reinsurance business), insurance brokers, insurance financial advisers.* 2. Takaful business as defined in the Takaful Act 1984. *e.g.: Takaful operators*. 3. Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996. *e.g.: Offshore insurance companies.*

Money and currency changing	*1.* Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989. *e.g.: Commercial banks.* 2. Islamic banking business as defined in the Islamic Banking Act 1983 [*Act 276*]. *e.g.: Islamic banks*. 3. Money-changing business as defined in the Money-Changing Act 1998. *e.g.: Money-changers*

i) Banking Industry

45. Under the BAFIA, Malaysia has licensed 22 commercial banks and 14 investment banks. Of the 22 commercial banks, 13 are foreign owned. As at 31 December 2006, conventional banking accounts for over 86% of market share in the banking sector.

46. In 2005, as part of consolidation within the banking sector, five finance companies merged with their respective parent commercial banks and as at 1 January 2007 there are no more finance companies operating in Malaysia.

47. Malaysia has recently pursued a framework for the creation of investment banks through the merger of merchant banks, stock broking companies and discount houses to develop full-fledged investment banks. Upon completion of the rationalisation process, there will no longer be any discount houses and the investment banks will hold both the merchant banking licence issued pursuant to the BAFIA and the dealer's licence issued pursuant to the Securities Industry Act 1983 (SIA).

ii) Islamic Banking Industry

48. Islamic banking is subject to the Islamic Banking Act 1983 (IBA), which provides for similar regulatory and supervisory frameworks and requirements as conventional banking. Malaysia is encouraging institutional development, enhancing the domestic financial infrastructure, strengthening the Shariah and legal infrastructure, and promoting greater international integration for the Islamic banking sector.

49. The Islamic Financial Services Board (IFSB) was established in Kuala Lumpur in 2002. The IFSB is an international standard setter body established to ensure the soundness and stability of Islamic financial services industry. Malaysia established the International Centre for Education in Islamic Finance in March 2006, specialising in developing professionals and specialists in Islamic Finance. In August 2006, Malaysia launched the Malaysia International Islamic Financial Centre (MIFC), which is a centre for the offering of Islamic financial products and services by a diversified range of financial institutions from anywhere in Malaysia in any currency to residents and non-residents.

50. As at 31 December 2006, there were 10 Islamic banks which accounted for total assets of RM73.8 billion (equivalent to approx. USD21.3 billion).

iii) Insurance Industry

51. In 2006, the insurance sector (life and general insurance) generated a total combined premium income of RM27.3 billion (equivalent to approx. USD7.8 billion). The total assets of insurance funds as at end of 2006 amounted to RM106.2 billion (equivalent to approx. USD30.3 billion). The number of licensed insurance entities as of March 2007 is as follows:

Table 4: Licensed insurers

Category of Licence	Number of Licensees*
Direct insurer - life	7
- general	26
- composite	9
Professional re-insurer - life	1
- general	5
- composite	1
Insurance broker	34

* As of March 2007

iv) Takaful Industry (Islamic Insurance)

52. The Takaful industry is subject to the Takaful Act 1984 (TA), which provides for similar regulatory and supervisory frameworks and requirements as the insurance industry. As at 31 December 2006, the Takaful industry constitutes 6.7% of total insurance premium and has total assets of Takaful funds of RM6.9 billion (equivalent to approx. USD2.0 billion). In 2006, there were 8 registered Takaful operators. The combined net contribution of family and general Takaful was RM1.7 billion (equivalent to approx. USD0.49 billion).

v) Development Financial Institutions - DFIs

53. There are 13 DFIs in Malaysia with assets amounting to RM114 billion (equivalent to approx. USD 32.3 billion) as at end of 2006 (note: the total assets of DFIs as of March 2007 is current not available). Six of the DFIs are governed by the Development Financial Institutions Act 2002 (DFIA) and are regulated and supervised by BNM. The remaining DFIs are governed by their respective incorporation statutes and are under the purview of various government agencies.

54. Three DFIs accept deposits from the public and are reporting institutions under the AMLA. The majority of non-deposit taking DFIs obtain their funds mostly from the government and are involved in lending activities for specific purposes such as development of small and medium enterprises and promoting exports. The Lembaga Tabung Haji (LTH), or Pilgrims Fund Board, is a fund management company whose funds are savings by the Muslims for the purpose of holy Pilgrimage to Mecca. LTH has also been brought into the AMLA regulatory net.

vi) Money Changers

55. As of March 2007, there were 798 licensed money changers in Malaysia as compared to only 94 bureaus de change within the commercial banks. Money changers are incorporated under the *Company Act 1965* (CA'65), licensed by BNM and operate under the *Money Changing Act 1998* (MCA). The scope of the business includes buying and selling foreign currencies and buying travellers' cheques. Licensed money changers account for more than 90% of Malaysia's money changing business. Money changers hold few assets and do not accept deposits. The BNM is reviewing the MCA to strengthen the regulatory framework for money changers to include powers to conduct on-site inspections on money changers, 'fit and proper' requirements and powers to revoke a money changers' license for offences under

the AMLA. A number of reports have indicated that some money changers have been involved in unlicensed remittance activity.

vii) Leasing and Factoring Businesses

56. Leasing and factoring businesses must register/obtain written acknowledgement from BNM before commencing business (BAFIA requirement). As at end of 2005, there are 370 leasing companies and 35 factoring companies registered with BNM. Based on the statistics submitted by the leasing and factoring companies, the total assets of the leasing companies and factoring companies amounted to RM17.5 billion (equivalent to approx. USD4.79 billion) and RM8.0 billion (equivalent to approx. USD2.18 billion) respectively. Only a few of these companies are pure leasing companies and pure factoring companies.

viii) Capital Market

57. The capital market institutions (stock exchanges, clearing houses, etc) and market intermediaries (securities dealers, brokers, etc) are regulated and supervised by the SC. The market institutions are Bursa Malaysia Berhad, the exchanges (Bursa Malaysia Securities Berhad and Bursa Malaysia Derivatives Berhad), the clearing houses (Bursa Malaysia Securities Clearing Sendirian Berhad and Bursa Malaysia Derivatives Clearing Berhad) and the central depository (Bursa Malaysia Depository Sendirian Berhad).

58. There are 1,021 listed companies accounting for a total market capitalisation of RM695 billion (equivalent to approx. USD189.37 billion) listed on BMSB as at end of 2005. The list of capital market intermediaries as of March 2007 is as follows:

Table 5: Capital market licensed intermediaries and licensed representatives

Licensed Intermediaries	Number of Licensee	Licensed Representatives	Number of Licensee
Licensed dealers	37	Paid dealer's representative	1,513
Licensed fund managers	79	Remisier	5,087
Licensed futures fund managers	16	Fund manager's representative	425
Licensed futures brokers	16	Investment adviser's representative	257
Registered Unit Trust Management Companies	38	Futures broker's representative	643
Investment Advisers	98	Futures fund manager's representative	95

ix) Fund managers

59. As at 31 December 2006, Malaysia has 79 licensed fund managers which manage a total fund of RM169.34 billion (equivalent to approx. USD48.24billion) of which RM150.39 billion (equivalent to approx. USD42.84 billion) is invested in Malaysia.

x) Unit trust management companies

60. As at 31 March 2007, there were 38 registered unit trust management companies with a total net asset value of RM134.2 billion. There were 429 approved (25 has yet

to be launched) funds managed by the 38 registered unit trust management companies.

Labuan Offshore Entities

61. The Labuan International Offshore Financial Centre (IOFC) was established in 1990 and now provides a range of financial services that includes offshore banking, insurance and insurance related services, investment holding, trust, fund management, leasing and factoring. As at end of 2005, there are more than 5,000 companies registered in the Labuan IOFC as follows:

Table 6: Offshore entities

Offshore Entities	**Number of Institutions**
Banks	59 including 10 investment banks
Insurance and insurance related companies	112
Trust companies	20
Leasing companies	69
Fund managers	18
Private funds	18
Public funds	2
Listing sponsors	8
Trading agents	5
Companies	5,152 registered (3,067 active)

62. These entities are principally governed by the following Acts under LOFSA's administration:
    - Offshore Banking Act 1990 (OBA);
    - Offshore Insurance Act 1990 (OIA);
    - Labuan Trust Companies Act 1990 (LTCA); and
    - Labuan Offshore Securities Industry Act 1998 (LOSIA).

63. The offshore banks, including investment banks, attracted total deposits of USD4.8 billion and have total assets of USD18.3 billion as at end of 2005. Offshore Insurance total assets amounted to USD1.2 billion. The total gross premiums written by offshore insurers and reinsurers were USD505.5 million in 2005.

64. The Labuan Financial Exchange (LFX) lists 36 instruments issued by domestic and foreign financial institutions comprising investment funds, Islamic notes and debt securities that cumulatively have a total market capitalisation of USD13.5 billion.

65. Labuan IOFC is encouraging the Islamic and takaful sector to offer Shariah-compliant products and services. Islamic financial services are relatively new in Labuan and the offshore Islamic banking only constituted 3.9% of the total assets of the offshore banking industry while the Takaful and Retakaful industry contributed 1.2% of the insurance industry's gross premiums in 2005.

66. Registration and incorporation of companies, including licensed institutions, in the Labuan IOFC have to be made through a trust company. In addition to this, Labuan

trust companies are also empowered to act as administrator, executor and trustee as provided in the LTCA.

Designated Non-Financial Businesses and Professions

i) Licensed Casino

67. Malaysia has only one casino, the Genting Highlands Casino, licensed by the Ministry of Finance (MOF). The casino is licensed under section 27A of the Common Gaming Houses Act 1953 (CGHA) and the casino is a reporting institution under the AMLA.

ii) Accountants

68. As of September 2006, there are 23,183 accountants registered under the MIA of whom 2,438 are engaged in public practice services and are hence, reporting institutions under the AMLA.

iii) Advocates and Solicitors

69. Advocates and solicitors in Peninsular Malaysia are legally obliged to become members of the Malaysian Bar whereas in Sabah and Sarawak, membership is voluntary. As of September 2006, there are 12,303 Malaysian Bar members, 640 Advocates Association of Sarawak members and 212 Sabah Law Association members.

iv) Company Secretaries

70. In Malaysia, company secretaries are governed by section 139A of the CA'65. A company secretary can be regulated by either the prescribed bodies such as chartered secretaries, accountants, advocates and solicitors; or the CCM in the case of licensed company secretaries.

71. As of September 2006, there are 13,379 company secretaries subjected to the AMLA reporting obligations (excluding those under the prescribed bodies that are already AMLA reporting institutions).

v) Trust Companies (domestic)

72. Trust companies are registered under the Trust Companies Act 1949 (TCA) or may be a public company under the CA'65. The Minister of Domestic Trade and Consumer Affairs may also recognise foreign companies that act as a trustee corporation.

73. A trust company is established only to act as a fiduciary, trustee or agent in the administration of trust funds, estates and custodial arrangements. There were 23 registered trust companies (excluding offshore trust companies) in Malaysia as of September 2006.

vi) Registered Real Estate Agents

74. Estate agents must be registered with the Board of Valuers, Appraisers and Estate Agents (BVAEA) in order to provide a service in buying, selling and leasing of properties. As of September 2006, there are 1,895 registered estate agents from over 600 firms practising in Malaysia.

vii) Dealers in Precious Metals and Stones

75. There are a number of associations of gold and precious metals dealers, including the Federation of Goldsmiths and Jewellers Association of Malaysia which capture over half of the approximately 3000 jewellers in Malaysia. The industry associations serve as liaison points with regulators (including BNM in relation to AMLA) on behalf of members.

viii) Offshore trust companies

76. Offshore trust companies are registered under the Labuan Trust Companies Act 1990. All offshore trust companies operating in Labuan are licensed by LOFSA and must be members of the SRO Association of Labuan Trust Companies (ALTC). Directors and officers of a Labuan Offshore Trust Company undergo fit and proper tests and must sit a written exam and interview by LOFSA before appointment. All offshore trust company directors or officers must be a member of another professional body (lawyer, accountant etc). There were 20 licensed offshore trust companies operating in Labuan IOFC in January 2007.

1.4. OVERVIEW OF COMMERCIAL LAWS AND MECHANISMS GOVERNING LEGAL PERSONS AND ARRANGEMENTS

Legal persons

77. The Interpretation Acts 1948 and 1967 define 'person' to include a body of persons, corporate and unincorporated. They are various vehicles available for persons who wish to carry on businesses in Malaysia. They include the following:

Table 7: Type of legal person

Legal Person	Governing Act	Regulator/ Registrar
Businesses	• *Registration of Businesses Act 1956* • *Trade Licensing Ordinance (Sabah) 1948* • *Business, Professions and Trade Licensing Ordinance (Sarawak) 1955* • *Business Names Ordinance 1948*	• CCM • Municipal Councils of various Sabah districts • Municipal Council of various Sarawak districts
Companies	• *Companies Act 1965* • *Trust Companies Act 1949*	• CCM
Societies	• *Societies Act 1966*	• ROS
Offshore Companies	• *Offshore Companies Act 1990* • *Offshore Limited Partnership Act 1990*	• LOFSA

Businesses - formed under the Registration of Businesses Act 1956 (ROBA)

a) *Sole Proprietorship*

78. A sole proprietorship is for businesses comprising the sole proprietor who is entitled to all the profits of the business and is personally liable, without limit, for all its debts and obligations.

b) *Partnership*

79. A partnership sees two or more persons combining some or all of their resources with profit shared by all the partners. In a partnership, all the partners are personally liable, without limit, for the debts and obligations of the partnership.

80. Sole proprietors and partnerships under the ROBA require approval from the CCM.

Companies – formed under the Companies Act 1965

81. A company is treated as an entity separate from the members that make up the company and as a "person" in law. As a legal person, the company has rights and obligations like a natural person.

a) *Foreign companies*

82. Foreign companies carrying on business in Malaysia must first register under the CA'65 and must have a registered office in Malaysia. Representative offices in Malaysia of foreign investors are not allowed to engage in any trading activities.

b) *Local companies*

83. The following three major types of companies may be incorporated in Malaysia:

i) *Company limited by shares*

84. Companies limited by shares are the most common type of companies in Malaysia and are usually profit-making businesses. A company limited by shares is one where the liability of its members is limited to the amount unpaid on the shares taken up by them.

ii) *Company limited by guarantee*

85. A company limited by guarantee is one where the liability of its members is limited to the amount that the members have undertaken to contribute should the company be wound up. Companies limited by guarantee are usually formed for non-profit making purposes. This type of company is more commonly used for trade associations, charitable bodies, clubs, professional and learned associations, some religious bodies and the like. Companies limited by guarantee must use the profits and other sources of income for furtherance of the objects of the company.

iii) *Unlimited companies*

86. An unlimited company is one where the members' liability for its debts is unlimited.

87. These major classes of companies can be further broken into private companies (restriction on share issue, transfer and investment) or public companies (able to issue shares and debentures to the public and its shares are freely transferable).

c) *Special classes of companies*

i) *Investment companies*

88. Any corporation (not being a private company) which is engaged primarily in the making of investments in marketable securities for the purpose of revenue and for profit and not for the purpose of exercising control may be declared by the Minister of Domestic Trade and Consumer Affairs to be an investment company.

ii) *Public or charitable organisations*

89. A company formed for the purpose of providing recreation or amusement or promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or any other object useful to community, may apply to the Minister of Domestic Trade and Consumer Affairs to delete the word 'Berhad' (limited) from its name whilst retaining limited liability.

iii) *Unlisted recreational clubs*

iv) *Trustee corporations*

90. A trustee corporation is defined as a company registered as a trust company under the TCA.

Offshore companies – formed under the Offshore Companies Act (1990)

91. Offshore companies are deemed to be a 'person' in law. However, unlike the domestic companies, all offshore companies must be limited by shares as provided under section 14(3) of the OCA. Foreign offshore companies may be registered in the Labuan IOFC pursuant to section 121 of the OCA. However, such registration is limited to foreign offshore companies that has a place of business in the Labuan IOFC and is not registered under the CA'65.

Legal Arrangements

92. Malaysia adopts a common law system whereby legal arrangement can be formed including express and discretionary trusts. There is no obligation under Malaysian law to register a trust. If the trustee is a corporate entity it must be registered with the CCM. Registration of offshore trust is optional under the Labuan Offshore Trust Act 1996 (LOTA). Under section 23(1) of the LOTA, any offshore trust validly created in accordance with or as provided under the LOTA may be registered with the LOFSA.

Natural Persons

93. All Malaysian citizens and permanent residents are required to have national registration identity card that is to be used as a formal identification document, which includes for the purpose of opening of accounts in financial institutions, dealings with government departments, entering into contractual relationship, etc.

1.5. OVERVIEW OF STRATEGY TO PREVENT MONEY LAUNDERING AND TERRORIST FINANCING

a. AML/CFT Strategies and Priorities

94. Malaysia has recognised the national and global threats from money laundering and terrorist financing and is taking coordinated steps to progressively implement a comprehensive national AML/CFT system.

95. Malaysia adopted AML measures prior to the AMLA coming into force in 2001. The DD(FOP), ACA'97 and Penal Code contain provisions that criminalise some elements of the process of money laundering. The ISA 1960 provides powers for authorities to take actions against some domestic acts of terror, including elements of support for such acts. BNM issued the Guidelines on Money Laundering and 'Know Your Customer' Policy (BNM/GP9) to banking institutions under the BAFIA.

96. Malaysia joined the APG in 2000 in order to increase regional collaboration on AML, to share knowledge and experience among the regional members and to further understand the threats of money laundering and AML counter measures.

97. Malaysia established a multi-agency National Coordination Committee to Counter Money Laundering (NCC) from 2000 to develop a national AML/CFT program and to co-ordinate national policies with regional and international initiatives. The NCC was instrumental in reviewing Malaysia's AML controls and formulating the Bill that resulted in the AMLA being gazetted in July 2001.

98. The AMLA 2001 provides for the offence of money laundering, investigation, freezing, seizure and forfeiture of the proceeds of money laundering and terrorist financing offences, suspicious transactions reporting, record keeping and the establishment and functions of the FIU.

99. Malaysia takes a staged approach to implementing the AML/CFT regime across various sectors, business and professions, initially with STR obligations and then with CDD, internal controls and record keeping obligations. The Minister of Finance may list the reporting institutions that are subject to the reporting obligations under Part IV of the AMLA and to incrementally impose these obligations on any reporting institution.

100. The staged approach to AMLA implementation is guided by parameters including the vulnerability of a particular industry to ML/TF and requirements of the FATF standards. The ML/TF risk of the industry is being assessed through various channels such as study visits, industry research and feedbacks from the regulatory and supervisory authorities as well as the industry players.

101. The banking industry, being the largest financial sector, submits over 75% of the STRs and in line with the incremental approach, the banking industry is given some priority. Various general and sector specific guidance has been issued to assist implementation of obligations under AMLA.

102. Malaysia has made AML/CFT training a priority in order to equip the personnel involved in implementing the national AML/CFT regime with the necessary skills and expertise in order to ensure effective implementation. Malaysia has sought to host a range of regional training initiatives for AML/CFT.

103. Malaysia works closely with regional partners in AML/CFT implementation and actively contributes to global and regional AML/CFT efforts. This includes sharing financial intelligence with other FIUs. Malaysia has taken a lead role in the APG and leading roles in the Egmont Group as well as serving as the 'Lead Shepherd' for AML in ASEAN.

104. At a policy level, the Governor of BNM takes a role in overseeing AML/CFT implementation. The FIU is required to submit a periodic report to the Governor of BNM on matters relating to STRs and cash transaction reports (CTRs), latest AML/CFT developments, including invocation of reporting obligations on reporting institutions, policies measures undertaken, awareness programs conducted etc. This

reporting mechanism ensures continuous monitoring and effectiveness of the national AML/CFT regime.

105. Despite, until very recently, the absence of comprehensive legal regimes to tackle terrorist financing, since 2001 Malaysia has taken a number of steps to combat terrorism and terrorist financing and has worked closely with international partners.

106. Malaysia is taking steps towards signing and ratifying the UN Convention for the Suppression of the Financing of Terrorism. To enable Malaysia to accede to the UN Terrorist Financing Convention new legislative provisions were incorporated into five pieces of legislation, namely the *Penal Code, Criminal Procedure Code, Subordinate Courts Act 1948, Courts of Judicature Act 1964* and the AMLA. The amendments to these pieces of legislation came into force in March 2007.

107. Malaysia has developed a specialist national Certified Financial Investigators Programme (CFIP). The NCC has developed a new training program for AMLA investigators to cover AMLA investigation process and procedure, forensic accounting and computer forensics.

108. Ongoing efforts are being pursued to review and amend the AMLA and other relevant legislation. The RMP initiated an inter-agency taskforce in April 2006 to review the provisions relating to freezing, seizing and forfeiture of property (Parts 5 and 6 of the AMLA). The objective of the review is to strengthen the legislative powers to seize and forfeit property derived from crimes. The taskforce consists of representatives from the law enforcement agencies, BNM and the SC. The review is on-going and is targeted to be completed by March 2007.

b. The institutional framework for combating money laundering and terrorist financing

109. Malaysia adopts a collaborative, multi-agency approach in implementing its AML/CFT regime under the AMLA. The AMLA stakeholders are as follows:

i) FIU in BNM is the central point of reference for all AML/CFT matters;

ii) Regulatory and supervisory authorities consist of BNM ; the FIU in BNM; Securities Commission; Labuan Offshore Financial Services Authority; Companies Commission of Malaysia; and Ministry of Finance (Gaming Unit);

iii) Law enforcement agencies consist of: BNM ; Royal Malaysia Police; Royal Malaysian Customs; Anti-Corruption Agency; Companies Commission of Malaysia; Securities Commission; and Ministry of Domestic Trade & Consumer Affairs;

iv) Self-regulatory organisations consist of the following: Malaysian Bar; Malaysian Institute of Accountants; Malaysian Institute of Chartered Secretaries and Administrators; Malaysian Association of Company Secretaries; and Persatuan Setiausaha Syarikat Melayu Malaysia (Malaysian Association of Malay Company Secretaries); and Board of Valuers, Appraisers and Estate Agents; and

v) Trade associations such as the Association of Labuan Trust Companies, unit trust associations and the Federation of Goldsmiths and Jewellers Association of Malaysia; and

vi) AMLA reporting institutions.

The National Co-ordination Committee to Counter Money Laundering (NCC)

110. The NCC comprises 13 federal Ministries and government agencies that meet on a quarterly basis to co-ordinate the implementation of the AML/CFT measures.

111. BNM is the lead agency for the NCC and the Deputy Governor of BNM chairs the NCC. The NCC members are as follows:

- BNM (lead agency);
- Anti-Corruption Agency;
- Attorney-General's Chambers;
- Companies Commission of Malaysia;
- Inland Revenue Board;
- Labuan Offshore Financial Services Authority;
- Ministry of Finance;
- Ministry of Foreign Affairs;
- Ministry of Internal Security;
- Ministry of Domestic Trade and Consumer Affairs;
- Royal Malaysian Customs;
- Royal Malaysia Police; and
- Securities Commission.

112. The objectives of NCC are, among other things, to develop national AML/CFT policy measures, including legislative proposals; coordinate national policies; develop action plans; and monitor the effectiveness of measures that have been implemented.

113. The following Subcommittees have been established under the NCC:

i) Sub-Committee for Investigation Support *(chaired by the FIU in BNM)*;
ii) Sub-Committee for Asset Forfeiture Management *(chaired by AGC)*;
iii) Sub-Committee for Inter-agency Training *(chaired by the FIU in BNM)*; and
iv) Sub-Committee for Counter Financing of Terrorism *(chaired by MOIS)*.

114. The FIU in BNM is the NCC Secretariat and regularly updates NCC members on the experiences in other countries in AML/CFT. Each NCC member is responsible for research into AML/CFT related matters, sharing of information, reporting on progress and implementation of NCC decisions within its purview.

The Competent Authority – Financial Intelligence Unit, BNM

115. The BNM is appointed as the competent authority under the AMLA and the FIU was established within BNM to carry out the functions of the competent authority under the AMLA. The BNM FIU mission is 'to formulate and implement AML/CFT laws and measures to deter and detect financial crimes by gathering and sharing financial intelligence in order to enhance the integrity and stability of Malaysia's financial system'. The purpose of the FIU is 'to facilitate the implementation and enforcement of the AMLA nationwide and to co-operate with other countries in the global fight against money laundering and serious crime'.

116. The BNM FIU, as the competent authority under the AMLA, undertakes the AML/CFT regulatory and supervisory role for DNFBPs and some other financial institutions.

Ministries

i) Ministry of Finance (MOF)

117. Under the AMLA, the Minister of Finance is empowered to, amongst others:

- appoint a person to be the 'competent authority' under the AMLA;
- amend the list of reporting institutions, i.e. the First Schedule to the AMLA;
- amend the list of predicate offences for money laundering offence, i.e. the Second Schedule to the AMLA; and
- invoke all or any of the AMLA provisions relating to reporting obligations with respect to any particular reporting institutions.

118. The MOF is responsible for regulating the gaming industry. The only casino, seven number forecast and lottery operators, three racing clubs and 71 slot machine clubs, which are reporting institutions under the AMLA, are licensed by the MOF. However, for AML/CFT matters, the FIU in BNM is responsible for the supervision of these institutions.

ii) Ministry of Foreign Affairs (MOFA*)*

119. The MOFA is responsible, among other things, for the transmission and receipt of mutual legal assistance requests and plays a vital role in the development of treaty relationships relating to extradition, mutual legal assistance and terrorism financing.

120. The MOFA chairs the Inter-Agency Committee on International Terrorism (ICIT), which was established to make recommendations to the Government for Malaysia's accession and ratification of the relevant UN instruments against terrorism. The ICIT involves:

- Ministry of Foreign Affairs (Chair);
- Atomic Energy Licensing Board, Ministry of Science, Technology and Innovation;
- Attorney-General's Chambers;
- BNM ;
- Companies Commission of Malaysia;
- Immigration Department, Ministry of Home Affairs;
- Labuan Offshore Financial Services Authority;
- Ministry of Defence;
- Ministry of Transport;
- Ministry of Finance;
- Ministry of Internal Security;
- National Security Division, Prime Minister's Department;
- Registration of Societies Department; and
- Royal Malaysia Police.

iii) Ministry of Internal Security (MOIS)

121. The MOIS is the leading agency in maintaining national sovereignty and security. Functions include enforcing preventive measures or laws in order to eradicate crimes, drug abuse, subversion and terrorism activities.

122. The MOIS includes the Security and Public Order Division that oversees the five enforcement agencies under its purview such as the RMP, the Prison Department, the National Anti-Drug Agency and the Civil Defence Department. The Security and Public Order Division also play a vital role in enforcing the preventive measures and laws such as the Emergency Ordinance (Public Order and Prevention of Crimes) 1969, Dangerous Drugs Act (Preventive Measures) 1985, ISA and AMLA.

123. The Security and Public Order Division plays a major role in ensuring the newly invoked Part VIA *(Suppression of Terrorism Financing Offences and Freezing, Seizure and Forfeiture of Terrorist Property)* of the AMLA is being implemented to meet Malaysia's obligations under both SR 1267 and SR 1373. Part VIA empowers the Minister of Internal Security to make an order under section 66C(1) of the AMLA that the entities named on the UN Security Council's Consolidated List of terrorist entities are specified entities whose property is to be frozen.

iv) Ministry of Domestic Trade and Consumer Affairs (MDTCA)

124. The MDTCA registers and supervises businesses and manages matters related to intellectual property, covering matters of copyrights, trademarks, patents and industrial designs.

125. Three predicate offences under the Copyright Act 1987 and Optical Discs Act 2000, which are under the purview of the MDTCA, are included in the Second Schedule to the AMLA. The MDTCA has its own Enforcement Department and a task force dedicated to AMLA related matters has been set up pending the establishment of a formal AMLA unit within the department. The MDTCA Enforcement Department has wide-ranging enforcement powers, including powers to inspect, search, arrest, seize, investigate and prosecute.

Attorney-General's Chambers

126. The AGC is responsible for giving legal advice and views to the Malaysian Government; drafting legislation and providing prosecution instructions to all related law enforcement agencies for criminal cases and to decide to proceed with and ultimately conduct prosecutions. The Attorney-General is also the central authority for mutual legal assistance requests to/from Malaysia.

127. In relation to AML/CFT, the DPPs play a significant role in money laundering and asset forfeiture cases. Section 93 of the AMLA provides for the full discretionary power of DPPs in the prosecution of ML/TF offences under the AMLA. The DPPs have investigation powers in relation to a financial institution, powers to obtain information and powers in relation to freezing, seizure and forfeiture under Part VI of the AMLA.

Regulatory and Supervisory Authorities

i) Bank Negara Malaysia (BNM)

128. BNM is established under the Central Bank of Malaysia Act 1958 (revised 1984) and reports directly to the Minister of Finance. BNM is responsible for supervising and regulating financial institutions in the domestic sector. The institutions regulated and supervised by BNM are commercial and Islamic banks, investment banks, money brokers, insurance companies, insurance brokers, adjusters, Takaful operators, development financial institutions and money changers.

129. BNM is responsible for regulating and supervising AMLA compliance of the financial institutions under its purview. This includes issuing guidance and conducting examinations as part of the overall prudential examinations on the banking and insurance industry.

130. BNM's enforcement function is carried out by the BNM Special Investigation Unit (SIU) which is empowered to investigate offences committed under the legislation administered by BNM.

ii) Securities Commission (SC)

131. The SC is a statutory body with investigative and enforcement powers established under the Securities Commission Act 1993 (SCA). The SC is Malaysia's sole capital market regulator and reports to the Minister of Finance. The SC has direct responsibility in supervising and monitoring capital market institutions and regulating all persons licensed under the Securities Industry Act 1983 (SIA) and the Futures Industry Act 1993 (FIA).

132. The SC is responsible for AML/CFT regulation and supervision of the capital market and collaborates closely with the FIU in BNM. The SC is responsible for encouraging and promoting self-regulation by market institutions in the stock broking and futures broking industries. The various market institutions under the Bursa Malaysia Group, which act as frontline regulators, are empowered by their rules to conduct periodic inspection/audit on their participants.

133. The routine inspection and audit conducted by the SC and Bursa Malaysia cover the range of obligations imposed on the stock broking companies and futures broking companies as required under the AMLA and the AML/CFT guidelines issued by the SC. In addition, the SC takes an oversight role in the supervision and inspection functions of Bursa Malaysia.

134. The SC oversees market intermediaries which are not under the purview of Bursa Malaysia (fund managers, unit trust management companies, etc).

135. The SC is responsible for investigating offences under the SIA and FIA and related money laundering offences. The SC enforcement arm consists of two departments, namely Investigation Department and Prosecution and Civil Enforcement Department. There are 28 investigating officers and 18 positions for prosecuting officers.

136. The SC is taking steps towards finalising a proposed Capital Markets and Services Act which would repeal the SIA and FIA and incorporate Part IV of the SCA. Consolidated regulations, a licensing handbook and guidelines would be issued under the new Act. The new Act will permit the recognition and oversight of approved SROs. It will also provide for the SC to gather information required to assist it in carrying out is supervisory functions and will set out administrative civil measures and offences.

iii) Inland Revenue Board (IRB)

137. The Inland Revenue Board is established under the Inland Revenue Board of Malaysia Act 1995. The IRB is responsible for the overall administration of taxes under the following Acts:

- Income Tax Act 1967
- Petroleum (Income Tax) Act 1967
- Real Property Gains Tax Act 1976
- Promotion of Investment Act 1986
- Stamp Act 1949
- Labuan Offshore Business Activity Tax Act 1990

138. The IRB administers, assesses, collects and enforces payment of various direct taxes. The IRB also advises government on matters relating to taxation and deals with foreign counterparts on tax matters.

iv) Labuan Offshore Financial Services Authority

139. The LOFSA is a single regulatory body established under the Labuan Offshore Financial Services Authority Act 1996 (LOFSAA). The LOFSA Board (the Authority) is chaired by the Governor of BNM. The roles of the LOFSA include:

- supervising the offshore financial services industry in Labuan;
- to process applications to conduct business in the Malaysian IOFC - offshore banking, offshore insurance, offshore trust and fund management;
- incorporating and registration of offshore companies and the setting up of Labuan trust companies; and
- administration and enforcement of the offshore financial services legislation.

140. In relation to AML/CFT, the LOFSA is the authority responsible for the regulation and supervision of LOFSA regulated reporting institutions. The LOFSA is empowered to conduct examination on the offshore institutions in Labuan, including AML/CFT examinations on AMLA reporting institutions.

iv) Companies Commission of Malaysia (CCM)

141. The CCM is a statutory body set up pursuant to the Companies Commission of Malaysia Act 2001. The CCM regulates matters pertaining to the incorporation of companies and business registration and to promote ethical conducts amongst those involved in the management of a company or business.

142. The CCM regulates domestic trust companies and company secretaries and is responsible for monitoring and ensuring AMLA compliance of these reporting institutions. Under the CA'65, the CCM has extensive monitoring, investigation and enforcement powers including a wide range of civil, criminal and administrative sanctions and these powers are extended to cover AML/CFT matters. The CCM has its own Investigation Department, with 22 officers.

Law Enforcement Agencies

i) Royal Malaysia Police (RMP)

143. The RMP is the principal law enforcement agency in Malaysia with approximately 90,000 staff to cover a wide spectrum of law enforcement responsibilities. The general powers of the RMP are provided under the *Police Act 1967* (PA) and the

CPC. The RMP is provided with wide powers of arrest and detention, entry, search and seizure and interception of communications.

144. Four departments within the RMP are responsible for investigating money laundering and terrorist financing in tandem with related predicate offences under AMLA, the Penal Code and other criminal statutes: the Commercial Crime Investigation Department, the Criminal Investigation Department (CID), Narcotics Investigation Department (NID) and Special Branch (SB). There is also a Forfeiture Unit within the NID.

ii) Anti-Corruption Agency Malaysia (ACA)

145. The ACA, which is governed by the ACA'97, is a federal agency entrusted to eradicate corruption and abuse of power. The ACA has over 1,000 staff.

146. The ACA investigates money laundering associated with offences under the ACA'97. ACA issues AMLA investigation powers for all investigating officers of the ACA (of the rank Assistant Superintendent and above). This is intended to ensure that ACA investigators pursue money laundering offences as an integral part of pursuing corruption offences. ACA has a specialist financial investigation section that specialises in forfeiture cases under the ACA'97 and the AMLA.

iii) Royal Malaysian Customs (RMC)

147. The RMC is a federal agency consisting of 8711 officers. In addition to roles for collection and enforcement of duties and taxes, the RMC also has a role in drug enforcement, prevention of smuggling and enforcement of exchange controls.

148. The RMC is empowered to investigate money laundering related to offences of smuggling, fraud and internal corruption. Before 2006, there was a unit consisting of two officers in charge of handling administrative matters relating to money laundering investigation. Since January 2006, money laundering investigation has been put under the responsibility of the Special Investigation Branch (SIB). This branch undertakes investigation of specific fraud cases and also special task which is significant to AML. The SIB consists of 30 officers and is stationed in Kuala Lumpur.

149. Customs is vested with responsibility for taking reports on cross-border currency movements under the exchange control mechanism.

Others

ii) Registration of Societies Department (ROS)

150. Established under the Ministry of Home Affairs (MOHA), the ROS is primarily concerned with the registration, control and supervision as well as the maintenance of records pertaining to registered societies and their branches throughout Malaysia. The ROS principally enforces the SA and the regulations made there under, namely the Societies Regulations 1984, which governs the societies.

iii) Immigration Department

151. The Immigration Department is under the MOHA and is responsible for managing immigration affairs, supervising entry/exit of nationals; enforcing the Immigration Act 1959/63 and its Regulations and the Passport Act 1966; formulating entry permit,

immigration and passport policies; and responsible for border crossing, movement of natural persons, human distribution and smuggling issues.

Self-Regulatory Organisations

152. Various AMLA Task Forces have been formed, consisting of representatives from various SROs and the BNM FIU, for each of the professions. The primary responsibility of the AMLA Task Force is to establish the relevant AML/CFT guidelines to assist the respective profession in meeting their obligations under the AMLA. As the professions are large and fragmented, updates on AML/CFT to these professionals are carried out through dialogue sessions with the AMLA Task Force.

i) Malaysian Institute of Accountants (MIA)

153. The MIA, which is established pursuant to the *Accountants Act 1967* (AA) as the country's national accountancy body, is the only accountancy body empowered by law to regulate the accountancy profession in Malaysia. A chartered or licensed accountant who wishes to engage in public practice services must register with the MIA and possesses a valid practising certificate issued by the MIA.

ii) The Malaysian Bar

154. The Malaysian Bar is an independent Bar governed by the LPA to self-regulate the legal profession in peninsula Malaysia. The Sabah Law Association and Advocates Association of Sarawak represent the legal profession in Sabah and Sarawak respectively.

iii) Malaysian Institute of Chartered Secretaries and Administrators (MAICSA)

155. The MAICSA is a prescribed body under section 139(A) of the CA'65. Members of the MAICSA can automatically act as company secretaries without having to apply for a licence from the CCM.

iv) Board of Valuers, Appraisers and Estate Agents Malaysia (BVAEA)

156. The BVAEA is governed by the provision of the *Valuers, Appraisers and Estate Agents Act 1981* and is formed:

- to keep and maintain the register of valuers, appraisers and estate agents, probationary valuers and probationary estate agents and firms of valuers, appraisers and estate agents;
- to regulate the professional conduct/ethics of valuers, appraisers and estate agents;
- to conduct examinations; and
- to govern the amount of fees that these professionals can charge their clients.

157. All registered estate agents in Malaysia are represented by the Malaysian Institute of Estate Agents (MIEA) which is answerable to the BVAEA.

c. Approach concerning risk

158. The Malaysian authorities have adopted an inclusive approach to the scope of the anti-money laundering obligations in the financial sector, and have not sought to exclude any of the activities on a risk-based approach. However, implementation of the obligations under AMLA has been done on a phased basis. Although no formal risk assessment has been undertaken to determine the sequence of this phasing, it

is apparent that most of the key financial activities have been captured as a matter of priority.

159. Malaysia's AML/CFT regime is being implemented on a gradual basis beginning with the largest sector in the financial system, the banking institutions. The AMLA regulatory net is then extended to other financial institutions such as the insurance industries, offshore entities, capital market intermediaries and development financial institutions. In the same manner, the AMLA reporting obligations are have been invoked in stages.

160. Although the AMLA has been in force since 2002, the detailed provisions implementing most of the preventive measures for the financial and other sectors have been introduced through the guidelines issued by the competent authorities. While the original guidelines promulgated by BNM and the SC addressed several key areas, they were quite general in nature. Since November 2006 a succession of new guidelines has been issued, some being applicable to several sectors, other being tailored to individual types of institution. Because of the very detailed nature of the guidelines in certain areas, an informal agreement has been reached with the institutions to allow a period during which they may phase in the measures before the authorities seek to enforce rigorously the new provisions. Generally, the period of implementation has been determined on the basis of a self-assessment or gap analysis completed by the individual firms and submitted to the authorities. This process of phased implementation is intended to allow institutions time to adjust their systems and controls to the new environment.

d. Progress since the last mutual evaluation

161. Malaysia has undergone two previous Mutual Evaluations. a joint APG/OGBS Mutual Evaluation of the Labuan International Offshore Financial Centre in May 2001 and an APG Mutual Evaluation of Malaysia in June 2002. The 2001 Labuan IOFC evaluation took into account the national laws of Malaysia, which apply in Labuan. For the APG second round of Mutual Evaluations it was decided to assess the Labuan IOFC as part of Malaysia's overall Mutual Evaluation.

162. A table summarising the recommended actions from the two previous reports and progress by Malaysia with responding to those recommended actions, is included at Annex 1 of this report.

163. There are four recommended actions arising from the two previous APG Mutual Evaluations that have not yet been met:

i) *Tighten the supervisory regime for money changers to meet the requirements of the AMLA.*

Analysis of deficiencies with coverage of Money Changers is included at Section 3.10 of this report.

ii) Ensure sufficient and appropriate resources for the FIU to carry out its functions.

Resource constraints on the FIU to perform its role as AML/CFT supervisor are noted in sections 2.5, 3.10 and sections on Recommendation 30 in the MER.

iii) Amend regulatory laws to rationalise the secrecy provisions and to remove any perceived impediments to the access by LOFSA to information identity of customers.

Concerns with these secrecy provisions are discussed section 4.2 of the MER.

iv) *Make explicit the ability of LOFSA to acquire information from regulated institutions on behalf of overseas regulatory authorities, and clarify that the sharing of information is not restricted in relation to customer's details, subject to reciprocal confidentiality provisions.*

Impediments to information sharing arising from these provisions are discussed section 3.2 of the MER.

164. It should be noted that LOFSA has obtained approval from the Minister of Finance to amend the *Labuan Offshore Financial Services Authority Act 1996* (LOFSAA) to meet recommendations iii) and iv) above.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 CRIMINALISATION OF MONEY LAUNDERING (R.1 & 2)

2.1.1 DESCRIPTION AND ANALYSIS

Recommendation 1

165. Malaysia's *Anti-Money Laundering Act* 2001 [AMLA] came into force on 15 January 2002. The AMLA provides a definition of money laundering and creates the money laundering offence to cover, in broad terms, dealing with the proceeds of any of the serious offences set out in the 2nd Schedule to the AMLA and also to any foreign serious offence.

Criminalisation of Money Laundering

166. Section 4 of the AMLA criminalises money laundering, such that any person who engages in, or attempts to engage in, or abets the commission of money laundering, commits an offence. Upon conviction the person is liable to imprisonment for a term not exceeding five years and/or a fine not exceeding RM5 million (USD1.36 million).

167. Section 3 of the AMLA defines the term "money laundering" to mean the act of a person who: "(a) engages, directly or indirectly, in a transaction that involves proceeds of any unlawful activity;"

168. However, Section 3 of the AMLA goes on to define "unlawful activity" as any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence. A "Serious offence" is any of the offences specified in the Second Schedule to the AMLA; or any serious foreign offence. A serious foreign offence is one which is "(a) against the law of a foreign State…; and (b) that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a serious offence".

169. Section 4 of AMLA and defining provisions in section 3 of the Act criminalise money laundering in accordance with:

- Article 3(1)(b) and (c) of the Vienna Convention; and
- Article 6(1) of the Palermo Convention.

Property

170. In determining whether property is the subject matter of, or has been used in the commission of a money laundering offence, the court must apply the standard of proof required in civil proceedings: that is, on the balance of probabilities.

171. Other Acts contain provisions for the criminalisation of money laundering. These are:

- Section 18 of the *Anti-Corruption Act* 1997 [the AC Act], which criminalises any dealing with property which is the subject-matter of a crime of corruption; and

- Sections 3 and 4 of the *Dangerous Drugs (Forfeiture of Property) Act* 1988 [the DD(FOP) Act], which criminalise any dealing with property which derives from, or is the subject matter of a narcotics offence.

172. 'Property' under the AMLA is broadly defined. Section 2 applies the AMLA to any property, whether it is situated in or outside Malaysia. Section 3 of the AMLA defines 'proceeds of an unlawful activity' (subsequently defined as a "serious offence") as any property derived or obtained, directly or indirectly, by any person as a result of any unlawful activity. Further, 'property' is defined as 'movable or immovable property of every description, whether situated in or outside Malaysia and whether tangible or intangible and includes an interest in any such movable or immovable property'.

173. It is not necessary that a person be charged or convicted of a predicate serious offence in order to prove that property is the proceeds of unlawful activity. Subsection 4(2) of the AMLA permits conviction of a person for a money laundering offence, irrespective of whether there is a conviction in respect of a serious offence or foreign serious offence, or whether a prosecution has been initiated for such offences.

174. It must be proved that the proceeds are proceeds of a serious offence listed in the Second Schedule to the AMLA. However, it need not be proved that the person charged with money laundering committed the serious offence. Officers of Attorney General's Chambers and of other enforcement agencies cited examples of current prosecutions within Malaysia where persons had been charged with money laundering offences without having been charged with any serious offences, either because the persons were not implicated in the commission of the serious offences, or there was insufficient evidence to charge them in relation to those offences.

175. Likewise under the DD(FOP) Act, prosecution for money laundering does not require that any person be convicted of the predicate offence to the DD(FOP).

Predicate offences

176. Malaysia takes a 'list-based' approach to the range of predicate offences covered by the money laundering offence.

177. Section 2 (1) of the AMLA applies the provisions of the Act to:

"any serious offence, foreign serious offence or unlawful activity whether committed before or after the commencement date".

"Serious offence" is defined as -

(a) any of the offences specified in the Second Schedule to the AMLA;
(b) an attempt to commit any of those offences; or
(c) the abetment of any of those offences.

"Foreign serious offence" is defined as an offence -

(a) against the law of a foreign State stated in a certificate purporting to be issued by or on behalf of the government of that foreign State; and

(b) that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a serious offence.

"unlawful activity" is defined as -

any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence.

178. The serious offences listed in the Second Schedule to the AMLA contain a number of the designated categories of offences, including offences of corruption, fraud, smuggling, currency counterfeiting, people trafficking and narcotics trafficking. However, the following offences are not currently included:

a. counterfeiting and piracy in the case of non-artistic products
b. offences specific to piracy
c. environmental crime

179. With regard to counterfeiting and pirating of products, there is limited coverage of these offences. Section 41 of the Copyright Act 1987 and Sections 4 and 21 of the Optical Discs Act 2000 prohibit counterfeiting and sale in relation to artistic, literary and musical works. These offences are included as serious offences in the Second Schedule. However the Second Schedule does not include offence provisions under the Trade Descriptions Act 1972 or the Industrial Designs Act 1996, which criminalise such activity in the case of non-artistic products such as clothing, bags and sporting goods.

180. With regard to piracy, Malaysia's High Court is empowered by s 22(1) of the Courts of Judicature Act 1964 to try offences by any person on the high seas 'where the offence is piracy by the law of nations'. While the Malaysian authorities submitted that AMLA Second Schedule offences of robbery and murder, if committed on the high seas, could fall within this category of offences, the Evaluation Team holds concerns that these offences do not clearly have the necessary extra-territorial application. It should be noted that Malaysian authorities are actively pursuing amendments to the Penal Code and to the Criminal Procedure Code to create specific piracy offences, which, it has been indicated, are intended to be included in the AMLA Second Schedule.

181. Offences of terrorism and terrorist financing became predicate offences on 9 March 2007 after the enactment of the AMLA Amendment package of legislation on 6 March 2007. Malaysia advises that offences relating to piracy and armed robbery at sea are at an initial stage of discussion for eventual inclusion in the Second Schedule.

182. Predicate offences for money laundering include both serious offences and foreign serious offences as required by the international standard.

183. The AMLA permits application of the offence of money laundering to persons who commit the predicate offence. 'Money laundering' applies to any person who engages, directly or indirectly, in a transaction that involves proceeds of any of the serious offences listed in the Second Schedule to the AMLA.

184. The offence of money laundering includes appropriate ancillary offences. Subsection 4(1) of the AMLA extends the offence of money laundering to the acts of

persons who engage in, or attempt to engage in, or abet the commission of money laundering. The definition of 'abetment' under section 107 of the Penal Code includes the conduct of a person who engages with one or more other persons in any conspiracy for the doing of a thing. Section 120A of the Penal Code defines 'conspiracy' as the agreement of two or more persons to do, or cause to be done, an illegal act or an act by illegal means.

185. The money laundering offence does not apply where the predicate conduct occurred in another country but was not an offence in that other country (see section 3 AMLA definition of 'foreign serious offence').

Recommendation 2

186. The offence of money laundering applies to both natural and legal persons. The *Interpretation Acts* 1948 and 1967 define 'person' to include a body of persons, corporate and unincorporated. In addition, section 87(1) of the AMLA provides that when an offence is committed by a body corporate or an association of persons, a person who was at that time a director, controller, officer or partner or who was concerned in the management of the affairs of the entity, is deemed to have committed the offence unless that person proves that the offence was committed without his consent or connivance.

187. The definition of 'money laundering' in section 3 AMLA explicitly provides that a person's knowledge that property is the proceeds of unlawful activity may be inferred from objective factual circumstance. Further, the mental element for the offence may be met where a natural person without reasonable excuse fails to take reasonable steps to ascertain whether or not the property is proceeds from any unlawful activity.

188. The AMLA does not preclude the possibility of parallel criminal, civil or administrative proceedings.

189. With regard to sanctions for the offence of money laundering, the maximum fine amount available is substantial; however available terms of imprisonment do not appear to be proportionate or dissuasive. The maximum term of imprisonment available is five years, which is significantly lower than the maximum terms available for comparable economic crimes under Malaysian law. The following are examples:

- Fraud/Cheating (section 420 *Penal Code*):10 years imprisonment and with whipping and liable to fine;
- Forgery (section 467 *Penal Code*): 20 years imprisonment and liable to fine;
- Corruption (sections 10,11,13,14 and 15 *Anti-Corruption Act* 1997): imprisonment not less than 14 days and not more than 20 years with fine; and
- Fraudulently inducing persons to invest money (section 368 *Companies Act* 1965): 10 years imprisonment and/or a maximum fine of RM250,000.

190. The maximum term for money laundering under AMLA is also lower than the maximum terms for money laundering under both:

- section 18 *Anti-Corruption Act*: 7 years and/or a fine not exceeding RM50,000; and
- Sections 3 and 4 DD(FOP) Act: imprisonment not less than 5 years and not more than 20 years.

191. It is also lower than the terms available for money laundering offences in many other jurisdictions, including:

- United Kingdom: 14 years and/or fine;
- Hong Kong: 14 years or fine HK$5 million;
- Indonesia: 5-15 years and/or fine of Rp 5-15 billion;
- US: 20 years and/or fine;
- Philippines: 7-14 years and/or fine; and
- Australia: 5-25 years (depending on value of property and accused's level of knowledge) and a fine.

192. In Malaysia to date there have been only two convictions for money laundering under AMLA. The offenders were sentenced as follows:

- Three years imprisonment for each of the five AMLA offences, to be served concurrently. The AMLA sentences are to commence on the expiry of the offender's nine years imprisonment for predicate robbery offences.
- Three years imprisonment and a fine of RM19.3 million for the AMLA offences. In default of the fine, the offender was sentenced to 12 months imprisonment. The AMLA sentences are to commence on the expiry of the offender's five years imprisonment for predicate criminal breach of trust offences.

Recommendation 32 (money laundering investigation/prosecution data)

193. The following table summarises information on the number of investigations and prosecutions under AMLA for the period 2002 to 2006:

Table 8: ML investigation, prosecution and conviction under the AMLA

	2002	2003	2004	2005	2006	Total
Number of investigations	1	11	24	26	82	144
Number of cases prosecuted	-	-	1	5	14	20
Number of charges	-	-	8	188	542	738
Amount involved (RM million)	-	-	41.338	29.946	190.845	262.129
Number of convictions	-	-	-	1	1	2

194. The bulk of these investigations have been conducted or are being conducted by the Commercial Crime Investigation Department of the Royal Malaysia Police [69 investigations] and the Anti-Corruption Agency [62 investigations]. Notably, the ACA has for some time had a policy of 'simultaneous investigations', whereby investigation of money laundering must be considered in conjunction with investigation of the predicate corruption offence.

195. Of the 144 investigations, the majority are still under investigation. Of those investigations that have been referred to the AGC for consideration of prosecution, 20 prosecutions have been commenced. Of the remainder:

- AGC has closed the case due to insufficient evidence; or
- AGC has not yet made a prosecution decision. In some cases this is because AGC has advised that further evidence is required.

196. Of the 20 prosecution cases, only two are complete with 18 still in progress. The sentences imposed in those two matters are set out above.

197. The progress of the 20 AMLA prosecutions through the courts has been slow. Amongst others, the delay is attributed to the heavy workload of the Sessions Courts, and to appeal and interlocutory actions taken by many defendants. Delay in resolution of the money laundering prosecutions has in turn delayed resolution of forfeiture actions in respect of property that is the subject of the prosecutions.

198. Statistics provided by Malaysian authorities indicate that money laundering investigations pursued to date are based on a broad range of predicate 'economic benefit' types of offences, with the exception of narcotics offences.

199. None of the above investigations was based on predicate narcotics offences. As noted, the DD(FOP) Act contains its own provisions to criminalise the activity of dealing with drug proceeds and instruments. These provisions are able to apply to a broad range of property and to capture a wide range of 'dealing' in property. In addition they do not require that any person be charged with or convicted of any predicate offence. Maximum available penalties are dissuasive, being imprisonment for a term of between 5 and 20 years. Despite this, statistics provided by Malaysian authorities show that there have not been any money laundering prosecutions under the DD(FOP) Act since 1999. Officers of the RMP Narcotics Department explained the absence of money laundering investigations based on predicate drug offences by reference to the unique forfeiture regime provided by the DD(FOP) Act and its reverse onus provisions, which they submitted made it a more attractive and effective legal tool in the fight against crime.

2.1.2 RECOMMENDATIONS AND COMMENTS

200. The Malaysian statutory scheme addressing money laundering is well drafted and meets many of the essential criteria of Recommendations 1 and 2. Two areas of concern are the following:

i. The legislation does not include as predicate offences for money laundering all offences to cover the twenty designated categories of offences;

ii. Criminal sanctions for money laundering under AMLA are not proportionate or dissuasive and are inadequate when compared with domestic and international comparisons.

201. Since Malaysia was evaluated in 2002 it has expanded the scope of predicate offences to include crimes of people smuggling, trafficking in women and children, and child pornography. In addition offences of terrorism and terrorist financing were very recently added to the Second Schedule. However the Second Schedule does not currently include environmental crime offences, offences specific to piracy, or offences of counterfeiting and piracy of non-artistic goods.

202. Statistics in relation to AMLA indicate a gradually increasing commitment to the investigation and prosecution of offences under that Act. Money laundering investigations cover a broad range of predicate offences, with the exception of narcotics offences. While confiscation measures are widely used to confiscate the proceeds and instruments of narcotics offences, money laundering offence

provisions appear not to be used despite their potential as a legal tool to combat commercial narcotics activity.

203. The effectiveness of money laundering offences as a legal tool would be enhanced with an increase in the maximum term of imprisonment available under the AMLA, and with a more speedy resolution of the matters once charged.

204. It is recommended that Malaysia:
- act quickly to include offences specific to piracy, counterfeiting of all goods, and environmental crime as predicate offences.
- take steps to utilise money laundering offence provisions (whether under the AMLA or the DD(FOP) Act) in appropriate narcotics-based cases.
- increase available custodial sentences for offences under the AMLA to compare with maximum terms available for other serious economic crimes under Malaysian law; and
- take steps to ensure the speedy resolution of money laundering prosecutions.

2.1.3 COMPLIANCE WITH RECOMMENDATIONS 1 & 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• The legislative scheme is being implemented in a reasonably effective manner, however there is incomplete coverage of serious offences • The money laundering legislative scheme is not used for drug-based offences, either through AMLA or the DD(FOP).
R.2	**LC**	• The legislative scheme is comprehensive. However criminal sanctions for AMLA prosecutions are inadequate.
R.32	**LC**	• This Recommendation is rated in more than one section

2.2 CRIMINALISATION OF TERRORIST FINANCING (SRII)

2.2.1 DESCRIPTION AND ANALYSIS

205. Malaysia has very recently improved the legislative scheme to comprehensively criminalise the financing of terrorism. In March 2007 Malaysia enacted AMLA Amendment Part VIA *(Suppression of Terrorist Financing Offences and Freezing and Forfeiture of Terrorist Property).* This legislative package is designed to implement Malaysia's obligations under the UN Suppression of the Financing of Terrorism Convention, and relevant UN Security Council Resolutions. New offences of terrorism and terrorist financing are included in the legislation.

206. Prior to the enactment of the Amendment package, Malaysia relied upon such provisions as were then available to criminalise conduct in the nature of terrorist financing. These were primarily, section 125A of the *Penal Code*, and section 59 of the *Internal Security Act* 1960.

AMLA Amendment

207. Since March 2007 section 3(1) of the AMLA now defines 'terrorism financing offence' as any offence under sections 130N, 130O, 130P and 130Q of the *Penal Code*. These sections create new offences of:

- providing or collecting property for terrorist acts: section 130N;
- providing financial services for terrorist purposes: section 130O;
- arranging for retention or control of terrorist property: section 130P; and
- dealing with terrorist property: section 130Q.

> **130N.** Whoever, by any means, directly or indirectly, provides or collects or makes available any property intending, knowing or having reasonable grounds to believe that the property will be used, in whole or in part, to commit a terrorist act shall be punished— …
>
> **130O.** (1) Whoever, directly or indirectly, provides or makes available financial services or facilities—
> *(a)* intending that the services or facilities be used, or knowing or having reasonable grounds to believe that the services or facilities will be used, in whole or in part, for the purpose of committing or facilitating the commission of a terrorist act, or for the purpose of benefiting any person who is committing or facilitating the commission of a terrorist act; or
> *(b)* knowing or having reasonable grounds to believe that, in whole or in part, the services or facilities will be used by or will benefit any terrorist, terrorist entity or terrorist group, shall be punished—…
> (2) For the purposes of subsection (1), "financial services or facilities" include the services and facilities offered by lawyers and accountants acting as nominees or agents for their clients.
>
> **130P.** Whoever knowingly enters into an arrangement that facilitates the acquisition, retention or control by or on behalf of another person of terrorist property by concealment, by a removal out of jurisdiction, by transfer to a nominee or in any other way shall be punished with imprisonment for a term which may extend to thirty years, and shall also be liable to fine and to forfeiture of any property so acquired, retained or controlled.
>
> **130Q.** (1) Whoever knowingly deals, directly or indirectly, in any terrorist property shall be punished with imprisonment for a term which may extend to twenty years, or with fine and shall also be liable to forfeiture of any property so dealt with. (2) For the purposes of subsection (1), "deals in" includes—
> *(a)* acquiring or possessing any terrorist property;
> *(b)* entering into or facilitating, directly or indirectly, any transaction in respect of terrorist property;
> *(c)* converting, concealing or disguising terrorist property; or
> *(d)* providing any financial or other services in respect of any terrorist property to or for the benefit of, or at the direction or order of, any terrorist, terrorist entity or terrorist group.

208. Section 130 B defines "terrorist property" as (a) proceeds from the commission of a terrorist act; (b) property that has been, is being, or is likely to be used to commit a terrorist act; (c) property that has been, is being, or is likely to be used by a terrorist, terrorist entity or terrorist group; (d) property owned or controlled by or on behalf of a terrorist, terrorist entity or terrorist group, including funds derived or generated from such property; or (e) property that has been collected for the purpose of providing support to a terrorist, terrorist entity or terrorist group or funding a terrorist act.

209. The above offences and their relevant defining provisions have been drafted in such a way as to make them consistent with Article 2 of the UN Terrorist Financing Convention. 'Property' is broadly defined and includes all the categories of 'funds' that are described in the UN Terrorist Financing Convention. Moreover, 'terrorist property' is given the same meaning as under new section 130B *Penal Code*, namely:

- the proceeds from the commission of a terrorist act; or
- property that has been, is being, or is likely to be used to commit a terrorist act or by a terrorist, terrorist entity or terrorist group; or
- property which is owned or controlled by or on behalf of a terrorist including funds derived or generated from such property; or
- property that has been collected for the purpose of providing support to a terrorist, terrorist entity, terrorist group or funding a terrorist act.

210. Section 130B defines a 'terrorist' as any person who commits, or attempts to commit, any terrorist act, or who participates in or facilitates the commission of any terrorist act. It also includes a specified entity under section 66B or section 66C of the AMLA. A 'terrorist group' includes an entity that has as one of its activities and purposes the committing of, or the facilitation of the commission of, a terrorist act. 'Terrorist act' is comprehensively defined and includes the classes of acts prescribed in Article 2 of the UN Terrorist Financing Convention.

211. Section 130N creates an offence of providing or collecting property with knowledge, intention or reasonable grounds to believe that it will be used to commit a terrorist act.

212. The effect of section 130O(1)(b) is to prohibit a person from making available financial services or facilities knowing or having grounds to believe that they will be used by, or will benefit, any terrorist, terrorist entity or terrorist group. 'Financial services or facilities' are not defined except to provide that they include services and facilities offered by lawyers and accountants acting as nominees or agents for their clients. This, together with the avoidance in section 130O of the terms 'any property' or 'terrorist property', leaves room for doubt that section 130O is intended to include all the categories of funds that are described in the UN Terrorist Financing Convention. For this reason the Evaluation Team was of the view that section 130O, while a useful provision within its own terms, could not operate to criminalise in a comprehensive manner the provision or collection of funds for the support of terrorist individuals or groups.

213. Section 130Q criminalises the conduct of dealing in terrorist property. 'Dealing' is extensively defined and in a manner which makes it unlikely that any act associated with the provision or collection of funds could not fall within its ambit. As noted

above, 'terrorist property' includes funds that have been collected for the purpose of providing support to a terrorist, terrorist entity or terrorist group. 'Terrorist property' also includes funds that have been, are being, or are likely to be used b a terrorist, terrorist entity or terrorist group. On this basis the Evaluation Team was satisfied that section 130Q was capable of criminalising most kinds of conduct directed at or resulting in the provision or collection of funds for terrorist individuals or groups. However a concern remained as to the indirect legislative approach taken to the criminalisation of this conduct, and whether in practice it could impose difficulties in the prosecution of such matters. For this reason the Evaluation Team strongly recommends that Malaysia consider enacting a provision which specifically criminalises this activity.

214. The terrorist financing offences do not require that the funds were actually used to carry out or attempt a terrorist act. Offences of attempting to commit the new offences and abetting their commission are available. 'Abetment' as defined in section 107 of the *Penal Code* covers all the types of conduct set out in Article 2(5) of the UN Terrorist Financing Convention, that is participating as an accomplice in a terrorist financing offence, organising or directing others to commit such an offence, and acting in common purpose with others to further the commission of such an offence.

215. The terrorist financing offences are predicate offences for money laundering, having been added to the AMLA Second Schedule. They are capable of application where the act of financing takes place in a different country to the one in which the terrorist group is located or the terrorist act will occur.

216. The terrorist financing offences apply to both natural and legal persons, and do not preclude parallel criminal, civil or administrative proceedings. Penalties are effective and dissuasive. The penalty for an offence against sections 130N and 130O is death if the resulting act results in death, or imprisonment for a maximum of thirty years in other cases. The penalty for an offence against sections 130P and 130Q is imprisonment for a maximum term of thirty years and twenty years respectively. Forfeiture of any property the subject of the offences is also available.

217. As the above offences have been enacted only very recently there have been no investigations, prosecutions or convictions and therefore no basis upon which to clearly determine their effectiveness.

Situation under previous law

218. In order to evaluate the past effectiveness of Malaysian laws to criminalise terrorist financing the Evaluation Team was obliged to consider the situation prior to the enactment of the AMLA Amendment. In this context two provisions were cited as being capable of criminalising terrorist financing; however they appear not to have been used as the basis of any investigations or prosecutions. These were:

- Section 125A *Penal Code*; and
- Section 59 *Internal Security Act* 1960 [the ISA].

219. Section 125A *Penal Code* made it an offence for a person to harbour by any act the enemies of the King. Section 130A *Penal Code* defined 'harbouring' to include supplying the enemies of the King with such things as shelter, food, drink, money, or

clothes. 'Enemies of the King' is not defined, but its context indicates its meaning is restricted to the conduct of persons who 'wage war' against the King or against the government of any power in alliance with the King.

220. When considered in light of the requirements of SR II, section 125A has fundamental limitations as follows:

- It is incapable of capturing the unlawful intentions of any but a narrow range of finance-recipients, namely those whose plans encompass the violent overthrow of the government. It is unlikely to be able to apply to the activities of those whose purpose is not to overthrow the State, but rather to advance a cause by disrupting essential services, destroying public utilities, and intimidating the public.
- It is unlikely to cover the range of 'funds' defined in the UN Terrorist Financing Convention.
- Its context indicates aid of a direct kind, complicating its application to the supply of funds for the general benefit of a terrorist group, and the collection of such funds.

221. Section 59(3) of the ISA makes it an offence for a person to provide supplies to another person, where it may reasonably be presumed that that person intends to act, is about to act, or has acted, in a manner 'prejudicial to public safety or to the maintenance of public order', or that the supplies are intended for the use of a terrorist. 'Terrorist' is defined as the conduct of acting in a manner prejudicial to public safety or to the maintenance of public order.

222. Section 59(3) of the ISA defines the intentions of the terrorist-recipient of funds in terms that are general enough to capture a wide range of terrorist activity. However its scope is restricted to persons whose terrorist aims are within Malaysia only, and it can only criminalise the provision of funds to terrorist groups whose intentions are domestic in nature. A further major limitation with the section 59 offence is that, unlike section 125A Penal Code, it is not a predicate offence for money laundering as it is not listed in the AMLA Second Schedule.

223. The Evaluation Team is unaware of any prosecutions, convictions or investigations under either section 125A Penal Code or section 59 of the ISA.

Recommendation 32 (terrorist financing investigation/prosecution data)

224. Under both current and previous laws there are no prosecutions or convictions for offences of terrorist financing, and no current terrorist financing investigations.

2.2.2 RECOMMENDATIONS AND COMMENTS

225. The new terrorist financing offences created within the AMLA Amendment package are broadly compliant with the essential criteria of SR II. They are able to capture a comprehensive range of financing activities, and to apply to a broad range of terrorist intentions and activities, however they take an indirect legislative approach to the criminalisation of provision or collection of funds for terrorist individuals or groups which may impact on effectiveness.

226. It is strongly recommended that that Malaysia enact an offence provision which directly criminalises the provision or collection of property for the support of terrorist individuals or groups.

227. As the new offences have only come into operation very recently, it is not possible to comment upon the effectiveness of their implementation.

228. Criminalisation of terrorist financing offences prior to the recent AMLA Amendments was based on the offences under section 125A *Penal Code* and section 59(3) of the ISA. These offences were only able to capture a narrow range of financing activities only. In addition each is limited in the range of terrorist activity to which it can apply. Overall the offences are unable to operate as terrorist financing offences in any but a very limited capacity, and in fact appear not to have been used as the basis of any investigations or prosecutions. Given that the new terrorism and terrorist financing offences under the Penal Code have no retrospective effect, there is concern that any future investigation of terrorist financing activity which occurred prior to March 2007 would still have to rely on these provisions.

229. Authorities should consider applying the revised legislation to investigate and prosecute terrorist financing related to identified terrorist groups with a presence in Malaysia.

2.2.3 COMPLIANCE WITH SPECIAL RECOMMENDATION II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• While the new offences meet all the essential criteria of SR II, there is as yet no basis to evaluate the effectiveness of their implementation. • The indirect legislative approach taken to the criminalise provision or collection of funds for terrorist individuals or groups could create difficulties in the prosecution of such matters.
R.32	**LC**	• There have been no investigations or prosecutions for terrorist financing. • This Recommendation is rated in more than one section and is a consolidated rating.

2.3 CONFISCATION, FREEZING AND SEIZING OF PROCEEDS OF CRIME (R.3)

2.3.1 DESCRIPTION AND ANALYSIS

230. While Malaysia does not have a comprehensive 'Proceeds of Crime' Act for the forfeiture, freezing and seizing of criminal proceeds and instruments, confiscation is possible pursuant to those measures that are available within the Acts creating specific predicate offences.

231. Comprehensive laws exist for the seizing and confiscation of property in relation to offences of money laundering, narcotics trafficking, corruption and, very recently, terrorist financing. In addition:

- there is provision for confiscation under various specific Acts, such as the *Customs Act,* the *Dangerous Drugs Act*, the *Internal Security Act*, the *Copyright Act* 1987, and the *Optical Discs Act* 2000; and
- section 407 of the *Criminal Procedure Code* [the CPC] permits a court to make orders for confiscation of any property which has been used for the commission of any offence, or in relation to which any offence appears to have been committed.

Confiscation under the AMLA

232. Section 55 of the AMLA provides for the forfeiture of property which is the subject-matter of a money laundering offence under subsection 4(1), or which has been used in the commission of such an offence. Thus forfeiture is available for property which is the proceeds, or the instrument, of a money laundering offence. In addition, as an attempt to engage in money laundering is also an offence under subsection 4(1), forfeiture extends to property which was intended to be used in the commission of a money laundering offence.

233. 'Property' is comprehensively defined in section 3 of the AMLA, and includes property indirectly derived from unlawful activity. In addition, where the property has been disposed of or cannot be traced the accused is liable to a penalty equivalent to the value of the property. Property is liable to forfeiture regardless of whether it is held by a third party.

234. Forfeiture under the AMLA may occur with or without conviction of a money laundering offence, as follows:

- where a person has been prosecuted for and convicted of an offence under subsection 4(1):
- where a person has been prosecuted for an offence under subsection 4(1) but the offence has not been proved. The court may make a forfeiture order if satisfied that the accused is not the true and lawful owner of such property and no other person is entitled to the property:
- where there has been no prosecution or no conviction for such an offence. The court may make a forfeiture order if satisfied that the property is the subject-matter of a subsection 4(1) offence, or has been used in the commission of such an offence.

235. With regard to confiscation for terrorist financing offences, effective offence provisions have very recently become available with the enactment of the AMLA Amendment package of legislation. As a result, the AMLA provisions described above and below for forfeiture, freezing and tracing of property in relation to money laundering offences are also available for the new terrorist financing offences. Prior to that, options for confiscation in this area were limited by the absence of effective offence provisions, and by the limited range of property covered.

236. Under AMLA the standard of proof to be applied by courts to determine whether property is the subject matter of a money laundering or terrorist financing offence is the civil standard of 'on the balance of probabilities'. However for all other predicate offences the standard of proof to determine confiscation is the criminal standard of 'beyond reasonable doubt'.

Confiscation under other Acts

237. The *DD(FOP) Act* contains specific provisions for forfeiture of property which is drug-related. Forfeiture is available where property is derived from narcotics offences, or has been used or is intended to be used in the commission of such offences. Forfeiture of property indirectly derived from narcotics activity is also available. Property of corresponding value may be forfeited, and forfeiture of drug-related property can be ordered where the property is in the hands of third parties. 'Property' is comprehensively defined in section 2 of the DD(FOP) Act. It may be forfeited with or without conviction of a predicate offence, and also where there is no prosecution.

238. The *Anti-Corruption Act* 1997 [the AC Act] permits forfeiture of any property which is the subject-matter of a corruption offence, or has been used in the commission of such an offence. It may be ordered notwithstanding property is in the hands of third parties. Forfeiture is available with or without conviction or prosecution. 'Property' under the AC Act is defined in section 2 to mean real or personal property of every description, including money, whether situated in Malaysia or elsewhere, whether tangible or intangible, and includes an interest in such property. It is not specifically defined to extend to property that is the indirect proceeds of an offence under that Act. The Act does however allow for forfeiture of a sum of money corresponding in value to the property derived.

239. Section 127 of the *Customs Act* [the CA] permits forfeiture of goods if the Court is satisfied that they were the subject matter of or were used in the commission of an offence against the CA. Forfeiture of such goods is possible without prosecution.

Confiscation in economic crime cases

240. In the case of many economic crimes which have the capacity to generate criminal proceeds such as fraud, cheating, company offences and securities offences, the specific Acts which create these offences do not make provision for the identification, freezing or confiscation of proceeds or instruments.

241. Malaysian authorities submitted that in these cases, section 407 of the Criminal Procedure Code is available as a 'catch-all' confiscation provision. As noted, this provision permits a court to make orders for confiscation of any property which has

been used for the commission of any offence, or in relation to which any offence appears to have been committed. While on its face this provision appears to be restricted to property that is an instrumentality of crime, 'property' is further defined to include not only property that has originally been in the possession or control of a party, but also property that has been converted or exchanged, and anything acquired by such conversion or exchange. It appears therefore that s 407 is capable of extending to property which represents the proceeds of an offence, although an explicit reference to property as including property that is derived from the commission of an offence would put the matter beyond doubt.

242. Section 407 appears to be extensively used to obtain forfeiture in cases of economic crime. Statistics provided by Malaysia for the period 2004 to 2006 inclusive demonstrated that during this period s 407 had been used in large numbers of cases of criminal breach of trust, cheating, and cyber crime. In each of these years s 407 had been used in over 5,000 cases to obtain forfeiture in these three offence categories.

243. In addition to relying upon s 407 in such cases, Malaysian authorities submitted that the AMLA is able to be used to obtain freezing and confiscation orders in respect not only of money laundering offences, but also for any of the AMLA Second Schedule offences, including economic crimes. However the Evaluation Team did not consider that the AMLA scheme offered the most effective framework for confiscation in these circumstances, because of its requirement that property be proved to be the subject matter of a money laundering offence. This contrasts with confiscation schemes based on the pre-condition that property is the subject matter of the predicate offence itself.

244. In practice the difference between the two schemes may not be significant, in that the evidence relied upon to establish that property is the subject matter of a money laundering offence may be essentially the same as the evidence required to establish that it is the proceeds or instrument of a predicate offence. Nevertheless the latter model would appear to offer a more direct route to confiscation. It is perhaps for this reason that Malaysian prosecutors do not appear to use AMLA to obtain forfeiture in general economic crime cases, preferring to use s 407 of the CPC.

Freezing and other orders

245. The AMLA confers a wide range of freezing and seizing powers. These include obtaining orders for:

- freezing the property of any person if there are reasonable grounds to suspect that an offence of money laundering or terrorist financing has been, is being or is about to be committed. Such an order may direct that the property is not to be disposed of or dealt with by any person;
- the seizure by an investigation official of movable property;
- the freezing of movable property in a financial institution, in which event the financial institution may not deal in or dispose of such property;
- the freezing of immovable property, in which event all dealings in relation to the property are prohibited; and
- the seizure of a business.

246. Both the DD(FOP) Act and the AC Act contain similar provisions for the seizure of movable and immovable property, and for the prohibition of any dealings in or transfers of such property.

247. Under section 114 of the Customs Act (CA), Customs officers are empowered to seize goods in respect of which there is reasonable cause to suspect that a CA offence has been or is about to be committed.

248. A general provision relating to seizure of property is found in section 435 of the CPC. This allows any member of the police force to seize any property which is suspected of being stolen, or any property in respect of which it may be suspected that an offence has been committed.

249. All the above orders in relation to freezing and seizure of property are able to be made by the relevant enforcement agency or by the DPP. There is no provision for advance notice to affected parties.

250. The AMLA also contains provisions which are intended to ensure that forfeiture action can take place where a prosecution or conviction was unable to be obtained due to the death or absconding of the target of the money laundering or terrorist financing investigation.

251. The AMLA gives a wide range of powers to investigating officials to identify and trace property. These include orders for

- the production of documents identifying, locating or quantifying any property owned or controlled by that person or any other person;
- the production by any person of information on relevant transactions;
- the inspection and copying of records from financial institutions;
- the requesting of further information in relation to such records; and
- the compulsory furnishing of statements by suspects and their associates to assist in identifying, locating and quantifying property in which the suspect has an interest.

252. Other property-tracing powers are conferred by particular Acts. Examples are:

- Sections 21-30 of the AC Act, which confer the power to investigate, examine persons, search, seize and arrest;
- Sections 31 and 32 of the same Act, relating to investigations into bank accounts, information relating to properties, business or other source of income; and
- Part XI of the Banking and Financial Institutions Act 1989 (sections 82-90), which includes the power to investigate, search and seize.

253. Measures are in place to protect the rights of bonafide third parties. Under section 61 of the AMLA, orders for forfeiture cannot be made without prior publication of the application to forfeit. A third party claimant can attend court to show cause as to why the property should not be forfeited. In ordering forfeiture, the court is required to be satisfied that no other person is entitled to the property as a purchaser in good faith and for valuable consideration.

254. Similar provisions are contained in the AC Act 97 and in the CA. Under the DD(FOP), where application is made pursuant to section 8 for forfeiture of the

property of 'liable persons', provision is made for the giving of notice to such persons and for the hearing of any claim by such persons that the property is not 'illegal property'.

255. The AMLA, DD(FOP) Act and AC Act contain provisions which declare null and void any dealings with the property after seizure, except for dealings under the respective Acts. In addition, all three Acts contain provisions preventing the commencement or maintenance of any civil action in respect of the property.

256. The AMLA and DD(FOP) Act also provide that the validity of any freeze, seizure or sale of property effected under their respective Acts shall not be effected by any objection relating to the form and manner in which it was affected.

257. As noted, a number of laws contain provisions for civil forfeiture including the AMLA, ACA'97, DD(FOP) Act and CA.

Recommendation 32 (confiscation/freezing data)

Table 9: Property frozen, seized and forfeited under the AMLA

	2003	2004	2005	2006
Number of freezing order issued under section 50 of the AMLA	15	23	46	118
Value of property frozen (RM million)	38.983	2.754	231.457	10.776
Number of seizure under AMLA section 51	2	1	5	15
Value of property seized (RM million)	-	18.575	10.036	64.212
Value of property forfeited (RM million)	-	-	-	-
Value of property returned (RM million)	-	-	1.237	1.838

Table 10: Property seized and forfeited under the DD(FOP)

	2002	2003	2004	2005	2006
Number of cases	2,490	2,230	2,497	2,892	2,151
Value of property seized (RM million)	35.785	14.697	40.337	22.886	20.449
Value of property forfeited (RM million)	1.764	1.634	3.187	10.711	2.251
Value of property returned (RM million)	24.357	3.571	1.519	0.693	2.069

Table 11: Property seized and forfeited under the ACA'97

	2002	2003	2004	2005	2006
Number of cases	33	16	25	23	16
Value of property seized (RM million)	0.449	0.925	0.593	5.132	0.464
Value of property forfeited (RM million)	-	-	0.0001	0.0861	0.1105
Value of property returned (RM million)	-	-	-	-	-

Table 12: Property seized and forfeited under section 135 of the CA

	2002	2003	2004	2005	2006

Value of property seized (RM million)	152.804	205.498	73.680	56.273	72.128
Value of property forfeited (RM million)	337.034	365.408	133.963	413.480	29.227
Value of property returned (RM million)	-	-	-	5.848	4.409

2.3.2 RECOMMENDATIONS AND COMMENTS

258. Malaysia's mechanisms for confiscation and for the provisional measures to support it are found in the Acts dealing with specific predicate offences. Of these, the AMLA, the DD(FOP) Act and the *Anti-Corruption Act* comprehensively provide for the confiscation, freezing, seizing and tracing of property which is the proceeds and instrument of their respective predicate offences. The legislative scheme for freezing and confiscation provided by these Acts is broadly compliant with the essential requirements of Recommendation 3. (Note however that the *Anti-Corruption Act* does not specifically provide for confiscation of indirect proceeds).

259. Statistics indicate that measures for freezing and confiscation of property in money laundering, corruption, narcotics and Customs Act matters are being used, and that orders have been sought at a healthy rate. Amounts actually forfeited are rather low, but this can be attributed to the slow rate of progress of criminal and civil matters through the courts.

260. A positive step is the introduction in the AMLA of the civil standard of proof to be applied by courts in determining whether property is the subject of a money laundering or terrorist financing offence. Malaysia could consider extending this facilitative measure to confiscation actions for all serious offences, in place of the existing criminal standard.

261. With regard to confiscation in other cases including cases of serious economic crime, legislative measures exist within specific Acts, and within s 407 of the CPC. It appears that confiscation as a legal tool in economic cases is being extensively pursued with the use of s 407 of the CPC.

262. With regard to freezing and seizing provisions, and provisions for identification and tracing of property, only the AMLA, DD(FOP) Act and Anti-Corruption Act provide comprehensively for these measures. All such measures under the AMLA are predicated on the reasonable suspicion that property is the subject matter of a money laundering offence, or is evidence in relation to it, or that such an offence has been or is about to be committed.

263. Malaysia should ensure that comprehensive measures are available to identify, freeze and confiscate proceeds and instruments of all serious offences.

264. Malaysia could consider:
- the enactment of a single and comprehensive 'Proceeds of Crimes Act' to deal with the identification, freezing and confiscation of proceeds and instruments of all serious offences.
- making the standard of proof for confiscation the civil standard in all matters.
- clarifications to the *Anti-Corruption Act* to specifically provide for confiscation of indirect proceeds.

2.3.3 COMPLIANCE WITH RECOMMENDATIONS

	Rating	Summary of factors underlying rating
R.3	**LC**	• Comprehensive schemes for freezing, seizing and identification of property are in place only for offences of money laundering, terrorist financing, corruption, and narcotics.
R.32	**LC**	• This Recommendation is rated in more than one section

2.4 FREEZING OF FUNDS USED FOR TERRORIST FINANCING (SR.III)

2.4.1 DESCRIPTION AND ANALYSIS

265. In March 2007 terrorist asset freezing measures in Malaysia were significantly updated by Part VIA *(Suppression of Terrorist Financing Offences and Freezing, Seizure and Forfeiture of Terrorist Property)* of the AMLA (Amendment) being brought into force. Prior to March 2007 Malaysia relied upon use of the *Exchange Control Act* 1953 to freeze funds of entities listed on the UN Security Council's Al-Qaeda and Taliban Sanctions Committee (UN SCR 1267) Consolidated List. To implement SR 1373 Malaysia relied upon such measures as were available under existing law to freeze funds of terrorist entities.

266. The new Part VIA of the AMLA is designed to implement Malaysia's obligations under both UN SCR 1267 and SCR 1373.

New procedure for UN SCR 1267

267. Part VIA empowers the Minister of Internal Security, on receipt of the UN Security Council's Consolidated List of terrorist entities, to make an order under section 66C(1) of the AMLA that the named entities are specified entities whose property is to be frozen. This will prohibit any person from:

- dealing directly or indirectly in any property of a specified entity;
- entering into or facilitating any transaction or providing any financial or other related service in respect of the property; or
- making available any property or any financial or other related service for the benefit of the specified entity.

268. 'Terrorist property' is defined broadly under section 3(1) of the AMLA, and includes the proceeds from the commission of a terrorist act, or property that has been, is being or is likely to be used to commit a terrorist act, or is likely to be used by a terrorist, terrorist entity or terrorist group or property which is owned or controlled by or on behalf of a terrorist. It also includes funds derived or generated from such property, and property that has been collected for the purpose of providing support to a terrorist, terrorist entity, terrorist group or to fund a terrorist act.

269. Once an order has been made by the Minister under section 66C(1) it is gazetted, and is deemed to be an order declaring the relevant entity to be a specified entity under section 66B(1). All relevant agencies are to be notified including regulatory and supervisory authorities, and law enforcement agencies. All assets of the specified entity are to be frozen immediately. All actions taken will be notified to the United Nations via the MOFA.

270. Section 66E(5) makes it a criminal offence for an institution to fail or refuse to comply with any guidelines or directions issued to it by regulatory or supervisory authorities to facilitate the implementation of a section 66B(1) order. The penalty on conviction is a fine not exceeding RM100,000. In addition, persons who contravene a section 66B(1) order by in of a specified entity commit an offence punishable by RM1m and/or one years' imprisonment. Civil and administrative sanctions are also available for non-compliance.

New procedure for UN SCR 1373

271. Under the new legislation, where the Minister of Internal Security is satisfied on information given to him by a police officer that-

(a) an entity has knowingly committed, attempted to commit, participated in committing or facilitated the commission of, a terrorist act; or

(b) an entity is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a),

the Minister may, by order published in the *Gazette*, declare the entity to be a specified entity. In this event the processes described above in relation to SR 1267 follow.

272. Action initiated under the freezing mechanisms of other jurisdictions is able to trigger freezing orders under section 66B(1), by means of information given to the Minister by a police officer. 'Funds' and 'terrorist property' are comprehensively defined under the AMLA.

273. Under s 66E(1) of the AMLA, the regulatory and supervisory authorities (BNM, SC and LOFSA) are able to issue directions and guidelines to institutions so as to facilitate the above procedure. Section 9 of BNM's Standard Guidelines on AML/CFT for reporting institutions describes the obligations imposed by UNSCR 1267, and requires reporting institutions to maintain a database of the entities listed by the UN 1267 Committee, against which the institution should regularly conduct checks of its customers against listed entities.

274. In the case of a verified match between reporting institution's customer and an entity on the 1267 list, reporting institutions are required to immediately:

a) inform the FIU, SEC or LOFSA, as the case may be;

b) reject the customer, if the transaction has not commenced; and

c) freeze the customer's transaction, if it is an on-going customer.

275. Where the reporting institution suspects that a transaction is terrorist related, it should make a suspicious transaction report to the FIU.

276. This obligation in section 9 of the BNM Standard Guidelines appears to apply only to freezing transactions and does not currently require reporting institutions to take steps to freeze terrorist assets that are not the subject of transaction.

277. The Evaluation Team was unaware whether any other authorities beyond BNM had issued guidelines and directions to entities holding other kinds of property which could be terrorist-related, such as real estate and securities.

278. Orders made under s 66B of the AMLA are reviewable every 6 months by the Minister, and must be revoked if, in the Minister's view, reasonable grounds no longer exist to maintain the order. In addition, a person or entity whose property is affected by a freezing order may within sixty days of publication of the order apply to the Minister for revocation of the order. The Minister is required to consider whether there are reasonable grounds to revoke it. The Minister is also authorised to make available from frozen property, such economic resources as are considered necessary to cover an affected person's basic expenses and reasonable professional fees.

279. With the enactment of the AMLA Amendment legislation, terrorist-related property is now subject to the existing provisions within AMLA for freezing, seizing, and forfeiture on both criminal and civil bases, as described in Part 2.3.1 of this report. As noted, 'terrorist-related property' is defined broadly and includes instruments, proceeds and the indirect proceeds of terrorist and terrorist-financing offences. Bona fide third parties with an interest in terrorist-related property will be able to avail themselves of the provisions of section 61 of the AMLA, whereby they may show cause as to why the property should not be forfeited.

280. In anticipation of Part VIA of the AMLA being brought into force the MOIS took a number of steps to plan for the implementation of the process and procedures to support the Minister of Internal Security to consider giving orders under Sections 66B and 66C of AMLA.

281. As yet no action has been taken under the new AMLA provisions to freeze terrorist property. In order to evaluate the effectiveness of measures to implement obligations under UN SCR 1267 and SR 1373, the Evaluation Team was obliged to consider the mechanisms used prior to the enactment of the AMLA Amendment.

UN SCR 1267: Description of previous measures

282. On receipt of the UN Consolidated List, the Ministry of Foreign Affairs [MOFA] was authorised to instruct BNM to take action in relation to it. The Governor of BNM as the Controller of Foreign Exchange was authorised to issue circulars under section 44 of the *Exchange Control Act* 1953 [the ECA] to all licensed financial institutions and licensed offshore financial institutions, instructing them to freeze funds of individuals and entities in the List that were in their custody. Similar circulars were also able to be issued by the LOFSA to offshore entities under LOFSA's supervision.

283. Freezing action initiated by this mechanism extended only to funds held by financial institutions under the supervision of BNM and LOFSA, and there did not appear to be a procedure for notification to other entities which may hold or deal in terrorist-related property such as real estate, securities, vehicles, and funds in the custody of money changers or remitters. In addition it is not clear that any mechanism existed for making requests to review or revoke freezing orders made

pursuant to this procedure. However a mechanism existed and was used to authorise access to frozen funds determined to be necessary for basic expenses.

284. Using the above procedure, for the period 2003 to 2007 BNM issued a total of 43 circulars to licensed financial institutions and licensed offshore financial institutions to freeze the accounts of individuals and entities associated with Osama bin laden, the Taliban and the Al-Qaeda. As a result, nine accounts have been frozen involving an amount of RM280,342 (equivalent to approx. USD76,387). Malaysia has reported the names and amount frozen to the UN Security Council 1267 Committee and has consulted with the Monitoring Committee in relation to cases of use of the mechanism to access frozen funds necessary for basic expenses.

UN SCR 1373: Description of previous measures

285. Until Part VIA of the AMLA Amendment came into force, the only measures available to implement SR 1373 were:

- the general power of seizure conferred by section 435 of the CPC, whereby police may seize property found in circumstances which create suspicion that an offence has been committed; and
- miscellaneous provisions within the ISA such as section 5(3), which authorises the freezing of property held by and for 'quasi-military organisations' within Malaysia.

286. The Evaluation Team do not consider that either provision was able to operate effectively as a mechanism for freezing and forfeiture of terrorist-related funds. The context of section 435 of the CPC indicates that it is restricted to goods which are suspected of having been stolen, or the proceeds of sale of such goods. It is unlikely to be capable of applying to the property of persons who may have committed terrorist acts. In addition section 435 does not confer power to seize property in the absence of a suspicion that an offence has been committed. This means that it cannot authorise the seizure of property on the basis only that it is property of a terrorist entity, outside the context of specific terrorist acts. Section 5(3) authorises action only in relation to property held by and for 'quasi-military organisations'. Many types of terrorist acts and groups fall outside the scope of this description.

287. Consideration of requests from other jurisdictions to freeze terrorist-related funds could only take place within the framework of existing laws and procedures for mutual legal assistance. Malaysia requires dual criminality as a pre-condition for giving mutual legal assistance. In this context the absence of fully effective offences of terrorism and terrorist financing were a potential impediment. Despite this Malaysia advises that on two occasions it gave effect to a request from a foreign country to freeze property where the offences included offences of terrorist financing and terrorism.

288. All the limitations referred to above mean that neither section 435 CPC nor section 5 ISA could operate effectively as a mechanism for freezing and forfeiture of terrorist-related funds in other contexts either.

2.4.2 RECOMMENDATIONS AND COMMENTS

289. The new laws for freezing of terrorist-related property appear to be broadly compliant with the requirements of SR.III. As noted, it is too early to judge the effectiveness of its implementation. Malaysian authorities have advised that the MOIS will determine whether entities which are not under the supervision of BNM, SC or LOFSA and which may be holding terrorist-related assets are notified of the orders made under section 66B of the AMLA.

290. In relation to SR1267, prior to the drafting and enactment of the new laws Malaysia responded with an interim procedure designed to implement its obligations, and took prompt action to freeze terrorist assets using this procedure. However it was an interim measure only and was incapable of complying with some of the essential criteria of SR III.

291. Previous laws and mechanisms to implement Malaysia's obligations under UN SCR 1373 were very limited in scope and effectiveness.

292. Authorities should ensure that guidelines and directions are issued to entities holding other kinds of property which could be terrorist-related, such as real estate and securities.

2.4.3 COMPLIANCE WITH SPECIAL RECOMMENDATION III

	Rating	Summary of factors underlying rating
SR.III	**LC**	• While the new legislation comprehensively provides for the freezing of terrorist funds and for the implementation of UN SCR 1267 and, to a large extent, SR 1373 it is too soon to determine the effectiveness of its implementation. • Prior to the new provisions there was a partially effective procedure in place to implement SR 1267, and action was taken pursuant to it, however there was no effective procedure to implement SR 1373. • Authorities do not appear to have issued guidelines or directions to entities holding real estate or securities

2.5 THE FINANCIAL INTELLIGENCE UNIT AND ITS FUNCTIONS (R.26)

2.5.1 DESCRIPTION AND ANALYSIS

293. The Financial Intelligence Unit in BNM is Malaysia's FIU and has a dual role as both the FIU and an anti-money laundering regulator. The FIU is created within BNM and is an independent and autonomous statutory agency. The FIU in BNM is not an investigative agency and it fulfils its functions under the AMLA independently of law enforcement, revenue, national security and social justice agencies, providing support to all agencies.

294. The FIU was established within BNM in August 2001 to carry out the functions of the competent authority under the AMLA. The Minister of Finance appointed BNM as the competent authority under the Anti Money Laundering Act 2001 on 15 January 2002. The legal powers accorded to BNM are set out in section 8 of the AMLA. BNM is the central agency to receive and analyse suspicious transaction reports (STRs) and cash threshold reports (CTRs) as well as to disseminate financial information from these reports to the appropriate enforcement agencies for investigation into suspected criminal activities.

295. Under Section 8 of AMLA, the FIU in BNM is the national centre mandated to:

- receive and analyse information and reports from any person, including reports issued by reporting institutions;
- send any report received or any information derived from any such report to an enforcement agency if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed; and
- send any information derived from an examination carried out on reporting obligations to an enforcement agency if it has reason to suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed.

296. In addition to those, the FIU may also:

- compile statistic and records;
- give instructions to a reporting institution in relation to any report or information received; and
- make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising out of any report or information received.

297. The mission of the FIU is to formulate and implement AML/CFT laws and measures to deter and detect financial crimes by gathering and sharing financial intelligence, in order to enhance the integrity and stability of Malaysia's financial system. This mission is in line with the purpose of the FIU to facilitate the implementation and enforcement of the AMLA nationwide and to co-operate with other countries in the global fight against money laundering and serious crimes.

Guidelines

298. The FIU in BNM issues a prescribed form of reporting STR. The form does not require the name of the reporting party. Instead, a specific code is allocated by the FIU in BNM to each reporting institution and for reporting DNFBPs.

299. Through the respective Guidelines on AML/CFT, the FIU in BNM provides guidance to reporting institutions on their reporting obligations and mechanisms of reporting, as well as examples of unusual or suspicious transactions. The FIU in BNM works closely with the regulatory authorities that issue AML/CFT guidelines (BNM, SC and LOFSA) to ensure they adequately support reporting to the FIU.

300. In order to enhance the reporting mechanism of STRs, the FIU in BNM has developed and introduced the Financial Intelligence System (FINS) since May 2004 to allow on-line submission of the reports and to share information with the reporting institutions about AML/CFT compliance. The FIU has provided guidance and training to reporting institutions that are users of FINS. More than 97% of the STRs received by the FIU in BNM are submitted through this system. Initially the FINS system was rolled out to all banking institutions and other regularly reporting institutions to enhance STR online submission and to support CTR reporting requirements. In 2007 FINS will be expanded to provide a Compliance Database for the FIU, to serve as a communication point with reporting institutions and to serve as a 'One-stop centre' for AML/CFT information for reporting institutions, law enforcement agencies and regulatory and supervisory authorities. The final phase of FINS will be to provide case management and data analysis support for the core functions of the FIU.

Access to information

301. The FIU has access, directly or indirectly, to sources of financial, including regulatory information, administrative and law enforcement information to undertake analysis of STRs, CTRs and other financial reports. From meetings with FIU analysts it is clear that they are able to access such information in a timely fashion. FIU analysts also have access to information in the following sources:

- BNM database;
- National Registration Department database;
- Companies Commission of Malaysia database;
- Immigration Department database;
- Royal Malaysia Police database;
- Royal Malaysian Customs database;
- Road Transport Department database.

Obtaining additional information

302. Under Section 8 of the AMLA, the FIU is empowered to give instructions to the reporting institutions as a follow up to information received, to provide additional information. The FIU may make recommendations to a relevant supervisory agency, which may include recommendations for the supervisors to call for additional information.

Dissemination of information

303. Section 8 of the AMLA authorises the FIU to disseminate information to law enforcement agencies. The FIU works closely and co-operates with the law enforcement agencies in sharing financial intelligence and supporting money laundering investigations. The FIU makes regular disclosure of intelligence to the enforcement agencies, in particular the RMP, ACA and to the BNM SIU. The FIU has also has also disseminated STRs to SC and RMC. Amongst the designated enforcement agencies, the FIU has not yet disseminated STRs to the CCM or the Ministry of Domestic Trade & Consumer Affairs.

304. In performing its function as the competent authority of the anti-money laundering, the FIU authorises, in writing, the following authorities to have access to the information that the FIU may specify:

- Relevant law enforcement agency for the purposes of performing the enforcement agency's functions;
- The LOFSA in respect of any information received from an offshore reporting institutions; and
- The Attorney-General or his designated officers for the purpose of dealing with a foreign State's request in relation to mutual assistance in criminal matters.

305. The BNM FIU utilises the NCC Sub-Committee for Investigation Support (SIS) to discuss sanitised STRs with enforcement agencies to assist the FIU to determine the correct avenue for dissemination in complex or sensitive cases.

Independence and autonomy

306. Although it is structured under BNM, the FIU in BNM operates with sufficient operational independence and autonomy to be free of undue influence or interference. The Deputy Governor of BNM is responsible for the FIU. However, functionally, the FIU Director decides the day-to-day operations of the FIU, including the dissemination of financial intelligence. While the FIU Director, through the Deputy Governor, is ultimately responsible to the BNM Governor, recent experience with the appointment of a new FIU Director demonstrates that the influence of BNM is to support the operation of the FIU, rather than to interfere in its work.

Security of information

307. The FIU in BNM applies an appropriate level of security and access control with information and reports maintained on secured databases in secured area where access is limited to the analysts only. Information is disseminated only in accordance with the provisions of the AMLA.

308. All officers in the FIU are bound by integrity and secrecy provisions. Only FIU analysts have access to the various databases and the information on STRs and CTRs. Law enforcement agencies do not have access to the original form of these reports or directly to the BNM FIU database in order to protect the identity of the reporting individuals and organisations.

Periodic public reporting

309. The FIU includes its annual reports to the public in BNM annual reports. In addition, the FIU also produces the booklet 'Financial Intelligence Unit – Anti-Money

Laundering and Counter Financing of Terrorism Measures in Malaysia' which is updated from time to time. There are no specific provisions in AMLA requiring the competent authority to make periodic public reports.

Egmont Group

310. The FIU was admitted as a member of the Egmont Group of Financial Intelligence Units in July 2003. Since 2006, the FIU has represented the Asia Group in the Egmont Committee.

Information exchange

311. The BNM FIU is guided by the principles set out in the Egmont Group Statement of Purpose as well as its Principles for Information Exchange between FIUs.

312. Section 10 of the AMLA permits the FIU in BNM to communicate information to a corresponding authority of a foreign State if an arrangement existed between Malaysia and that foreign State. The amendments to section 10 of the AMLA further enhance the sharing of information by allowing BNM to enter into a Memorandum of Understanding (MoU) for the exchange of financial intelligence with its counterpart without a Government-to-Government arrangement.

313. The FIU has been actively participating in exchange of information. In this regard, the FIU constructs and negotiates MoUs for the exchange of financial intelligence with its counterparts based on the Egmont Group's model of MoU. To date, the FIU in BNM has concluded MoUs for the exchange of financial intelligence with the FIUs of Australia, Indonesia, the Philippines, Thailand and the People's Republic of China. The FIU in BNM is currently at various stages of negotiation with other FIUs.

Recommendation 30: Structure, funding, staff, technical and other FIU resources

Structure

314. The FIU was established in 2001 with 18 staff divided into the Strategic Development Section, which develops AML/CFT policy, the Intelligence Management Section which receives, analyses and disseminates financial intelligence; and the Relationship Management Section which oversees training programs, administrative functions and liaison with stakeholders.

315. In 2004 the FIU increased its staff to 25 and restructured into two divisions - the Strategic Development Division and Intelligence Management Division.

316. The Compliance Section is set up to evaluate adequacy and effectiveness of policies, procedures, systems and controls to ensure that reporting institutions comply with the AMLA requirements. As will be discussed in Section 3.10 there are concerns that there are insufficient resources dedicated to undertake the compliance function of the BNM FIU.

317. The Investigation Support Section and Intelligence Analysis Section are well structured and resourced to perform their function. Analysts in the FIU are assisted by the use of i2 analytical tools in conducting their analysis.

318. In performing its core functions of receipt, analysis and dissemination of financial intelligence, the FIU is sufficiently funded with an annual budget from BNM. In performing its function, the FIU is also well supported by various departments in BNM including legal, information technology, examination and human resource.

319. It should be noted that there is increasing international demand from other jurisdictions in the Asia/Pacific region and beyond to visit the Malaysian FIU and to receive advice and technical assistance from the FIU in BNM. At present there is no stand-alone international division and the added demands of this international outreach and provision of technical assistance is borne across all sections of the FIU.

Professional standards

320. All staff of the BNM FIU are employed under the CBA and subject to the preservation of secrecy obligation under section 16 of the CBA and BNM's Code of Conduct. The Official Secrets Act also provides for secrecy obligations on classified matters. As a condition of employment, all BNM employees undergo background checks, employment checks, financial checks (details of financial position) and police check.

321. BNM promotes a work culture that emphasizes high standards of professionalism and integrity.

Training

322. The FIU places a strong emphasis on staff training and wider training efforts. The training budget for the FIU is equal to 30 per cent of the annual salary budget. BNM FIU staff regularly attend law enforcement training courses, legal training, study attachments as well as international conferences and training activities. The scope of training is wide ranging, which includes: development of investigative skills; mutual legal assistance; ML/TF typologies; supervisory and compliance; intelligence analysis; terrorism; and attachments with other FIUs.

323. The FIU in BNM has appointed an experienced senior police officer to train the financial analysts and to act as mentor in providing guidance and advice on intelligence matters, in particular in relation to terrorism financing.

Recommendation 32

324. The FIU regularly reviews the effectiveness of its systems, policies and procedures to ensure effective implementation of the AMLA and broader measures. The FIU utilises the NCC as a mechanism to conduct a broad review of the ongoing implementation of the AML/CFT regime, as well as the needs for improvements.

325. The FIU maintains comprehensive statistics on STRs and CTRs received, including a breakdown of the type of the reporting institutions making the STR, as well statistic on STR analyzed and disseminated.

Table 14: STRs received and disseminated

	2002	2003	2004	2005	2006
Number of STRs received	555	1,120	2,413	2,236	4,225
Number of STRs disseminated	-	18	257	794	386

Table 16: Breakdown of STR disseminated

	2002	2003	2004	2005	2006
Royal Malaysia Police	-	7	164	452	282
Anti-Corruption Agency	-	5	30	70	18
Royal Malaysian Customs	-	-	3	-	3
Securities Commission	-	1	-	177	7
Special Investigation Unit, BNM	-	-	46	70	54
Foreign FIUs	-	5	14	25	22

Table 49: Requests received and made by the BNM FIU to foreign counterparts

	2002	2003	2004	2005	2006
Requests received	-	5	20	29	41
Requests made	-	-	8	12	10

Table 50: Number of disclosure to/from foreign counterparts

	2002	2003	2004	2005	2006
Disclosures	-	3	9	19	17
Spontaneous disclosure made	-	-	-	2	-
Spontaneous disclosures received	-	-	1	7	-

2.5.2 RECOMMENDATIONS AND COMMENTS

326. The FIU is adequately funded, well structured and resourced and sufficiently autonomous to effectively serve as the national centre for receiving, analysing and disseminating financial information. In a relatively short time since its establishment the BNM FIU has become fully effective in these core functions. The staff of the FIU are highly skilled, demonstrate high integrity and are well trained. The Malaysian authorities have taken a staged approach to develop the size and structure of the FIU.

327. As the lead AML/CFT agency in Malaysia and through its role in APG and the Egmont Group, it is evident that the BNM FIU also takes a lead role in the region, providing training, technical assistance and mentoring to other APG members, in particular among ASEAN countries.

328. Given the success of the FIU in BNM, there is increasing international demand from other jurisdictions in the Asia/Pacific region to receive advice and technical assistance from the FIU in BNM. Authorities may wish to consider additional resources and adjustments of current structures to meet this demand.

2.5.3 COMPLIANCE WITH RECOMMENDATION

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**C**	• The recommendation is fully observed

2.6 LAW ENFORCEMENT, PROSECUTION AND OTHER COMPETENT AUTHORITIES – THE FRAMEWORK FOR THE INVESTIGATION AND PROSECUTION OF OFFENCES, AND FOR CONFISCATION AND FREEZING (R.27 & 28)

2.6.1 DESCRIPTION AND ANALYSIS

Designated authorities for investigation of money ML/TF offences

329. Malaysia has a non-integrated system for designated law enforcement agencies responsible for investigating money laundering and terrorist financing offences, with the agencies responsible for investigating predicate offences also responsible for investigating related money laundering offences. There are seven law enforcement agencies responsible for the investigation of Money Laundering in Malaysia: the RMP; ACA and RMC; BNM; CCM; SC; and Ministry of Domestic Trade & Consumer Affairs. At present the police, ACA, SC and customs undertake the majority of money laundering investigations. The police are primarily responsible for investigating terrorist financing offences, which are derived from the Penal Code.

330. The AGC has DPPs seconded to some of the enforcement agencies. The AGC plays a role overseeing the exercise of investigation powers under the AMLA. Prosecutions of AMLA offences are undertaken by the AGC.

331. The AMLA designates investigative authorities responsible for investigating money laundering and terrorist financing. Section 3(1) of the AMLA defines 'enforcement agency' to include body or agency that is for the time being responsible in Malaysia for the enforcement of laws relating to the prevention, detection and investigation of any serious offence. Part V of the AMLA provides extensive investigative powers to the relevant law enforcement agencies having the power to enforce any of the laws governing the serious offences in the Second Schedule to the AMLA.

332. Each investigation agency has established AML investigation units or some designated capacities to implement relevant investigation provisions of the AMLA.

333. Three departments within the RMP have established AMLA units to investigate money laundering and terrorist financing offences in parallel with the various predicate offences under the purview of the police. The Commercial Crime Investigation Department (CCID) has 52 personnel in the AMLA unit; the Criminal Investigation Department (CID), and Special Branch (SB) have each set up AMLA units. The Narcotics Investigation Department (NID) has a Forfeiture Unit which is primarily responsible for utilising powers within the DD(FOP) to freeze and seize proceeds from dangerous drugs. Complex AML cases involving a number of divisions will generally be investigated by the CCID.

334. There is some counter-terrorism capacity within the Special Branch, however, while some intelligence probes have occurred, no criminal investigations of terrorist financing have occurred, despite significant terrorist financing threats. Special Branch has undertaken investigation of terrorist groups, though no investigations have yet been undertaken in relation to terrorist financing. This reflects the absence of effective Penal Code provisions for terrorist financing before March 2007. There

does not appear to be a high level of awareness with the new provisions and the need to take action against terrorist financing.

335. The NID has not yet undertaken money laundering investigations (in terms of the AMLA offence) in relation to proceeds generated from dangerous drugs. Authorities note that this is due to the DD(FOP) Act containing its own provisions to criminalise the activity of dealing with drug proceeds and instruments and includes a powerful forfeiture regime with reverse onus provisions. The NID Forfeiture Unit has not utilised any of the provisions under the AMLA, preferring to utilise proceeds of crime provisions under the DD(FOP). The DD(FOP) Act contains its own provisions to criminalise the activity of dealing with drug proceeds and instruments and includes a powerful forfeiture regime with reverse onus provisions. The NID have found this to be the most effective legal tool in the fight against narcotics crime.

336. RMC is beginning to build its capacity to investigate money laundering associated with customs and smuggling offences. RMC does not have a specialist AML/CFT unit and has not yet completed any investigations of money laundering offences associated with customs offences, but is understood to be developing cases. The RMC has designated the Special Investigation Branch (SIB) to develop a restructuring plan to have a unit specialised in AML. RMC identify a range of challenges, including trade-based money laundering and is working with the FIU to train addition customs staff and to develop specialist capacity.

337. The ACA has adopted an integrated approach to AMLA and ACA'97 investigations. ACA has not established a specialised unit to solely undertake money laundering investigations, but has issued AMLA investigation powers to all investigating officers of the ACA via an official appointment by the Director General as per provision section 31 of the AMLA. In 2002, a new section specialising in financial investigation was set up within the Investigation Division that specialises in forfeiture cases under the ACA'97 and the AMLA. ACA has initiated money laundering investigations from STRs received and has initiated money laundering investigations related to predicate corruption offences.

338. SC has undertaken a range of money laundering investigations in cooperation with other competent authorities. SC has initiated money laundering investigations from STRs and via targeting related to predicate securities offences.

339. BNM Special Investigation Unit (SIU) works closely with the FIU in the course of investigating money laundering associate predicate offences within the banking laws. The BNM SIU has initiated money laundering investigations from STRs received.

340. CCM has established an AML/CFT unit which includes developing specialist capacity within its investigation unit.

341. The MDTCA has its own Enforcement Department and a task force dedicated to AMLA related matters has been set up pending the establishment of a formal AMLA unit within the department. The MDTCA Enforcement Department has wide-ranging enforcement powers, including powers to inspect, search, arrest, seize, investigate and prosecute.

Postponement or waiver of arrest

342. While there are no provisions mentioning postponement or waiver of arrest of suspected persons and/or seizure of assets for the purpose of identifying persons involved in ML/TF or for evidence gathering for ML/TF case, law enforcement may use the power on a selective basis to strengthen the case. As provided to law enforcement authorities in many jurisdictions, such a decision is discretionary depending upon the level of comfort based on evidence obtained (evidence driven) and the risk of the suspect absconding.

Special investigative techniques

343. Malaysia has a clear legal basis to apply several special investigative techniques in relation to money laundering and terrorist financing investigations:

- Agent provocateur – section 69 of the AMLA and section 44 of the ACA'97 provides for the uncorroborated evidence of an agent provocateur to be admissible in the court of law. Further, no agent provocateur shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy;

- Interception of communication – powers to intercept communication are provided under section 252 of the CMA, section 39 of the ACA'97, section 20 of the DD(FOP), section 27A of the DDA and section 11 of the KA;

- The use of informants – section 5 of the AMLA protects any informant who discloses to an enforcement agency any knowledge or belief that any property is derived from or used in connection with money laundering or any matter on which such knowledge or belief is based on from being treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct. In addition, the informant shall not be liable for damages for any loss arising out of the disclosure or any act done or omitted to be done in relation to the property in consequence of the disclosure. Similar provision is found in section 53 of the ACA'97.

- Controlled deliveries – controlled deliveries are used in instances where arrest is delayed for the delivery of smuggled/illegal goods to gain further evidence or to arrest the real perpetrator; and

- Declaration of assets –

    - section 49(1) of the AMLA provides for the powers of the Public Prosecutor to obtain information on any property of a suspect; and

    - section 32(1) of ACA'97 – the use of this technique helps to trail transfer of illegal proceeds and the possible laundering into other forms of assets.

344. The special investigative techniques that have been often used in the investigation of serious offences as well as ML/TF investigation are the use of informants and interception of communication.

345. In addition to those techniques mentioned above, Section 30 of the AMLA provides for the appointment of any person to be an investigating officer (a part of the investigation team). The person could be professionals or experts in areas relevant to the investigation, for instance, an accountant specialising in forensic

accounting, and computer and banking experts. The appointed external party would then be subjected to the direction and control of the relevant enforcement agency.

346. Law enforcement agencies have formed permanent and temporary groups to support AML/CFT investigations. For example, the ACA has a section to take on specific forensic investigation in the areas of accounting, computer and engineering which are complimentary to money laundering investigations. The SC has also collaborated in joint investigations with the RMP, BNM, Immigration Department, National Registration Department and the CCM.

347. In relation to a cooperative investigation with competent authorities in other countries, Section 29(3) of the AMLA provides for the competent authority and the relevant enforcement agency to co-ordinate and co-operate with any other enforcement agency in and outside Malaysia with respect to an investigation into any serious offence or foreign serious offence.

348. Domestic coordination and cooperation of investigations and intelligence sharing is conducted through the Sub-Committee for Investigation Support (SIS) under the NCC. This sub-committee discusses particular cases, including elements of STRs. This forum appears to be effective in sharing supporting cooperative approaches to investigations. The SIS seeks:

- to optimise the use of STRs information in identifying the underlying predicate offences and money laundering offences;
- to gather feedback from the law enforcement agencies on intelligence provided by the FIU in BNM ; and
- to share experience in the investigation of money laundering cases.

Recommendation 28

349. The AMLA provides extensive investigation powers for the relevant law enforcement agencies in addition to their powers to enforce any of the serious offences listed in the Second Schedule to the AMLA.

Powers to compel production of, search, seize and obtain financial information

350. Based on AMLA and legislation relating to predicate offences, law enforcement authorities are given powers to compel the production of financial transaction records, bank account documents, customer identification records, and other records maintained by financial institutions and other persons or reporting parties and obtain those records and document through lawful process. For investigation under the AMLA, authorisation from the DPPs is required to compel production of, search, seize or obtain, records at financial institutions.

351. RMC has investigative powers relating to smuggling under the CA; ACA has investigation power under the ACA'97 offences. The BNM has investigative powers under the various banking and insurance legislation; SC has investigative powers under the securities legislation; CCM has powers under the CA'65; MDTCA has powers under the *Copyright Act 1987* and *Optical Discs Act 2000*. The RMP has investigative power under the *Penal Code* (including terrorist financing offences), *Dangerous Drugs Act 1952*, *Dangerous Drugs(Forfeiture of Property) Act 1988*,

Betting Act 1953, *Child Act 2001*, *Common Gaming Houses Act 1953*, *Corrosive Substance and Offensive Weapons Act 1958,* and *Firearms (Increased Penalties) Act 1971.*

352. AMLA provides wide powers to agencies investigating money laundering, including search without a warrant. Section 31 of the AMLA gives an investigating officer the power to enter into any premises, without a search warrant, to search for any property, record, report or document and inspect them as well as taking possession of them. This also includes the power to search any person suspected to have on his person any property, record, report, document, including personal document which is necessary for the purpose of investigation into ML/TF offence.

353. Section 48 of the AMLA provides powers for investigating officers to obtain financial information, records and documents subject to written authorisation of the Public Prosecutor. This table below shows the implementation of Section 48 of the AMLA:

Table 18: Number of orders issued under section 48 of the AMLA

	2003	2004	2005	2006	Total
Orders	10	65	312	934	1,321
Persons involved	13	22	108	284	427
Legal persons (companies) involved	1	13	52	35	101

354. Section 68 of the AMLA provides that where an enforcement agency enforcing the law under which a related serious (predicate) offence is committed gathers evidence with respect to any investigation relating to that offence, such evidence shall be deemed to be evidence gathered in accordance with the AMLA.

355. Similar with the investigative powers provided under the AMLA, the relevant laws also provide such power as the CPC, ACA, CA, SCA, SIA, etc., also provide parallel provisions:

Table 19: Investigative powers under the relevant Acts

	Power to compel production	Power of search of person/ premise	Seize and obtain documents/ evidence etc.
CPC (Criminal Procedure Code)	section 51	sections 54 and 62	section 63
ACA (Anti-Corruption Act)	sections 22 and 23	sections 22 and 23	Sections 23, 25 & 26; 33 and 34
CA (Customs Act 1967)	sections 100 & 116	sections 107 – 113	section 114
SCA (Securities Commission Act)	sections 128(5) and 132(1)	sections 128(1), 128(2) and 133(1)	sections 128 and 132
SIA (Securities Industries Act)	section 99A(1)	-	-

356. Authorities indicate that law enforcement agencies use the powers available to them under various pieces of legislation in order to compel production of, search persons or premises for, and to seize and obtain, records, documents and

information that are relevant to the investigation. However, statistics on the use of such powers are not maintained by law enforcement agencies.

Powers to take witnesses' statements

357. Section 32(1) of the AMLA empowers investigating officers to administer an oath or affirmation to the person being examined. Under section 32(2)(c), he may also order any person whom he believes to be acquainted with the facts and circumstances of the case to furnish to him a statement in writing made on oath or affirmation setting out such information as he may require, failure of which will constitute an offence punishable with a fine not exceeding RM1 million or to imprisonment for a term not exceeding one year or to both. In the case of a continuing offence, the person would be subjected to a further fine not exceeding RM1,000 (equivalent to approx. USD272) for each day during which the offence continues after conviction.

358. In addition to that, in terms of admissibility, Section 40 of the AMLA states that the statement recorded under section 32(2)(a), 32(2)(b) and 32(2)(c), notwithstanding any written law or rule of law to the contrary, shall be admissible as evidence in court.

359. An example of power to take witnesses' statement is Section 134 of the SCA 1993 provides that any relevant person shall be legally bound to answer all questions relating to such case put to him by the Investigating Officer of the Commission and to state the truth, whether or not the statement is made wholly or partly in answer to questions, and shall not refuse to answer any question on the ground that it tends to incriminate him. The statement made and recorded under this subsection shall be admissible as evidence in any proceedings in any court.

360. Section 22 of the ACA'97 provides the power to officers responsible for examining persons in relation with corruption offence to record in writing any statement made by the person. The record of an examination shall be admissible in evidence in any proceedings in any court, either for an offence under the ACA 1997 or for the forfeiture of property pursuant to section 36 or 37 of the ACA 1997.

Recommendation 30 – Law enforcement agencies

361. The FIU in BNM, RMP, ACA, AGC and IRB were involved in the NCC effort to develop the Certified Financial Investigations Programme (CFIP) which includes training on AMLA investigations and procedure, forensic accounting and computer forensics.

362. The following is the number of participants from each agency:

Agency	**2006**	**2007**
FIU in BNM	1	1
BNM SIU	3	4
Royal Malaysia Police	7	8
Anti-Corruption Agency	4	4
Royal Malaysian Customs	3	4
Securities Commission	2	3
Inland Revenue Board	2	2

Ministry of Domestic Trade and Consumer Affairs	2	2
Companies Commission of Malaysia	-	1
Labuan Offshore Financial Services Authority	-	1
Total	24	30

363. The SIS (FIU, ACA, RMP, RMC and AGC) has produced the AMLA Investigation Reference Guide that provides for a structured and consistent approach to the AMLA investigation across agencies and is a particularly useful guide for investigating officers who are new in accomplishing their investigative duties.

RMP

364. The RMP has established a number of specialist units to ensure that money laundering offences are investigated in parallel with predicate offences. Due to stronger powers under the DD(FOP), RMP resources are not being utilised to investigate AMLA offences related to the proceeds of dangerous drugs.

365. In relation to terrorist financing investigations, it is not clear that there are sufficient structures and resources to ensure that terrorist financing is adequately investigated. Special Branch officers have attended some specialist training on CFT, however there appears to be a need for dedicated resources to target terrorist financing investigations.

366. RMP has established operational protocols to ensure that sensitive financial intelligence and related investigation of AMLA offences are subject to enhanced operational security and confidentiality. In the RMP, designated officers in each investigating department are authorised to request and receive financial intelligence from the FIU in BNM.

367. A significant number of RMP staff have received training on financial investigations and sufficient officers appear to be available to investigate money laundering. At least 60 officers are directly involved in financial investigations related to AMLA offences on a full time basis. Of these a number have accountancy training and at least 40 officers have done accounting as part of their financial investigations training.

Anti-Corruption Agency Malaysia

368. The ACA has sought to ensure that investigation of money laundering offences is an integral part of investigations of corruption offences and appears to be applying significant resources to investigate AMLA offences. ACA has issued AMLA investigation powers for all investigating officers of the ACA (of the rank Assistant Superintendent and above). ACA has a specialist financial investigation section that specialises in forfeiture cases under the ACA'97 and the AMLA.

369. ACA officers have received extensive domestic and international training on AML/CFT. ACA was involved in the NCC effort to develop the CFIP.

Royal Malaysian Customs

370. Prior to January 2006 RMC had just two officers in charge of handling administrative matters relating to money laundering investigation. Since January 2006, money laundering investigation has been put under the responsibility of the

Special Investigation Branch (SIB). This branch undertakes investigation of specific fraud cases and also special tasks relevant to AML. The SIB consists of 30 officers and is stationed in Kuala Lumpur.

371. At this stage it does not seem that RMC has committed sufficient resources or established structures to ensure that money laundering related to customs offences are properly investigated.

372. RMC is developing further capacity to address cross-border money laundering and terrorist financing investigations, including trade based money laundering and has forwarded a restructuring of the SIB to develop a specialist AMLA unit.

SC

373. The SC is adequately structured and resourced with well trained staff able to undertake investigations of securities offences and related money laundering offences. Staff are subject to strict controls on integrity. A list of training attended by the SC staff is sent to the FIU each year. The SC enforcement arm consists of two departments, namely Investigation Department and Prosecution and Civil Enforcement Department. There are 28 investigating officers and 18 positions for prosecuting officers.

BNM SIU

374. BNM Special Investigation Unit (SIU) works closely with the FIU in the course of investigating money laundering associated with predicate offences within the banking laws. The FIU organises bilateral meetings with BNM SIU to exchange intelligence analysis findings and to facilitate compliance investigation initiatives undertaken by BNM SIU in relation to enforcement of the AMLA.

Attorney General's Chambers

375. The AGC is responsible for giving legal advice to the Malaysian Government, drafting legislation, and providing a prosecution service in relation to criminal offences. The AGC prosecution function is carried out by Deputy Public Prosecutors (DPPs), who number 208 (December 2006). In the performance of their functions DPPs are governed by prosecution guidelines which require that prosecutions be commenced only where there is sufficient evidence and where it is in the public interest that a prosecution be pursued.

376. In Malaysia, DPPs and advocates and solicitors are different entities. DPPs' functions are controlled and directed by the Attorney-General of Malaysia. Advocates and solicitors are governed by the Malaysian Bar and the *Legal Profession Act* 1976. DPPs, unlike advocates and solicitors, need not hold a valid practising certificate to attend court to conduct proceedings. However, both DPPs and advocates and solicitors are officers of the Court. As public servants DPPs are also subject to the *Official Secrets Act* 1972 and are subject to the various General Orders which bind them to maintain confidentiality in discharging their functions. They are also subject to security clearance before and after their appointment to government service.

377. DPPs have the primary responsibility for initiating, conducting and where appropriate, discontinuing prosecutions for criminal offences. DPPs also play a significant role in ancillary functions including asset forfeiture. In addition DPPs

written authorisation is required for investigating officers to obtain financial information, records and documents in financial institutions.

378. In most cases the conduct of prosecutions for predicate offences is the responsibility of prosecution lawyers within the relevant regulatory or law enforcement agency. They must however obtain the consent of the AGC DPPs before commencing a prosecution, and the AGC maintains a supervisory role in relation to the matter.

379. Regulatory and law enforcement agencies, including the SC, RMP and RMC, are obliged to refer their money laundering matters to the AGC for conduct of the matter. The purpose of this arrangement is to ensure consistency and expertise in the conduct of money laundering prosecutions, which are a relatively new and challenging area of criminal prosecution. For the same reason it is proposed that all terrorist financing prosecutions will be handled within the AGC.

380. The ACA, on the other hand, has out-posted DPPs who are empowered to authorise the commencement of money laundering charges and to conduct AMLA prosecutions themselves.

381. The AGC AML and confiscation practice is conducted by DPPs within a specialist unit, the Forfeiture of Property and Money Laundering Unit. This unit is currently staffed by 7 DPPs almost all of whom have 7 or more years of experience. They receive specialised training in matters relevant to money laundering, both internally and through attendance at international training programs. In addition they provide ongoing advice to investigative officers in relation to their money laundering investigations.

382. In general the AGC AML prosecution unit appears to be adequately structured and staffed, and its officers appear to receive specialised training on AML/CFT. The handling of money laundering prosecutions within a specialised unit helps to ensure that consistency and expertise are applied to these often difficult matters. In relation to the prosecution of predicate offences, the supervisory role performed by the AGC helps to ensure that prosecution decisions in these matters are made on a consistent basis and by reference to objective criteria.

383. The AGC also plays a significant role in the management of mutual legal assistance and extradition requests. More detailed comments in relation to its performance of this function appear at Part 6.3 of this report. In general Malaysia appears to provide such assistance in a co-operative and timely manner. However as noted in Part 6.3, shortages in the staffing of the AGC International Affairs Branch are impacting on its ability to deal with parts of the mutual legal assistance process in a more timely manner.

384. It is recommended that the AGC maintain the conduct of all money laundering and terrorist financing prosecutions, and that it maintain its supervisory role in relation to prosecutions conducted by DPPs within the regulatory and law enforcement agencies.

Recommendation 32

Money laundering investigations and details of related predicate offences

Investigations (as of Dec 2006)	**Investigations completed**	**Predicate Offences**
Royal Malaysia Police (RMP)		
77	13	• Section 4(1) of the AMLA • Section 373(A) of the Penal Code (Importing for purposes of prostitution) • Section 378 of the Penal Code (Theft) • Section 408 of the Penal Code (Criminal breach of trust by clerk or servant) • Section 409 of the Penal Code (Criminal breach of trust by public servant or agent) • Section 411 of the Penal Code (Dishonestly receiving stolen property) • Section 420 of the Penal Code (Cheating and dishonestly inducing delivery of property)
		• Section 468 of the Penal Code (Forgery for the purpose of cheating) • Section 4A of the *Common Gaming Houses Act 1953* (Assisting in carrying on a public lottery, etc.) • Section 4 of Betting Act 1953 (Offences relating to common betting-houses and betting information centres) • Section 6(3) of the *Betting Act 1953* (Gaming in common gaming house) • Foreign serious offence (cheating) • Foreign serious offence (woman trafficking)
Anti-Corruption Agency (ACA)		
62	13	• Offences under ACA'97 on corruption/gratification. *NB – 2 cases were developed from investigation of Penal Code offences, where the consent from the DPP was obtained)*
Special Investigation Unit (SIU), Bank Negara Malaysia		
3	2	• Offences under the section 25(1) of the BAFIA
Securities Commission (SC)		
3 (Feb 2007)	-	• Section 85 of the *Securities Industry Act 1983*
1	-	• Section 83 of the *Futures Industry Act 1993*

2.6.2 RECOMMENDATIONS AND COMMENTS

385. Malaysia has designated investigation agencies responsible for properly investigating money laundering and terrorist financing. Malaysia has systematically sought to develop its AML investigative capacity, in particular within the RMP, ACA and SC. Nearly every law enforcement agency has established a unit dedicated to combat money laundering and all agencies have worked to build AML/CFT investigative capacity and train staff.

386. There are, however, varying levels of awareness of AML/CFT issues and application of powers under AMLA to investigate money laundering and terrorist financing. At this stage investigation agencies report the majority of investigations related to cases of 'self-laundering' which suggests that there is a need to further develop investigations capacity to detect cases of stand-alone money laundering.

387. The numbers of money laundering investigations have varied between enforcement agencies, depending on the AML/CFT investigative capacity of the agency. No terrorist financing investigations have yet taken place.

388. Malaysia should ensure that RMC develops an effective AML/CFT investigation capacity as a matter of priority.

389. Given the significant terrorist financing vulnerabilities identified and the recent amendments to the Penal Code in relation to terrorist financing, Malaysia should take steps to enhance the skills, training and resources of the RMP in relation to detecting and investigating terrorist financing.

390. AMLA, DD(FOP), ACA '97 and other statutes provides strong tools to support concurrent investigation of money laundering and predicate offences. It is important that investigation agencies are well trained and resourced to properly use these tools to 'follow the money' in investigations and effectively combat money laundering and terrorist financing.

391. Law enforcement investigations have been shown to benefit from close cooperation with the FIU. Strengthening the cooperation between the BNM FIU and law enforcement agencies will be an effective tool to increase the number of effective investigation and prosecution. Possible secondments of officers from the BNM FIU to investigative agencies or vice versa may assist to support more investigations of ML/FT offences.

392. Given the trans-national nature of money laundering and predicate offences, there appear to be opportunities for more practical cooperation with neighbouring countries in the investigation of money laundering and terrorist financing.

393. There is a need for greater training on practical issues of applying the investigative toolkit available to investigations agencies in Malaysia.

394. Further joint-agency task forces on money laundering and terrorist financing could be formed to increase the number of effective investigations and prosecutions in Malaysia.

2.6.3 COMPLIANCE WITH RECOMMENDATIONS 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**LC**	• RMC has not yet developed sufficient capacity to effectively investigate money laundering or terrorist financing offences • Until March 2007 terrorist financing matters were not adequately covered and there is still a need to focus on CFT investigations.
R.28	**C**	• This recommendation is fully observed

2.7 CROSS BORDER DECLARATION OR DISCLOSURE (SR.IX)

2.7.1 DESCRIPTION AND ANALYSIS

395. Malaysia has sought to meet its obligations to implement an effective cross border cash declaration system using existing foreign exchange administration policy. However, given the nature of the controls and the serious deficiencies in their application, in practice the existing declaration system does not meet the requirements as set down in the FATF Recommendations.

396. Under the Exchange Control (Import and Export of Currency Notes and Traveller's Cheques) Notice of Malaysia 2006 (issued under the ECA) resident travellers are required to obtain prior permission from the Controller of the Foreign Exchange (BNM) to import or export Ringgit notes exceeding RM1,000 and to export foreign currency notes, including travellers' cheques exceeding the equivalent of USD10,000.

397. Non-resident travellers are required to declare import/export of Ringgit exceeding RM1000 and/or foreign currency notes or travellers cheques exceeding USD10000 equivalent.

398. The declaration is made in the Currency Declaration section of the Arrival/Departure Card (IMM26 card) issued by the Immigration Department. The currency declaration is limited to cash and travellers' cheques and does not require declaration of other forms of bearer negotiable instruments.

399. The ECA has delegated powers of enforcement of import and export of currency to the RMC. Hence, any money in excess of the permitted amount becomes prohibited goods under the CA. The RMC uses Sections 103, 133 and 135 of the CA against any travellers who contravene the ECA rules.

400. The RMC is the designated competent authority to receive and act on currency declarations made on the IMM26 card. However, at present RMC has no role in receiving or checking currency declarations and receives none of the data contained in the declarations.

401. Due to the physical procedures adopted, no currency declaration is made to RMC at the point of arrival or departure. Immigration does not record the contents of or retain the declaration form until the traveller has left Malaysia. The contents of the currency declaration are not available to Malaysian authorities until the traveller has departed from Malaysia.

402. The following steps occur in practice in Malaysia's currency declaration system:

Procedures for arriving travellers:

- ✓ Travellers complete a currency declaration form prior to arrival in Malaysia.
- ✓ The currency declaration form is handed to the Immigration checkpoint on arrival.
- ✓ Immigration does not record the contents of the declaration or act on the content of the currency declaration.
- ✓ The currency declaration card is returned to the visitor.
- ✓ RMC may inspect the travelers' body, baggage and vehicle at the entrance to Malaysia, but there is no process for RMC receiving or acting on the traveler's declaration.

Procedures for departing travellers

- ✓ Travellers proceed through RMC checkpoints without providing the currency declaration made on arrival to Malaysia.
- ✓ There is no obligation to complete a fresh currency declaration on departure.
- ✓ The traveller's declaration form is ultimately collected by Immigration.

403. In practice, at no stage while the traveller is in Malaysia is the visitor required to submit a truthful currency declaration form to the designated competent authority (RMC), either directly or indirectly.

404. The RMC conducts random checks on travellers; however such checks are not conducted in response to information obtained via the currency declaration process. Such checks do not constitute a disclosure system.

405. No system is in place for storing or retrieving the data on currency declaration or for forwarding such data on to RMC. The RMC may request copies of currency declaration forms from Immigration once travellers have departed Malaysia. The Immigration Department can forward data recorded on the declaration form to the RMC or other authorities, if requested and has done so on a number of occasions. No information was provided to the APG team to suggest that such data has been requested of the Immigration Department for AML/CFT purposes.

406. Under the CA read together with the ECA the RMC is empowered to seize the money from:

- a person carrying Ringgit and foreign currency notes, including traveller's cheques if the amount exceeds the permitted limit without approval by BNM ; and
- a non-resident carrying foreign currency notes, including traveller's cheques if the amount exceeds USD10,000 or equivalent and failed to declare or falsely declared in the IMM26 card.

407. Upon seizure, the RMC issues letter of seizure receipt to the offender.

408. The RMC has powers to investigate and review non-declaration or false declaration of currency at the border (including for the investigation of currency notes/traveller's cheques seized in relation to ML or TF) before making recommendations to the Controller. In practice, this is would only occur if RMC were to detect currency by random or targeted checks, rather than via information from currency declarations.

409. Under the CA, any person who fails to declare or falsely declares currency above the permitted amount, can be arrested and prosecuted or compounded, and the currency subject to seizure. When such person is convicted, the currency shall be forfeited. If the person is compounded, the currency shall be forfeited only if the persons so compounded failed to gain approval from BNM. Any currency seized under the CA shall be forfeited within 30 days from the date of seizure when and only if: i) the seizure of currency is made without an arrest and prosecution; and ii) there is no claim made within the 30 days.

410. Between 1998 and early 2007, RMC has prosecuted 22 cases relating to currency smuggling. Authorities indicate that the majority of such cases resulted in conviction and 18 cases have been compounded (please see table 20). Despite these very low figures over some 10 years, it is noted that there has been a marked increase in the previous three years, with 18 cases of currency smuggling (out of the total 22 cases) having occurred since 2004.

411. The RMC maintains its Broad Based Information Management System (that includes identification data) that includes the following:

- cases of false declaration;
- information of cases being prosecuted or being compounded;
- forfeiture; and
- suspected violation of the CA.

412. At present, the information obtained on the currency declaration forms is not made available to the FIU or to RMC. Details of the 22 cases of false declaration detected by RMC and any future detections are available to the FIU in BNM upon request for intelligence purposes.

413. At a domestic level there is a need for greater coordination amongst the RMC, Immigration Department, the FIU and other competent authorities on issues related to the implementation of SR IX.

414. The RMC has been an active member of the World Customs Organisation as well as other bodies and offices such as the Regional Intelligence Liaison Office, Customs Enforcement Network and has various MoUs or bilateral agreements with other customs authorities.

415. The CA stipulates a penalty of imprisonment not exceeding five years and/or fine not exceeding RM500,000 (equivalent to approx. USD136,240) for making incorrect declarations and falsification of documents.

416. Persons who are carrying out physical cross-border transportation of currency or bearer negotiable instruments that are related to money laundering or terrorism financing may be sanctioned, and upon conviction, would be prosecuted and punished under the sanctions available in the AMLA and/or Penal Code.

417. If necessary, or upon request, RMC will inform Customs authorities or relevant competent authorities of the originator jurisdiction, of any unusual shipments of gold, precious metals and stones in relation to goods that are destined for Malaysia.

Recommendation 30

418. There are inadequate structures and ineffective coordination of resources in RMC to implement an effective cross border reporting system that meets the obligations set out in the FATF Recommendations.

419. Under current arrangements, there are inadequate structures, resources and staff within the Immigration Department to take receipt of cross-border declaration forms and to collate data from those forms to be provided to RMC or the FIU.

420. Please see Part 2.6 above for the rules imposed on customs officers regarding professional standards and integrity.

421. Training provided to RMC staff has not supported them to effectively implement AML/CFT cross border currency controls.

Recommendation 32

422. Accurate statistics and records of data obtained through the existing cross-border reporting systems are not retained or made available to competent authorities.

Table 20: Smuggling of currency cases under section 135 of the CA

	2004	**2005**	**2006***
Number of cases	5	5	8
Quantity	92,747	205,171	1,253,854.54
Amount involved (RM)	167,659.77	1,374,477.50	1,253,854.54

* As of December 2006.

423. BNM maintains statistics of approvals for export of currency notes, including travellers' cheques.

424. Neither Customs nor Immigration maintain statistics on reports filed on cross-border transportation of bearer negotiable instruments

2.7.2 RECOMMENDATIONS AND COMMENTS

425. Malaysia currently has an exchange control derived system for declaring cross-border cash and travellers cheques movement, but not other bearer negotiable instruments. This system is deficient and does not meet the requirements or achieve the objectives as set down in the FATF Recommendations.

426. Under the ECA, the currency declaration is deemed to be a matter relating to RMC under the CA. However, at present RMC has no role in receiving or checking currency declarations and does not receive the data contained in the declarations.

427. In practice, no declaration is made to RMC, the designated competent authority, at the point of arrival or departure. No system is in place for storing or retrieving the data on currency declaration or for forwarding such data on to RMC or the FIU. The RMC does conduct random checks on travellers, however it is not in response to information obtained via the currency declaration process. The RMC may request copies of currency declaration forms from Immigration once travellers have departed Malaysia.

428. The RMC has included AML investigation in the SIB, but has not established a specialised AMLA unit.

429. Malaysian authorities should establish a cross-border currency and bearer negotiable instruments declaration or disclosure system that meets purpose and intent of the FATF standards as a matter of priority.

430. There is a need for enhanced coordination between agencies to design and implement an effective cross-border currency declaration/disclosure system which is supported by effective powers of competent authorities, information sharing provisions and sanctions for non-compliance.

431. RMC should establish a specialised unit to detect cross-border transportation of currency and bearer negotiable instruments in relation to money laundering and terrorist financing.

2.7.3 COMPLIANCE WITH SPECIAL RECOMMENDATION IX

	Rating	Summary of factors underlying rating
SR.IX	**NC**	• While Malaysia has a system for completing a cross-border declaration for cash and travellers' cheques, in practice the systems is deficient and does not meet the requirements as set down in the FATF Recommendations. • While sanctions are available for false disclosure of cross border currency movements, they are rendered ineffective due to deficiencies in the declaration system. • While a limited number of cross-border currency detections have occurred over the past 10 years, they generally do not derive from the operation of the declaration system.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Law, regulations and "other enforceable means"

432. The AMLA is federal legislation that has application throughout the States and Federal Territories, including Labuan. The BNM is the competent authority for implementation of the Act, and, therefore, has powers to introduce measures that affect both domestic and offshore institutions.

433. The various regulatory authorities in Malaysia have a long tradition of issuing "guidance" to the sectors for which they are responsible. In the AML/CFT context the BNM, SC and LOFSA have had general guidance in place since shortly after the introduction of the AMLA, and in many cases this has been supported by additional guidance provided by industry bodies. However, since November 2006, the earlier guidance has substantially been replaced by more detailed documents that seek to address the principles laid down in the FATF Recommendations (see summary table below).

Institutions	**Standard Guidelines**	**Date of application**	**Sectoral Guidelines**	**Date of application**
Domestic banking sector	BNM Standard Guidelines	15/11/06	BNM Sectoral Guidelines 1	15/11/06
Offshore banking sector	BNM Standard Guidelines LOFSA Standard Guidelines	15/11/06 03/01/07	LOFSA Sectoral Guidance 1	03/01/07
Domestic insurance sector	BNM Standard Guidelines	15/11/06	BNM Sectoral Guidelines 2	15/11/06
Offshore Insurance sector	BNM Standard Guidelines LOFSA Standard Guidelines	15/11/06 03/01/07	LOFSA Sectoral Guidelines 2	03/01/07
Development institutions	BNM Standard Guidelines	15/11/06	BNM Sectoral Guidelines 1&3	15/11/06
Pos Malaysia	BNM Standard Guidelines	15/11/06	BNM Sectoral Guidelines 3	15/11/06
Broker/dealers			Securities Commission Guidelines	11/01/07
Fund and unit trust managers			Securities Commission Guidelines[2]	11/01/07
Money changers	BNM Standard Guidelines	15/11/06	BNM Sectoral Guidelines 3	15/11/06
Money lenders	BNM Standard Guidelines	Not yet in force	BNM Sectoral Guidelines 8	Not yet in force
Credit card issuers	BNM Standard Guidelines	16/04/07	BNM sectoral Guidelines 4	16/04/07

[2] But the CDD and compliance program requirements under AMLA are not expected to be brought into force until the end of the first quarter of 2007. Therefore, it appears that these guidelines may only be enforceable under the securities legislation until such time as the AMLA provisions are extended to this sector.

434. As discussed below in the context of Recommendation 5 onwards, the new guidance tracks very closely the language and principles specified in the Recommendations and Methodology, including most of the issues required by the FATF to be embedded in law and regulation, as opposed to "other enforceable means". The authorities have recognised this point, and in March 2007 introduced regulations under the AMLA that address the following specific requirements:

- to undertake fresh CDD procedures when there is either a suspicion of ML/FT, or there are doubts about the veracity of information previously obtained;
- to verify the identity of the beneficial owner, and of any person purporting to act on behalf of the customer; and
- to undertake ongoing due diligence on all business relationships.

435. Since November 2006 formal guidance has been issued to all the institutions subject to supervision for AML/CFT purposes by the BNM, SC and LOFSA. This guidance takes the form of "Standard Guidelines" issued by BNM and applicable to all institutions covered by the First Schedule to AMLA (including offshore), and "Sectoral Guidelines" issued by the relevant competent authority. As the table above indicates, the implementation ("invocation") date for these guidelines varies from sector to sector.

436. The Standard Guidelines and those promulgated by BNM are issued under sections 66E and 83 of the AMLA. Section 83 provides BNM with a general enabling power to issue "such guidelines, circulars or notices as are necessary or expedient to give full effect to, or for carrying out, the provisions of this Act". AMLA makes no direct reference to the enforceability of any such guidelines. However, the authorities have stated that case law exists to indicate that similar such guidelines issued by BNM are legally enforceable. In *Affin Bank Bhd v. Datuk Ahmed Zahid Hamidi* the High Court observed that "it is a matter of policy and it is for the good of the country that all banks in the country should adhere to the BNM guidelines" and it held that such guidelines had the force of law. Discussions with the financial sector clearly indicated that the institutions regard the guidelines as binding and that they would be subject to sanctions for non-compliance.

437. In the case of the sectoral guidelines issued by the SC and LOFSA, the position is more directly evident from the regulatory laws themselves. Section 158 of the Securities Commission Act gives the SC the authority to issue guidelines, and makes provision for the SC to take enforcement action in the event of non-compliance. Similarly, LOFSA's most recent guidelines are issued under section 4(5) of the LOFSA Act, which effectively transforms them into directions for which, under section 4(6), there are criminal sanctions for non-compliance. The LOFSA guidelines follow almost *verbatim* the general guidelines issued by BNM, thus making them largely redundant for AMLA purposes since the BNM document already applies to the offshore institutions.

438. However, by separate invocation under the LOFSA Act, the authorities in Labuan gain the ability to take direct enforcement action under local statute to supplement any measures available to BNM under the AMLA.

439. In summary, therefore, all the guidelines promulgated by the relevant competent authorities are treated in this report as "other enforceable means". Guidelines issued by the various professional associations and SROs do not have a similar status and are not considered for the purpose of this assessment.

440. Throughout the following description of the preventive measures the following acronyms are used for the various guidelines.

441.

Name of guidelines	Issued by	Acronym employed
Standard Guidelines on AML and CFT	BNM	BNM Standard Guidelines
AML/CFT Sectoral Guidelines 1 for Banking and Financial Institutions	BNM	BNM SG1
AML/CFT Sectoral Guidelines 2 for Insurance and Takaful Industries	BNM	BNM SG2
AML/CFT Sectoral Guidelines for Licensed Money Changers and/or Non-Bank Remittance Operators	BNM	BNM SG3
Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries	SC	SC AML Guidelines
LOFSA's Standard and Sectoral Guidelines 1, 2 and 3	LOFSA	LOFSA AML Guidelines

442. It should be noted that since the guidelines issued by LOFSA replicate the Standard Guidelines issued by BNM, any reference to the BNM guidelines should be understood to extend also to the institutions licensed to operate in Labuan. Similarly, while there are specific sectoral guidelines for the insurance industry, non-bank remitters and money changers, these largely repeat or flesh-out the provisions contained within the BNM Standard Guidelines which apply to all institutions except those within the securities sector. Therefore, no specific reference is made to these sectoral guidelines unless they contain unique requirements not already covered in the Standard Guidelines.

Implementation of the preventive measures

443. Although the AMLA has been in force since 2002, the detailed provisions implementing most of the preventive measures for the financial and other sectors have been introduced through the guidelines issued by the competent authorities. While the original guidelines promulgated by BNM and the Securities Commission addressed several key areas, they were quite general in nature and did not cover the detailed provisions now required under the 2003 revision of the FATF Recommendations. As indicated above, since November 2006 a succession of new guidelines has been issued, some being applicable to several sectors, other being tailored to individual types of institution.

444. From the following description of the preventive measures in place in Malaysia, it will be clear that the new guidelines reflect very closely the language and requirements of the FATF standards. As a result, the Malaysian AML/CFT regime generally shows a high level of formal compliance with many of the Recommendations relating to the financial sector. However, the vast majority of these provisions have been rolled out progressively since November 2006, with some of the sector-specific guidelines becoming effective only in January 2007.

Moreover, because of the very detailed nature of the guidelines in certain areas, an informal agreement has been reached with the institutions to allow a period during which they may phase in the measures before the authorities seek to enforce rigorously the new provisions. Generally, the period of implementation has been determined on the basis of a self-assessment or gap analysis completed by the individual firms and submitted to the authorities.

445. This process of phased implementation is entirely reasonable to allow institutions time to adjust their systems and controls to the new environment. However, it does pose a particular challenge in determining the effectiveness of implementation of the standards at the time of this evaluation. The Evaluation Team has been informed by the authorities that Malaysian financial institutions have a positive track-record of formal compliance with regulatory requirements, and so could be expected to move very quickly to implement the new measures fully, although some institutions are concerned about their ability to reconcile the detailed provisions with their risk-based approaches. Certainly, since the broad provisions of the AMLA have been in place since 2002, there is a high degree of awareness of AML issues within the industry, and detailed recognition by the individual institutions of their obligations (as was confirmed from the meetings that the team had with the private sector institutions).

446. Unfortunately, the team has been unable to judge the effectiveness of implementation over the longer term from studying the enforcement measures taken by the competent authorities in recent years. To date BNM has not taken any formal action against an institution for non-compliance with the AMLA or the previous guidelines. Any concerns about compliance have been dealt with through the normal supervisory process, and have never been escalated to the formal enforcement level.

447. While such an approach may be entirely consistent with the concept of a proportionate approach to compliance enforcement, the BNM's database does not permit an analysis of those cases where AML deficiencies may have been noted, and addressed, alongside more general regulatory matters in the routine supervisory process. However, the SC data indicates that, in the case of the three AML audits undertaken in 2006 within their wider audit program, the regulators found AML failings in each case. In one instance a fine of RM100,000 was levied for CDD failures among more general breaches of securities rules. LOFSA, like the BNM, has indicated that its inspection program over the past three years has not revealed any significant weaknesses, although the incidence of "housekeeping" issues was greater in the insurance sector than among the banks. It should also be noted that there are certain categories of domestic financial institution for which the AML inspection programs are less developed than for mainstream institutions, including money changers for whom the authorities have not conducted AML/CFT examinations to judge implementation.

448. The absence of any substantive enforcement action may indeed support the widely held view among both regulators and the institutions themselves that there is a very strong compliance culture within Malaysia, and that institutions will work hard to abide by the letter of the law. However, more time is required in order to see whether the implementation of the new guidelines continues to follow this pattern. Therefore, for the purpose of this evaluation, the effectiveness of implementation cannot be assessed adequately and cannot be factored positively into the ratings.

As a result several ratings are shown as lower than might appear to be justified purely on the basis of formal compliance of the laws and regulations with the FATF standards. The reasons for this treatment will not be repeated under each relevant Recommendation, but will simply be cross-referenced to this explanation.

Scope issues

449. The implementation of the preventive measures is also subject to certain scope limitations relative to the range of financial activities defined by the FATF. For the purposes of the AMLA, "reporting institutions" are deemed to include a broad range of financial activities that generally match those required to be covered under the FATF standards. The coverage includes all the institutions licensed in the Labuan offshore centre. However, invocation of the various provisions for the different sectors has been done on a phased basis. The provisions of Part IV of the AMLA that relate to CDD, record-keeping and compliance programs were not brought into force until March 2007 for the domestic fund managers (92 institutions), unit trust managers (40), non-bank credit card operators (5), the building society (1) and the money lenders (3197). However, with respect to the fund and unit trust managers, the Securities Commission had included these institutions within the general securities sector guidelines issued on 11 January 2007. As these are issued directly under the provisions of the Securities Commission Act, they appear to be enforceable independently of AMLA. The very recent expansion of scope to include the credit card operators, the building society and the money lenders is not considered to be a significant deficiency in the context of Malaysia, but is referenced where relevant under the preventive measures, and does have a bearing (however small) on overall compliance ratings.

Customer Due Diligence & Record Keeping

3.1 RISK OF MONEY LAUNDERING OR TERRORIST FINANCING

450. The Malaysian authorities have adopted an inclusive approach to the scope of the anti-money laundering obligations in the financial sector, and have not sought to exclude any of the activities on a risk-based approach. However, as indicated above, implementation of the obligations has been done on a phased basis. Although no formal risk assessment has been undertaken to determine the sequence of this phasing, it is apparent that most of the key financial activities have been captured as a matter of priority.

3.2 CUSTOMER DUE DILIGENCE, INCLUDING ENHANCED OR REDUCED MEASURES (R.5 TO 8)

3.2.1 DESCRIPTION AND ANALYSIS

Recommendation 5

General description of laws or other measures, the situation, or context

451. Section 16(1) of the AMLA prohibits a reporting financial institution from opening, operating or maintaining any anonymous accounts or accounts in fictitious, false or incorrect names. Furthermore, section 18 prohibits any person from opening, operating or authorising the opening or operation of similar accounts with a reporting

institution. Persons commonly known by more than one name are required to disclose all such names to the institution when opening an account.

When CDD is required

452. Section 16(2)(a) of the AMLA requires a reporting institution to verify, by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, as well as other identifying information on that person, whether he is an occasional or usual client, when establishing or conducting business relations, particularly when opening new accounts or passbooks, entering into any fiduciary transaction, renting of a safe deposit box, or performing any cash transaction exceeding such amount as the competent authority may specify.

453. The primary legislation is further underpinned by section 5.1.2 of the BNM Standard Guidelines (GP1) which stipulates that every reporting institution must conduct CDD when:

a) establishing a business relationship with the customer;
b) carrying out cash or occasional transaction that involves a sum in excess of the amount specified by BNM under its sectoral guidelines or relevant circular;
c) it has any suspicion of money laundering or financing of terrorism; or
d) it has any doubts about the veracity or adequacy of previously obtained information.

454. Similar provisions (but in less structured fashion) appear in the SC Guidelines. Points c) and d) above are replicated in the most recent regulations issued under the AMLA in order to comply with the FATF requirement that the requirement to undertake CDD be fully captured within law or regulation.

455. The thresholds for conducting CDD on certain transactions are provided in the respective sectoral guidelines as follows:

Institution	**Type of transaction**	**Threshold**	**US$ approx**
Banks	Occasional customer	RM50,000	$13,624
	Wire transfer	RM3,000	$817
Securities companies	All	None	
Insurance companies	At proposal stage: Single/annual premium life[3] At payout stage:	RM50,000 (personal) RM100,000 (group) RM5,000 (annual premium) RM10,000 (single premium)	$13,624 $27,248 $1,362 $2,724
Money changers	Total of daily transactions by one person	RM20,000	$5,450
Money remitters		RM3,000	$817

[3] Verification procedures must be undertaken for all policies below these thresholds, but the insurer is only required to retain the documents above these levels

Required CDD measures

456. Section 16 of the AMLA requires a reporting institution to "verify, by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, as well as other identifying information on that person, whether he be an occasional or usual client, through the use of documents such as identity card, passport, birth certificate, driver licence and constituent document, or any other official or private document". The BNM Standard Guidelines (section 5.1.1) further reinforce this by providing that "every reporting institution must conduct customer due diligence and obtain satisfactory evidence and properly establish in its records the identity and legal existence of any person applying to do business with it. Such evidence must be substantiated by reliable and independent source documents". Sections 5.2 to 5.5 of the guidelines detail the specific types of documentation and information that institutions are required to obtain with respect to natural persons, corporate customers, clubs, societies, charities and legal arrangements. The lists are extensive and include a wide range of official and other independent forms of identity. Similar lists are provided for the securities industry in the rules promulgated by Bursa Malaysia.

457. Section 16(3) of the AMLA requires a reporting institution to take reasonable measures to obtain and record information about the true identity of the person on whose behalf an account is opened or a transaction is conducted if there are any doubts that a person is not acting on his own behalf. For the purpose of section 16, 'person' includes any person who is a nominee, agent, beneficiary or principal in relation to a transaction. In addition, section 5(2) of the AMLA Regulations specifies that a "reporting institution should verify by reliable means, independent source documents, data or information that any person who is purporting to act on behalf of the client is so authorised and the identity of that person".

458. Section 16 (2) of the AMLA requires a reporting institution to verify by reliable means, the identity, legal capacity and business purpose of any person through the use of documents such as the constituent document or any other official or private documents. A 'constituent document' is defined as "the statute, charter, memorandum of association and articles of association, rules and by-laws, partnership agreement, or other instrument, under or by which the institution is established and its governing and administrative structure and the scope of its functions and business are set out, whether contained in one or more documents". The BNM Standard Guidelines extend this to include the identification documents of directors, shareholders and partners, and the authorisation and identity documents for any person to represent the business.

459. Section 5(2)(b) of the AMLA Regulations requires institutions to identify the beneficial owner of its client, which is defined to mean "the person who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted, including a person who exercises effective control over a legal person or arrangement". The concept of control is not further defined within the Regulations, but a footnote to the BNM Standard Guidelines (which further references the obligation to establish the beneficial ownership and control) indicates that the identification of shareholders should extend to persons with a majority or more than 25% controlling interest. In addition, section 5.3.3 of the BNM Standard Guidelines

requires the reporting institution to know the control structure of corporate customers and to determine the source of funds.

460. With respect to legal arrangements, section 5.5.2 of the BNM Standard Guidelines requires an institution to take reasonable measures to understand the relationship among the relevant parties in handling a trustee or nominee business, and to obtain satisfactory evidence of its legal status, the identity of the trustee, settlor or nominee, authorised signatories, beneficiaries and the nature of their capacity and duties as trustee and nominee.

461. Section 16(2) of the AMLA and section 5.1.3 of the BNM Standard Guidelines require a reporting institution to verify by reliable means the purpose and intended nature of the business relation for all clients (occasional or usual) and to include such details in a record. In the securities sector, section 40A of the SIA requires all licensed persons to ascertain the client's investment objectives, financial situation and particular needs of the client. In so doing, the licensee is required to understand the ownership and control structure of its client. Similar provision under section 52B of the FIA is applicable to futures brokers, futures fund managers and futures trading advisers.

462. Section 5(3) of the AMLA Regulations require reporting institutions to conduct on-going due diligence on all their business relationships with any client. The nature of this process is not further defined in the Regulations, but section 4.2.2 of the BNM Standard Guidelines requires an institution to "continuously monitor each customer's transaction activity pattern to ensure it is in line with the customer's profile and to reassess the customer's risk profile if there are any unreasonable differences". Section 5.1.3 expands on this by requiring an institution to "conduct on-going due diligence and scrutiny to ensure the information provided is updated and relevant".

463. For the securities sector, section 7.1.1 of the SC AML Guidelines also expands on the basic legal obligation by specifying that "reporting institutions should conduct ongoing due diligence and scrutiny of the customers' identity and his/her investment objectives. This should be done throughout the course of the business relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, its business and its risk profile". Section 8.4 specifies that all client records should "remain up-to-date and relevant".

Risk

464. Part 4 of the BNM Standard Guidelines stipulates that the reporting institution should develop customer acceptance policies and procedures based on the perceived risk of the customers (i.e. risk profiling). Institutions are required to have reasonable measures in their internal policy and procedures, including CDD, to address the different risks posed by each type of customer. In conducting the risk assessment, institutions are required to take into account the following:

- the origin of the customer and location of business;
- background or profile of the customer;
- nature of the customer's business;
- structure of ownership for a corporate customer; and
- any other information suggesting that the customer is of a higher risk.

465. More generally, there is also an obligation (section 4.1.1) to identify "the type of customers associated with high risk of money laundering and financing of terrorism".

466. Part 5.10 of the BNM Standard Guidelines requires institutions to conduct enhanced due diligence on higher risk customers. This is specified to include at least the following:

- Obtaining more detailed information from the customer and through publicly available information on the purpose of transaction and source of funds; and
- Obtaining approval from the senior management of the reporting institution before establishing the business relationship with the customer.

467. Examples of higher risk customers are listed to include

- High net worth individuals;
- Non-resident customers;
- Customers from locations known for their high rates of crime;
- Customers from jurisdictions with inadequate AML/CFT laws;
- PEPs;
- Legal arrangements that are complex; and
- Cash-based businesses; and unregulated industries

468. Part 4.11 of the BNM SG1 (applicable to banks) requires there to be enhanced due diligence procedures for private banking services, including a customer acceptance policy that is subject to a more stringent approval process, i.e. approval from the senior management of the reporting institution. Banks are also required to undertake an independent review (at least annually) of the conduct and development of such business relationships.

469. For the securities sector, section 7.2 of the SC AML Guidelines requires institutions to adopt an enhanced CDD process for higher risk categories of customers, business relationships and transactions. The guidance offers a range of risk factors to be taken into account when assessing any client, but also provides examples of certain categories of high-risk client. These generally mirror those specified in the BNM guidelines, but also include "complex legal arrangements such as unregistered or unregulated investment vehicles, or companies that have nominee shareholders"

470. The AMLA and BNM Standard Guidelines are generally silent on the issue of low risk scenarios, with the exception of providing a concession on the timing of customer verification in certain low risk scenarios (see below). Therefore, institutions are required to undertake the standard approach to identification and verification laid down in the guidelines for all but high risk customers. The SC AML Guidelines (section 7.2.2) make reference to the concept of simplified due diligence in low risk situations, stating that institutions "should exercise their own judgment and adopt a flexible approach when applying the specific enhanced or simplified CDD measures to customers of particularly high or low risk scenarios". Examples of low risk customers are given, including:

- Financial institutions that are authorised and supervised by the SC, BNM or equivalent authority in an FATF member jurisdiction;

- Public companies subject to regulatory disclosure requirements (including those listed on exchanges in FATF member jurisdictions; and
- Government or government-related organisations in non-NCCT jurisdictions, where the money laundering risk is judged to be low.

471. The various guidelines indicate generally that simplified or reduced CDD is not permitted with respect to customers who reside outside Malaysia, since non-residents are highlighted as potentially high-risk in all circumstances. A similar principle applies to all those categories of customers listed as potentially high-risk (see above).

472. BNM SG2 (relating to insurance companies) permits that in the event that the risks of money laundering and financing of terrorism are low and there are publicly available measures to sufficiently identify the customer (e.g. Government agency, public educational institution or company listed on Bursa Malaysia), the reporting institution would only need to ascertain whether the customer falls within these categories, and would not be required to undertake further due diligence. More generally, there appears to be an implied application of the principles of low risk in the treatment of the premium threshold in relation to insurance products. Under section 4.1.2 of BNM SG2, where the single or annual premium is less than RM50,000 for individual clients or RM100,000 for group policies ($13,624 and $27,248 respectively), and the insurer need only have sight of the identification and verification documents at the time of writing the policy, but need not retain the records.

Timing of verification

473. As a basic principle, section 16 of the AMLA requires a reporting institution to verify and identify the client and the beneficial owner (whether occasional or usual) when;

- establishing or conducting businesses relations; and
- performing any cash transaction exceeding the amount specified by BNM.

474. Beyond this, section 5.1.5 of the BNM Standard Guidelines requires the reporting institution not to commence business relations or perform any transaction if the customer fails to comply with the CDD requirements. Together, these provisions indicate that the CDD should normally be completed before the relationship is established or the transaction completed. However, section 5.1.6 of the BNM Standard Guidelines goes on to state that "in certain special circumstances where risks of money laundering and financing of terrorism are low or where measures are already in place to effectively manage such risk, the reporting institution may allow its customer due diligence process to be conducted not later than 14 days (or the period specified in the Sectoral Guidelines, where applicable) after the business relationship has been established to permit some flexibility for their customer to furnish the relevant documents". The guidelines provide no indication of what types of measure might be appropriate to mitigate the risk associated with delayed verification.

475. For the securities sector, there is no concession on timing within the SC AML Guidelines, and the general requirement laid down in the securities legislation and the rules of Bursa Malaysia indicate that identification and verification of the client is

required before any transactions are undertaken. With respect to the insurance sector, section 4.5 of the BNM SG2 provides that the verification procedure may be delayed until the time that benefits are paid out in relation to the following:

- a policy where the premium does not exceed RM5,000 per annum or RM10,000 for any single premium;
- verification of beneficiaries, if they are different from the policy holder; and
- verification of individual members covered under group insurance policies.

Failure to satisfactorily complete CDD

476. Paragraph 5.1.5 of the BNM Standard Guidelines and section 4.10 of the BNM SG2 prohibit the reporting institution from commencing business relations or performing any transaction for a customer who fails to comply with the CDD requirements. For existing customers the institution must terminate the relationship in such circumstances. In both cases the institution is also required to consider lodging a suspicious transaction report to the FIU. For the securities sector, section 6.3 of the SC AML Guidelines states that clients who fail to provide evidence of their identity should not be allowed to engage in business transactions with the reporting institution, but there do not appear to be any provisions relating to the circumstances in which the institution concludes that it can no longer be satisfied about the true identity of a client with which it has already commenced business.

Existing customers

477. Section 5.11.1 of the BNM Standard Guidelines requires the reporting institution to take the necessary measures to ensure that the record of existing customers, including its customer profile, remains updated and relevant. In addition, further evidence in identifying the existing customers should be obtained to ensure compliance with the reporting institution's current CDD standards. For this purpose, section 5.11.2 requires the reporting institutions to conduct regular reviews of existing customer records, especially when:

- a significant transaction is to take place;
- there is a material change in the way the account is operated;
- the customer's documentation standards change substantially; or
- the reporting institution discovers that the information held on the customer is insufficient.

478. In circumstances other than those mentioned above, the reporting institution, based on its risk assessment, may require additional information consistent with the reporting institution's current CDD standards from those existing customers that are considered to be of higher risk.

479. Section 8.4 and 8.5 of the SC AML Guidelines requires securities firms to ensure that all records of clients are kept up-to-date, and specifies that, to achieve this, the institutions should undertake periodic and/or ad hoc reviews of existing customer records. The guidelines indicate that an appropriate time to perform an ad hoc review might be:

- when there is an unusual transaction;
- when there is a material change in the way the account is operated;
- when the institution is not satisfied that it has sufficient information about the customer; and

- when there are doubts about the veracity or adequacy of previously obtained information.

480. All particulars of clients of a stock broking company shall be properly recorded and maintained at the office of the stock broking company, which is required, from time to time, as and when material changes occur or otherwise, as they deem fit, to request their clients to update their particulars as previously provided by them.

Recommendation 6

481. Part 5.9 of the BNM Standard Guidelines stipulates the requirements to deal with foreign politically-exposed persons. It defines PEPs as 'foreign individuals being, or who have been, entrusted with prominent public functions, such as heads of state or government, senior politicians, senior government officials, judicial or military officials and senior executives of public organisations'. This definition is further expanded in a subsequent provision to include family members and close associates. Section 5.9.3 requires the reporting institution to have in addition to their respective CDD process, a risk management framework to determine whether current or new customers are PEPs. To achieve this, the institution should "at least gather sufficient and appropriate information from the customer and through publicly available information". Subsequent sections specify that:

- once a PEP is identified, the institution must take reasonable and appropriate measures to establish the source of wealth and funds;
- the decision to enter into or continue with the business relationship should be made by senior management; and
- the reporting institution should conduct enhanced ongoing due diligence throughout the business relationship.

482. The SC AML Guidelines state that a PEP is to be considered a possible high-risk customer and greater caution should be exercised by the reporting institutions when dealing with such customers. However, no further specific instructions or guidance are provided.

483. Malaysia has not extended the definition of a PEP to include persons who hold prominent functions domestically. However, as noted elsewhere in this report the government is taking robust action to combat corruption among its politicians and public officials. Malaysia signed the United Nations Convention against Corruption on 9 December 2003. Necessary legislative and administrative measures are being taken to meet the terms of all mandated provisions in the Convention prior to ratification, which is expected to take place in the near future.

Recommendation 7

484. Part 4.14, together with part 4.3, of the BNM SG1 sets out the obligations on correspondent banking. Section 4.14.2 stipulates that "when entering into a correspondent banking relationship, the reporting institution should capture and assess at the minimum the following information on the respondent institution, to determine the reputation and quality of supervision:

- Board of Director and the management;
- Business activities and products;
- Applicable legislation, regulations and supervision; and

- AML/CFT measures and control".

485. The institution must be satisfied with the assessment of the information gathered before establishing or continuing a correspondent banking relationship with the respondent institution. In addition, part 4.3 (which relates generally to counter-party relations) requires institutions to be satisfied that its counter-party is properly regulated.

486. Section 4.14.5 stipulates that the decision and approval to establish or continue a correspondent banking relationship should be made at the level of senior management, while section 4.14.4 requires the reporting institution to document the responsibilities of the respective parties in relation to the correspondent banking relationship, in particular, with respect to matters in relation to CDD.

487. Where a correspondent banking relationship involves the maintenance of 'payable-through account', the reporting institution (under section 4.14.7) should be satisfied that:
- the respondent institution has performed all the normal obligations on its customers that have direct access to the accounts of the reporting institution; and
- the respondent institution is able to provide relevant customer identification data upon request by the reporting institution.

488. In addition, Part 4.3 provides that a reporting institution should ensure that its counter-party's CDD process is adequate and its mechanism to identify and verify customers is reliable. The counter-party should also be able to submit information and provide certified copies of all documents upon request. At the minimum, the reporting institution should obtain a written undertaking from the counter-party confirming that it has conducted CDD in accordance with internationally accepted AML/CFT standards.

Recommendation 8

489. Section 5.8.1 of the BNM Standard Guidelines requires reporting institutions to pay special attention when establishing and conducting business relationships via the internet, post, fax or telephone.

490. Paragraph 4.1.1 of the BNM SG1 and SG2 provides that the extent of information required from the customer should be determined by consideration, among other things, of whether the transaction involves a new type of service or product or engages new technology, which alters the delivery mode and transaction process. In such circumstances the reporting institution is required to ensure that, prior to the launch of any new products/services or the use of new technologies, appropriate AML/CFT controls are in place to address any risks they may pose.

491. Part 5.8 of the BNM Standard Guidelines specify the requirements in relation to non-face-to-face business relationships. Section 5.8.3 requires the reporting institution to establish appropriate measures for customer verification that should be as stringent as that for face-to-face customers, and implement monitoring and reporting mechanisms to identify potential money laundering and financing of terrorism activities. Section 5.8.2 states that an institution should only establish a

business relationship upon completion of the CDD process conducted through face-to-face interaction, and from discussions with the financial institutions, it is apparent that they believe that all account opening procedures must be undertaken with the customer physically present. However, under section 5.8.3 re-verification is required of an existing customer who wishes to apply for new services, but this may be done on a non-face-to-face basis.

492. In the securities sector, dealer's representatives or commissioned dealer's representatives are not permitted to submit an application to open an account for a client unless that client is present in person. A stock broking company may –

(a) in the case of an application for the opening of an account made by a reputable institution or corporation, approve such application without requiring the authorised representative of such institution or corporation to be present before the stock broking company or its dealer's representative; or

(b) in the case of an application by a client residing outside Malaysia for the opening of an account, approve the application without requiring such client to be present before the stock broking company or its dealer's representative, provided always that the execution of the application and all other forms and documents necessary have been duly attested by a notary public. Additionally, the stock broking company shall in such cases take all such steps as shall be necessary to ensure the authenticity of the application.

493. Securities brokers' clients are required to open a securities account, and the client is required to be present in person before the stock broking company, dealer's representative, authorised officer of the stock broking company, notary public, officer of an exempt dealer, and other person as prescribed by Bursa Malaysia to submit the completed application form together with the relevant supporting documents.

3.2.2 RECOMMENDATIONS AND COMMENTS

494. As mentioned in the introduction to this section, the CDD requirements in Malaysia show a high degree of technical compliance with FATF standards. There are, however, a number of issues for consideration.

(a) Identification documents

495. With respect to natural persons, the National Registration Identification Card (NRIC) is a key document on which there is basic reliance in the account-opening process. This document alone is generally regarded as being sufficient for the purposes of both identification and verification with respect to Malaysian nationals. While, in principle, a fundamental reliance on one single form of identity document might be considered unreasonable in view of the risks of forgery, the authorities in Malaysia are confident that the national system for issuing and maintaining such cards is robust. All citizens are issued with an identity number at birth and must obtain a card on reaching the age of 12 years. Thereafter the cards must be renewed at ages 18 and whenever required by the government.

496. In recent years a new generation of chip-based cards has been introduced and all residents have been required to replace their original cards with the new generation. The chip contains key personal data including name, address, identity

number, date of birth, race, religion and any former names by which the person has been known. Besides the holder's photograph, the card also contains biometric images of both thumb prints. It is optional for the holders to request inclusion of their passport and drivers licence numbers. Under the Registration Act it is a legal requirement to update the information within six months of any change of address. All properties in Malaysia have numeric and street identifiers and have all been issued with postal codes. Most major financial institutions have invested in card readers produced by the two authorised manufacturers. These not only permit verification of the authenticity of the cards, but also provide for automatic downloading of the data onto account-opening forms, thereby removing the risk of input error.

(b) Beneficial ownership

497. The position with respect to the implementation of the requirement to identify and verify beneficial ownership of corporate customers is unclear. Under section 5.3.3 of the BNM Standard Guidelines, institutions are required to "know the beneficial owners and control structure of the corporate customers", and under section 5.6 there is an obligation to undertake CDD on "any natural person who ultimate owns or controls the customer's transaction if it suspects a transaction is conducted on behalf of a beneficial owner and not the customer who is conducting such transaction". The glossary to the Standard Guidelines defines "beneficial owner" to include "the natural person with a controlling interest and the natural persons who comprise the mind and management of the company". A controlling interest is defined to be 25% or more of the shares. The basic requirement to identify beneficial ownership is incorporated within the new AMLA Regulations, but remains supported by the detailed provisions in the Guidelines.

498. While the legal provisions are in line with FATF standards, the Evaluation Team could not be satisfied that the general implementation by the financial institutions necessarily complied with the legal requirements. In discussions with the private sector, some institutions were quite clear about the scope of the obligation with respect to corporate customers, in that they would seek to identify the natural person who might lie behind any intermediate corporate or other structures. Others, however, appeared to see the obligation to be more limited in scope, suggesting that it might be necessary simply to establish the legal identity (rather than the underlying controllers) of any corporate vehicle that itself held shares in the institution's corporate customer. In the securities sector, reference was made by the authorities to the provisions of the Securities Industry (Central Depositories) Act, which appears to require the disclosure of the beneficial ownership of trading accounts held directly or through intermediaries. In practice, however, this is being interpreted by institutions to mean that, where the accounts are being held in the name of a broker or a nominee, the obligation is merely to disclose the name of the person or entity on whose behalf the account is held. This does not extend to the concept of beneficial ownership, as defined by the FATF.

499. Malaysia should provide clarification to the industry on what exactly is required in the area of beneficial ownership.

(c) Legal arrangements

500. The requirements under the BNM Standard Guidelines relating to the identification of beneficial ownership with respect to a legal arrangement would benefit from some clarification. Section 5.5.2 requires institutions to "obtain satisfactory evidence of its legal status, the identity of the said trustee, settler or nominee, authorised signatories, beneficiaries and the nature of their capacity and duties as trustees". This is in line with the FATF standards, but section 5.5.3 goes on to say that "it shall be reasonable for the reporting institution to rely on the trustee or nominee to verify or confirm the identity of the beneficial owners", and provides for the subsequent provision of identification documents by the trustee upon request. This appears to amount to self-certification of beneficial ownership by the trustee[4]. The authorities have indicated that the intention of this latter provision was to address situations where lawyers are operating client accounts, or a trust fund is established for a group of beneficiaries, and where the identification of each and every beneficiary would be unreasonable. However, the current guidance does not make this distinction, and it would benefit from clarification.

(d) Thresholds for insurance business

501. The guidelines for insurance companies specify that the company is not required to retain identification documents in respect of individual customers and group customers where the annual/single premium is less than RM50,000 or RM100,000, respectively. In practice this means that, since the majority of business is acquired through agents who undertake the due diligence process, the institution itself will not routinely see the documentation. This procedure poses significant risks.

502. The authorities indicated that the insurers have been notified that it is their responsibility to ensure that the agents comply with the CDD requirements. However, there appears not to be any systematic process for implementing this requirement, and there is no independent verification of compliance by the agents. It is also unclear what obligation an agent may have to retain customer documentation for which it alone is responsible.

503. Malaysia should ensure that insurance agents systematically implement CDD requirements.

(e) Risk mitigation measures for delayed verification

504. The current provisions permit institutions to delay the verification of a customer's identity under certain circumstances and where adequate risk management procedures are in place. However, the guidelines are silent on what might constitute such procedures, and, while they should not be prescriptive, it would be of assistance to the financial sector for the guidelines to indicate the range of measures that might be considered appropriate.

505. Malaysia should provide guidance on the range of measures that might be considered appropriate and the circumstance in which in which financial institutions may delay the verification of a customer's identity.

[4] In the case of insured deposits the institution should have basic identifiers, since under section 49 of the Malaysia Deposit Insurance Corporation Act an institution is required to maintain records of the names of beneficiaries of any trust arrangements.

(f) Securities sector: failure to verify identity

506. While the guidelines relating to the banking and insurance sectors specify that institutions should be required to close any existing accounts where they can no longer be satisfied about the identity of the client, there are no such provisions in the guidelines for the securities industry.

507. Provisions should be added to the guidelines to specify that institutions in the securities sector are required to close any existing accounts where they can no longer be satisfied about the identity of the client.

(g) PEPs

508. While PEPs are identified as potential high risk customers in the SC AML Guidelines, there are no specific obligations imposed on the securities sector when dealing with such clients.

509. The equivalent requirements to those specified for the rest of the financial sector (in the BNM Standard Guidelines) to treat PEPs as potential high risk customers should be extended to the securities sector.

3.2.3 COMPLIANCE WITH RECOMMENDATIONS 5 TO 8

	Rating	Summary of factors underlying rating
R.5	**LC**	• Uncertainties about current level 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 • Uncertainty about the extent to which insurers can verify CDD undertaken by agents
R.6	**PC**	• Specific requirements on PEPs not provided in the securities industry guidelines • Uncertainties about current level of implementation
R.7	**LC**	• Uncertainties about current level of implementation
R.8	**C**	• This Recommendation is fully observed

3.3 THIRD PARTIES AND INTRODUCED BUSINESS (R.9)

3.3.1 DESCRIPTION AND ANALYSIS

Recommendation 9

510. The securities and futures industries are not permitted to rely on third parties at any stage in the CDD process. However, part 5.7 of the BNM Standard Guidelines makes provision for other institutions to rely on intermediaries for the conduct of CDD. This is conditional upon the ultimate responsibility remaining with the reporting

institution, which must undertake CDD either on the basis of its own records or through a copy of the records obtained from the introducing party.

511. Section 5.7.2 requires the reporting institution and its intermediaries to make an arrangement/agreement that clearly specifies the rights, responsibilities and expectations of all parties. The reporting institution must at least be satisfied that the intermediary:

- has an adequate CDD process;
- has a reliable mechanism to verify customer identity;
- can provide the CDD information and make copies of the relevant documentation available immediately upon request; and
- where appropriate, is properly regulated and supervised by the respective authorities.

512. The guidelines make no reference to any limitations to the use of intermediaries established in foreign jurisdictions. The SC AML Guidelines are silent on the issue of introduced business.

3.3.2 RECOMMENDATIONS AND COMMENTS

513. While the conditions of section 5.7.2 of the Standards Guidelines, under which financial institutions may rely on third-party introductions, largely mirror those laid down by the FATF standard, there are two areas of potential concern. First, the insertion of the words "where appropriate" in relation to the need for the intermediary to be a regulated entity suggests that there may be circumstances in which this condition may be waived. The authorities have indicated that such a condition may not be required where the intermediary is acting effectively as an agent of the institution in conducting CDD on its behalf (e.g. in relation to a credit card application). The provisions of Recommendation 9 clearly exclude such agency arrangements on the grounds that the role of the agent is considered to be fully integrated within the institution's procedures. As it currently stands, section 5.7.2 provides a degree of uncertainty about who may act as an eligible introducer.

514. Malaysia should clarify the obligation to ensure that financial institutions deal only with properly regulated introducers.

515. The second, related issue relates to the apparent absence of any limitation on the jurisdiction from which the introducer may originate. The FATF standard requires that, in determining in which countries eligible intermediaries may be based, the authorities should take into account information on whether those countries adequately apply the FATF Recommendations.

516. Malaysia should provide direction to financial institutions regarding which countries eligible intermediaries may be based, taking into account information on whether those countries adequately apply the FATF Recommendations.

3.3.3 COMPLIANCE WITH RECOMMENDATION 9

	Rating	**Summary of factors underlying rating**

R.9	**PC**	• Potential exists for reliance on unregulated third parties • No reference to any limitations on the jurisdictions in which introducers may be based

3.4 FINANCIAL INSTITUTION SECRECY OR CONFIDENTIALITY (R.4)

3.4.1 DESCRIPTION AND ANALYSIS

517. All the financial services regulatory laws, with the exception of the Money-Changing Act, contain provisions prohibiting the disclosure of customer information by persons who acquire such information in the course of their business. These are, for the most part, overridden with respect to communications by the staff of the institutions with the relevant regulatory authority. Section 96 of the BAFIA specifically prohibits enquiries by BNM into the affairs of individual customers of banks, but makes this conditional on the fact that it should not limit the Bank's ability to carry out inspections and investigations into the affairs of banks as provided elsewhere in the law.

518. However, a similar prohibition affecting LOFSA is not subject to the same override with respect to the offshore banking sector. Section 21 of the OBA states that "nothing in this Act shall authorise the Minister to direct the Authority, or shall authorise the Authority, to inquire specifically into the identity, accounts and affairs of any particular customer of any licensed offshore bank". Section 28B of the LOFSAA gives LOFSA the power to request submission of information by offshore financial institutions, but specifically precludes enquiries into the affairs or identity of customers. This restriction is set aside only in the context of matters relating to credit facilities extended by financial institutions. These limitations affecting LOFSA were referenced in the 2001 APG report on Labuan, and they have still to be addressed. The authorities have indicated that approval has now been obtained to put amendments before Parliament, and that it is hoped that they will be enacted in the course of 2007. LOFSA has also indicated that, in practice, the legal provisions have not prevented its access to customer information in the normal course of its inspection programs, and that the institutions themselves have not sought to deny such access.

519. Section 20 of the AMLA provides that the reporting obligations under Part IV of the AMLA would override any obligation as to secrecy or other restrictions on the disclosure of information imposed by any other written law. As these reporting requirements relate to the filing of STRs and any subsequent enquiries by the FIU, the override in section 20 would not apply to the routine supervisory process. Similarly, while there are powers under section 48 of the AMLA permitting the Public Prosecutor to authorise an investigating officer to obtain information from a financial institution, these powers are only exercisable in the context of a specific investigation.

520. The competent authority is empowered under section 8 of the AMLA to share information with law enforcement agencies if it has reason to believe that a transaction involves proceeds of unlawful activity or a serious offence is being, has been or is about to be committed. However, under the current provisions of the AMLA, the BAFIA and the Labuan offshore legislation there are severe restrictions

on the ability to cooperate with foreign regulatory authorities. This issue is addressed under Recommendation 40 below. Section 10 of the AMLA allows the competent authority to share information relating to STRs and CTRs filed under section 14 of the Act with the corresponding authority of a foreign state, and an amendment to extend the scope of this gateway was brought into force on 6 March 2007. This amendment restricts disclosure by BNM (as the FIU) to information relating to STRs, and to circumstances relevant to the investigation and prosecution of a money laundering offence.

3.4.2 RECOMMENDATIONS AND COMMENTS

521. It is important that the regulatory authorities should be able to acquire customer information in the normal course of their duties, and to share such information with domestic and foreign counterparts, subject to conditions of confidentiality. Notwithstanding the apparent ability of LOFSA to acquire information at an operational level, in principle the current law precludes such access, and should be amended at the earliest opportunity to clarify the situation.

522. Similarly, the ability of BNM and LOFSA to cooperative effectively with foreign counterparts (see Recommendation 40) needs to be addressed.

523. Malaysia should address:

- OBA provisions that inhibit the ability of LOFSA to legally acquire customer information in the normal course of its supervisory role; and
- Legal constraints on BNM (as a bank supervisory authority) and LOFSA to share customer information with foreign counterparts.

3.4.3 COMPLIANCE WITH RECOMMENDATION 4

	Rating	Summary of factors underlying rating
R.4	**PC**	• OBA provisions inhibit ability of LOFSA legally to acquire customer information in the normal course of its supervisory role • Legal constraints on BNM (as a bank supervisory authority) and LOFSA to share customer information with foreign counterparts.

3.5 RECORD KEEPING AND WIRE TRANSFER RULES (R.10 & SR.VII)

3.5.1 DESCRIPTION AND ANALYSIS

Recommendation 10

524. There are numerous general record-keeping requirements in various laws affecting the financial services sector, including the Companies Act and the tax legislation. Typically these impose obligations to retain accounting and other records for at least six years. Section 17 of the AMLA follows this tradition. It requires a reporting institution to retain its records relating to customer identification, all records and documents of transactions, and records of the account for at least six years after the account has been closed or the transaction has been completed or terminated.

525. Section 17(2) requires a reporting institution to maintain records to enable the reconstruction of any transaction in excess of an amount specified by BNM, for at least six years from the date the transaction has been completed or terminated. The BNM has not specified any threshold and has instructed financial institutions that this requirement applies to all transactions. Part 6.2 of the BNM Standard Guidelines expands on this by stating that the documents and records must be able to create an audit trail on individual transactions that can be traced by BNM, the relevant supervisory and law enforcement agencies. In addition, the records must enable the reporting institution to establish the history, circumstances and reconstruction of each transaction.

526. Section 17(3) of the AMLA exempts from the basic record-keeping requirements any information that has been passed to the FIU or a law enforcement agency. The intent of this is clarified in section 6.1.2 of the BNM Standard Guidelines, which state that all records that are subject to on-going investigations or prosecution must be retained beyond normal retention periods until the FIU confirms such records are no longer needed. Similar provisions exist in the SC AML Guidelines.

527. With respect to timely access to the books and records by the competent authorities, section 15 of AMLA requires that information collected by the reporting institutions pursuant to Part IV must be centralised within the institution. The AML Regulations further specify that the information must be "made available on a timely basis when required by the competent authority". Section 6.3.1 of the BNM Standard Guidelines requires that all documents be retained in a form in keeping with section 3 of the Evidence Act 1950, and that they are secure and retrievable, upon request, in a timely manner.

Special Recommendation VII

528. The BNM SG1 and SG3 mentioned below are applicable to banking institutions and non-bank remittance operators respectively. Similar provisions to those in BNM SG1 exist in the LOFSA guidelines.

529. Section 4.1.4 of the BNM SG1 stipulates that for wire transfers, the reporting institution is required to conduct CDD and transmit accurate and meaningful originator information for transactions involving an amount equivalent to RM3,000 (equivalent to approx. USD817) and above. Part 4.4 then provides detailed instructions on what measures must be implemented when wiring funds. Section 4.4.1 requires the ordering institution to obtain at least the following originator information and to verify that it is accurate:

- name;
- nationality;
- national identification/ passport number;
- account number (or a unique reference number if there is no account number); and
- address (or in lieu of the address, date and place of birth).

530. For non-bank remittance operators, the same requirements are specified in BNM SG3.

531. There are no provisions for batched wire transfers. Section 4.4.2 of BNM SG1 requires the reporting institution to transmit the following originator information on the transfer message:

- name;
- account number (or a unique reference number if there is no account number); and
- address (or in lieu of the address, national identification or passport number, or date and place of birth).

532. Section 4.3.3 of the BNM SG3 requires the non-bank remitter to transmit the above originator information to its corresponding agent. If the remittance or wire transfer is facilitated through a bank, the reporting institution must provide the originator information to the bank immediately upon request.

533. For domestic wire transfers, the ordering institution may include only the originator's account number or, if there is no account number, a unique identifier, within the message or payment form. However, this is only permitted if at any time, upon request, the ordering institution would be able to provide the originator's information within three business days.

534. Section 4.4.3 of BNM SG1 stipulates that when facilitating or acting as an intermediary to a wire transfer, the reporting institution should ensure that the accompanying originator information is retained with the payment instructions. Beneficiary institutions must adopt an effective risk-based approach in identifying any wire transfer with incomplete originator information (section 4.4.4). When such an occurrence happens, the institution must adopt such an approach in deciding whether to proceed with or stop the transaction, or request the missing information from the corresponding institutions. Wire transfers with incomplete originator information may be considered as a factor for suspicion, and where appropriate, the reporting institution should file an STR (section 4.4.5). The same requirements apply to non-bank remittance operators under BNM SG3.

535. The same record-keeping requirements apply to wire transfers as for all transactions conducted by reporting institutions (i.e. six years after the transaction was completed).

536. Compliance with the wire transfer rules will be monitored under the existing regulatory framework. Under section 69 of the BAFIA, BNM is empowered to examine, without prior notice, the books or other documents, accounts and transactions of each bank, including its offices inside and outside Malaysia. This basic process is long-established (see section 3.10 of this report). In relation to the supervision of non-bank remittance operators, BNM is empowered under section 34 of the PSA to examine, with or without prior written notice, the books or other documents, accounts or transactions of an operator and any of its offices in or outside Malaysia. BNM has conducted an examination on one of the five non-bank remittance operators. BNM requires non-bank remittance operators to submit external auditors' reports, latest audited accounts and management accounts to support their application for renewal of permission on a yearly basis. The document submission requirement was imposed in early 2007.

537. Since banking institutions and non-bank remittance operators conducting wire transfers or remittances are reporting institutions under the AMLA, non-compliance with the wire transfer rules may result in sanctions as provided under AMLA (see Recommendation 17). No sanctions have yet been applied for non-compliance with wire transfer obligations.

3.5.2 RECOMMENDATIONS AND COMMENTS

538. With respect to the general record-keeping requirements, the legal provisions within Malaysia comply with the FATF standards, and it is apparent that, since the principles have long been embedded in company and tax law, the institutions are very well aware of their obligations. The text of the AMLA provisions makes no specific reference to the need to retain general correspondence involving customers, although all the institutions interviewed during the onsite visit confirmed that it was their practice to treat such correspondence as a document subject to the six-year rule. However, the authorities may wish, at some stage, to expand the definition in the Guidelines to put this beyond all doubt.

539. Wire transfer rules in Malaysia follow the obligations laid down in Special Recommendation VII. However, the rules are relatively new, and there must be uncertainty about the current level of compliance. Moreover, while BNM has the power to inspect both the banks and the non-bank remitters, a full examination of compliance with the rules has yet to be undertaken, particularly with respect to the non-bank institutions. Of the five, including Pos Malaysia, only one has undergone full examination.

540. Malaysia should undertake supervision and surveillance to ensure the current level of compliance with wire transfer rules, particularly with respect to the non-bank institutions.

3.5.3 COMPLIANCE WITH RECOMMENDATION 10 AND SPECIAL RECOMMENDATION VII

	Rating	Summary of factors underlying rating
R.10	**C**	• This Recommendation is fully observed
SR.VII	**LC**	• Uncertainties about extent of implementation • Inspection powers yet to be used with respect to the majority of non-bank remitters

Unusual and Suspicious Transactions

3.6 MONITORING OF TRANSACTIONS AND RELATIONSHIPS (R.11 & 21)

3.6.1 DESCRIPTION AND ANALYSIS

Recommendation 11

541. Section 7.1.1 of the BNM Standard Guidelines requires reporting institutions to conduct on-going due diligence "to examine and clarify the economic background and purpose of any transaction or business relationship that appears unusual, does not have any apparent economic purpose or the legality of such transaction is not clear especially with regards to complex and large transactions or higher risk customers". The section further requires that all findings must be documented and made available to BNM and the relevant supervisory authorities upon request. The SC AML Guidelines (section 9.1) impose similar monitoring and documentation obligations on the securities firms. All records generated through this process are subject to the standard six-year rule for record-keeping.

542. Unlike many other aspects of the preventive measures, the obligation to monitor transactions has been in place for some years for most of the primary financial institutions, as part of the overall requirement to report suspicious transactions. Therefore, in the absence of any significant deficiencies reported by the regulatory authorities as a result of their examination programs, there is no reason to believe that implementation has not been reasonably effective.

Recommendation 21

543. Obligations to conduct enhanced and on-going due diligence and monitoring of transactions with regard to business relationships and transactions with individuals, businesses, companies and financial institutions from countries which have insufficiently implemented the internationally accepted AML/CFT measures such as the Non-Cooperative Countries and Territories (NCCT) are set out in sections 5.10 and 7.3 of the BNM Standard Guidelines. For such business relationships and transactions, the reporting institution is required to make further detailed enquiries about their background and purpose and to document the findings in writing. These findings are to be made available to the BNM and the relevant supervisory authority. Similar obligations are set out in section 7.2 of the SC AML Guidance.

544. The BNM and the SC inform institutions of countries that have AML/CFT weaknesses. During compliance officers' dialogue sessions, the BNM advises reporting institutions on the risk of money laundering posed by countries such as NCCT and steps that are to be taken to mitigate such risks. A list of media updates of AML/CFT related matters is also forwarded to reporting institutions by the BNM.

545. The BNM Standard Guidelines also require reporting institutions to establish internal 'red flag' criteria to detect suspicious transactions which should also be subject to enhanced due diligence and ongoing monitoring, and may be guided by examples provided by BNM and other corresponding competent authorities and international organisations.

546. In assessing whether or not a country sufficiently applies FATF standards the SC AML Guidance requires reporting institutions to carry out their own country

assessment of AML/CFT implementation and pay particular attention to assessments that have been undertaken by standard setting bodies such as the FATF and by international financial institutions.

547. The previous guidelines issued by BNM and the SC did not cover this matter.

3.6.2 RECOMMENDATIONS AND COMMENTS

548. The detailed requirements to conduct enhanced and on-going due diligence and monitoring of transactions are set out in the new guidelines issued by the BNM and SC in November 2006 and early 2007 respectively, and it is therefore difficult to assess the effectiveness of implementation to date, as there has been no opportunity for the authorities to verify compliance. The institutions usually agree with the authorities on a transition period to phase in new requirements.

549. The AMLA does not appear to provide the BNM with authority, beyond the abovementioned guidelines, to compel reporting institutions to adopt more rigorous countermeasures where a country does not, or insufficiently applies the FATF recommendations. No other mechanism has been established to date for detailed countermeasures to be imposed on specifically-identified countries.

550. Malaysia should:

- ensure that reporting institutions adopt more rigorous countermeasures where a country does not, or insufficiently applies the FATF Recommendations; and
- establish a mechanism for detailed countermeasures to be imposed on specifically-identified countries.

3.6.3 COMPLIANCE WITH RECOMMENDATIONS 11 & 21

	Rating	Summary of factors underlying rating
R.11	**C**	• This Recommendation is fully observed
R.21	**LC**	• There is uncertainty as to whether effective implementation of recently issued requirements to conduct enhanced and on-going due diligence and monitoring has yet been achieved. • Limited scope for country-specific countermeasures

3.7 SUSPICIOUS TRANSACTION REPORTS AND OTHER REPORTING (R.13-14, 19, 25 & SR.IV)

3.7.1 DESCRIPTION AND ANALYSIS

Recommendation 13 & Special Recommendation IV

551. The STR obligation has been introduced progressively since 2002 to different sections of the financial industry. While the banking and insurance institutions have been subject to the requirement since 2002, the broker-dealers were not brought into the framework until 2004, and the fund and unit trust managers, money lenders and non-bank money remitters (except Pos Malaysia) remained outside until August 2006.

552. Section 14 (b) of the AMLA requires a reporting institution to report promptly to the FIU any transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction give any officer or employee of the institution reason to suspect that the transaction involves the proceeds of an unlawful activity. Section 3 of the AMLA defines "unlawful activity" as "any activity which is related, directly or indirectly, to any serious offence or any foreign serious offence", which, in turn, are defined as follows:

> "serious offence" means —
>
> (a) any of the offences specified in the Second Schedule;
>
> (b) an attempt to commit any of those offences; or
>
> (c) the abetment of any of those offences.
>
> "foreign serious offence" means an offence—
>
> (a) against the law of a foreign State stated in a certificate purporting to be issued by or on behalf of the government of that foreign State; and
>
> (b) that consists of or includes an act or activity which, if it had occurred in Malaysia, would have constituted a serious offence.

553. There is no explicit obligation within the AMLA to report transactions suspected of being linked to terrorist financing, although parts 8 and 9 of the BNM Standard Guidelines makes reference to terrorist financing as the basis for filing a report. The SC AML Guidelines remain neutral on this issue, simply referring to the concept of the proceeds of unlawful activities.

554. The amendments to the AMLA that were brought into force in March 2007 broadened the scope of the terrorist offences in the second schedule to the AMLA to include terrorist financing, thereby making it a predicate offence for reporting purposes.

555. Irrespective of this, the STR obligation under section 14 of the AMLA is defined only in terms of those transactions that are suspected of involving the proceeds of an unlawful activity. Since terrorist financing may be provided from funds that derive from perfectly legitimate sources, the scope of section 14 is inadequate as it does not extend the obligation to cover transactions suspected of being related generally to terrorist financing. The authorities have indicated that they recognise this

deficiency and intend to include an amendment to section 14 in a forthcoming set of AMLA amendments to be presented to Parliament.

556. A provision has been introduced in the AMLA Regulations (section 3) which extends the scope of the reporting obligation to attempted transactions. This section also makes reference to the reporting of transactions linked to terrorism and terrorist financing, but continues to tie this to the proceeds of an unlawful activity, thus giving rise to the same issues described above.

557. The authorities have indicated that the STR reporting obligation is not fettered by considerations that the transaction might also involve tax matters, although tax fraud and evasion are not predicate offences under the AMLA.

Recommendation 14

558. Section 24 of the AMLA gives protection from civil, criminal or disciplinary proceedings to any person who discloses or supplies any information in any report made under Part IV of the AMLA (or any information in connection with such a report), unless the information was disclosed or supplied in bad faith.

559. The position with respect to "tipping off" is not entirely clear. Section 79 of the AMLA provides for preservation of secrecy where:

> (1) Except for the purpose of the performance of his duties or the exercise of his functions under this Act or when lawfully required to do so by any court or under the provisions of any written law, no person shall disclose any information or matter which has been obtained by him in the performance of his duties or the exercise of his functions under this Act.
>
> (2) No person who has any information or matter which to his knowledge has been disclosed in contravention of subsection (1) shall disclose that information or matter to any other person.

560. Paragraph 8.2.8 of the BNM Standard Guidelines requires the reporting institution to ensure its suspicious transaction reporting mechanism is operated in a secure environment to maintain confidentiality and preservation of secrecy.

561. The authorities cite these provisions as the basis for the prohibition on "tipping-off". However, it is not clear that section 79 would preclude a financial institution from disclosing or otherwise indicating to its client certain matters relating to the client's own affairs (i.e. that a particular transaction gives rise to suspicions that might, therefore, be reported to the authorities). The SC AML Guidelines take a far clearer line under section 11.1, which states that "the subject of a report must not be advised of the reporting by a reporting institution".

562. The identity of staff making a report to the FIU is protected under section 5(2) of the AMLA which provides that:

> 'Where any information relating to an offence under this Act is received by an officer of the competent authority or reporting institution, the information and the identity of the person giving the information shall be secret between the officer and that person and everything contained in such information, the identity of that person and all other

circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of subsection 8(1) or section 14'.

Recommendation 19

563. Section 14(a) provides for the reporting to the FIU of any transaction (cash or otherwise) that exceed an amount specified by BNM. BNM has invoked a cash transaction reporting (CTR) obligation for all commercial banks, investment banks and Islamic banks with effect from 1 September 2006. The threshold has been established at RM50,000. BNM has noted that it intends to extend this CTR obligation gradually to other reporting institutions.

564. BNM is implementing a significant enhancement of the FINS reporting system to enable reporting institution to submit both STRs and CTRs in a secure online environment and has begun to receive a significant volume of CTRs.

Recommendation 25 (only feedback and guidance related to STRs)

565. Section 8(3) of the AMLA empowers the BNM to compile statistics and records, and make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising out of any report or information received under section 8(2) of the AMLA. Section 21 (1) (c) provides for the relevant supervisory authority of a reporting institution or such other person as the relevant supervisory authority may deem fit to issue guidelines to assist reporting institutions in detecting suspicious patterns of behaviour in their clients and these guidelines shall be developed taking into account modern and secure techniques of money management and will serve as an educational tool for reporting institutions' personnel. A broader power to issue guidelines is also set out in Section 83, which provides that the BNM, upon consultation with the relevant supervisory authority, may issue to a reporting institution such guidelines, circulars, or notices as are necessary or expedient to give full effect to or for carrying out the provisions of this Act and in particular for the detection or prevention of money laundering.

566. BNM has issued guidance on identifying suspicious transactions, and a copy of the STR reporting form as an attachment to each of its AML guidelines. Initially this was contained in Appendix 1 to BNM/GP9 for banks, JPI/GPI 27 for the Insurance Industry and guidelines for the Takaful industry. Similar guidance has been provided for DNFBP (lawyers, accountants, company secretaries and casinos). LOFSA provided supplementary guidance to GP9 for offshore financial institutions. The Securities Commission has also appended guidance on suspicious transactions to its March 2004 AML Guidance for capital markets entities.

567. The same approach of appended examples of suspicious transactions has also been adopted for each of the recently issued (2006 and 2007) revised sector-specific AML/CFT guidelines from the BNM and the respective supervisory authorities.

568. The BNM conducts dialogue sessions approximately twice a year with compliance officers of reporting institutions, and jointly with the Securities Commission for compliance officers of capital markets entities. The BNM shares with the reporting institutions AML/CFT typologies (trends and sanitised cases), general feedback and statistics on STRs submitted and information shared, supervision findings and other related issues. Compliance Officers Network Groups (CONGS)

established by the industry in the banking and insurance sectors meet regularly. The BNM FIU has the opportunity to provide further guidance and feedback when it is invited to attend CONG meetings from time to time.

569. The financial institutions have found the feedback from the BNM and the Police on STRs and sanitised cases to be helpful and have incorporated the feedback into their staff awareness training programs.

570. The BNM FIU and the respective supervisory authorities have issued an adequate amount of guidance and feedback with respect to STR reporting through various means including the attachments to the enforceable guidelines, as well as the industry briefings provided by the FIU and engagement between the FIU and the CONGs in the banking and insurance sectors.

Recommendation 32

571. The following table shows the breakdown of STRs filed by the different types of institution within the financial services sector, since the inception of the system in 2002. Further analysis of these data is provided in the section on effectiveness below.

Breakdown of STRs Received

	2002	**2003**	**2004**	**2005**	**2006**
Commercial banks	485	973	2,159	1,818	2,034
Finance companies	10	18	87	23	0
Islamic banks	7	21	24	43	106
Merchant banks	9	54	11	2	4
Insurance companies	-	6	52	39	1,195
Development financial institutions	N/I	9	13	194	116
Offshore financial institutions	7	20	9	7	-
Money changers	1	-	8	-	-
Stock/futures brokers	N/I	N/I	-	13	13
Pos Malaysia	N/I	-	-	73	703
Lembaga Tabung Haji	N/I	-	-	-	1
Fund managers	N/I	N/I	N/I	N/I	10
Others	36	16	5	1	3

Note: N/I denotes that the STR reporting obligations under the AMLA were yet to be invoked

572. The following table identifies the number of CTRs filed (month-on-month) by the relevant financial institutions since the reporting obligation was introduced in September 2006.

CTRs Received

Reporting Institution	2006					
	Sept	Oct	Nov	Dec	Number	%
Commercial Banks	4,737	30,646	83,175	95,274	213,832	96.1%
Islamic Banks	866	1,599	2,568	3,735	8,768	3.9%
Total	**5,603**	**32,245**	**85,743**	**99,009**	**222,600**	**100.0%**

3.7.2 RECOMMENDATIONS AND COMMENTS

573. The STR reporting obligation under the AMLA gives rise to several issues.

(a) Scope

574. The definition of unlawful activity is tied to the list of predicate offences in the second schedule. Therefore, there is technically no obligation to report any transactions that are linked to those offences that are included within the FATF list of essential predicates, but which have yet to be added to the AMLA schedule (see section 2 of the report). This issue will be addressed automatically once these offences have been added to the schedule.

575. There is no explicit obligation to report transactions suspected of being linked to terrorist financing, other than when the financing is the proceeds of an unlawful activity. It is recommended that this be addressed in amendments to the AMLA expected to be presented to parliament in the course of 2007.

(b) Reporting threshold

576. Section 14 of AMLA gives some scope for confusion about whether there is intended to be a threshold for the reporting obligation, although clarification is provided in the BNM Standard Guidelines. Section 14 states that:
"A reporting institution shall promptly report to the competent authority any transaction

(a) exceeding the amount as the competent authority may specify; and
(b) where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity".

577. This language appears to indicate that the suspicious transactions reporting obligation is subject to a threshold, since the two sub-clauses are made conjunctive with the use of "and". The authorities have indicated that the two sub-clauses were intended by the legislature to be read as independent requirements (requiring the reporting of both large value and suspicious transactions), and that there is case law to support the view that "and" can be construed both conjunctively and disjunctively. In practice, there does appear to be a general understanding among financial institutions that the STR requirement does not include a threshold. The AMLA regulations introduced in early 2007 make clear that reports should be filed "regardless of the amount", and this has been the implication of the relevant sections of the BNM Standard Guidelines and the SC AML Guidelines.

578. The authorities have indicated that, in order to remove any further doubt about the intention of the two sub-clauses (sections 14(a) and 14(b)), they may seek to amend the section further to specify that the two reporting obligations are separate and distinct. Such an amendment is recommended.

(c) Effectiveness

579. BNM and the other regulatory authorities have noted that the quality of STR reporting has improved in the past year or so, in terms of both the detail being provided about the transactions and the extent of the analysis to support the suspicion. It also appears to be the case that the obligation to report promptly is being fulfilled, with most reports being submitted no later than 1-2 weeks after the transaction. The institutions interviewed by the Evaluation Team also felt that they were receiving valuable feedback from the FIU, both bilaterally and through the industry's six-monthly meeting with the FIU, which permitted them to gain a better appreciation of what was required in terms of reporting.

580. The sector breakdown of STRs submitted reveals some marked variations year-on-year for individual sectors. Generally the sharp increase in numbers for 2006 has been attributed to the expansion of the FINS system to allow direct input from the regional offices of the major financial institutions, rather than all reports having to be channelled through the head offices[5]. The previous sharp rise in reports in 2003/04 coincided with the initial introduction of FINS. While the most recent movement is to be welcomed in principle, it does, of course, raise two questions: firstly, whether institutions were under-reporting previously simply because of the administrative burden of having to centralise the reporting process; and secondly, whether the reporting by the regional offices is subject to the same threshold of suspicion as those submitted by the head offices. These questions can only sensibly be addressed through the authorities' AML compliance inspections.

581. A number of marked changes have taken place in the reporting by specific sectors, and these are attributed by BNM to various factors, as follows:

- *Insurance companies* – a sharp increase in reporting in 2006 coincided with an inspection program, combined with an awareness-raising exercise within the sector.
- Pos Malaysia – the tenfold increase in reports in 2006 followed the formulation of some basic, red-flag indicators for its remittance business. These appear to be rules-based indicators that generate STRs irrespective of any underlying suspicion. Pos Malaysia should apply more dynamic and less rigid criteria for determining suspicion.
- Finance companies – the absence of reports in 2006 is due to the structural absorption of these companies within the banking institutions, thereby leaving no reporting entities within the sector.
- Money-changers – the generally low level of reporting by this sector has no apparent explanation, and is certainly something that BNM should seek to explore. On the basis of the impact that outreach programs have had in the other

[5] However, discussions with the private sector suggest that some institutions have opted to retain a centralised reporting system so that the group compliance function can keep control over the STR procedures for quality and consistency purposes.

sectors, this would appear to be an important first step. Although BNM has powers under section 25 of the AMLA to authorise an examination of a reporting institution there have been no routine AML/CFT compliance examinations of money changers to date. It is recommended that these be pursued at the earliest opportunity. In this context, it has also to be noted that anecdotal evidence suggests that the money changers represent one of the principal categories of customers involved in STRs filed by other financial institutions.

- Offshore financial institutions – There has been a low level and reducing trend of reports across the sector since 2003. This is attributed by LOFSA and the institutions themselves to the restrictions on activities of the institutions (e.g. no cash transactions are permitted), the structure of the market (mostly wholesale) and to a high degree of awareness among the institutions of the money laundering threat. It is essential that the authorities substantiate this assessment by means of comprehensive compliance inspections in the offshore sector.

582. Generally, the spike in reports brought about by specific awareness sessions, and the very low level of reporting by the offshore institutions and the money changers indicates that the system still has some way to go before there can be relative confidence in its overall effectiveness. The authorities are encouraged to continue their outreach and inspection programs to assist institutions to understand the STR obligation.

(d) Tipping-off

583. While there appears to be a widespread recognition among the financial institutions about the need not to alert their clients to the fact that an STR has been filed, the legal provisions should be reviewed to ensure that there is a clear prohibition on this specific action. The current, more general, secrecy provisions have yet to be tested in court, and may not be sufficiently robust.

3.7.3 COMPLIANCE WITH RECOMMENDATIONS 13, 14, 19 AND 25 (CRITERIA 25.2), AND SPECIAL RECOMMENDATION IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• Limited scope since not all the required predicates offences for STR reporting are included within the schedule to AMLA • No explicit obligation in law or regulation to report suspicions of terrorist financing • Uncertainties about the effectiveness of the system in certain sectors of the financial industry
R.14	**LC**	• Lack of clarity about the tipping-off offence
R.19	**C**	• This Recommendation is fully observed
R.25	**LC**	*This is composite rating and does not derive from the issues covered here.*
SR.IV	**PC**	• No explicit obligation in law or regulation to report suspicions of terrorist financing • Uncertainties about the effectiveness of the current system in

		certain sectors of the financial industry

Internal controls and other measures

3.8 INTERNAL CONTROLS, COMPLIANCE, AUDIT AND FOREIGN BRANCHES (R.15 & 22)

3.8.1 DESCRIPTION AND ANALYSIS

584. The compliance requirements established under the AMLA, augmented by detailed obligations set out in the relevant enforceable guidelines, have ensured that the mainstream financial institutions in particular have generally adopted a good level of AML/CFT internal procedures and controls. For a few minor categories of non-bank financial institutions where these requirements have only recently been invoked, the level of compliance cannot yet be assessed.

Recommendation 15

585. The requirements for effective AML policies, procedures and controls, compliance officer functions, staff training and internal audit are set out in legislation and elaborated on in the respective enforceable AML/CFT guidelines. Guidance was initially provided to BNM-supervised banking institutions from 1993 as part of BNM/GP9 (in respect of money laundering) and has subsequently been replaced by the BNM Standard Guidelines which closely follow FATF standards. The new standard guidelines include a brief coverage of procedures relevant to combating terrorist financing.

586. Section 19 of the AMLA provides that a reporting institution shall adopt, develop and implement internal programs, policies, procedures and control to guard against and detect any offence under the AMLA. This includes procedures to ensure high standards of integrity of employees, on-going employee training programs (including with respect to CDD, record keeping and reporting obligations) and an independent audit function to check compliance. Section 19(4) of the AMLA requires a reporting institution to designate compliance officers at the management level in each branch and subsidiary who will be in charge of the application of the internal programs and procedures, including record keeping and reporting STRs.

587. Section 10 of the BNM Standard Guidelines sets out the AML/CFT Compliance Programme requirement for reporting institutions and outlines the respective the roles and responsibilities of the Board of Directors and Senior Management responsibilities of the compliance officer.

588. Section 10 of the SC AML Guidance summarises compliance and training requirements. A reporting institution must designate a compliance officer at management level in each branch, or in the case of a universal broker, at the designated branch, who will be in charge of the application of the internal programs and procedures, including proper maintenance of records and reporting of suspicious transactions. The guidance reiterates that, notwithstanding the duties of the compliance officer, the ultimate responsibility for compliance with AMLA remains with the reporting institution and the board of directors.

589. General and sector-specific guidance from the SC requires designated compliance officers to pass an examination set by the Commission and complete a qualifying interview before being registered as an eligible compliance officer.

590. Section 15 of the AMLA requires that all information collected under the Part IV of the AMLA (e.g. information relating to CDD, suspicious transactions etc.) should be centralised. Paragraph 10.3.4 of the Standard Guidelines on AML/CFT states the need for the compliance officers to have timely access to CDD documentation and other relevant information. Similar requirements are set out in the various guidelines for entities under the purview of the Securities Commission and LOFSA.

591. Section 19(5) of the AMLA requires a reporting institution to develop audit functions to evaluate policies, procedures and controls to test compliance with the measures taken by the reporting institution to comply with the AMLA, and the effectiveness of those measures. Part 10.5 of the BNM Standard Guidelines set out the requirements for independent audit. The Board of Directors is responsible for ensuring regular independent audit of the internal AML/CFT measures and is also required to ensure the roles and responsibilities of the auditors are clearly defined and documented.

592. The sectoral guidelines for banking and insurance entities provide details on the role of reporting institutions Audit Committees, to review internal controls, to evaluate the adequacy of internal controls for AML/CFT measures and to report on the audit findings to the Board of Directors on a regular basis.

593. The SC AML Guidelines prescribe that AML/CFT audit should conform to any applicable audit standard for the detection and prevention of ML, to test transactions, and to ensure financial transactions are following prescribed programs, rules, regulations and internal controls. The audit function may be conducted by either an external audit firm or the financial institution's internal auditor. The various securities sub-sector guidelines set out additional requirements on internal audit and Audit committees.

594. LOFSA has also issued separate requirements on offshore banking and insurance sector entities in particular with respect to the scope of internal audit functions and review processes.

595. Section 19(2)(b) of the AMLA requires reporting institutions' internal programs to include on-going employee training programs in relation to record-keeping, reporting STRs, customer identification and verification and retention of records. Section 10.4 of the BNM Standard Guidelines further requires regular and comprehensive staff training and awareness programs. Employees should be made aware that they may be held personally liable for any failure to observe the internal AML/CFT requirements. Paragraph 10.4.4 sets out a requirement to tailor employee training taking into account the level of AML/CFT responsibilities of the employees and the risks of ML/TF faced by the reporting institutions. The SC AML Guidelines also requires reporting institutions to establish on-going employee training programs with regard to the responsibilities specified under AMLA.

596. Section 19(2)(a) of the AMLA requires a reporting institution to establish procedures to ensure high standards of integrity of its employees and a system to

evaluate the personal, employment and financial history of these employees. Section 10.2 of the BNM Standard Guidelines requires the senior management to ensure the integrity of the reporting institution's employees at all times by establishing an appropriate employee assessment system that is approved by the Board of Directors to adequately screen its employees including evaluation of each employee's personal information, including criminal records (to the extent available) and employment and financial history.

597. The Bursa Malaysia rules require stock broking companies to ensure that their employees are 'fit and proper' persons with regard to the position and responsibility they hold. Appointees to more senior positions need to be further scrutinised and all supervisors and heads of departments must be registered with Bursa Malaysia. Bursa Malaysia may require at any time that the name, terms of employment, and duties of an employee, and other information necessary to enable it to enforce the rules. Criteria are established for circumstances where certain persons may not be appointed without the approval of Bursa Malaysia. In addition, every stock broking company must formulate a code of conduct for its registered person(s) and employees. The code of conduct must be reviewed by the compliance officer to ensure its adequacy and effectiveness.

598. Similar requirements as stated above under the BNM Standard Guidelines are applicable to the offshore licensed and regulated institutions through the Guidelines issued by the LOFSA.

599. The non-STR provisions of Part IV of the AMLA including section 19 have not yet been invoked for a few categories of relatively minor non-bank financial institutions for which the BNM FIU is the AML/CFT supervisor (such as leasing and factoring companies, e-money issuers, etc). In addition, for some other categories of non-bank financial institutions (e.g. some non-bank remittance operators, non-bank charge and credit card issuers, moneylenders and Malaysia Building Society Bhd), the non-STR provisions of Part IV of the AMLA including section 19, have only been invoked in March 2007 and therefore cannot yet be considered to be implemented effectively. Hence the compliance and control aspects of the Standard Guidelines for those entities are not fully effective.

600. The BNM Standard Guidelines emphasise the importance of Board engagement and governance with respect to compliance functions but there are no specific provisions requiring the compliance officer to report to the Board or a senior management level above the compliance officer's next reporting level. However, the guidance on compliance for securities sector entities requires the compliance officer to report directly to the Board of Directors.

Recommendation 22

601. As a matter of practice, financial institutions in Malaysia consistently apply AML/CFT procedures and controls across all branches and/or subsidiaries, as required under the AMLA. In every branch and subsidiary of each financial institution, a designated compliance officer is required to be appointed, who reports in turn to the group or head office compliance officer.

602. Section 3 of the AMLA defines a 'reporting institution' as any person, including branches and subsidiaries outside Malaysia of that person, who carries on any activity listed in the First Schedule. Section 19(3) of the AMLA further requires a reporting institution to implement compliance programs under subsection (1) (regarding establishing internal programs, policies, procedures and controls to guard against and detect any offence under the Act), on its branches and subsidiaries in and outside Malaysia.

603. The inclusion of foreign branches and subsidiaries is reiterated in paragraph 2.1 of the BNM Standard Guidelines and section 2 of all the BNM Sectoral Guidelines. Where there is conflict between the Guidelines and the regulatory requirements of the host country, the more stringent requirements must be adopted, to the extent that is permitted by the host country's laws and regulations. In addition, reporting institutions are required to pay special attention to foreign branches and subsidiaries operating in countries which have insufficiently implemented the internationally accepted AML/CFT measures.

604. Paragraph 2.3 of the BNM Standard Guidelines requires that in the event that a reporting institution's foreign branch and subsidiary is unable to observe the more stringent requirements, including the reporting of suspicious transaction to the FIU due to prohibition of the host country's laws and regulations, the foreign branch or subsidiary must issue an exception report to the reporting institution, which must inform the BNM. In addition, the reporting institution should place additional AML/CFT controls on the respective foreign branch or subsidiary and should map out a timeline for it to comply with the requirements.

605. Section 2 of all the Sectoral Guidelines reinforces those requirements and further notes, for banking and insurance entities, that the Board of Directors may also consider ceasing the operations of the relevant branch or subsidiary that fails to observe the AML/CFT requirements or put in place the necessary mitigating controls as described above.

606. The BNM has not identified AML/CFT concerns in its regular on-site examinations of foreign branches and subsidiaries of banking institutions.

607. Although the non-STR provisions (e.g. relating to CDD, record keeping and compliance programs) of Part IV of the AMLA have not yet been invoked on a few non-bank financial institutions, and have only been recently invoked on some other categories, that does not appear to impair the effectiveness of the arrangements established for compliance with Recommendation 22, as those categories of entities for which full invocation has not yet occurred do not appear to have foreign operations.

608. Apart from the mandatory application of AMLA requirements to all branches and subsidiaries, there are currently no explicit requirements for reporting institutions in the banking, insurance and securities sectors to apply consistent CDD requirements at the group level, although that appears to be the practice in the banking sector, and the BNM banking supervision examination manual notes it as an element to be reviewed by examiners i.e. is expected to be in place as part of BNM's consolidated supervision approach.

3.8.2 RECOMMENDATIONS AND COMMENTS

609. The invocation of section 19 of AMLA on compliance programs occurred after the Evaluation Team visit for certain categories of financial institutions, including some non-bank remittance operators, non-bank charge and credit card issuers, the building society, and money lenders, funds managers and unit trust management companies, and has not yet occurred for a few other minor categories of non-bank institutions. It is therefore impossible to assess the effectiveness of implementation for those entities. Implementation is also difficult to assess for other categories of entities such as moneychangers where the BNM FIU does not yet appear to have exercised its full AML/CFT supervision powers.

610. Supervision should be undertaken to determine the extent of compliance with the newly invoked section 19 of AMLA for certain categories of financial institutions.

611. The section 3 (Interpretation) provisions of AMLA are in full effect for all reporting entities and the section 19 compliance requirements and respective guidelines are effective in respect of those entities with foreign branches and subsidiaries.

3.8.3 COMPLIANCE WITH RECOMMENDATIONS 15 & 22

	Rating	Summary of factors underlying rating
R.15	**LC**	• Uncertainties regarding effectiveness of implementation over entities for which by BNM FIU is responsible for compliance monitoring.
R.22	**C**	• The Recommendation is fully observed

3.9 SHELL BANKS (R.18)

3.9.1 DESCRIPTION AND ANALYSIS

612. There is no legislative provision that explicitly bans the existence of shell banks in Malaysia. However, in practice, BNM and LOFSA have effective legal powers and policies in place to ensure that shell banks are not permitted. Under section 4 of Banking and Financial Institutions Act 1989 (BAFIA), no person shall carry on banking business unless it is a public company incorporated in Malaysia and holds a valid licence granted under section 6 (4) of BAFIA to carry on such business. Furthermore, under section 15 of the BAFIA, no other institutions can use the word 'bank' without the written consent of the Minister of Finance. The legislative provisions and BNM's active supervisory framework and on-site examinations ensure that a physical presence is maintained for all licensed banks in Malaysia.

613. Section 7(3) of the Offshore Banking Act 1990 (OBA) provides that no person other than a licensed offshore bank, shall, without the written consent of the LOFSA, assume or use the words 'offshore bank' or any derivative of such words in any language capable of being construed as indicating the carrying on of offshore banking business by such person. The licensed offshore banks are required to maintain a physical presence in the Labuan IOFC. LOFSA's eligibility criteria for obtaining an offshore bank licence further ensure that no shell banks are permitted.

614. Paragraph 4.10.1 of the BNM SG1 and LOFSA SG1 prohibits a reporting institution from establishing or conducting any business relationship with shell banks while Paragraph 4.14.6 of the BNM SG1 requires the reporting institution to ensure that its correspondent banking relationships do not include any respondent institution that has no physical presence and which is unaffiliated with a regulated financial group, i.e. shell banks.

615. Paragraph 4.14.1 of the BNM SG1 requires that where the reporting institution has correspondent accounts with other respondent institutions, it should take the necessary measures to ensure that it is not exposed to the threat of money laundering and financing of terrorism through its accounts in these respondent institutions, such as being used by shell banks. The same requirements are repeated in the LOFSA AML Guidance. However, this wording is open to misinterpretation and it should be clarified, if the intention is that the requirement applies to correspondent bank accounts provided by Malaysian banks to respondent banks.

616. Commercial banks are aware of the requirements on them to comply with these elements of FATF standards in respect of their correspondent/respondent banking business, and the BNM examinations include some general procedures with respect to correspondent banking arrangements. The detailed new requirements set out in BNM SG1 regarding shell banks, which have been in place since November 2006, appear to have been implemented by banks.

3.9.2 RECOMMENDATIONS AND COMMENTS

617. The effect of the BAFIA and OBA provisions and the BNM and LOFSA supervisory practices is to prevent the operation of shell banks in Malaysia. Banks are aware of requirements for, and appear to have implemented, arrangements to prevent the correspondent bank accounts they provide to other banks being misused by shell banks.

618. The Authorities should consider re-wording of section 4.14 of BNM guidelines SGI if it is intended that the requirement applies to correspondent bank accounts provided by Malaysian banks to respondent banks.

3.9.3 COMPLIANCE WITH RECOMMENDATION 18

	Rating	Summary of factors underlying rating
R.18	**C**	• This recommendation is fully observed.

Regulation, supervision, guidance, monitoring and sanctions

3.10 THE SUPERVISORY AND OVERSIGHT SYSTEM - COMPETENT AUTHORITIES AND SRO's ROLE, FUNCTIONS, DUTIES AND POWERS (INCLUDING SANCTIONS) (R.23, 29, 17 & 25)

3.10.1 DESCRIPTION AND ANALYSIS

Recommendation 23, 30, 29, 17, 32, & 25

Authorities' /SROs' roles and duties & structure and resources - R.23, 30

Recommendation 23

619. The Malaysian authorities have adopted a non-integrated approach to AML/CFT regulation and supervision of financial institutions in the banking, insurance and securities sectors (both domestic and offshore). The primary financial sector supervisory authorities (BNM, LOFSA and SC) also cover AML/CFT. The supervisors have powers of regulation, supervision and enforcement under the sector-specific legislation and guidelines. The AMLA also provides some supporting powers to the relevant supervisory authorities (section 21) and provides powers for the BNM to enforce compliance over all reporting institutions (section 22). Section 25 of the AMLA empowers BNM to authorise any examiner to perform examinations for AML/CFT on any reporting institution. For this purpose designated officers in FIU in BNM are appointed to carry out AML/CFT supervision for a small number of categories of non-bank financial institutions not covered by the BNM supervision departments for AML/CFT obligations.

620. The table below summarises the allocation of responsibilities for supervision, regulation and AML/CFT requirements across the financial sector as a whole.

Table 26: regulatory and supervisory authorities for financial institutions

Regulatory Authority, and responsible AML/CFT agency	Reporting Institutions
Bank Negara Malaysia (BNM)	Commercial Banks; Investment Banks; Islamic Banks; Discount Houses; Insurance Companies; Reinsurance Companies; Insurance Brokers; Insurance Financial Advisory Business; Takaful Operators (Islamic insurance); Bank Kerjasama Rakyat (People's Cooperative Bank); Bank Simpanan Nasional (National Savings Bank); Bank Pertanian Malaysia (Malaysia Agricultural Bank); Non-bank Affiliated Charge and Credit Card Issuers; Bank Perusahaan Kecil & Sederhana Malaysia Berhad (Small and Medium Enterprise Bank); E-money Issuers; Money Changers; Non-bank Remittance Operators;
Labuan Offshore Financial Services Authority (LOFSA)	Offshore Banks; Offshore Insurance Companies; Offshore Trust Companies; Offshore Listing Sponsors; Offshore Trading Agents;
Prime Minister's Department BNM FIU (AML/CFT)	Lembaga Tabung Haji (Pilgrims Fund Board)

Malaysia Communication & Multimedia Commission BNM FIU (AML/CFT)	Pos Malaysia Berhad (Malaysia Postal Services)
Securities Commission of Malaysia	Stockbrokers; Futures Brokers; Unit Trust Management Companies; Fund Managers; Futures Fund Managers;
Ministry of Housing & Local Government BNM FIU (AML/CFT)	Money Lenders (Peninsular Malaysia)
Sabah State Ministry of Finance Labuan Authority BNM (AML/CFT)	Money Lenders (Sabah & Labuan)
Sabah State Ministry of Finance BNM FIU (AML/CFT)	Sabah Credit Corporation
BNM FIU (AML/CFT)	Leasing and Factoring Businesses**; Malaysia Building Society Bhd; Borneo Housing Mortgage Finance Berhad

** Only required to register/obtain written acknowledgement from BNM.

621. AML/CFT supervision powers under section 21(1) of the AMLA empower the relevant supervisory and regulatory agencies to -

- adopt measures to prevent unsuitable persons from controlling, or participating in the directorship, management or operation of the reporting institution;
- regulate, supervise and examine, reporting institutions to confirm their implementation of obligations under AMLA;
- issue guidelines to assist reporting institutions in detecting suspicious pattern of behaviour in their clients; and
- co-operate with enforcement agencies in any investigation, prosecution or proceedings relating to any unlawful activity or offences under the AMLA.

622. The BNM FIU consults with the relevant regulatory and supervisory authorities (or SROs where they exist for DNFBP) of the reporting institutions before recommending to the Minister of Finance to invoke the requirements under Part IV of the AMLA on reporting institutions. The BNM FIU has conducted briefing sessions for reporting institutions to clarify issues and resolve problems relating to AMLA implementation.

Financial institutions supervised by Bank Negara Malaysia

623. BNM is the primary regulator of the banking and insurance sectors under the BAFIA, Islamic Banking Act 1983 (IBA), Development Financial Institutions Act 2002 (DFIA), the Insurance Act 1996 (IA) and the Takaful Act 1984 (TA). BNM supervision includes off-site and on-site supervision.

624. BNM supervision departments work closely with the BNM FIU in supervising financial institutions for AML/CFT. BNM Supervision Department provides the BNM FIU with copies of supervisory examination reports which identify AML/CFT compliance issues. The BNM FIU is invited by BNM Supervision Department to be present at closing meetings of onsite examinations with reporting institutions. The BNM FIU receives copies of follow-up letters/actions to correct issues identified in examinations or from offsite surveillance, and updates that information into its AML/CFT compliance database.

Institutions supervised by the Securities Commission (SC)

625. The SC regulates Malaysia's capital markets and supervises the activities of market institutions and all persons licensed under the SIA and the FIA. The SC conducts regular and targeted onsite examinations. The SC works closely with the BNM FIU and provides copies of examination reports, and details of actions taken arising in instances of less than full compliance.

626. The SC is responsible for encouraging and promoting self-regulation by market institutions in the stock broking and futures broking industries. The various market institutions under the Bursa Malaysia Group, which act as frontline regulators, are empowered by their rules to conduct periodic inspection/audit on their participants.

627. The routine inspection and audit conducted by the SC and Bursa Malaysia cover the range of obligations imposed on the stock broking companies and futures broking companies as required under the AMLA and the AML/CFT guidelines issued by the SC. In addition, the SC takes an oversight role in the supervision and inspection functions of Bursa Malaysia.

Offshore financial institutions supervised by LOFSA

628. Under section 4 of the LOFSAA, LOFSA has powers to regulate and supervise any services provided by any person licensed or registered under the OBA, OIA or any other law relating to offshore financial services. LOFSA adopts a risk-based approach to supervision including monitoring the financial condition and operating soundness of the offshore financial institutions (OFIs). Both on-site examinations and off-site surveillance are conducted on OFIs.

Reporting entities supervised by the BNM FIU

629. The BNM FIU has not yet undertaken onsite supervision for AML/CFT of the reporting institutions under its ambit. Off-site monitoring of some categories of reporting institutions has commenced using self-assessment questionnaires. The FIU has requested internal audit reports from several larger entities under its supervision. However, in the absence of on-site verification, and noting the potentially high risk nature of these less-well regulated entities (for example, money changers), it is by no means clear that the FIU AML/CFT supervision to date is adequate to ensure that the AML/CFT risks across the various entities/sub-sectors are being effectively managed and controlled.

Inspections by Bursa Malaysia

630. Bursa Malaysia Rule 1203 provides powers to Bursa Malaysia to conduct on and offsite inspection of stock broking companies and futures broking companies. On site inspection takes place on a three-year cycle and compliance inspection/audit reports and actions taken against the participants, if any, are shared with the SC.

Recommendation 30

Bank Negara Malaysia

631. Four BNM departments are responsible for supervision of banking, insurance/takaful and prescribed development financial institutions including monitoring and supervising AML/CFT compliance by the institutions. These

departments appear to be adequately staffed (a total of 383 supervisors) to discharge their roles. The supervision departments have their own separate operational budgets funded by BNM. The BNM appears to have adequate resources committed to the line supervision departments to conduct AML/CFT compliance monitoring for banking and insurance entities.

632. All staff of BNM are employed under the CBA and subject to the preservation of secrecy obligation under section 16 of the CBA and BNM's Code of Conduct. The Official Secrets Act also provides for secrecy obligations on classified matters. As a condition of employment, BNM employees undergo background checks, declarations of financial position and police checks.

633. BNM's supervisors appear to be well trained and have undergone comprehensive training on AML/CFT supervision. AML/CFT reference points have been established within the four supervision departments to provide in-house consultation on AML/CFT supervisory issues.

FIU in BNM

634. The BNM FIU has 25 staff over five sections. A significant proportion of the 25 staff are involved in the Intelligence management functions. See Section 2.5 for overall details of FIU structure and resources.

635. The BNM FIU Compliance Section appears to have limited resources at this stage to supervise the range and number of entities (NBFIs and DNFBP) for which the FIU is the responsible supervising authority for AML/CFT.

Securities Commission

636. The SC is adequately structured and resourced with a dedicated Division of 103 supervisors. The supervisory staff of the SC appear to be skilled and well trained. Staff are subject to ongoing regimes of integrity.

637. SC staff receive training on AML/CFT through external programs, training with the FIU and the Certified Financial Investigators Programme. A list of training attended by the SC staff is sent to the FIU each year. AML/CFT compliance issues and the requirements of the AMLA and SC Guidelines are incorporated into training programs run by the Securities Industry Development Centre (SIDC), the education arm of the SC, which is responsible for promoting education in the capital market as well as the staff of the SC.

Bursa Malaysia

638. Bursa Malaysia's inspection team includes 18 members to carry out inspections of 34 brokers. It is not clear, however, that sufficient training support on AML/CFT has been provided to Bursa Malaysia inspection staff.

LOFSA

639. The LOFSA Supervision and Enforcement Division (SED) is structured with five units, i.e. Banking Supervision (3 staff), Insurance Supervision (3 staff), Capital Market Supervision (3), Legal (2 staff) and AML Unit (1 staff) to discharge their prudential and AML/CFT supervision roles (responsible for 54 banks, 116 insurance companies and 20 trust companies). The five units report to the Director and Senior

Director of the SED. The LOFSA is funded largely through revenue from the incorporation and annual licensing fees and from interest free loans from BNM.

640. LOFSA staff are subject to a confidentiality agreement, confidentiality provisions under section 28B(6) of the LOFSAA and provide details on their financial position annually. LOFSA staff appear to be skilled and experienced, with a significant number of LOFSA staff being former staff of BNM or are on secondment from BNM.

641. LOFSA sets minimum AML/CFT training requirements for its staff. LOFSA staff attend domestic and international training on AML/CFT. Annual seminars and on AML/CFT have been organised by LOFSA and IBBM to train staff and OFI compliance officers.

642. There appear to be relatively limited resources within the LOFSA dedicated to AML/CFT monitoring and supervision having regard for the number of institutions it supervises. This may be hampering the LOFSA's ability to effectively monitor AML/CFT compliance. LOFSA's Supervision and Examination Division is seeking approval to increase its resources for AML/CFT supervision and monitoring.

Recommendation 29

643. Regulatory powers and sanctions are set out in the respective primary legislation applicable to each category of supervised institution and supervisory authority. In addition, section 21 of the AMLA provides for powers and sanctions specific to the relevant supervisory authorities. These included powers to examine and supervise the reporting institutions, and regulate and verify that a reporting institution adopts and implements their obligations (as set out in section 19 of AMLA).

644. Examination powers are available to the BNM supervision departments under section 69 of the BAFIA, for Islamic banks under section 31 of the IBA, for development financial institutions under section 82 of the DFIA, for licensed insurers and insurance brokers under section 99 of the IA and for Takaful operators under section 33(3) of the TA. These provisions include powers to the supervisor to conduct examinations on the books, documents, accounts and transactions of the institutions and its offices, branch and agency inside and outside Malaysia. Additionally, section 79 of the BAFIA extends the examination powers to related corporations of licensed institutions and to director-controlled institutions. The BNM Supervision departments provide copies of examination reports to the FIU.

645. Under section 126 of the SCA, the SC may, from time to time, without any prior notice, examine the books or other documents, accounts and transactions of a licensed person, including capital market intermediaries, the stock exchange and the central depository. SC reviews compliance inspection reports submitted by the frontline regulators (Bursa Malaysia) and carries out its own examinations and investigations. In addition to the on-site compliance inspections conducted by Bursa Malaysia, since the full invocation of AMLA in October 2005, the SC has conducted thematic examinations on the stock broking companies, amongst others, to supervise compliance with AMLA requirements. SC investigating officers are empowered to freeze or seize assets when they have reason to believe that an offence has been committed.

646. The LOFSA conducts on-site assessments of OFIs' AML/CFT compliance under sections 28B, 28C and 28D of the LOFSAA. The Evaluation Team notes a concern that section 28B of the LOFSAA, as currently in force, appears to constrain the powers of LOFSA to access information about individual customers of OFIs. However, LOFSA advise that in practice their on-site examinations have not been constrained in that respect to date. Draft amendments to the LOFSAA are expected to be passed in 2007 that would allow LOFSA to access such information if it is satisfied that such information is necessary for or incidental to its supervisory functions.

647. Section 25 of the AMLA also empowers the BNM to appoint any examiner to examine any reporting institution's records or reports kept at the institution's premises relating to Part IV obligations or any system used by the institution at its premises for keeping those records or reports. The examiners may take copies of records of transactions and ask questions. The powers of examination in sections 21 and 25 may be specifically used by the BNM FIU in respect of those reporting institutions for which the BNM FIU is the relevant supervisory authority i.e. where the financial sector regulators do not have AML/CFT responsibilities. Section 26 of AMLA provides for such examinations to include documents or information held by any person who is or was a director or officer, or client, or otherwise having business dealings with the reporting institution, or other persons who may have relevant information such as and auditor or solicitor of the reporting institution. The BNM FIU has not ordered any such examinations to date.

648. The relevant supervisory authorities are able to compel production or obtain access for supervisory purposes without the need for a court order. Apart from the legal impediment regarding the extent of access to bank customer information by LOFSA including during on-site examinations (see section 3.4 of this report), there are no other apparent constraints on the access of the supervisory authorities to documents or information related to accounts or business relationships or transactions.

Recommendation 17

649. A broad range of sanctions powers is available to the BNM FIU under the AMLA to address breaches of AML/CFT requirements. In addition, the SC, BNM and LOFSA can exercise their supervisory sanctions and powers for breaches of AML/CFT requirements, as compliance with the respective AML/CFT guidelines is enforceable under the various supervisory legislations.

FIU sanction powers under AMLA

650. While the BNM FIU has a broad range of sanctions powers available under the AMLA, they do not appear to have been invoked to date. This is a particular concern in relation to those entities that are not supervised for AML/CFT purposes by the BNM supervision departments, the SC or the LOFSA, and may be partly due to the gradual invocation of various AML/CFT requirements on those entities and the limited resources available in the BNM FIU for their supervision.

651. Under the AMLA, in the event of non-compliance, the following sanctions may be imposed on the reporting institutions by the BNM FIU.

a) *Administrative sanction*

652. Administrative sanctions range from demands for corrective action to compounded fines. BNM FIU may direct or enter into an agreement with any reporting institution that has without reasonable excuse failed to comply in whole or in part with the obligations in Part IV of the AMLA, to implement any action plan to ensure compliance with its obligations (AMLA section 22(3)).

653. Section 92 of the AMLA empowers the BNM FIU, with the consent of the Public Prosecutor, to compound any offence under the AMLA or under regulations made under the AMLA, by accepting from the person reasonably suspected of having committed the offence such amount not exceeding 50% of the amount of the maximum fine for that offence.

654. Compounding allows for an administrative penalty to be payable by the offender as an alternative to prosecution. The AMLA enforcement framework (AEF) sets out proposed proportions of compound fines under the AMLA, varying for the different offences under AMLA and may range in severity from RM50,000 to RM500,000. Compounded fines may be imposed in addition to other administrative sanctions or requirements for corrective action to be undertaken, and the AEF indicates that continuing offending would be more likely to warrant prosecution action.

655. In more severe cases, Section 21(2) of the AMLA empowers the licensing authority of a reporting institution to, upon the recommendation of the BNM, revoke or suspend the reporting institution's licence if it has been convicted of an offence under the AMLA.

b) *Civil sanction*

656. The BNM is empowered under section 22(2) of the AMLA to obtain an order against officers or employees of a reporting institution that has failed without reasonable excuse to comply in whole or in part with any obligations under the AMLA, on such terms as the Court deems necessary to enforce compliance.

c) *Criminal sanction*

657. A range of criminal sanctions is available under the AMLA. The general offence provision is set out in section 86, whereby any person who contravenes any provision of the AMLA, or the regulations or any requirements made under the AMLA commits an offence and shall on conviction, if no penalty is expressly provided for the offence under the AMLA or the regulations, be liable to a fine not exceeding RM250,000.

658. Section 87 provides for criminal sanctions against directors, controller, officers, partners, etc where an offence is committed by a body corporate or an association of persons. In such a case the officers are deemed to have committed that offence, unless they prove that the offence was committed without their consent or connivance and that they exercised appropriate diligence to prevent the commission of the offence. A natural person may be prosecuted even if the body corporate or association of persons is not convicted of the offence. A person is also liable for conviction for actions carried out by his agent or employee, unless he proves that the offence was carried out without his knowledge or consent and he took all reasonable precautions to prevent the act.

659. Any person who contravenes the reporting obligations shall, upon conviction, be liable to a fine not exceeding RM100,000 or imprisonment for a term not exceeding six months or both, and in the case of a continuing offence, a further fine not exceeding RM1,000 for each day during which the offence continues after conviction. Contravention of the AMLA Regulations may be sanctioned by a fine of up to RM1 million or imprisonment for a term not exceeding one year or both or be compounded under section 92 of the AMLA.

660. Contravention of the AML/CFT Guidelines which are issued under section 83 of the AMLA may be sanctioned under section 86 of the AMLA, (which refers to any specification or requirement made, or order in writing, direction, instruction or notice given in the exercise of any power conferred pursuant to any provision of the Act, or regulation made under it) and carries a fine of not exceeding RM250,000 or may be compounded under section 92 of the AMLA. There is a need to clarify the application of section 86 to guidelines issued under section 83.

661. The BNM FIU has established an AMLA Enforcement Framework (AEF) for entities it supervises for AML/CFT, which will be applied once supervision by the BNM FIU commences. The AEF is intended to provide a systematic approach to enforcement of compliance with the obligations under the AMLA, its regulations and enforceable guidelines. Under the AEF the BNM FIU will be able to determine the enforcement action after considering the nature and severity of breaches. The AEF provides for a process of escalation of sanctions.

Bank Negara Malaysia

662. BNM supervision departments have established an Informal Enforcement Action Framework (IEAF) for rectification measures and sanctions that can be imposed proactively. While the IEAF does not directly refer to AML/CFT compliance matters, BNM has advised that the IAEF is adopted for AML/CFT breaches. Under the IEAF BNM may require three forms of informal enforcement actions from the reporting institution, depending on the severity of the issues:

- Commitment (generally applicable to all examinations unless more severe actions are required)
  - A written undertaking in response to BNM 's recommendations contained in the examination report;
  - The reporting institution is to table the examination report to the Board of Directors and respond within six weeks on the rectification actions taken.

- Board Resolution
  - A formal resolution by the Board of Directors of the reporting institution to take certain steps; and
  - The identified weaknesses will be monitored, usually via progress reports.

- Letter of Undertaking (LOU)
  - Structured document signed by the institution's Board of Directors, undertaking to correct specific deficiencies and accepted by BNM.

663. If identified deficiencies have not been addressed adequately, BNM may exercise its administrative powers by withholding approval for introducing new

products, or the payment of dividends by the banking institution. Formal sanctions include general penalties (including fines and/or imprisonment) for breaches of the banking legislation and the Governor has powers to compound offences. BNM may recommend that the Minister revoke a licence issued under BAFIA or the IBA or restrict a licence or impose conditions on a licence.

664. Section 59 of IA and section 47 of TA provide the BNM with the power for enforcement and sanctions against the licensed insurers, insurance brokers and Takaful operators. Various sanctions may be applied (penalties and imprisonment) to the licensed insurers', insurance brokers' and Takaful operators' directors and employees for any breach of these Acts. Committing an offence under the AMLA could render the person in breach of 'fit and proper' requirements (section 70 of the IA and regulation 51 of the IR), which may be grounds for removing him/her from his/her management position. BNM may recommend to the Minister of Finance to suspend or revoke licences (section 31 of the IA and section 47 of the TA).

665. BNM indicated that the AML/CFT issues most commonly identified by supervisors and addressed to date were weaknesses in: KYC and enhanced due diligence procedures; management information systems and processes to monitor customer profiles and patterns of transactions; and the compliance officer role not being given sufficient importance in terms of resources and reporting to senior management/board.

666. The BNM supervision departments routinely exercise their administrative sanctions powers in respect of the rectification of deficiencies identified in examinations. BNM has provided examples of recent the steps taken, for example in respect of 37 supervisory actions letters on matters specific to AML/CFT deficiencies arising from the 104 on-site examinations conducted in 2006.

Securities Commission

667. Section 158 of the SCA and the licensing conditions of the reporting institutions state that it is a requirement for the institutions to comply with any guidelines issued by the SC, including those issued by the SC on AMLA obligations. The SC may bring criminal and civil actions against those who breach the SIA, FIA and SCA. In addition, the SC may impose administrative sanctions, which include reprimands, fines, and to publicly 'name and shame' the perpetrators. The SC has the power to hold 'reputational intermediaries' such as external auditors, corporate advisers and other professionals accountable in certain cases, not just the company itself or its directors. The SC also has the power to transfer the client's property and monies to a trust account, etc. under certain circumstances where the SC deems necessary.

668. Generally, the enforcement powers of the SC are as follows:

a) Administrative sanction include directive to rectify non-compliance, refusing approval for corporate proposals, reprimands or revocation or suspension of licence.

b) Civil sanction – include restraining orders, appointment of receivers, vesting securities in a trustee, winding up, disgorgement of profits, etc, which are taken under Section 100 of the SIA.

c) Criminal sanction – Under the SCA, an offender is liable on conviction for a fine of not less than RM1 million or imprisonment of up to 10 years or both depending on the offence. Types of offence include front running activities, insider trading, etc.

669. The Chairman of the SC may, with the consent of the Public Prosecutor, compound any offence committed under the SCA or SCA regulations, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.

670. The SC has commenced on-site examinations including AML/CFT compliance in 2006, and has issued administrative actions in several cases, including at least one monetary penalty.

LOFSA

671. Sanctions available to LOFSA range from administrative letters through to compounding offences, criminal prosecution and removal of licence. The LOFSA issued its AML/CFT guidelines under section 4(5) of the LOFSAA. OFIs which fail to comply with direction issued under section 4(5) shall be guilty of an offence and shall be liable, on conviction, in the case of an individual person, to a fine not exceeding RM250,000 and in the case of a body corporate or partnership, to a fine not exceeding RM500,000.

672. LOFSA supervisors are given general powers under section 37 of the LOFSAA to make regulations and impose criminal liabilities for contravention of the regulations and imposition of penalties not exceeding RM25,000 for any offence thereunder. Section 36B empowers the Director-General, with the written consent of the Public Prosecutor, compound any offence punishable under the LOFSAA. Section 28B of the LOFSAA provides that the failure of any OFI to comply with the supervisors' requirement to submit relevant information shall amount to a criminal misconduct where it may be liable, upon conviction:

- in the case of an individual person, to a fine not exceeding RM1.5 million and/or an imprisonment term not exceeding three years; and
- in the case of a body corporate or a partnership, to a fine not exceeding RM3 million.

673. Section 36C of the LOFSAA imposes criminal liability on the director, officer or controller of the OFI who has been found guilty of an offence perpetrated during the tenure of his office.

674. The Minister may, on the recommendation of the LOFSA, revoke the licence of an offshore bank for breaches of any provisions of its licence of any written law; or of an offshore insurance company if it has contravened any condition of its licence or any provision of the OIA.

675. LOFSA has advised that it has exercised administrative sanctions to require corrective action in respect of weaknesses identified in AML/CFT systems and compliance in OFI.

Recommendation 23

***Market* entry**

676. A general power is provided to the supervisory authorities under section 21(1) (a) of the AMLA to adopt the necessary measures to prevent or avoid any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of the reporting institutions. In addition, each of the primary financial sector supervisory authorities has powers under sector-specific legislation.

Financial institutions supervised by BNM

677. For banking institutions other than DFI, the directors and senior management must satisfy the BNM that they are 'fit and proper'. Minimum standards are set by BNM regarding the quality of shareholders and management before a licence is issued. Powers available under section 56 of the BAFIA, section 7 of the DFIA and section 23 of the IBA allow the BNM to disqualify directors or officers concerned in the management of a banking institution, under specified conditions.

678. Under section 55 of the BAFIA, BNM's consent is required for a person to be a director of a licensed institution. Section 57 of the BAFIA further requires the licensed institutions to obtain BNM's approval for the appointment of the CEO. Section 56(1)(d) of the BAFIA precludes service of any officer concerned in the management of a licensed institution if they have been subject to any order of detention, supervision, restriction or punishment under any law relating to the prevention of crime or drugs or immigration.

679. The Revised BNM/GP1 sets out principles and minimum criteria for 'fit and proper' standards and requirements for sound corporate governance. Similar requirements are specified in sections 6 and 7 of the DFIA as well as BNM/DFI/GP4, and section 23 of the IBA as minimum criteria for the appointment of directors and CEOs and senior management officers.

680. Licenses and authorisations to carry out insurance and Takaful business in Malaysia are provided by the Minister of Finance upon the BNM's recommendation. Minimum standards must be met by these parties regarding quality of shareholders and management before BNM recommend granting authorisation or a license. These minimum standards include fit and proper requirements for directors and senior management. Under section 70 of the IA, BNM's consent is required for a person to be a director of a licensed institution. Section 71 of the IA sets out the circumstances where a person is ineligible to be appointed or accept appointment as a director, chief executive director, manager, secretary or other officer concerned in the management of a licensed institution. Section 31 of the TA provides that a managing director, director, chief executive, principle officer or controller of controller of a Takaful operation shall cease to hold office if he becomes bankrupt or is convicted of an offence involving dishonesty or fraud.

681. Part XII of the Insurance Regulations (IR) provides for the minimum criteria of a 'fit and proper' person to hold the position of a director, CEO or manager of an insurer. The JPI/GPI1 (Consolidated) issued by BNM require all insurers to ensure on an on-going basis that the directors, CEO and managers fulfil the 'fit and proper' criteria prescribed in Part XII of the IR and are not disqualified under section 71 of

the IA. Similar requirements for directorship for Takaful operators are provided under JPIT/GPT1.

Entities supervised by the SC

682. For licensing or annual renewal of licence, SC requires that all intermediaries, their shareholders, directors, management and their officers, will be subjected to the 'fit and proper' criteria as contained in the Schedule to the SIA and Regulation 11 of the FIR. The SC carries out external vetting with domestic agencies and regulators and with foreign regulators where applicable.

683. The SC monitors for breaches of guidelines, rules and regulations or changes in the status of relevant person when considering compliance with 'fit and proper' requirements.

Offshore Entities supervised by the LOFSA

684. All offshore financial service providers are required to be licensed prior to commencement of operations in the Labuan IOFC.

685. Labuan trust companies are required to register with the LOFSA under section 3 of the LTCA. Directors and officers of a trust company are required under section 4(2)(f) of the LTCA to be fit and proper persons and remain so through the term of their appointment.

686. OFIs are authorised or licensed by the Minister of Finance upon the LOFSA's recommendation. Minimum requirements must be met before the licence is issued, including LOFSA's approval of appointment of directors and principal officer. The OFI must satisfy the LOFSA that directors and officers are 'fit and proper' to hold their respective positions.

687. The OFIs are also subject to section 90 of the OCA, 'fit and proper person' requirements under section 5(ee)(iii) of the OBA, section 12A of the LOSIA, section 4(2)(f) of the LTCA, sections 6(1)(d) and 7(1)(a) of the OIA, and the LOFSA Guidelines on Fit and Proper Persons Acting as Directors/Controllers/Principle Officers, which require the controller, director and CEO to be a 'fit and proper' person. Under section 90 of the OCA, a person may be disqualified by the LOFSA from acting as director or promoter of, or being in any way directly or indirectly concerned with, or taking part in the management of, an offshore company if they have been:

- convicted of an offence in connection with the promotion, formation or management of corporation;
- convicted of any act involving fraud or dishonesty; or
- an un-discharged bankrupt or insolvent.

Other financial sector entities supervised by the BNM FIU

688. Each of the categories of reporting institutions currently has licensing or registration requirements under the jurisdiction of the respective regulatory or licensing authority (see table 26).

689. Money changers are licensed by BNM under the MCA. Section 32(1) of the MCA requires the licensees to obtain prior approval from BNM before appointing a director or an officer, who will have control of money-changing business. Section 32(4) of the

MCA provides for a sanction of RM50,000 upon conviction of a licensee who appoints a director or officer who fails to comply with the minimum criteria of 'fit and proper' as set out in the Second Schedule to the MCA.

690. Non-bank remittance operators are regulated under the ECA and the PSA. Under section 10 of the ECA, remittance service providers must obtain permission from the Controller of Foreign Exchange in BNM. Permission to operate remittance services is obtained on a yearly basis.

691. With respect to other non-bank financial institutions not mentioned above, money lenders are licensed under section 5 of the Money Lenders Act 1951; leasing and factoring businesses are scheduled business as defined under the Third Schedule and section 2(1) of the BAFIA and must be registered with BNM; and the Malaysia Building Society Berhad must likewise undergo notification to BNM.

692. Overall, as summarised in table 26, there appear to be effective licensing or registration arrangements in place for the categories of entities falling within the definition of "financial institutions" under the FATF standards. For entities in the banking, insurance and securities sectors, directors and senior management are evaluated on the basis of "fit and proper" criteria at the time of licensing and on an ongoing basis.

Ongoing supervision and monitoring

693. With respect to the banking, insurance and securities sectors, the current regulatory and supervisory measures that apply for prudential purposes and are also relevant for AML/CFT have been put in place in a similar manner for AML/CFT regulatory and supervisory purposes. The financial sector supervision framework for these entities aims to be consistent with the respective "core principles".

Financial institutions supervised by BNM

694. BNM supervises and monitors banking institutions' AML/CFT compliance as an element of wider prudential regulatory on site and offsite supervision. BNM applies the consolidated supervision approach in supervising the banking industry, consistent with the Basel Core Principles. BNM has provided guidance on best practices on these matters.

695. Ongoing surveillance of AML/CFT controls is conducted through the BNM's review of internal audit reports submitted by the reporting institutions. The scope of on-site examinations covers AML/CFT procedures and may be targeted from the review of banks' internal control questionnaires. BNM's risk based supervision incorporates shorter themed visits across several banks, including on AML/CFT issues.

Insurance industry

696. The BNM's off-site monitoring and on-site examinations of AML/CFT requirements for insurance and Takaful entities builds on the prudential supervision, identifying and mitigating areas of prudential, AML/CFT and operational risks in a manner which is generally consistent with the core principles.

697. The banking institutions' compliance with AML/CFT requirements is monitored and enforced by the BNM supervision departments as an integral component of the prudential regulation and oversight approach which includes both on-site and off-site supervision. BNM applies a consolidated supervision approach, consistent with the Basel Core Principles. The BNM's risk-based approach to supervision encourages financial institutions to address AML/CFT measures focusing on areas of high risk and establishing effective risk management systems, internal audit and corporate governance arrangements. Guidance on best practices is provided by BNM. Banks must also obtain BNM's prior approval to introduce new products or business lines or modify existing products, which provides a further opportunity for the applicant bank to outline the risk management and mitigation arrangements in place including AML/CFT risks for that product/business, for the BNM's review.

698. Ongoing surveillance of banks' AML/CFT procedures and controls includes the BNM's review of internal audit reports and internal control questionnaires submitted by the institutions. The scope of on-site examinations covers all aspects of AML/CFT procedures, with areas for special attention being identified from the review of banks' internal control questionnaires. Each bank's AML risk management structure, (including Board and management) policies and procedures, internal controls, management information systems and human resources capacity are assessed and rectification measures are imposed by BNM to address any weaknesses identified. The BNM's examination procedures manual outlines the expected standards and areas for review in reasonable detail, which also serves as a guide for each bank's board and management on appropriate measures to put in place. BNM's risk based supervision is also increasingly incorporating shorter themed visits across a number of banks, including on AML/CFT issues.

699. The BNM's supervision of insurance and Takaful entities likewise regulates and monitors the operations of those entities, with the objective of identifying and mitigating prudential, operational and AML/CFT risks in a manner that is generally consistent with the core principles. The respective supervision departments ensure the insurance and Takaful entities comply with the AML/CFT requirements through off-site monitoring and on-going supervision, and conduct on-site examinations based on the comprehensive AML supervision examination manual for insurance and Takaful entities.

700. The supervision arrangements established by BNM for banking and insurance entities appear to be sound and generally consistent with the respective core principles, integrating AML/CFT requirements into all aspects of supervision. Examination manuals and procedures will need to be updated for the latest guidelines and legislative amendments.

Inspections by Bursa Malaysia

701. Routine inspection and monitoring of stock broking companies and futures broking companies is conducted by Bursa Malaysia based on a three-year cycle. The SC takes an oversight role in the supervision and inspection functions of Bursa Malaysia, and receives a copy of the Bursa Malaysia compliance inspection/audit reports and actions taken against the participants, if any. Bursa Malaysia may take disciplinary action against its members for non-compliance with the BM's Rules.

However, if the matter involved a breach of securities laws or any other laws, it would be referred to the SC for further action.

702. The on-site inspections conducted by Bursa Malaysia cover the head office and branches of the market intermediaries and involve a review of books and records, and ascertaining the adequacy of policies, procedures and risk management systems inspections against Bursa Malaysia Rules include basic issues of beneficial owner identification and verification, 'Know Your Client', procedures on account opening, as well as record keeping, effectiveness of the compliance function and adequacy of senior management oversight and involvement. These, however, do not reflect the updated requirements under the AMLA and there is concern that earlier inspections concentrated mostly on form rather than substance of preventative measures and may not have detected underlying compliance problems in the sector.

Supervision by the Securities Commission

703. SC has overall responsibility for onsite and offsite supervision of AML/CFT measures implemented by the stock broking companies, futures broking companies and the exchanges. The SC Compliance and Risk-based Supervision (CRS) framework includes AML/CFT measures. SC has issued a self-assessment questionnaire on AML/CFT to gauge reporting institutions' internal control policies and procedures.

704. The SC commenced its program of on-site visits in 2006. It is planning to conduct an around 7 on-site inspections in 2007 including joint examinations with BNM of some of the newly approved category of investment banks (which includes broking business).

705. For the securities sector overall, the SC has strengthened both on and offsite AML/CFT supervision framework since invocation of AMLA requirements in 2005 and appears to be making good headway, supported by the compliance oversight carried out by Bursa Malaysia.

Offshore financial institutions supervised by the LOFSA

706. LOFSA's on-site examinations encompass assessment of corporate governance practices of the OFIs and evaluation of the quality and effectiveness of the management. The on-site examination is complemented by off-site surveillance, which includes a review of financial information and audit reports submitted by the OFIs. A self-assessment questionnaire on AML/CFT measures was issued to 163 OFIs in the latter part of 2006 and the results are intended to assist in targeting subsequent supervisory action but no information is available yet on the collated results or the nature of follow-up action proposed. LOFSA holds prudential meetings with the management of the OFIs and meetings with the internal auditors of the OFIs to discuss annual internal audit findings.

707. The extent to which LOFSA focuses on AML/CFT compliance on and off-site supervision is not clear. Most of LOFSA's supervisory efforts to date appear to have focused on off-site monitoring for prudential purposes and LOFSA may have relied, to some extent, on AML/CFT policies and procedures being imposed from the OFIs' parent institutions and home supervisory authorities.

708. In aggregate over the last 3 years, approximately 10% of the licensed OFIs have been subject to joint (with BNM) or stand-alone on-site examinations, which mostly incorporate AML/CFT components. The joint examinations with BNM supervision teams have only covered offshore entities which are branches or subsidiaries of domestic financial institutions supervised by BNM. The number of BNM/LOFSA joint examinations declined in 2006 as BNM's risk-based supervision approach has placed less importance on the Labuan-based operations of domestic entities, but LOFSA expects the number of joint examinations to pick up again in 2007.

Financial sector entities supervised by the BNM FIU

709. Table 26 outline the sectors which BNM FIU is responsible for monitoring regarding the AMLA compliance. Of this group, only money changers, Pos Malaysia and Pilgrims Funds Board were subject to all provisions of Part IV of the AMLA at the time of the Evaluation Team visit. For the other entities, the STR-related obligations have been in place for several months but the remaining elements of Part IV were invoked in March 2007. Leasing and factoring businesses were included as reporting institutions under the AMLA, and covered for STR-reporting obligations only, in March 2007.

710. The BNM FIU proposes to undertake both off-site surveillance and on-site examinations. Their supervisory approach is set out in the Work Processes and Procedures on Compliance Monitoring document. Off-site surveillance is conducted on the reporting institutions by assessing the reporting institutions' responses to the self-assessment questionnaire or, where available, evaluating the reporting institutions' internal audits report on AMLA compliance. The responses to the self-assessment questionnaire are reviewed and updated in the FIU compliance database.

711. In the case where the business are primarily cash-based (e.g. money changers, Pos Malaysia Berhad) or accept deposits (e.g. Lembaga Tabung Haji), the BNM FIU would request for the reporting institutions' internal audit report on their AMLA compliance, as part of its monitoring function.

712. Upon reviewing the self-assessment questionnaire or internal audit report, the BNM may then meet with the reporting institution to discuss its assessment findings and the proposed corrective action plan.

713. The effectiveness of the ongoing supervision of AML/CFT compliance for these other non-bank financial institutions appears generally weaker than for the entities subject to core principles-standards of supervision. No on-site examinations have been conducted by the BNM FIU to date on these entities and the offsite supervision, relying on self-assessment questionnaires and internal audits, appears to have been targeted at only a small proportion of the entities to date. Possible contributing factors are that not all of these types of entities are yet subject to the full AMLA obligations, and also the limited resources available in the BNM FIU Compliance Section.

Recommendation 32

714. A general power is provided to the BNM FIU, as the competent authority under the AMLA, to compile statistics and records as provided in section 8(3) of the AMLA. The financial supervisory authorities have also maintained statistics on the number of examinations conducted in recent years as set out in tables 28 to 32. There are no comprehensive statistics available on the sanctions imposed by the supervisory authorities.

Financial institutions supervised by Bank Negara Malaysia

715. Over the last four years, BNM has completed 326 on-site examinations of banking institutions. The majority of the examinations include AML/CFT assessments.

Table 28: Bank Negara Malaysia on-site examinations on banking institutions

INSTITUTION	2003	2004	2005	2006	Total
Commercial banks	39	47	39	53	178
Islamic banks	5	4	5	20	34
Finance companies	12	8	3	-	23
Merchant banks	9	5	5	19	38
Securities/stock broking	4	4	3	3	14
Discount house	3	7	-	-	10
Joint examination on offshore subsidiaries of Malaysian financial institutions in Labuan	2	2	4	-	8
Development Financial Institutions	4	5	3	9	21
Total number of compliance examinations	78	82	62	104	326

716. Over the last four years, BNM has completed 70 compliance inspections on insurance companies, insurance brokers and Takaful operators.

Table 29: Bank Negara Malaysia compliance examinations on insurance companies and Takaful operators

Institution	2003	2004	2005	2006	Total
Insurance Companies	20	7	18	12	57
Takaful Operators	1	1	2	1	5
Others**	4	1	-	3	8
Total compliance examinations	25	9	20	16	70

** Includes insurance re-insurers.

Entities supervised by the Securities Commission

Table 30: Compliance reviews by Bursa Malaysia

Number of inspections	2003	2004	2005	2006	Total
stock broking companies	16	16	17	12	61
futures broking companies	17	7	7	4	35

Table 31: Onsite audit by the Securities Commission

	2003	2004	2005	2006	Total
Audits on stock broking companies	-	-	-	8	8
Follow-up audits on stock broking companies	-	-	-	3	3

Offshore Entities supervised by the LOFSA

Table 32: Number of compliance examinations on offshore entities

	2004	2005	2006	Total
Number of examinations**	5	6	6	17
Number of prudential meetings	5	5	16	26
Issuance of self-assessment questionnaires	-	-	163	163

** Excluding joint examinations with BNM.

Table 33: Enquiries received by the Compliance Section of the BNM FIU

	2005	2006	Total
No. of enquiries from supervisors	7	9	16
No. of enquiries from reporting institutions	15	36	51
	22	45	67

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

717. As noted earlier, in considering Recommendation 25, the various AML/CFT guidelines can only be considered to the extent that the guidance is not considered enforceable.

718. In 2004, the FIU provided a comprehensive AML/CFT Compliance Handbook to reporting institutions which included copies of all relevant guidelines at the time, and copies of international standards, best practice advisories and some typologies examples. It included a set of Core Compliance Standards for AML/CFT. However, this Handbook is now out of date. It is understood that the next phase of the FINS system (expected to be rolled-out in 2007) will include the updated information. As

Table 33 shows, the BNM FIU Compliance Section has fielded an increasing number of inquiries from reporting institutions which has enabled it to provide guidance to those institutions regarding achieving compliance with the AML/CFT requirements imposed under the AMLA.

719. The BNM has included detailed AML/CFT sections in its on-site examination manuals for banking and insurance entities, which in effect provide some additional guidance on the issues that examiners will consider prior to, and during their visits. During the on-site examination, best practices are shared with the financial institutions. The financial institutions are advised to adopt the best practices as prescribed in the AML/CFT guidelines. The Insurance examination manual has been updated to reflect the new AML/CFT guidelines but updating of the Banking examination manual is still underway. Both manuals require updating to incorporate the March 2007 changes to the AMLA and new regulations.

720. The SC Examination Manual is not up to date and has not been made available to covered institutions to date. The SC issues guidance letters to outline for industry participants the expectations for a comprehensive AML/CFT program.

721. The industry associations in the banking and insurance sectors have, with the support of the BNM, established Compliance Officers' Network Groups (CONGs) to share information on AML/CFT developments and typologies. The BNM FIU is invited to attend the CONG meetings from time to time, which serves as a forum to discuss with the BNM the implications of new AML/CFT policy and legislative initiatives.

3.10.2 RECOMMENDATIONS AND COMMENTS

R. 23 and R.30

722. The effectiveness of implementation of the AML/CFT compliance monitoring and supervision framework has varied across the financial sector. BNM supervision departments have incorporated AML/CFT requirements into their supervision processes for some time and have an extensive program of on-site examinations of banking and insurance entities (see tables 28 to 29). Most of those examinations include an AML/CFT component. The SC has become actively engaged in AML/CFT compliance and on-site reviews from 2006. The relevant BNM banking and insurance supervision departments and the SC supervision and enforcement divisions appear to have adequate powers and be adequately structured, staffed and funded to carry out their prudential and AML/CFT monitoring, supervision and enforcement functions.

723. All of the supervisory agencies have made use of self-assessment questionnaires to encourage reporting institutions to evaluate their AML/CFT systems and any compliance gaps. The authorities may wish to consider reviewing the scope of the self-assessment questionnaire to obtain additional qualitative information in future.

724. The BNM Banking supervision examination manual sections on AML/CFT should be updated to be consistent with the latest Standard and Sectoral Guidelines.

725. LOFSA has adopted sound principles for on-site and off-site prudential supervision. LOFSA places significant reliance on internal audit reports and follow-up meetings with management to evaluate the effectiveness of OFIs AML/CFT compliance. LOFSA has undertaken a small number of on-site examinations each year (in addition the earlier relatively few joint examinations with BNM). LOFSA needs to strengthen its capability to conduct on-site examinations (independent of any possible joint examinations with BNM), and increase the coverage of AML/CFT issues in those examinations. Overall, the relatively limited resources within the LOFSA committed to AML/CFT monitoring and supervision, having regard for the number of institutions it supervises, may constrain the LOFSA's ability to ensure AML/CFT compliance by OFIs.

726. The BNM FIU Compliance section has developed an AMLA AEF document which outlines the roles and responsibilities for the BNM FIU to supervise and monitor NBFIs and DNFBP.

727. The BNM FIU Compliance Unit should consider undertaking risk-targeted on-site compliance examinations and themed visits of covered entities.

728. The BNM FIU has relatively few staff committed to its compliance monitoring responsibilities and Malaysia should consider committing additional staff resources to enhance the effectiveness of AML/CFT supervision of non-bank financial institutions and DNFBP.

729. Invocation of the non-STR (e.g. CDD and compliance) aspects of Part IV of the AMLA has not yet occurred for a few categories of small non-bank financial institutions and should be completed as soon as possible.

R.17 and R.29

730. A proportionate and dissuasive range of enforcement powers and sanctions is available to the authorities, though most actions taken to date appear to be of an administrative nature. Factors for the under-use of the sanctions framework include: the absence of any actions under AMLA provisions by the BNM to date; the relatively recent involvement of the SC in AML/CFT compliance actions; and the limited engagement with OFIs by LOFSA on AML/CFT compliance matters.

731. There was a limited ability to use regulatory powers and sanctions with respect to CFT compliance, prior to the additional AMLA CFT provisions being invoked in March 2007.

732. While contravention of the AML/CFT Guidelines may be sanctioned under section 86 of the AMLA, for the avoidance of doubt about the application of the offence provisions of section 86 of the AMLA in respect of guidelines issued under section 83, the authorities may wish to consider making explicit reference in section 86 to 'guidelines'.

733. To implement the AEF, the financial supervisory authorities and BNM FIU should share information on AML/CFT supervisory issues (enforcement actions, typologies and trends, and ensuring there are no gaps in coverage or effectiveness) and to

ensure that responsibility is clearly allocated for all types of corrective action over reporting institutions.

R. 25

734. The BNM FIU should ensure that reporting institutions have ready access to all relevant reference information, typologies, updated legislation, guidelines and other advisories, to replace the now outdated AML Compliance Handbook

735. The SC should update and consider making the relevant AML/CFT sections of the SC Institution Examination Manual available to securities entities to provide further guidance on expected best practices.

736. The AML/CFT Compliance Handbook should be updated and made available via the FIU website.

3.10.3 COMPLIANCE WITH RECOMMENDATIONS 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**LC**	• Uncertainties about implementation arising from limited use of sanctions actions other than administrative letters, and lack of sanctions actions initiated by BNM FIU over non-bank financial institutions.
R.23	**LC**	• Gaps in effectiveness of implementation of AML/CFT monitoring and supervision by BNM FIU and LOFSA • Invocation of the non-STR related AMLA Part IV requirements and the respective guidelines not yet completed for a few categories of non-bank financial institutions,
R.25	**LC**	• Guidance has not been updated consistent with current AML/CFT requirements.
R.29	**LC**	• Limited implementation of AMLA powers by BNM FIU over non-bank financial institutions • BNM FIU was unable to enforce CFT compliance until AMLA CFT amendment was invoked in March 2007. • Constraints on powers of LOFSA to access bank customer-specific information under OBA.
R.30	**PC**	• Insufficient resources available to BNM FIU Compliance Section to conduct on-site examinations of non-bank financial institutions and DNFBP. • Limited resources in LOFSA committed to AML/CFT compliance and on-site examinations.
R.32	**LC**	• Minimal statistics on supervisory actions taken by BNM. • This Recommendation is rated in more than one section

3.11 MONEY OR VALUE TRANSFER SERVICES (SR.VI)

3.11.1 DESCRIPTION AND ANALYSIS (SUMMARY)

Special Recommendation VI

737. Malaysia's economy is characterised by large remittance flows due to a variety of factors including the size, diversity and continued growth of its economy as well as large populations of overseas foreign workers and Malaysians living or working abroad. Figures provided during the onsite visit indicate that Malaysia's payment and remittance sector includes a significant informal remittance sector that is not subject to AML/CFT controls and which may pose vulnerabilities for misuse for money laundering and terrorist financing.

738. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Malaysia.

Formal licensed channels

739. BNM is responsible for monitoring all non-bank remittance operators to ensure their compliance with the licensing requirements as well as other obligations under the AMLA, ECA and PSA. Currently, the only entities permitted to carry out such business are banking institutions and five non-bank institutions. Non-bank remittance operators are supervised for AMLA compliance by the BNM supervision department.

740. With respect to those licensed remittance service operators other than commercial banks and Pos Malaysia Berhad (national postal service provider) provide inward and outward remittance services to various countries via the Western Union network. Pos Malaysia also provides International Money Order facilities.

741. BNM has taken steps to encourage low-cost remittance services for particular groups of overseas foreign workers. Licenses have been issued to four smaller remittance companies to provide outward remittance services solely for Nepalese and Bangladeshi nationals to remit funds back to those countries. Settlement of remittance funds by these companies is done via appointed commercial banks.

742. The obligations under Part IV of the AMLA have been invoked on BSN and Pos Malaysia with effect from 31 March 2004 and 31 March 2005 respectively (the STR reporting obligations took effect in both cases from 15 January 2003). The STR-related obligations (sections 14(b), 20 and 24) have also been invoked on the other non-bank remittance operators with effect from 10 August 2006, and the remainder of Part IV was invoked on the latter institutions in March 2007. All licensed non-bank remittance operators in Malaysia are subject to the obligations as set out under the BNM Standard Guidelines and BNM SG3 (issued in November 2006), where applicable, as well as other obligations under the relevant laws and regulations.

743. The detailed requirements with respect to wire transfers set out in BNM SG3 apply to all non-bank remittance operators. However, full implementation of the CDD,

record-keeping and compliance aspects of the guidelines and wire transfer requirements for the remittance operations other than BSN and Pos Malaysia is not yet certain as the relevant provisions of Part IV of the AMLA were not invoked for those entities until March 2007 and supervision of compliance with those requirements has not yet taken place.

744. BNM maintains a current list of the remittance operators, including their names and address. Under Paragraph 4.3.4 of the BNM SG3, each reporting institution is required to maintain a current list of its agents and this list should be made available to BNM upon request.

745. BNM requires non-bank remittance operators to submit external auditors' reports, latest audited accounts and management accounts for purpose of yearly renewal of permission. The document submission requirement was imposed in early 2007 under a new requirement for yearly renewal of permission.

746. Under section 34 of the PSA, BNM has the power to examine, with or without any prior written notice, the premises, apparatus, equipment, machinery, books or other documents, accounts or transactions of the non-bank remittance operators and any of its offices in or outside Malaysia. An on-site examination has been conducted on one licensed non-bank remitter to date including review of compliance with AML/CFT requirements.

747. The sanctions available to the BNM FIU under the AMLA as outlined under Recommendation 17 also apply generally in relation to non-bank remittance operators. No actions have been taken to date to sanction non-compliance.

748. The BNM's notification under section 44 of the ECA to licensed financial institutions with respect to freezing of funds of entities subject to UN SCR1267 does not appear to have been extended to non-bank remittance operators.

Informal remittances

749. It is apparent that remittance to/from Malaysia includes a significant portion of informal money value transfer activity that is not subject to applicable AML/CFT controls. The size of the informal remittance sector poses risks for ML and TF. The nature of the economy, the existing controls on export of currency and the small number of licensed non-bank remittance channels contributes to challenges for comprehensive AML/CFT regulation of money or value transfer services operating in Malaysia.

750. Information obtained during the Mutual Evaluation indicates that informal remittance channels in Malaysia are utilised by low income populations, including authorised and unauthorised foreign workers, for a number of reasons including lesser identification requirements; low fees; speed of transactions; geographic coverage of outward remittances; cultural preference; and a reliance on trust-based systems.

751. Authorities estimate that there are significant numbers of unregistered foreign workers in Malaysia and that a significant portion of outward remittance transactions by foreign workers (legal and illegal) is undertaken through informal channels.

752. As mentioned above, BNM has taken a number of measures since 2005 to migrate the informal remittances to the formal channel. The measures include:

- allowing non-banks to offer remittance services (5 licensees);
- active surveillance and enforcement on the illegal remittance operators;
- communication with the public to increase their awareness on availability of formal remittance services;
- allowing banks to appoint local agents to collect and disburse funds for remittances on behalf of banks; and
- support the ATM cross-border link initiatives. One provider has established links with its counterparts in Indonesia, Singapore and Thailand. The facility allows ATM cash withdrawals in the participating countries.

3.11.2 RECOMMENDATIONS AND COMMENTS

753. The BNM standard and sectoral guidelines for all licensed non-bank remittance operators were promulgated in November 2006, however, their implementation is not clear for those operators other than BSN and Pos Malaysia, as full invocation of Part IV of AMLA on those other remittance operators occurred after the Evaluation Team visit.

754. Effectiveness of the AML/CFT regime in respect of licensed non-bank remittance operators appears to be hampered by the limited degree of compliance monitoring by the BNM, as the responsible authority, which also negates the potential effectiveness of sanctions powers.

755. The BNM supervision department should conduct targeted on-site examinations of non-bank remitters.

756. The current system of relying primarily on sanctions against non-licensed activities does not appear to be effectively ensuring that remittance is undertaken through channels with proper AML/CFT controls.

757. The authorities should proceed without delay to ensure that the non-bank remittance operators are effectively included in the AML/CFT framework, including requiring checks against the UNSCR 1267 lists.

758. The authorities should undertake further study of the nature of informal remittance business carried out from Malaysia and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels. Such a review may seek to consider information from government and the private sectors and may include an outreach program to the informal remittance sector. The reviewers may wish to have regard to the experiences of other countries and typologies and best practices identified by international bodies including FATF, APG and World Bank for supporting better regulation of remittance for AML/CFT.

3.11.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	• Large scale unregulated remittance channels exist, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; • Limited implementation of CDD, record keeping and compliance provisions of AMLA as not invoked until March 2007 for certain non-bank remittance operators. • Limited implementation of AML/CFT compliance monitoring and sanctions by BNM over remittance operators. • Malaysia has not ensured that all MVT service operators are subject to applicable FATF Recommendations

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Scope of application of the AMLA requirements to the DNFBP sectors

759. The reporting obligations of the Designated Non-Financial Businesses and Professions (DNFBPs) are governed by the AMLA, the AMLA Regulations and the respective BNM Guidelines. The date of application of key parts of the law to each sector has varied, with the STR obligations having been phased in ahead of the CDD and other requirements (see following table).

Reporting institutions under the AMLA – DNFBPs

Reporting institutions	Number of entities	Invocation of sections 14(b), 20 and 24 of AMLA (STRs)	Invocation of remaining sections of Part IV of AMLA
Licensed Casino	1	15 January 2003	10 August 2006
Accountants	2,438	30 September 2004	10 August 2006
Advocates & Solicitors	13,155		
Company Secretaries	13,379		
Notaries Public	195	31 March 2005	
Trust Companies	18	10 August 2006	9 March 2007
Estate Agents	1,895		
Offshore Trust Companies	20	15 April 2002	15 April 2003
Dealers in precious metals and stones	3000 (approx)	Not yet invoked	Not yet invoked

4.1 CUSTOMER DUE DILIGENCE AND RECORD-KEEPING (R.12)

4.1.1 DESCRIPTION AND ANALYSIS

Recommendation 12

760. The requirements in relation to Recommendations 5, 6 and 8-11 that apply to financial institutions in general have been (or are planned to be) applicable to the various DNFBP sectors with effect from the dates shown in the second column of the above table (Enforcement of the remaining sections of Part IV). These obligations are addressed in the AMLA, the accompanying Regulations and the BNM Standard Guidelines. Additional requirements that are specific to the DNFBPs are laid down in separate Sectoral Guidelines (BNM SG5 and SG6) and are referenced in the following description where appropriate. Both the Standard and Sectoral Guidelines, which provide the detailed requirements, were only extended to the DNFBP sectors on 2 February 2007 and, therefore, an assessment of the effectiveness of their implementation is not possible at the stage of writing this report.

DNFBPs: respective governmental and self-regulatory agencies and applicable AML guidelines

Reporting Institutions	Governmental and self-regulatory agency	Applicable Regulations and Guidelines	Date invoked
Licensed Casino	Ministry of Finance (Gaming Unit) ***In relation to AML/CFT - BNM***	AMLA Regulations BNM Standard Guidelines BNM Sectoral Guidelines 5 for Licensed Casino	Mar 2007 Feb 2007 Feb 2007
Accountants	Malaysian Institute of Accountants ***In relation to AML/CFT - BNM***	AMLA Regulations BNM Standard Guidelines BNM Sectoral Guidelines 6 for DNFBP	Mar 2007 Feb 2007 Feb 2007
Advocates and Solicitors and Notaries Public	Malaysian Bar Council Advocates Association of Sarawak Sabah Law Association ***In relation to AML/CFT - BNM***	AMLA Regulations BNM Standard Guidelines BNM Sectoral Guidelines 6 for DNFBP	Mar 2007 Feb 2007 Feb 2007
Company Secretaries	CCM Malaysian Institute of Chartered Secretaries and Administrators Malaysian Association of Companies Secretaries ***In relation to AML/CFT - BNM***	AMLA Regulations BNM Standard Guidelines BNM Sectoral Guidelines 6 for DNFBP	Mar 2007 Feb 2007 Feb 2007
Trust Companies	Companies Commission of Malaysia ***In relation to AML/CFT - BNM***	AMLA Regulations *BNM Standard Guidelines*	Mar 2007
Registered Estate Agents	The Board of Valuers, Appraisers and Estate Agents Malaysia **In relation to AML/CFT – BNM**	AMLA Regulations *and BNM Standard Guidelines]*	Mar 2007
Offshore Trust Companies	LOFSA – overall and in relation to AML/CFT	AMLA Regulations LOFSA Standard Guidelines on AML/CFT	Mar 2007 Jan 2007

When CCD is required

761. While the various businesses and professions are listed generically under the first schedule to the AMLA, the exact circumstances in which they are captured by the AMLA requirements are specified in the invocation orders. The requirements for CDD are set out in the AMLA Regulations as well as in the BNM Standard and Sectoral Guidelines.

Licensed Casino

762. Malaysia has only one licensed casino. The casino licence and its terms and conditions are issued under section 27A of the CGHA by the Ministry of Finance. It is subject to the CDD requirements for all transactions of RM10,000 and above (see below).

Accountants

763. All practising accountants in Malaysia must be members of the Malaysian Institute of Accountants (MIA). Members of the MIA are reporting institutions under the AMLA if they hold valid practising certificates issued by the MIA and prepare for, or carry out, the following activities for their clients:

- buying or selling of immovable property;
- managing of client's money, securities or other property;
- managing of accounts, including savings and securities accounts;
- organising of contributions for the creation, operation or management of companies; or
- creating, operating or managing of legal entities or arrangements, and buying and selling of business entities.

764. Members of the MIA are also reporting institutions under the AMLA if they act as company secretaries, whether in person or through a firm or company, and prepare, or carry out, the prescribed activities for their clients.

Advocates and Solicitors, and Notaries Public

765. Each advocate and solicitor in Peninsular Malaysia is automatically a member of the Malaysian Bar as long as he/she holds a valid practising certificate. Members of the Malaysian Bar are subject to the Legal Profession Act 1976 (LPA), which is the principal Act governing the legal profession in Peninsular Malaysia, and all the rules and regulations made thereunder. For advocates in Sabah and Sarawak, they are governed by the Advocate Ordinance Sabah 1953 and Advocate Ordinance Sarawak 1953 respectively.

766. The AMLA reporting obligations have been invoked on advocates, solicitors and notaries public when they prepare, or carry out, the following activities for their clients:

- buying or selling of immovable property;
- managing of client's money, securities or other property;
- managing of accounts, including savings and securities accounts;
- organising of contributions for the creation, operation or management of companies; or
- creating, operating or managing of legal entities or arrangements, and buying and selling of business entities.

Companies Secretaries

767. Company secretaries are governed by section 139A of the Companies Act. Pursuant to this section, a company secretary can be regulated by the prescribed bodies such as chartered secretaries, accountants, advocates and solicitors; or by the Companies Commission of Malaysia (CCM) in the case of licensed company secretaries.

768. All company secretaries are subject to the AMLA reporting obligations when they, whether in person or through a firm or company, prepare or carry out the following activities for their clients:

- acting as a formation agent of legal entities;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal entities;
- providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal entities or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust; or
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

Trust Companies

769. Pursuant to section 4(1) of the Companies Act, a trust company means a company registered under the Trust Companies Act (TCA), or a corporation that is a public company under the Companies Act, or under the laws of any country and which has been declared by the Minister of Domestic Trade and Consumer Affairs to be a trustee corporation. Under section 3 of the TCA, any public company may apply to the Registrar of Companies to register the company as a trust company by fulfilling the conditions provided in this section. The CCM has established the Registration Guideline for application to register a trust company.

770. A trust company is established only to act as a fiduciary, trustee or agent for individuals and businesses in the administration of trust funds, estates and custodial arrangements. The AMLA provisions relating to CDD were invoked for the trust companies in March 2007, and required them to meet the AMLA obligations when they carry out the following activities for their clients:

- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or any similar position in relation to other legal entities;
- acting as (or arranging for another person to act as) a trustee of an express trust; or
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

771. It should be noted that the trust companies operating in Labuan do not fall within the scope of these provisions. They provide a wider range of services and are treated under the AMLA in the same manner as all other financial service providers

regulated by LOFSA. Therefore, the requirements and procedures described in part 3 of this report apply to the offshore sector.

Registered Estate Agents

772. Any person acting as estate agents must register with the Board of Valuers, Appraisers and Estate Agents Malaysia (BVAEA), which is under the purview of the Ministry of Finance, and registration is subjected to certain qualifications recognised by the BVAEA. These estate agents are permitted to provide a service in buying, selling and leasing of properties. The AMLA provisions relating to CDD were invoked for real estate agents in March 2007.

Offshore Trust Companies

773. All offshore trust companies operating in Labuan are licensed by LOFSA and must be members of the Association of Labuan Trust Companies (ALTC). Directors and officers of a Labuan Offshore Trust Company undergo fit and proper tests and must sit a written exam and interview by LOFSA before appointment. All offshore trust company directors or officers must be a member of another professional body (lawyer, accountant etc). The AMLA provisions relating to offshore trust companies were invoked in 2003. Offshore trust companies became subject to the LOFSA Standard Guidelines on AML/CFT in January 2007.

774. There were 20 licensed offshore trust companies operating in Labuan IOFC in January 2007.

Required CDD measures

775. As indicated above, the DNFBPs that have been brought within the broader AMLA framework are subject to the general requirements of the BNM Standard Guidelines in the same way as they apply to the financial sector. However, the respective Sectoral Guidelines (BNM SG5 and SG6) provide some additional specific requirements.

776. In the case of the casino, section 4.1.1 of BNM SG5 requires it to conduct CDD on customers engaging in any transaction totalling RM10,000 (equivalent to approx. USD2,725) and above in a single transaction or in several transactions that appear to be linked. In addition, when a customer requests that payments be made to a third party account for the amount equivalent to RM10,000 and above, the casino is required to ascertain the identity of the third party, the relationship between the third party and the customer and the purpose for the payment to be made in this form. The specific information required includes:

- full name;
- national registration identification card/passport number;
- permanent and mailing address; and
- reason for the payment.

777. The issuance of SG5 in February 2007 required the Casino to conduct CDD on Junket Operators and their customers. Genting casino had been undertaking this procedure as standard practice prior to SG5 being issued.

778. For all other DNFBPs, except for estate agents, currently captured under AMLA, the BNM SG6 applies. To supplement the requirements stipulated in the BNM

Standard Guidelines, the entities are required to obtain the following additional information when conducting CDD for individual customers:

- occupation type/self employed;
- name of employer or nature of self-employment/nature of business; and
- contact number (home, office or mobile).

The Genting Highlands Casino

779. As indicated, there is only one licensed casino in Malaysia established at Genting. It has 500 gaming tables, 4,000 gaming machines and receives in the region of 40,000-60,000 visitors per day. It is the practice of this casino to sell cash chips only at the gaming tables, rather than through a central cashier's cage. Where the casino receives bank-intermediated funds or large amounts of cash on behalf of clients, chip warrants, non-negotiable chips or plaques are issued to the clients for exchange at the table. The CDD process is undertaken at the point of issuing the warrants. The casino does not offer client accounts and does not permit gaming on credit.

780. Cheque-cashing service is available to selected premium clients with established gaming records. Authorities indicate that comprehensive CDD is conducted prior to cheque-cashing services being granted.

781. Because cash chips may only be purchased at the table, all CDD is undertaken on a transactions basis, including those clients introduced by a junket operator who purchases chips warrants, non-negotiable chips or plaques en bloc for distribution to individual clients according to their individual advanced payments for the tour. The casino operates three distinct zones with different limits in each. At the base level (access to which is available to all clients) the table limits are very substantially below the required CDD threshold, and appear to pose relatively little risk for money laundering. The mid and high level areas may only be accessed by members holding a silver, gold or platinum in-house loyalty card, which must be presented at the table on each occasion that a purchase of cash chips of RM10,000 and above is undertaken. Casino loyalty cards include the holder's photograph and contain a micro-chip that records the name, national identification or passport number, date of birth and address. Whenever a purchase of cash chips is undertaken the loyalty card is inserted into a reader and the value of the transaction is recorded centrally. While this system has been developed primarily to facilitate the operation of the loyalty program it also enables the casino to track their clients' records. At the mid-level the monitoring of individual bets can be done on an average basis, but in the high-level area a more accurate system of monitoring is employed.

782. A small number of the visitors to the casino are introduced by junket operators. The casino does not rely on the junket operators to undertake due diligence on their clients but instead conducts its own CDD on both the junket operators and the clients of junket operators. The casino is required to keep records of all those who arrive with such organised visits, and, as with all clients, only those who take out the casino in-house silver, gold or platinum loyalty card are permitted to enter the mid- and high-level gaming areas.

Clients of Genting Casino (as of April 2007)

	Number	% of total clientele
Total number of clients	1,954,099	100%
Genting World Card holders	1,949,782	99.78%
Clients of Junket operators	4,317	0.22%
Silver Card holders		4.10%
Gold Card holders		0.66%
Platinum Card holders		0.18%

783. Whenever a client requests cash-out in e-cash, cheque or wire transfer, a secondary process of CDD is required to be undertaken. In order to facilitate enquiries from the IRB repayments that are not shown to be winnings, but are simply reimbursement of the original stake, is each returned by a cheque clearly stamped to indicate that it represents a capital refund. A separate cheque is issued for any winnings.

4.1.2 RECOMMENDATIONS AND COMMENTS

784. The fact that the CDD provisions of the AMLA were not extended to parts of the DNFBP sector until August 2006, and the relevant guidelines were not introduced until February 2007, makes it impossible to assess the effectiveness of the implementation of these measures. This is compounded by the fact that some of these businesses and professions have no prior compliance culture in related areas. Therefore, it is important that the authorities should complete the process of extending the full AMLA requirements to all categories of DNFBPs, and institute a process to monitor implementation.

1.1.3 COMPLIANCE WITH RECOMMENDATION 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• AMLA requirements are only recently extended to the domestic trust companies and real estate agents. • AMLA requirements not yet invoked for dealers in precious metals and stones. • Very little evidence of effective implementation given the recent introduction of the CDD requirements

4.2 SUSPICIOUS TRANSACTION REPORTING (R.16)

4.2.1 DESCRIPTION AND ANALYSIS

785. As indicated in the table at the start of this section of the report, the STR obligation has been extended progressively to the DNFBP sectors since 2003. The domestic trust companies and registered estate agents were include most recently (August 2006) but the dealers in precious metals and stones still remain outside the framework. There is currently no set date for their inclusion. For the purposes of STR reporting, the AMLA and accompanying guidelines make no distinction between the activities which give rise to CDD and those to which the STR obligation is applicable. All STRs must be reported directly to the FIU, and there is no provision for involvement in the process by the relevant SROs.

786. Generally, the provisions relevant to Recommendations 14, 15, and 21 that apply to the financial institutions are also applicable under Malaysian law to the DNFBPs. However, in order to cater for the specific nature of these businesses and professions, Part 5 of the BNM SG6 stipulates specific requirements on AML/CFT compliance programs to be implemented by accountants, advocates and solicitors, notaries public and company secretaries, as follows:

> Part 5.1 – The partners, sole proprietor or the firm's senior management should be aware of the money laundering and financing of terrorism risk associated with the services provided by the firm. The role and responsibilities of the Board of Directors and senior management as stipulated under Part 10 of the BNM Standard Guidelines would be applicable to the partners, sole proprietor or senior management of the firm and there should be clear lines of responsibility and accountability to ensure that the AML/CFT requirements are set out accordingly;
>
> Part 5.2 – For the purpose of administrative efficiency, the responsibility of implementing the AML/CFT internal procedures and controls may be assigned to a partner within the firm, who would assume the role and responsibility of a compliance officer as specified in the BNM Standard Guidelines. However, each reporting institution remains ultimately responsible for its reporting obligations under the AMLA; and
>
> Part 5.3 – In relation to the independent audit function, the reporting institution may appoint anyone of its employee who is 'fit and proper' to carry out appropriate independent audit function to check that the internal procedures on AML/CFT are implemented satisfactorily.

787. For the licensed casino, in addition to the compliance program obligations stipulated in the BNM Standard Guidelines, the licensed casino is also required under section 5.1.3 of the BNM SG5 to put in place proper procedures for ensuring that all payments are made only to genuine players.

The number of STRs filed in total by DNFBPs

	2002	2003	2004	2005	2006
Licensed casino / licensed gaming outlets	Not invoked	3	42	18	39
Lawyers, accountants, company secretaries	Not invoked	-	3	5	1
Trust companies	Not invoked	Not invoked	Not invoked	Not invoked	-
Real estate agents	Not invoked	Not invoked	Not invoked	Not invoked	-
Offshore Trust Companies	0	0	0	0	0

788. These figures are very low, but also appear to overstate what may be regarded as genuine STRs for the casino sector. Here the reports are generated from a narrow set of defined characteristics, rather than from any subjective analysis of whether the transaction is genuinely suspicious, and in practice they are tantamount to unusual transaction reports, based upon very limited criteria. The very low number of reports from the legal, accounting and company secretary sectors may be attributed in part to a widespread lack of awareness of the requirements. The legal profession considers that section 20 of the AMLA overrides the principle of legal privilege, but has decided not to challenge the authorities on this, preferring to monitor the implementation of the requirements to see if any fundamental problems arise for the profession.

4.2.2 RECOMMENDATIONS AND COMMENTS

789. The extremely low level of STRs from the professions, and the nature of the reporting from the casino sector give rise to serious questions about the effectiveness of the current regime. Unlike the CDD requirements, the obligation to file STRs has been in place for the casino since 2003, and for the lawyers, accountants and company secretaries since 2004/05. Therefore, it might be expected that the level of implementation would be more clearly established.

790. Malaysian authorities should undertake an awareness campaign within the DNFBP sector, and seek to institute the compliance monitoring program as soon as possible, in order to determine the cause of the apparent under-reporting.

791. The same factors that have been referenced under Recommendation 13 as falling short of the FATF requirements apply equally to the DNFBPs i.e. the limitation of the reporting obligation based on the list of predicate offences, and the lack of an explicit obligation to file STRs in relation to terrorist financing.

4.2.3 COMPLIANCE WITH RECOMMENDATION 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	• Obligations not yet extended to dealers in precious metals and stones • Limited scope since not all the required predicates offences for STR reporting are included within the schedule to AMLA • No explicit obligation in law or regulation to report suspicions of terrorist financing • Major doubts about the level and effectiveness of implementation

4.3 REGULATION, SUPERVISION AND MONITORING (R.24-25)

4.3.1 DESCRIPTION AND ANALYSIS

Recommendation 24

792. The BNM FIU is responsible for monitoring and ensuring the DNFBPs' compliance with AML/CFT requirements under the AMLA, and has adequate powers for those purposes under sections 21, 22 and 25 and other appropriate provisions of the AMLA. Adequate supervisory powers and sanctions over DNFBPs are also available to the BNM, as set out under Recommendations 29 and 17 above.

793. The table of DNFBPs designated as reporting institutions in the introduction to this section of the report sets out the dates of invocation of the AML requirements on each type of DNFBP.

Licensed Casino

794. Malaysia has to date issued only one casino licence, to the Genting Highlands Casino (the Casino). Internet gambling is prohibited in Malaysia and offenders can be prosecuted under sections 4, 5 and 6 of the Betting Act (BA). The Casino is licensed and regulated by the Ministry of Finance under section 27A of the CGHA. Its licence is renewable quarterly, subject to terms and conditions which, amongst others, set out the validity of the licence and obligations of the licensee. The operations of the licensed casino are subject to monitoring and onsite supervision of compliance with the conditions of its licence (but not on AML/CFT matters) on a daily basis by officials from the Ministry of Finance.

795. The responsible supervisory authority for AML/CFT monitoring and compliance is the BNM FIU, which has adequate powers under sections 21, 22 and 25 and other appropriate provisions of the AMLA to carry out compliance monitoring and examination. Part IV of AMLA and the relevant guidelines are fully invoked for the casino. When the final (non-STR) obligations in Part IV of the AMLA were invoked on the licensed casino on 10 August 2006, the BNM issued an AML/CFT self-assessment questionnaire to the Casino to enable it to assess its internal AML/CFT

program and to ascertain if the program is comprehensive and effective in addressing the requirements of the AMLA and related guidelines issued by the BNM.

796. The Casino also conducted an internal audit review of its AMLA procedures in May 2006. The internal audit review addressed material operational, information and compliance risks to ensure that the casino operation is running in accordance with the internal AMLA control procedures. A copy of the internal audit report was forwarded to the BNM for information.

797. Adequate supervisory powers and sanctions over the casino are available to the BNM as set out under Recommendations 29 and 17 above. However, no on-site examination of the casino has been carried out to date for AML/CFT purposes. On-site visits would assist the FIU in BNM as supervisors to better understand the nature of the casino business, the AML/CFT risks it poses, and the implications of the current rule-based identification of STRs. The BNM has not found any need to exercise AML/CFT sanctions over the casino to date.

798. The terms and conditions of the casino licence specify that the licensee shall not cater for, assist, employ or associate with either socially or in business affairs persons of notorious or unsavoury reputation or who have previous convictions, or persons who are associated with or support subversive movements, and shall on the request of an officer of the Ministry of Finance, cease to employ any person who is considered to prejudice the compliance with the conditions of licence or the reputation of the casino. Further, section 21 of the AMLA provides that the supervisory or licensing authority of a reporting institution may adopt the necessary measures to prevent or avoid having any person who is unsuitable from controlling, or participating, directly or indirectly, in the directorship, management or operation of the reporting institution.

799. The legal framework for licensing and oversight of the casino appears to be adequate. However, it appears that the BNM FIU is relying for effectiveness of compliance purposes on the self-assessment questionnaire and an internal audit conducted prior to the issuance of the sector-specific guidelines or requirements. The BNM FIU has not conducted any on-site examination of the casino but has been in close consultation with the casino and Ministry of Finance regarding the implementation of AMLA obligations including STR reporting and AML/CFT compliance procedures. Guidance has been provided to refine the rules-based STR reporting process, although some potential weaknesses remain.

Accountants, Solicitors, advocates, Notaries and Company secretaries

800. The professional self regulatory organisations (SROs) (MIA, MBC, MAICSA) do not have direct responsibility for AML/CFT compliance but have issued guidance to their members and cooperate with the BNM to enhance the awareness of best practices and maintenance of good standards of compliance within their industries. The SROs have disciplinary powers against their members and may consider whether suspension or disqualification from membership was appropriate, for example on the recommendation of BNM following a conviction under the AMLA.

801. The BNM conducts its compliance monitoring primarily through off-site supervision, but it may if necessary exercise on-site supervision through its

examination powers under section 25 of the AMLA. The FIU in BNM has documented its operational Work Processes and Procedures (WPP) for AMLA Compliance Monitoring. Initially, off-site surveillance is conducted on DNFBPs by assessing the responses to the AML/CFT self-assessment questionnaire. Where appropriate, the BNM works in consultation with the respective self regulatory authorities which have the expertise and in-depth industry experience in dealing with these reporting institutions. In view of the large numbers of professional DNFBPs, the self-assessment questionnaire is issued to targeted reporting institutions on depending for example on the size of the reporting institution, nature of the business and geographical area, and any relevant information provided by the various authorities and other reporting institutions.

802. The responses to the self-assessment questionnaire are reviewed and updated in the BNM's compliance database. After reviewing the self-assessment questionnaire, the BNM may meet with targeted reporting institutions (on a selective basis) to discuss its assessment and to obtain the intended action plan and timeframe in which the institution will undertake to address the non-compliance issues, if any. The BNM will monitor progress in implementing the action plan and, if need be, would conduct an on-site visit to the reporting institution to confirm and verify the on-going status of the action plan. No onsite examinations to confirm the DNFBPs AML/CFT compliance have been conducted to date.

803. In addition to the powers provided to BNM under the AMLA, the CCM has extensive monitoring, investigation, examination and enforcement powers under the CA'65 which may be used in some instances, for example in respect of licensed company secretaries and trust companies, and in investigating the relevant predicate offences listed in schedule 2 of the AMLA. The CCM is restructuring its Legal and Enforcement functions including strengthening resources committed to investigations on companies, including trust companies, based on complaints and proactive investigations. There will be a designated team with 11 investigation officers under the Special Project Unit which will handle AML matters.

Other categories of DNFBP

804. Domestic-based trust companies and registered real estate agents have had the STR-related obligations under AMLA in place from August 2006. The remaining AMLA Part IV requirements were invoked on 9 March 2007. The BNM was therefore constrained from exercising full compliance monitoring and enforcement over these entities using the powers available under AMLA prior to March 2007. The BNM will need to engage further with the industry representatives, conduct outreach to the sector and effectively activate its WPP compliance monitoring program.

805. Offshore trust companies have been subject to the full AMLA requirements since April 2003. The LOFSA Supervision and Examination Department is developing a supervisory framework for offshore trust companies. A self-assessment questionnaire on AML/CFT measures was issued to all trust companies in September 2006. The LOFSA Guidelines on Trust Companies was issued in January 2005, among others, covers AML requirements (Part IX). All offshore trust companies must be members of the industry association, the ALTC, which coordinates communications between LOFSA and ALTC members including regular

information exchange meetings and disbursement of advisories and guidelines from LOFSA.

806. With respect to dealers in precious metals and stones, there are no AML/CFT requirements or AMLA powers invoked at present. The FIU in BNM has commenced discussions with industry representatives in the Federation of Goldsmiths and Jewellers Association of Malaysia with the objective of including those types of business as reporting institutions, (subject to deminimis thresholds for CDD in respect of cash purchases of gold and jewellery) in the near future. It is estimated that there are around 3,000 entities conducting such business in Malaysia, with the larger businesses involved in both manufacturing and retailing.

Recommendation 25 (Guidance for DNFBPs other than guidance on STRs

807. The BNM has conducted ongoing consultation and outreach to the respective industry groups representing professional DNFBP in the course of preparing for invocation of AMLA requirements and in seeking to ensure the guidance issued by BNM is appropriate to the scope of that sector's business. An AMLA Task Force has been formed by the self-regulatory organisations (SROs) of each of the respective professions, i.e. the accountants, advocates and solicitors and company secretaries. The following SROs have issued the following guidelines to their respective industries:

Table 38: Guidelines/guidance on AML/CFT issued by the SROs

Reporting Institutions	Issuer Authority	Guidelines	Date Issued
Accountants	Malaysian Institute of Accountants	AML Guidance	1 July 2004
Advocates & Solicitors	Malaysian Bar	Bar Council Guidelines on AML & CFT	6 May 2005
Company Secretaries	Malaysian Institute of Chartered Secretaries and Administrators	Minimum Compliance Framework for Company Secretaries in Public Practice	20 July 2004
Offshore trust companies	ALTC	Not yet issued	

808. The CCM has also assisted BNM in the development of sectoral guidelines 6 in relation to DNFBP.

4.3.2 RECOMMENDATIONS AND COMMENTS

Recommendation 25 (DNFBP)

809. Guidance issued by the SROs assists the relevant reporting institutions with sector-specific examples of best policies and practices. However, in each case the industry guidance is now out of date following the promulgation of new standard and sectoral guidance from BNM and commencement of the AMLA 2003 Amendment Act and 2007 Regulations.

810. The BNM FIU should ensure that DNFBPs have access to up to date guidance and advisories in respect of the new requirements under the AMLA and standard and sectoral guidelines. The respective industry associations and SROs should be encouraged to revise their guidance notes, particularly increasing the industry's awareness of terrorist financing risks.

Recommendation 24

811. The BNM FIU Compliance Section is responsible for AML/CFT compliance monitoring and enforcement for a wide range of DNFBPs and non-bank financial institutions. Off-site compliance monitoring by BNM to date has been targeted at only a small proportion of the large number of entities in the DNFBP sector, primarily through the self-assessment questionnaire that does not appear to provide much qualitative information for the supervisors. The BNM FIU should review the current questionnaire form to enhance the information provided by reporting entities on the strengths, weaknesses and effectiveness of current compliance arrangements.

812. The BNM FIU should also ensure that a systematic process is in place for regularly obtaining and reviewing internal audit reports on AML/CFT compliance from all DNFBP reporting institutions with an internal audit function, commencing with all medium and large-sized entities, to assist in targeting subsequent on and off-site supervisory efforts.

813. With no on-site reviews of either the casino or other DNFBP, and given the very recent invocation of full AMLA requirements for trust companies and licensed real estate agents, it is difficult to assess whether AML/CFT risks in the DNFBP sector are being effectively managed and controlled. The FIU Compliance section's staff resources appear to be thinly stretched having regard for the large number of entities it supervises directly, as well its other responsibilities including monitoring the outcomes of AML/CFT compliance actions by other supervisory authorities and follow-up actions.

814. Likewise, the LOFSA appears to require further steps to be implemented to ensure a robust supervision framework is fully in place for offshore trust companies.

815. There also appears to be scope for the BNM FIU to engage more proactively on a bilateral basis with the CCM in its several roles, including as the licensing authority for company secretaries, trust companies and companies limited by guarantee, to maximise the CCM's contribution to combating AML/CFT drawing on the CCM's industry expertise and investigative resources and powers.

816. It is recommended that the BNM:

- review the current self-assessment questionnaire form so that respondents are encouraged to provide additional qualitative information on strengths and weaknesses of the current policy and control environment in the reporting institution, to enhance the assessment of risk within the sector and targeting of subsequent supervisory action;
- review the functions and available staff resources of the FIU Compliance Unit with the objective of increasing the effectiveness of AML/CFT supervision of DNFBP (and other non-bank financial institutions);

- undertake targeted onsite examination visits of higher-risk categories of institutions including the casino and other large DNFBP (and other non-bank financial institutions it is responsible for) to establish the existence and effectiveness of AML/CFT policies and procedures in place and the processes used for identifying suspicious transactions; and
- complete the coverage of AMLA requirements over dealers in precious metals and stones as soon as possible.

817. It is recommended that the LOFSA:

- review the current self-assessment questionnaire form so that respondents are encouraged to provide additional qualitative information on strengths and weaknesses of the current policy and control environment in the reporting institution, to enhance the assessment of risk within the sector and targeting of subsequent supervisory action.

4.3.3 COMPLIANCE WITH RECOMMENDATIONS 24 & 25 (CRITERIA 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R. 24	**PC**	• Weaknesses in effectiveness of compliance monitoring and absence of on-site examinations. • Inadequate resources for effective supervision of entities under the responsibility of BNM FIU. • Absence of AML/CFT requirements for dealers in precious metals and stones.
R. 25	**LC**	• The professional associations should be encouraged to update their AML/CFT guidance for members in 2007 to reflect changes in the AMLA legislation, BNM and LOFSA guidelines. • This recommendation is also assessed elsewhere

4.4 OTHER NON-FINANCIAL BUSINESSES AND PROFESSIONS - MODERN SECURE TRANSACTION TECHNIQUES (R.20)

4.4.1 DESCRIPTION AND ANALYSIS

818. The Malaysian authorities continue to assess the risk of other institutions and non-financial businesses and professions which may be potential conduits for money laundering and terrorism financing. In this regard, licensed gaming entities and pawnbrokers have been brought into the AMLA regulatory net, and insurance financial advisers are slated for inclusion as outlined in Table 39. The BNM is the responsible supervisory authority (to monitor and ensure compliance) under the AMLA for all categories of non-financial businesses and professions. The relevant guidelines are expected to be issued or invoked during 2007 as set out in Table 40.

Table 39: AMLA Reporting Institutions – other non-financial businesses and professions

Reporting Institutions	Number of Entities*	Date of Invocation AMLA (sections 14(b), 20, 21 and 24)	Date of Invocation (remaining sections of Part IV)
Licensed Gaming Outlets	81	31 March 2005	10 August 2006
Pawn Brokers	234	10 August 2006	9 March 2007
Insurance Financial Advisers	3	9 March 2007	Not yet in force
Total	318		

Table 40: Other non-financial businesses and professions with their respective regulatory and supervisory authorities and applicable guidelines

Reporting Institutions	Governmental regulatory & supervisory agency	Applicable Regulations & Guidelines	Date of invocation
Licensed Gaming Outlets	Ministry of Finance (Gaming Unit) In relation to AML/CFT - BNM	AMLA Regulations *BNM Standard Guidelines* *BNM Sectoral Guidelines 7 for Licensed Gaming Outlets*	9 March 2007 16 April 2007 16 April 2007
Pawn Brokers	Ministry of Housing & Local Government (BNM FIU - AML/CFT)	AMLA Regulations *(BNM Standard** Guidelines)*	9 March 2007 *(Not yet invoked)*
Insurance Financial Advisers	BNM	AMLA Regulations† *(BNM Standard** Guidelines)*	Part IV not yet fully invoked *(Not yet invoked)*

** The Authorities advise that the Standard Guidelines on AML/CFT and the respective Sectoral Guidelines on AML/CFT will be issued soon to the respective industries.

Licensed Gaming Activities

819. Limited gaming activities are allowed to operate in Malaysia subject to licence being issued by the Ministry of Finance. Currently, seven number forecast and lottery operators, three racing clubs and 71 slot machine clubs have been licensed by the MOF. These licensed gaming activities are governed by the CGHA, the BA, Betting and Sweepstake Duties Act 1948, Lotteries Act 1952, Racing (Totalizator Board) Act 1961, Racing Club (Public Sweepstake) Act 1965, Pool Betting Act 1967 and Gaming Tax Act 1972.

820. The STR-related reporting requirements of Part IV of AMLA have been invoked on licensed gaming activities from 31 March 2005 and the remainder of the Part IV requirements were invoked on 10 August 2006. The BNM Standard Guidelines and BNM Sectoral Guidelines SG7 have not yet been invoked.

821. Although this occurred after the period of consideration for this evaluation, the SG7 was issued for licensed gaming outlets in April 2007. Part of 3 of the SG7 stipulates the requirements in relation to CDD, which includes CDD for payment to a third party and reliance on intermediaries to conduct CDD. Under SG7, the licensed

gaming outlets are only required to conduct CDD on any customer who has won an amount above the internal threshold that the reporting institution is required to set based on its own risk assessment. In conducting CDD on winners, the reporting institution is required to obtain and verify the accuracy of the following information:

- winner's name;
- winner's national registration identity card/passport number;
- winner's address;
- ticket number;
- registration number and address of the outlet where the winning ticket was purchased; and
- winning amount.

822. For winners requesting for payment to a third party account for the amount equivalent to the internal threshold and above, the reporting institution is required to ascertain who the third party is, the relationship between the third party and the winner, and the purpose for such request.

823. A licensed gaming outlet is permitted to rely on intermediaries such as agents to conduct CDD on its winners as in some cases, the agents are the persons who have the first point of contact and deal directly with the winners. However, the ultimate responsibility for CDD remains with the reporting institution. Hence, the reporting institution is required to obtain and keep record of all records, documents and copies of documents in relation to the CDD conducted by its agents on the winners in order to enable the reporting institution to monitor transactions conducted and detect suspicious transactions.

824. In addition, it is also the responsibility of the reporting institution to ensure that its agents are well informed of the AML/CFT obligations under the AMLA, particularly on the requirements/procedures of conducting CDD as set out in the BNM Standard Guidelines.

Pawnbrokers

825. Any person who wishes to carry on business as pawnbrokers must hold a valid licence granted under the Pawnbrokers Act 1972 (PA'72). The Act provides for regulation by the Registrar, conditions to be placed on a licence, suspension or revocation of licence, investigation, search, arrest and seizure powers and penalties for offences under the Act.

826. The STR-related reporting requirements of Part IV of AMLA have been invoked on pawnbrokers from 10 August 2006 and the remainder of the Part IV requirements were invoked on 9 March 2007. The BNM Standard Guidelines have not yet been invoked.

Insurance financial investment advisers

827. The Malaysian authorities have commenced discussions with industry representatives for insurance investment advisers and have included those businesses as reporting institutions from 9 March 2007, also imposing STR reporting obligations at that time. The CDD, recordkeeping and compliance requirements of Part IV of the AMLA have not yet been invoked.

Modern and secure technologies

828. The Malaysian authorities have adopted a number of strategies to encourage the use of new secure technologies throughout the economy (including a smart-chip based national photo identity card which stores key identification information electronically). The technology-based national strategic plan also contributes to reducing the risk of cash-based transactions. Although cash is still widely used in the economy, there are no large denomination bank notes, the largest being RM100 (approx US$30). The Association of Banks in Malaysia is also spearheading a campaign to promote the use of electronic banking. There is increasing use of credit cards (over 200m credit card transactions in 2006) and ATM cards with ready access to ATMs and deposit machines, particularly in urban areas. The ATMs provide capacity for funds transfers to other bank accounts, bill payments and loan and credit card repayments. Internet banking and mobile phone banking are gaining acceptance. Electronic Funds Transfer at Point of Sale has not yet been introduced.

4.4.2 RECOMMENDATIONS AND COMMENTS

4.4.3 COMPLIANCE WITH RECOMMENDATION 20

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.20	**C**	• **This Recommendation is fully observed**

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 LEGAL PERSONS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.33)

5.1.1 DESCRIPTION AND ANALYSIS

829. In Malaysia, the CA'65 is the principal legislation governing the formation, management and dissolution of companies, which is regulated and administered by the CCM. Public listed companies are incorporated under the CA'65, with legal framework also provided by the *Securities Industry Act* 1983 [the SIA] and the *Securities Industry (Central Depositories) Act* 1991 [SICDA]. These Acts are administered by the SC.

830. The main types of legal person in Malaysia are:
- companies incorporated under the CA'65 (limited by shares, guarantee and unlimited); and
- businesses – sole proprietorships and partnerships registered under the *Registration of Businesses Act* 1956 (ROBA).

831. As of September 2006 there were 747,336 registered companies and 3,222,048 registered businesses in Malaysia. In addition there were 1,026 public listed companies.

Offshore Companies

832. The *Offshore Companies Act* 1990 [the OCA] provides for the establishment of offshore companies and the registration of foreign offshore companies in the Labuan IOFC. A foreign company incorporated under the laws of another country may also apply to be registered in the IOFC. An offshore company may be a company limited by shares or by guarantee. Offshore companies are incorporated and registered pursuant to the OCA, which is administered by the Labuan Offshore Financial Services Authority [LOFSA]. Incorporation of an offshore company and registration of a foreign offshore company must be done through a Labuan trust company.

833. Residents and non-residents of Malaysia are permitted to establish offshore companies in the Labuan IOFC. Offshore companies may only carry on business activities with persons other than residents of Malaysia, except where permitted under the OCA. In addition they may only deal in currencies other than the Malaysian Ringgit, except for the purpose of defraying administrative and statutory expenses and receiving fees and commissions.

834. As of June 2006 there were 5,408 registered offshore companies, of which 3,212 were operating.

System of Central Registration

835. Under Malaysian law, all associations and partnerships, which are formed for the purpose of gain, must be incorporated under the CA '65. Information to be supplied to the CCM on application for registration must include:
- the name of the company;

- details of the initial directors (who must be natural persons)
- name and address of each shareholder, and number of shares allotted; and
- Memorandum and Articles of Association.

836. Once incorporated, the company must comply with the legal requirements of the CA'65, which include:
- appointment of a company secretary and a registered office, and notification of these details to CCM;
- holding of Annual General Meeting within 18 months of incorporation;
- lodgement with the CCM of annual returns and audited accounts in a timely manner; and
- notification to the CCM of any changes to directors, shareholders or registered address within 30 days.

837. There is no requirement to lodge with the CCM information as to whether company shareholdings are held beneficially and if so, details of beneficial owners.

838. However, section 69A of the CA'65 empowers the CCM to, at any time by notice in writing, require any company, person or individual to furnish all the necessary information and particulars of any shares acquired or held directly or indirectly either for their own benefit or for any other company, person or individual within 7 days and have all the necessary information and particulars duly verified by statutory declaration. Criminal sanctions apply for non-compliance.

839. In the case of securities, share scrips must be deposited into central depository accounts which must be held either in the name of the beneficial owner of the shares, or an authorised nominee. In the latter case, particulars of the beneficial owner of the securities must be disclosed to the Central Depository. Public listed companies are in addition required to disclose to Bursa Malaysia, the SC and the company, details of all substantial shareholders, being shareholders holding 5% or more of the shares in the company. Particulars must be provided of the nature of the interest held, including whether it is held as beneficiary under a trust.

840. Failure to comply with the above requirements attracts administrative and criminal sanctions against the company and its officers.

841. The CCM maintains a database of information on the CCM website which is accessible by members of the public for a nominal fee and by investigating authorities. Available information includes the company's establishment date, type, status, registered address, office address, directors, company secretaries, type and number of shares, details of shareholders, details of nominees (where provided by the company); and annual returns, balance sheets and profit and loss accounts. In the case of businesses, accessible information includes name of business, principal address of business, type, date established, and details of the owner.

842. In the case of offshore companies and foreign offshore companies, applications for registration are lodged with LOFSA and must be supported with similar information to that required in the case of domestic Malaysian companies. There are limitations upon the public accessibility of information held by LOFSA.

The Role of Company Secretaries

843. All companies are required to have a company secretary who is a natural person. It is an offence for a company not to have a company secretary for a period of more than one month. Company secretaries must either be licensed by the CCM or be members of professional bodies, such as the Malaysian Institute of Administrators and Chartered Company Secretaries (MAICSA), Malaysian Institute of Accountants (MIA) and the Malaysian Bar Council.

844. Each company is required to maintain at its registered office a register of its directors, managers, secretaries, members and share allotments. There is no requirement that the register note whether interests are held beneficially or not.

845. The Standard Guidelines on AML/CFT impose upon reporting institutions additional obligations to establish and verify beneficial ownership. However company secretaries are subject to these requirements only when are in a client relationship with the company, and not when they are employed within the company on an in-house basis. Statistics provided indicated that of Malaysia's 19,702 company secretaries, approximately 30% are employed as in-house company secretaries. Of this group 80% act for public companies, which are subject to the requirements noted above in relation to disclosure of beneficial ownership of securities, and of substantial share holdings.

846. External company secretaries as well as other DNFBPs such as accountants and lawyers are subject to rigorous requirements under AMLA when they perform work for clients such as forming companies, and acting as directors, secretaries, trustees and nominee shareholders. In these contexts they are required:

- to establish and verify with reliable documents the legal existence of the client (5.1.1);
- to identify and verify beneficial ownership and control of transactions conducted on behalf of the client (5.1.3);
- to know the beneficial owners and control structure of corporate customers (5.3.3);
- to establish whether the customer is acting on behalf of another person, eg as a trustee or nominee and if so, to confirm the identity of that person (5.5);
- if of the belief that a transaction is conducted on behalf of a beneficial owner and not the customer, to establish who ultimately owns or controls the transaction (5.6); and
- to maintain for at least 6 years all records and documents of transactions including identity of beneficiaries (6.1 and 6.2.2).

847. As noted, these requirements are not applicable to in-house company secretaries. However, as from 9 March 2007 they do apply to fund managers, futures fund managers, trust companies, trust management companies, and money remitters.

848. The full range of AMLA obligations is likewise applicable to stock broking and futures broking companies. However the extent to which some of the requirements apply is unclear. Capital market intermediaries are subject to separate guidelines, being the Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries. The Customer Identification section of these

Guidelines requires only that when establishing business relations or conducting transactions, the institution identify, verify and record the identity of the client (6.2). There is no reference to the need to identify those who may stand behind the client. However, companies having nominee shareholders are named as one of several classes of customers in relation to which the institution should consider exercising greater caution.

849. As a further matter, the extent of the obligation on capital market intermediaries to keep records is unclear. Institutions are advised that they must keep records of the identity of the beneficiary on whose behalf a transaction is conducted, but this requirement appears to be restricted to transactions 'exceeding such amount as the FIU shall specify'.

850. Offshore companies must employ the services of a Labuan trust company to provide company secretarial services. The Labuan trust company itself must be registered with LOFSA. It is required to maintain an updated register of the offshore company's directors and secretaries, and to keep copies of all documents lodged with LOFSA on behalf of the offshore company, including annual returns. Labuan IOFC trust companies have been subject to the full range of AMLA obligations since April 2003. These include the obligation to establish and verify beneficial ownership of the offshore company and its transactions, and to maintain records in relation to it.

851. So far as monitoring compliance is concerned, the CCM has the power to conduct on-site visits to ensure that CCM records are accurate and up to date, and that proper records are being maintained by the company. For this purpose officers of the CCM are able to access premises and to inspect and take copies of company records. They are also able to call for the production of such records. In recent years the CCM has pursued a targeted program of on-site visits. Material supplied by the CCM indicated that since 2003 the number of such visits has increased, as has the number of civil and criminal actions taken for non-compliance. The material also indicated a significant increase in the rate of compliance for lodgement of annual returns.

Investigative and Enforcement Powers

852. The CCM's general investigative powers under the CA'65 include the following:

- to access premises and make copies or take extracts of documents kept by the company;
- to search premises and seize materials of a company; and
- to call persons in for examination.

853. In addition the CA'65 confers strong and specific powers to investigate beneficial interests. Sections 207, 208 and 208A of the Act empower investigators to call persons in to answer questions and furnish records for the purpose of determining true ownership and control of a company, or ownership of shares in or debentures of a company, including past ownership. In addition, section 69A of the Act empowers the CCM to require any person or corporation to furnish information about any shares held either for their own benefit or for another person's. Criminal sanctions apply for non-compliance. If the information furnished by the company, person or individual under section 69A of the CA'65 is false, the CCM can invoke section 364(2) of the CA'65 against any person who have provided false or misleading

information to the CCM. This offence carries a penalty of 10 years imprisonment or a fine of RM250,000 or both.

854. Investigating officers of the SC are also given broad inspection, search and seizure powers and the power to call persons in for examination. They and other investigating agencies are authorised to access information kept by central depositories and by the Bursa Malaysia Central Depository. A specific power is also given to the SC to require a central depository or its agent to provide information as to the identity of any person on whose behalf securities were acquired or disposed of. Officers of the SC are authorised to provide law enforcement officers with access to their investigative material.

855. Officers of LOFSA have similar powers to investigate offences under LOFSA's purview, including the power to compel persons to answer questions and to furnish documents relating to an offshore company's business. LOFSA is also empowered to call for any information which it requires for the performance of its supervisory functions.

856. Notably, section 25 of the AMLA confers a power upon the competent authority to monitor compliance of institutions with their reporting and record-keeping obligations under AMLA. This includes the power to inspect the reporting institution's record-keeping systems, and to examine relevant persons including directors, officers and clients.

857. As noted, companies are required to submit certain information to the CCM and to notify of changes to directors, shareholders and business activities. The CCM endeavours to ensure that its records are current and accurate through surveillance activities and on-site visits. Investigative and competent authorities are invested with adequate powers to obtain information about beneficial ownership from the CCM and from corporations and persons. However as noted, neither the CCM nor the company itself is required to maintain information as to whether shareholdings are held beneficially.

858. The CCM is able to share information with other government agencies such as BNM, the SC, IRB and the ACA, on the list of directors who have been convicted of offences involving fraud and dishonesty, the list of untraceable directors and those who have been declared as bankrupts and are disqualified from being appointed as company directors. The CCM is also able to assist the competent authorities of other countries such as INTERPOL and the European Union Anti-Fraud Office by providing beneficial ownership and control information in relation to entities registered with the CCM.

859. In relation to securities held in nominee accounts, there is adequate provision for obtaining details of beneficial ownership. This information is accessible to the competent authority and to law enforcement agencies.

860. The issue of bearer shares is prohibited by section 57 of the CA'65. A company is not permitted to issue any share warrant which entitles the bearer of warrants to the number of shares mentioned within it and which enables the shares to be transferred by delivery of the warrant.

861. Information on the CCM's website and at the CCM's office is accessible to financial institutions and to members of the public for a nominal fee. However information on beneficial ownership is limited due to the absence of a requirement for companies to submit this information to the CCM.

862. Bursa Malaysia's website is publicly accessible and contains information of substantial shareholdings, including information as to whether the interest is held as a beneficiary.

863. Malaysian officials advise that a comprehensive review of the CA'65 is currently underway, with a view to making it more comprehensive and relevant to the changing corporate scene. The review involves widespread consultation with lawyers, bankers, academicians, accountants and company secretaries. All recommendations for review are to be finalised and forwarded by November 2007.

5.1.2 RECOMMENDATIONS AND COMMENTS

864. Malaysia has a national system of recording and making available information on companies, which must be updated in a timely fashion. However, the role of the CCM in combating money laundering would be enhanced with a requirement that it maintain information as to whether shares of registered entities are held beneficially and if so, details of the beneficial owner. The ready availability of this information would assist the efficient investigation of money laundering offences, as well as helping financial institutions to meet their CDD obligations. Relevant information about beneficial ownership of interests held in public listed companies is publicly accessible.

865. Company service providers, external company secretaries, trust companies, fund managers, accountants and lawyers are subject to strong obligations under AMLA to obtain, verify and retain records of the beneficial ownership and control of legal persons on whose behalf they act. The extension of the AMLA obligations throughout the financial and DNFBP sector is a positive development and potentially an effective tool in the prevention and investigation of money laundering offences.

866. The same obligations extend to capital market intermediaries, but in their case it is recommended that the SC AML Guidelines spell out in clearer terms their obligations to identify and record beneficial ownership details.

867. In the case of in-house company secretaries, obligations in this area are restricted to those under the CA'65 which, as noted, do not include any specific obligation to maintain records indicating whether or not a shareholder holds shares beneficially. Nor is there any statutory obligation on companies to maintain in their register, information as to whether shares are held beneficially and if so, details of the beneficial owner.

868. Investigative agencies such as the CCM and the SC have strong compulsory powers for obtaining information as to beneficial ownership and control of legal persons, and adequate powers to share this information with other law enforcement authorities. However as there is no obligation on either the CCM or the companies themselves to maintain information as to beneficial ownership, the effectiveness of these measures is reduced.

869. Malaysian authorities have submitted that beneficial ownership information is readily available to competent authorities as a result of the comprehensive obligations upon financial institutions and DNFBPs to maintain this kind of information. However the Evaluation Team had at least two concerns about the effectiveness of this procedure as a means of providing accurate and timely information about the beneficial ownership of legal persons. First, beneficial ownership information will only be held by financial institutions and DNFBPs in those cases where the company makes use of financial services. This is unlikely to be the case where the company holds non-financial assets. Secondly, and as noted elsewhere in this report, the team held concerns that implementation in this area by the financial institutions and DNFBPs was not wholly effective and complied with the legal requirements. In the course of discussions with the private sector, the Evaluation Team noted that in some cases there was a limited understanding of the scope of the relevant obligations. As a result, and combined with the fact that CDD and record-keeping obligations have only been extended very recently throughout the DNFBP sector, the team was not convinced of the effectiveness of this mechanism as the primary source of beneficial ownership information.

870. Malaysia should consider making information on beneficial ownership more readily available, by obliging the CCM and companies to record this information on their registers.

871. It is recommended that Malaysia

- require the CCM to maintain information as to whether shares of registered entities are held beneficially and if so, to maintain details of the beneficial owner;
- require company registers to maintain records of the same information; and
- clarify obligations of capital market intermediaries in relation to identification and recording of beneficial ownership details.

5.1.3 COMPLIANCE WITH RECOMMENDATIONS 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• The CCM maintains a central registry of information about companies which is publicly accessible, but it is not obliged to include information about beneficial ownership. • Company registers do not have to include information on beneficial ownership. However records of such information must now be maintained by a wide range of DNFBPs. • While law enforcement and regulatory agencies have strong powers to obtain information on beneficial ownership, the timeliness and adequacy of such information is hampered by the CCM and company registers not being obliged to maintain this information.

5.2 LEGAL ARRANGEMENTS – ACCESS TO BENEFICIAL OWNERSHIP AND CONTROL INFORMATION (R.34)

5.2.1 DESCRIPTION AND ANALYSIS

872. Malaysian law has a system of trust law that includes express and discretionary trusts. Similar with other jurisdictions which apply common law, it is common in such circumstances that there is no obligation under Malaysian law to register a trust. If the trustee is a corporate entity it must be registered with the CCM. It must also submit to the CCM an annual statement containing a list of its members and summary of its activities, a statement of liabilities, and a statement of its holdings on trust. A trust company may in addition register itself with the CCM as a trust company. In neither type of registration is there a requirement on trustee companies to submit to the CCM details of the beneficial owners of the trusts they administer. Such information as the CCM holds on a trustee company is publicly accessible.

873. Trust companies are required to maintain separate bank accounts for their own money and money under their care as trustee. Where a trustee holds deposits in trust at a bank, pursuant to section 49 of the *Malaysia Deposit Insurance Corporation Act* 2005 the bank is required to maintain records of that fact and the names of those for whom the deposits are held.

874. The *Labuan Offshore Trusts Act* 1996 provides for the creation and recognition of offshore trusts. An offshore trust may register itself with LOFSA, and may furnish LOFSA with a copy of its trust instrument. However this is not mandatory. Similarly, a Labuan trust company must register itself as a trust company with LOFSA, but does not have to submit information as to the beneficial ownership of the trusts it administers.

Role of Trust Companies and Trust Company Service Providers

875. All trust companies, including offshore trust companies are reporting institutions under the AMLA. As such they are subject to the obligations imposed by the Standard Guidelines. These include obligations to establish, verify and record beneficial ownership and control of transactions which they conduct on behalf of their clients, and to maintain all records of such transactions. The Standard Guidelines, when defining beneficial ownership refer to 'those persons who exercise ultimate effective control over a legal person or arrangement'.

876. As from 9 March 2007, domestic trust companies and trust company service providers are also subject to these obligations.

877. LOFSA issued enforceable Standard Guidelines on AML/CFT in January 2007 which apply to offshore trust companies. Section 5.5.2 of the LOFSA Standard Guidelines on AML/CFT requires reporting institutions to take 'reasonable measures to understand the relationship among the relevant parties in handling a trustee or nominee business and obtain satisfactory evidence of its legal status, the identity of the said trustee, settlor or nominee, authorised signatories, beneficiaries and the nature of their capacity and duties as trustee or nominee.

878. Section 5.5.3 of the LOFSA Guidelines, however, indicates that it shall be reasonable for the reporting institution to rely on the trustee or nominee to verify or

confirm the identity of the beneficial owners. For this purpose, the reporting institution should require a written undertaking from the trustee or nominee that identification documents of the beneficiaries has been obtained, recorded and retained. In addition, such documentation needs to be made available promptly to the reporting institution upon request. This amounts to self certification by the trustee.

Investigative powers

879. The *Trust Companies Act* 1949 empowers the appointment of inspectors to investigate the affairs of trust companies and their customers. Officers of the trust company are obliged to co-operate with the appointed inspectors by producing documents and records as required, as well as giving statements. Criminal sanctions apply for non-compliance.

880. Section 28B of the LOFSA Act allows LOFSA officers to require information about the affairs, accounts, dealings and particulars of customers a trust company, where the officer suspects that a fraud or other criminal act may have taken place. LOFSA is empowered to share this information with domestic law enforcement agencies.

881. In neither Act do there appear to be specific powers to compel such information from a trustee who is not a trust company. However the AMLA confers broad powers on investigating officers to compel production of financial records, trace property ownership, search and seize material and require persons to answer questions and produce documents. The BNM is likewise empowered under the BAFIA to obtain any books, records or document from banks for the purpose of investigation.

882. Overall it appears that investigating officers have adequate powers to obtain access to such information on beneficial ownership as is available from the CCM, trust companies, and other types of trustees. Under current law however only trust companies and trust company service providers are obliged to maintain this information.

883. Financial institutions are able to access the records of the CCM. As noted however the CCM's records do not contain information as to beneficial ownership of trusts administered by registered trust companies.

884. Malaysian officials advise that the CCM has embarked on a project to review the Trust Companies Act. Recommendations will be forwarded to the Government.

885. Trustees are required to lodge information of the trust, such as information of the trustee, settlor and beneficiaries with the IRB when filing tax returns. The IRB is able to give the information to other authorities for AMLA purposes.

5.2.2 RECOMMENDATIONS AND COMMENTS

886. Under current law there are limited obligations on entities to maintain information about the beneficial ownership of trusts. There is no system of central registration of trusts, and in the case of trusts that are administered by trust companies; registration

of the trust company with the CCM or LOFSA does not impose any obligation on the trust company to submit such information.

887. Information on beneficial ownership may be accessed from banks where the trustee maintains a deposit account on behalf of the beneficiary. In this situation the bank is obliged to maintain records of the beneficial owner of the funds. Other AMLA reporting institutions are also obliged to maintain records of the beneficial ownership of a trust.

888. In the case of trusts which are administered by trust companies or trust company service providers, these entities are obliged under AMLA to identify beneficial ownership and to maintain records in relation to it. These obligations have only recently been imposed upon domestic trust companies

889. Malaysian authorities have submitted that in the case of trusts which are not administered by trustee companies, beneficial ownership information is able to be captured when the trust transacts through financial institutions which are reporting institutions under the AMLA. However this procedure for capturing beneficial ownership information is only available where the trust makes use of financial services. For this reason the Evaluation Team considered that this mechanism was of limited value as a means of capturing this kind of information, and that overall there were insufficient measures in place to enable competent authorities to obtain adequate information about the beneficial ownership of trusts in a timely manner.

890. Malaysia's invocation of the full AMLA obligations upon domestic trust companies and trust company service providers is a positive step. It is recommended that, Malaysia consider obliging entities registered with the CCM and LOFSA to maintain information on beneficial ownership of trust arrangements administered by those entities.

891. Also, in the case of those trusts which are required to lodge tax returns, Malaysia should consider authorising the IRB to spontaneously make available to law enforcement and investigative agencies relevant information which it holds as to trust beneficiaries, where it appears that serious offences may have been committed.

5.2.3 COMPLIANCE WITH RECOMMENDATIONS 34

	Rating	Summary of factors underlying rating
R.34	**PC**	• While competent authorities have some powers to access information on beneficial ownership of arrangements such as trusts, availability of such information is limited by the fact that only trusts administered by trustee companies and trust company service providers are obliged to maintain such information.

5.3 NON-PROFIT ORGANISATIONS (SR.VIII)

5.3.1 DESCRIPTION AND ANALYSIS

892. Malaysia's non-profit organisation (NPO) sector includes societies, associations, clubs, organisations, companies limited by guarantee, and foundations. The statutes dealing with the establishment and regulation of NPOs in Malaysia are the Societies Act 1966, the Companies Act 1965 and the Income Tax Act 1967. The constitutional form may be either a registered society under the oversight of the Registrar of Societies (ROS) or a registered company limited by guarantee (CLBG), under the oversight of the Companies Commission of Malaysia (CCM). NPOs which are registered with the CCM or ROS are taxable entities under the Income Tax Act but they may apply for tax-exempt status provided they meet certain criteria and are either established for charitable purposes or established exclusively for the purposes religious worship or the advancement of religion. NPOs are not reporting institutions under the AMLA.

893. Of the 41,196 societies (not including branches) registered with the ROS at 31 December 2006, nearly 7,000 of are involved in welfare activities, and over 5,000 are involved in religious activities, including Islamic NPOs. There is also a framework for Zakat (alms giving) administration in Malaysia which includes collection and distribution of funds to Islamic groups with characteristics similar to NPOs (including mosque-based groups). The legislative and regulatory oversight arrangements for each category of NPOs and the Zakat administration are discussed in further detail below.

Review of the domestic non-profit sector

894. A task force comprising the BNM FIU, the ROS, CCM and the IRB conducted a review of Malaysia's domestic NPO sector between late 2005 and mid-2006. The report of the review was shared with the APG in July 2006.

895. The review considered the legislative and oversight frameworks for NPOs, information/cooperation arrangements, and AML/CFT measures, risks and outreach conducted in the sector. It concluded that the sector was well regulated. It did not find any evidence of particular ML or TF risks in the NPO sector and did not uncover any substantial links between terrorist groups and NPOs. The review report has been tabled and discussed at the NCC but no recommendations have been made to date for additional measures to be introduced. No plans have been made for a follow-up review or reassessment.

896. There is no specific task force being set up to review the laws and regulations in relation to NPO although both the ROS and CCM may consider and make recommendations for enhancements to the framework as necessary.

Outreach program, transparency and accountability

897. Relatively few outreach initiatives have been undertaken to raise awareness of terrorist financing risks in the NPO sector, however efforts are being made to enhance transparency, accountability and governance in the sector. The ROS conducts introductory course on the management and financial management to

newly registered society. The ROS also produces pamphlets and brochures relating to good society management.

898. To increase the awareness of the NPOs on its vulnerability to terrorism financing, the ROS, in collaboration with the BNM FIU, conducted eight nationwide awareness programs on AML/CFT which involved a total of 573 societies.

899. The current CCM outreach program to NPOs includes some coverage of the risks of terrorist abuse. The CCM has formally established its own internal AML Secretariat in July 2006 which will plan for future outreach drawing on the experiences of other relevant agencies such as the UK Charities Commission, the BNM FIU, ROS and IRB. Current measures to promote transparency, accountability and integrity of NPOs include the CCM's Corporate Directors Training Programmes, Annual Dialogue Sessions between directors and the CCM, etc. The CCM also coordinates a half-yearly Corporate Practice Consultative Forum which provides a platform for the CCM to engender and cultivate good corporate values among the corporate citizens in the country, particularly through professionals involved in the corporate sector.

900. Transparency, accountability and public confidence in the administration and management of NPOs is reinforced by the overall framework including: registration of societies/ companies limited by guarantee (and powers to deregister); supervision by ROS and CCM (including approval of directors and officers, filing of annual returns and audited financial statements, etc); and the regulatory framework on funds collection and disbursement, as outlined below.

Regulatory framework

901. The principal statutes dealing with the establishment and regulation of NPOs in Malaysia are the CA'65, the *Societies Act* 1966 [the SA] and the ITA. Every NPO in Malaysia is required to be registered with the ROS or the CCM. The ROS is responsible for the registration and supervision of registered societies. The CCM is responsible for registration and supervision of NPOs, which are companies limited by guarantee.

Registration and regulation of registered societies

902. Societies consisting of at least 7 persons must be registered with the ROS. Exceptions include registered companies, trade unions, and associations formed for the purpose of gain.

903. Material which must be supplied to the ROS on registration includes:

- details of management committee members including names, offices held, identification card numbers, address and employment details;
- the society's draft constitution;
- minutes of the meeting which established the society; and
- information as to the society's fixed assets.

904. Persons are disqualified from being office bearers, advisers or employees of registered societies if, among other things, they have been convicted of serious offences, or of offences against the SA, or are un-discharged bankrupts. The CCM

exchanges information with the ROS to ensure that entities rejected for registration by one body are not accepted by the other.

905. Pursuant to section 14 of the SA, all registered societies are required to submit annual returns to the ROS. These must include:

- a financial statement including balance sheet;
- minutes of general meetings;
- updated details of office bearers;
- details of any amendments to the society's rules;
- details of any society or organisation with which the society is affiliated or associated; and
- details of any property or benefit received by the society.

906. The ROS is empowered to request the above information and further information from a society, including audited accounts. There are criminal sanctions for failure to comply with such requests. All the above information is publicly available, with the exception of the society's accounts which are only available to its members.

907. While there is a power to compel such information from a registered society, there is no corresponding power under the SA to require the society itself to maintain such information. Nor is there any power under the SA to compel a society to maintain records of transactions in such detail as to verify that the society is not using its funds for purposes other than its stated ones. However, all NPOs that carry out activities that generate income or have chargeable income are obliged under the *Income Tax Act* to maintain financial records for a period of 7 years and to lodge annual income tax returns.

908. Where the society maintains such records for tax purposes, the ROS is able to access those records under section 14(2) (SA) which empowers the Registrar of Societies to, at any time by notice, requires any society to furnish him any information that he requires.

909. Failure to lodge an annual return can result in action taken by the ROS to dissolve the society. Other grounds for deregistration action by the ROS include that the society is being used for purposes which are unlawful or are prejudicial to the peace and good order of Malaysia, or that the society is pursuing objectives other than those for which it was registered.

910. The powers of the ROS to carry out investigations are described later in this report [see paragraph 934]. The main trigger for investigative action was stated by ROS officials to be complaints by society members, or by members of the public.

911. In an effort to increase levels of compliance and governance, in 2006 the ROS conducted 1,090 examinations, 177 of which were conducted on a 'without notice' basis. 401 societies and 603 branches have been sanctioned for non-compliance with their obligations under the SA. Most of these related to non-lodgement of annual returns.

912. Limited measures are in place to ensure that societies are not raising or expending funds in a manner inconsistent with their stated purposes. The ROS has

issued guidelines for fundraising which include the requirement that prior approval be obtained from the relevant Ministry, and that an audited statement of accounts be sent to the ROS following the collection. However as noted there is no legal obligation on societies to maintain records of transactions in sufficient detail to verify that funds have been expended in a manner consistent with the society's objectives. Limited overview is provided through the ROS's system of targeted analysis of financial statements lodged with annual reports. In this regard ROS officials advised that priority is given to analysis of annual reports from religious societies, societies with international involvement, and those concerned with consumer rights and human rights.

913. Overall however the ROS does not appear to have a clear policy for the identification and closer monitoring of those societies which might be regarded as being more vulnerable to possible misuse for terrorist financing. ROS appears to lack resources to identify terrorist financing risks in the NPO sector and ROS appears to be relying largely upon information from the public, media and the RMP to target investigation of misuse of NPOs.

Registration and regulation of companies limited by guarantee

914. Companies limited by guarantee must be registered with the CCM. As of December 2006 1260 such companies were registered with CCM. They include companies formed for the purpose of promoting recreation, art, religion, charity and commerce.

915. For registration the following material must be supplied to the CCM:
- a detailed statement of the company's proposed activities;
- a statement of estimated income and expenditure for the following two years;
- proof of contribution of at least RM 1 million as initial funding;
- the latest audited financial statements of the company;
- details of identity, background of qualifications of proposed directors and sponsors;
- draft Memorandum and Articles of Association; and
- a statement whether the company has any connection with a foreign or local body.

916. On approval of registration by the Ministry the company must submit further information to the CCM, including settled Memoranda and Articles of Association and a copy of the identification card for each director or founder. Directors must also provide statutory declarations that they are not un-discharged bankrupts and have not been convicted of dishonesty offences or company management offences. The company is legally obliged to inform the CCM of any changes to its directors and company secretary, and to lodge annual returns and audited accounts. All of the above information is publicly available both on-line and on-site at the CCM for a fee.

917. Fundraising by a company limited by guarantee is subject to similar conditions to those which the ROS imposes upon societies.

918. The CCM is able to wind up NPO companies found to be operating in a manner prejudicial to national security or public order, and to take criminal, civil and administrative action against those which breach their obligations under the CA'65.

919. Companies limited by guarantee are obliged under section 167 of the CA'65 to maintain records which will sufficiently explain the company's transactions and financial position for a period of 7 years. Failure to do so attracts criminal sanctions.

920. The investigative powers of the CCM are described below, and include examinations, on-site visits, search and seizure. Internal surveillance reports, information from the public, the media and other agencies are triggers for investigation. In addition the CCM targets companies with links to international bodies for closer monitoring.

921. In 2005 and 2006 the CCM conducted a nationwide operation on NPOs within its supervision. A total of 168 NPO companies were selected for examination on the basis of poor compliance record or a relatively high proportion of incoming overseas funds. The operation focused on fundraising, the maintenance of financial records, and the lodgement of returns. A number of criminal, civil and administrative actions resulted. The CCM points to a significantly increased rate of compliance as one of the outcomes of this operation, as well as an increased awareness among NPOs of their obligations.

Information held by the IRB

922. NPOs wishing to obtain 'tax exempt' status must submit an application to the IRB. However, NPOs with tax-exempt status must still lodge tax returns that include:

- donor particulars where the donation exceeds RM5,000
- a financial statement and, in the case of entities with affiliated bodies, a set of consolidated accounts showing all donations to and expenditure by the entity and its affiliate.

923. The IRB thus holds information which could assist regulators and law enforcement agencies to determine whether an NPO is collecting and expending its funds in a manner consistent with its stated objectives. However IRB officers are constrained by strict secrecy laws which prevent them from spontaneously sharing information as to suspicious activity. IRB officers are, however, able to consider requests from law enforcement agencies for information which they seek for intelligence purposes.

924. Random audits of NPOs are conducted by the IRB. The purpose of such audits is not primarily to determine whether the entity is pursuing objects which are inconsistent with its stated objects, but merely to ensure that it continues to meet the criteria for tax exemption. In addition as noted above, IRB officers are prevented from spontaneous disclosure of tax information to other agencies.

925. Officials of the IRB advised that they had recently set up a 'special audit' team to monitor NPOs, based on information received and a risk approach. Again however the purpose of the special audit program is to identify tax liability and not to detect the possible use of NPOs as vehicles for terrorist financing. IRB officials argue that the program will have the indirect result of deterring such activity by placing perpetrators in fear of increased scrutiny.

Islamic NPOs and Zakat administration

926. Malaysia has a comprehensive legal framework for the collection, administration and distribution of Zakat (alms-giving). The Malaysian Constitution provides for Zakat to be under the jurisdiction of the respective states. There are 14 Islamic Religious Councils, one for each of the 13 states and one for the Federal Territories of Kuala Lumpur, Labuan & Putrajaya. These Islamic Councils have a unique and independent status and are not involved in the administration functions of the Federal or State government.

State Islamic Councils and Zakat administration

927. The responsible institutions for Zakat affairs are the respective State Islamic Religious Councils established by State (or Federal) legislation. The state councils are mainly policy-making and supervisory bodies. Over and above the State Religious Councils is the Federal Government Department of Islamic Development Malaysia (JAKIM) which co-ordinates Islamic affairs nationally and is involved in drafting and streamlining Islamic laws and regulations and coordinating their implementation at the state level. JAKIM, in consultation with the State Religious Councils also issues best practices in Zakat collection and distribution procedures.

928. The state-based bodies receive grants from the Federal Government (through JAKIM) and submit their annual expenditure reports to JAKIM. The Auditor-General's Office audits the books of the State Religious Councils. JAKIM has an annual budget of around RM 200m to RM 250m, and approximately 2000 staff.

929. JAKIM conducts on-site visits to the Islamic organisations it funds, to ensure its guidelines are being followed. Such visits may be made on the basis of spot checks or where any issues have been identified through its administration or from complaints. JAKIM conducts outreach regarding good governance but does not currently include AML/CFT issues.

930. Monitoring and supervision of the activities of Islamic NPOs is conducted by the state religious departments. The state religious departments conduct seminars for these groups and conducts on-site visits to oversee the activities undertaken, which is also an opportunity to receive feedback to the state-based bodies. Many small mosque-based community groups are not registered as societies under the ROS but registered with the State Islamic Religious Councils. The state religious departments will consider applications for grant for funding, for example for building or repairing a mosque, and will oversee the expenditure and receive reconciliations of funds spent, and may withdraw rights to access funds because of inadequate financial management.

931. Zakat collection and distribution is under the purview of the Islamic Councils. Zakat collection nationwide in 2004 was approximately 0.11 per cent of the total GDP or about RM470 million. Zakat payment is generally traceable as payers usually disclose the amount paid for it to be tax deductible. The Zakat offices maintain a database of Zakat payers, which include information on the identity of the payer (name, address and identity card numbers). The IRB also keeps the records of Zakat payers. The Zakat offices also keep a comprehensive statistics on the Zakat collection and disbursement, which are made public annually by the publication of its annual report.

Effective information gathering

Domestic cooperation

932. The ROS and CCM cooperate closely, for example in exchanging details of persons or entities that have applied for, and been declined, registration of a society or CLBG. Information can be shared with the FIU in the exercise of its AMLA powers.

933. The CCM and the IRB are members of the NCC. The ROS may attend NCC meetings by invitation where there are issues of relevance to it. The ROS and CCM are members of the Inter-Agency Committee on International Terrorism led by the MoFA. The ROS, CCM and IRB will disclose information on suspicions regarding the activities of NPOs to other enforcement agencies as and when required. For example, information has been shared during these meetings for the CCM to take action against suspected undesirable NPOs. The CCM is also a member of a Tripartite Arrangement involving the SC and the RMP, and regular meetings are held and information sharing is coordinated between these parties.

Investigations

934. In addition to AML/CFT investigation powers under AMLA the ROS and CCM have investigation powers in respect of offences relating to the registration and conduct of NPOs and their officers. Fully effective terrorist financing offences have only very recently been included with the enactment in March 2007 of the AMLA Amendments.

Registrar of Societies

935. The ROS undertakes investigations of malpractices and offences against the Societies Act (SA) and to institute proceedings to charge such cases in court. The ROS carries out surprise checks on societies and investigates complaints from the public or government agencies. Sections 63, 64 and 66 of the SA provide the ROS with effective powers to: enter and search the premises of a society, and to inspect all books and records; enter and search a premise, or search a person for evidence; seize relevant materials; and summons any person whom the ROS believes able to give any information as to the existence of operations of any unlawful society or suspected unlawful society or as to the operations of any registered society. Additional powers are available to senior police officers under section 65 for entry, search, seizure and arrest in relation to an entity believed to be an unlawful society.

Companies Commission

936. CCM has wide ranging powers to investigate and gather information on NPOs. CCM is empowered to enter, search and seize documents and any object, article, material, thing, accounts, book or other documents of the company required under the CA'65.

CDD and identifying suspicious transactions regarding entities in the NPO sector

937. BNM FIU has taken steps to inform the AMLA reporting institutions about the vulnerability of NPOs as a potential conduit for illegal activities, in particular, terrorism financing. Among others, the initiatives taken by the BNM include: sharing of red flag indicators with the AMLA reporting institutions in relation to NPOs during the awareness programs conducted for the reporting institutions, particularly on

those NPOs with high movements of funds across borders; requiring the banking and other financial institutions to conduct close scrutiny on accounts of NPOs to detect discrepancies on transactions that do not fit into their normal profile; and CDD measures and on-going monitoring of transactions for NPOs as noted in the BNM Standard Guidelines and BNM SG1.

Responding to international requests

938. The ROS and CCM do not have formal mechanisms or explicit powers at present to share information on NPOs with foreign counterparts when there is a suspicion of terrorist financing, unless the information is publicly available. The IRB may share information on NPOs with foreign counterparts (including for CFT investigations) only if there is a Double Taxation Agreement between Malaysia and the foreign country and there is a clause for exchange of information in the agreement. In the absence of channels for prompt international sharing of information between NPO regulators Malaysian authorities would need to rely on FIU to FIU communications available the AMLA or formal requests for mutual legal assistance facilitated by the AGC pursuant to the MACMA.

939. This dependence on the FIU mechanism for exchange of non-public information with foreign NPO authorities significantly constrains the ability of the NPO supervisors and their foreign counterparts to freely obtain and exchange relevant information.

5.3.2 RECOMMENDATIONS AND COMMENTS

940. A system of central registration of NPOs is in place with the ROS and the CCM, through which information is available as to the purposes and objectives of registered NPOs, and the identity of their senior officers and board members. Violations of obligations are able to be sanctioned by the ROS and the CCM and statistics indicate such action is in fact taken, albeit mainly in the area of failures to lodge annual returns. Regarding financial records, companies limited by guarantee are obliged under the CA'65 to maintain such records, but there are no such obligations in the case of NPOs registered with the ROS. All NPOs which carry out activities that generate income or have chargeable income are obliged under the *Income Tax Act* to maintain records of financial transactions for 7 years.

941. Finally, the IRB through the tax return lodgement system is in possession of relevant information of NPOs including donor and expenditure information.

942. A formal structure is in place for oversight of Islamic religious entities and the collection and distribution of funds, however there appears to be a need to further raise awareness with the various oversight bodies to be vigilant against the potential for misuse of funds for terrorist purposes.

943. While the NCC formed a task force to conduct the NPO sector review, there does not appear to be an ongoing policy and strategy aimed at identifying and addressing TF risks in the NPO sector. The authorities may consider adding to the responsibilities of an appropriate working group such as the NCC sub-committee for CFT, the development and implementation of NPO sector strategies consistent with the measures outlined in the FATF's Interpretative Note and Best Practices Paper to

SR VIII. This would also ensure more effective NPO policy and operational coordination and information exchange between the respective agencies in the future.

944. The authorities should consider increasing the participation of the ROS in national AML/CFT initiatives, including by making it a permanent member of the NCC and relevant sub-committees and greater inclusion of ROS staff in training programs to enhance awareness of AML/CFT risks.

945. The ROS and IRB should establish a dedicated AML/CFT function including liaison with other relevant agencies, CFT investigations, outreach and providing training for staff.

946. Further outreach initiatives to the NPO sector should be conducted (including jointly with the BNM FIU and various NPO regulators) to increase awareness amongst NPOs and the public of AML/CFT issues and risks.

947. The NCC should support a national strategy to raise awareness of TF risks and AML/CFT best practice by NPOs and their regulators (CCM, ROS and Islamic Councils).

948. The Malaysian authorities should consider establishing effective powers and mechanisms for the IRB, ROS and CCM to be able to share information regarding NPOs of concern directly with their foreign counterparts, subject to adequate protections being in place.

5.3.3 COMPLIANCE WITH SPECIAL RECOMMENDATION VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• No ongoing strategy to identify and mitigate AML/CFT risks within NPO sector; • Limited outreach to the NPO sector or focus on CFT risks by NPO sector authorities to date; • Inadequate mechanisms for information exchange with foreign counterparts

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 NATIONAL CO-OPERATION AND COORDINATION (R.31)

6.1.1 DESCRIPTION AND ANALYSIS

949. Malaysia places a strong emphasis on coordination and cooperation between domestic competent authorities to develop and support the implementation of policies and measures to effectively combat money laundering and terrorist financing.

950. The NCC and Inter-agency Committee on International Terrorism (ICIT) appears to be effective mechanisms for coordinating AML/CFT strategy and policy formulation at the national level and the subcommittee structure ensures specialist attention is focused at on operational level on AML/CFT investigations, training and terrorist-financing issues.

951. However there appears to be a gap with operational level coordination between supervisory agencies (BNM, SC, LOFSA, BNM FIU), in respect of common issues relating to the AML/CFT policy framework, development and refinement of guidelines and outreach, joint examinations, compliance actions and enforcement (including operationalising the AMLA Enforcement Framework), and to ensure there are no gaps in coverage or effectiveness of implementation across all reporting institutions. One possibility could be to establish a supervisory coordination committee within the NCC for those agencies with AML/CFT supervision responsibilities. Alternatively, the supervisory authorities may wish to establish an over-arching coordination mechanism, where AML/CFT is part of the wider scope of coordination.

The NCC

952. The NCC was established in April 2000 to enhance cooperation among domestic agencies involved in AML/CFT. Section 1.5 of this report outlines the details of the NCC structure, mission and operation.

953. It is evident that the NCC is functioning effectively to coordinate policy cooperation regarding development and implementation of AML/CFT efforts. The membership of the NCC is wide and has periodically been expanded to include additional ministries and agencies to address particular issues (eg ROS in relation to the NPO sector review).

954. The NCC plays a key role in collaborative policy formulation. NCC agencies and ministries work together to develop law reform proposals, developing regulation and enforceable guidance and sharing opportunities for training.

955. The APG and other bodies have drawn on Malaysia's experience with establishing and running the NCC to develop a template for best practice for establishing an NCC, including model terms of reference based on those of the Malaysian NCC.

956. The NCC meets on a quarterly basis and its meetings serve as a mechanism to update the NCC members on ML/TF related issues. The same avenue is used by the

NCC members to collaborate on money laundering investigation undertaken by various law enforcement agencies.

The Inter-Agency Committee on International Terrorism (ICIT)

957. The ICIT was established to make appropriate recommendations to Government for Malaysia's accession and ratification of the relevant UN instruments against terrorism. It continues to co-ordinate the implementation of the various UN Resolutions related to terrorism as well as Malaysia's bilateral, regional and international obligations in this area. See section 1.5 of this report for a description of the structure of the ICIT.

Operational Cooperation

958. In addition to the NCC's role in leading policy formulation and four NCC sub-committees have been established:

959. *Sub-Committee for Investigation Support (SIS)* - was established to support operational level cooperation between the FIU and investigation agencies in order to optimise the use of STRs to identify the underlying predicate and money laundering offences; to gather feedback from the law enforcement agencies on intelligence provided by the FIU in BNM ; and to share experience in the investigation of money laundering cases.

960. *Sub-Committee for* Inter-*Agency Training* - was established to develop and co-ordinate capacity building program and in particular to establish the CFIP for law enforcement officers.

961. *Sub-Committee* for *Asset Forfeiture Management* - was established to develop legal management for assets forfeiture and is lead by the AGC. This Sub-Committee is currently studying mechanisms and structures for managing assets/property that have been frozen, seized and forfeited under AMLA.

962. Currently, the AGC has completed a draft law and is in the process of finalising the policy issues with the relevant parties. Upon completion of this process, the AGC will appoint an agency for administrating of the forfeited properties, including recovery, maintenance and disposal of such properties.

963. *Sub-Committee for* Counter *Financing of Terrorism* - is chaired by the MOIS and was established to discuss on matters relating to the financing of terrorism and to provide training in this matter. This Sub-Committee is also responsible to oversee the implementation of Part VIA of the AMLA.

Mechanisms for consultation between authorities and covered sectors

964. The BNM, SC and LOFSA have sought to focus on dialogue and consultation with various financial sector industry bodies (bankers association etc) and DNFBP professional associations and SROs. As part of Malaysia's staged approach to AMLA invocation over various sectors, the BNM FIU has consulted with relevant regulatory and supervisory authorities and with industry associations/representatives before various the AMLA obligations are invoked on the reporting institutions. The obligations on the reporting institutions are discussed during the consultations and

the views of the reporting institutions are taken into consideration during implementation.

965. The professional industry bodies representing lawyers, accountants and company secretaries have established AMLA Task Forces within their organisations, to consult or communicate with the BNM FIU on AMLA related matters. Likewise, the mainstream financial institutions have Compliance Officers Networking Groups (CONGs) that liaise with the FIU on AMLA issues.

966. Regular dialogue sessions with the compliance officers of the reporting institutions and awareness programs are held between the BNM FIU and the reporting institutions. During these dialogue sessions and awareness programs, the reporting institutions may seek clarification on any issues or express concerns with regard to the AMLA implementation and their reporting obligations.

967. There may be scope for the establishment of CONG-type groups in other parts of the financial sector such as the securities sector and offshore sector, and for the FIU to increase its sector-specific outreach and regular engagement with financial sector groups such as non-bank money remitters and money changers.

Recommendation 32

968. The effectiveness of the AML/CFT measures is reviewed through the NCC process and activities by the BNM FIU. The initiatives include the following:

- Quarterly NCC meetings - NCC members highlight specific area that the NCC may look into to ensure effectiveness of the AML/CFT measures implemented;
- Regular meetings by the NCC Sub-Committees to review and improve on various aspects of the AML/CFT regime;
- Industry consultation;
- Committee for amendment of the AMLA – A committee has been formed to look into specific areas to improve measures for ML/FT investigation and prosecution. ;
- Regular dialogue sessions and AMLA awareness raising by the FIU in BNM and the relevant supervisory and regulatory authorities to gauge the effectiveness of the implementation of the AMLA reporting obligations.

6.1.2 RECOMMENDATIONS AND COMMENTS

969. The NCC provides an excellent structure to bring together policy and implementing ministries and agencies to ensure that Malaysia implements an effective national AML/CFT system in keeping with the international standards.

970. As mention in Section 2.7 there is a need for a dedicated policy focus to support AML/CFT implementation with border enforcement agencies. The NCC and/or ICIT appear to be excellent vehicles to achieve this.

971. The financial sector supervisory authorities should consider establishing a more formal mechanism for supervisory coordination and regular information exchange

specific to the financial regulatory authorities, which could be a general framework incorporating AML/CFT coordination as one aspect, or could be dedicated to AML/CFT supervisory coordination.

972. Authorities may consider encouraging the establishment of CONG-type groups in other parts of the financial sector such as the securities sector and offshore sector.

6.1.3 COMPLIANCE WITH RECOMMENDATION 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• Limited focus on cross-agency coordination of supervisory initiatives specific to AML/CFT. • A need for inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems
R.32		• This Recommendation is rated in more than one section

6.2 THE CONVENTIONS AND UN SPECIAL RESOLUTIONS (R.35 & SR.I)

6.2.1 DESCRIPTION AND ANALYSIS

Recommendation 35

973. Malaysia is a state party to the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances [the Vienna Convention]. The Vienna Convention was signed on 20 December 1988 and ratified on 11 May 1993 through the criminalisation of the laundering of proceeds from drug trafficking in the DD(FOP). Malaysia has implemented all the measures in the Convention that are relevant to the FATF Recommendations.

974. Malaysia signed the UN Convention against Transnational Organised Crime [the Palermo Convention] on 26 September 2002 and ratified it on 24 September 2004. Malaysia has implemented to a substantial extent the measures in the Palermo Convention that are relevant to the FATF Recommendations. Fuller implementation of Articles 6, 11, 12 and 18 of this Convention would be achieved with a more complete coverage of serious crimes both as predicate offences for money laundering offences and for confiscation purposes, with the establishment of a more effective criminal sanction for the offence of money laundering, and with removal of the mandatory requirement for dual criminality as a prerequisite for all forms of mutual legal assistance.

975. The Malaysian Government has agreed to accede to the International Convention for the Suppression of the Financing of Terrorism [the Terrorist Financing Convention], following the passage of a package of legislation designed to give legal effect to Malaysia's obligations under this Convention. This legislation was brought into force on 6 March 2007. New provisions have been enacted to criminalise terrorist financing, to provide for the confiscation of the proceeds and instruments of

such offences, and to freeze terrorist-related funds. These provisions are to a very substantial degree compliant with the relevant Articles of the Terrorist Financing Convention, although as noted elsewhere in this report, the effectiveness of their implementation cannot be assessed as yet.

Special Recommendation I

976. As regards implementation of the Terrorist Financing Convention, see comments in section 2.2 of this report.

977. As regards implementation of Malaysia's obligations under UN SCRs 1267 and 1373, with the recent passage of the AMLA Amendment package Malaysia now has in place laws and measures for the implementation of these Resolutions. These are substantially compliant in form with the requirements of UN SCR's 1267 and 1373 and appear to provide effective mechanisms for the freezing of terrorist-related funds. While it is not yet possible to comment upon the effectiveness of their implementation, the evaluation team noted that prior to the passage of this legislation Malaysia took action under UN SCR 1267 by means of an interim measure which led to the freezing of accounts of several listed individuals.

978. Malaysia is a party to a number of anti-terrorism instruments negotiated under the banner of the Association of Southeast Asian Nations (ASEAN), which include the following:

- Memorandum of Understanding between the Governments of the Member Countries of the ASEAN and the Government of the People's Republic of China on Co-operation in the Field of Non-Traditional Security Issues; and
- Joint Declarations for Co-operation to Combat International Terrorism with other jurisdictions including the EU, United States of America, India, Australia, Russian Federation, Japan, Korea, Pakistan, New Zealand and Canada.

979. Malaysia has also signed the Agreement on Information Exchange and Establishment of Communication Procedure with the Philippines and Indonesia.

6.2.2 RECOMMENDATIONS AND COMMENTS

980. Malaysia has ratified the Vienna and Palermo Conventions and has made a public commitment to accede to the Terrorist Financing Conventions following the passage of the recent AMLA Amendments**.**

981. Malaysia should accede to the UN Convention on the Suppression of the Financing of Terrorism as soon as possible.

982. The relevant sections of all three Conventions have been implemented by Malaysia to a substantial degree. Fuller implementation of the Palermo Convention could be achieved with a more complete coverage of serious crimes both as predicate offences for money laundering offences and for confiscation purposes, with a more effective penalty for the offence of money laundering, and with removal of the mandatory requirement for dual criminality as a prerequisite for all forms of mutual legal assistance.

6.2.3 COMPLIANCE WITH RECOMMENDATION 35 AND SPECIAL RECOMMENDATION I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Full implementation of the Palermo Convention has not been achieved because of incomplete coverage of serious offences, inadequate penalties for the money laundering offence, and the requirement for dual criminality for all forms of mutual legal assistance.
SR.I	**LC**	• Malaysia has not yet acceded to the Terrorist Financing Convention, although laws and measures have recently been put in place to cover its requirements. • It is not yet possible to comment on effectiveness of implementation.

6.3 MUTUAL LEGAL ASSISTANCE (R.36-38, SR.V)

6.3.1 DESCRIPTION AND ANALYSIS

Recommendation 36 (mechanisms for mutual legal assistance)

983. Malaysia's mutual legal assistance mechanisms are set out in the Mutual Legal Assistance in Criminal Matters Act 2002 (MACMA). Mutual legal assistance is co-ordinated by the Attorney General as the designated central authority under the MACMA. Mutual legal assistance matters are dealt with in the AGC's International Affairs Division, which has a Mutual Legal Assistance Unit and an Extradition Unit.

984. Malaysia is able to provide mutual legal assistance in criminal matters both where:

- the requesting foreign State has a treaty or agreement with Malaysia to provide assistance in criminal matters; and
- where no treaty or agreement with Malaysia exists. In this situation the Minister may give a special direction that the MACMA shall apply to that foreign State in relation to the requested assistance.

985. 'Criminal matters' are defined in section 2 of the Act as criminal investigations or criminal proceedings in respect of serious offences or foreign serious offences. 'Criminal matters' also include ancillary proceedings such as those for the obtaining and enforcement of restraining orders and forfeiture orders.

986. A 'serious offence' is an offence against Malaysian law which carries a penalty of death or imprisonment for one year or more, and any attempt, abetment or conspiracy to commit any such offence. A 'foreign serious offence' means an offence against the law of a prescribed foreign State that consists of or includes activity that, if it had occurred in Malaysia, would have constituted a serious offence.

987. Under the MACMA, Malaysia is able to seek and to provide a wide range of assistance in criminal matters, including the following:

- providing and obtaining evidence, including the taking of statements from persons;
- making arrangements for persons to give evidence, or to assist in criminal investigations;
- recovering, forfeiting or confiscating property in respect of a serious offence or a foreign serious offence;
- restraining dealings in property, or freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- executing requests for search and seizure;
- locating and identifying witnesses and suspects;
- service of process;
- identifying and tracing proceeds and instrumentalities of crime
- recovering pecuniary penalties in respect of a serious offence or a foreign serious offence; and
- examining things and premises.

988. Malaysia is a party to the *Treaty on Mutual Legal Assistance in Criminal Matters* which has been signed by ten of the ASEAN Member Countries. The treaty is intended to provide an additional tool to combat transnational crime in the region. It will operate in conjunction with the existing mechanisms for mutual legal assistance in criminal matters, both formal and informal, including existing co-operative mechanisms such as the International Criminal Police Organisation (INTERPOL). Malaysia is the Depository State for the Treaty and the Attorney General's Chambers acts as the Secretariat for the Treaty.

989. Malaysia has Memoranda of Understanding on mutual assistance in criminal matters with Russia, Hong Kong, Venezuela, United Kingdom and the United States for drug-related offences.

990. Malaysia appears to provide mutual legal assistance in a constructive and effective manner. Based on statistical material, processing times are not speedy and this may be partly attributable to staff shortages within the International Affairs Division.

991. The grounds for refusal of assistance are provided in section 20 of the MACMA. There are a number of grounds upon which a request for assistance must be refused. These include:
- the request relates to the investigation, prosecution or punishment of a person for an offence that is an offence of a political nature;
- there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
- the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia would not have constituted an offence against the laws of Malaysia; and
- the thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means.

992. The grounds for refusal are unexceptional except for the following:

- the prohibition where dual criminality cannot be established
- the prohibition where the material requested is not considered to be of sufficient importance to the investigation.

993. It was submitted by Malaysian officials that a flexible approach is applied to the principle of dual criminality, to ensure as far as possible that in practice this requirement does not impose an impediment to the provision of assistance. Malaysian officials also advised that to date, Malaysia had not refused a request for assistance on this ground.

994. Notwithstanding this, both requirements have the potential to unreasonably prevent the provision of assistance, particularly as refusal is mandatory if the grounds are found to be present.

995. Requests to Malaysia for mutual legal assistance are first received by the AGC through diplomatic channels and forwarded for execution to the International Affairs Division of the AGC. The Mutual Legal Assistance Unit is responsible for executing requests and for dispatch of the assimilated material to the requesting State.

996. In relation to urgent requests, officers of the AGC are able to facilitate early execution by alerting the relevant law enforcement agency and by commencing work on the basis of an advance copy of the request.

997. A request for mutual legal assistance cannot be refused on the sole ground that the offence involves fiscal matters. Nor can it be refused on the ground of laws that impose secrecy or confidentiality requirements on financial institutions or designated non-financial businesses or professions. An exception is made where the relevant information was obtained in circumstances where legal professional privilege applies.

998. In response to requests for mutual legal assistance law enforcement officers and investigative officers are able to seek a wide range of orders, including orders for the production of any thing on any premises, production of records held by financial institutions, search and seizure, and the giving of assistance to locate or identify persons.

999. Malaysian officials advise that to date there have not been any conflicts of jurisdiction. In such an event, the treaties to which Malaysia is a party contain provisions for settlement of disputes through consultation or negotiation between the parties through diplomatic channels or any other peaceful means.

1000. Direct requests are able to be made by foreign judicial or law enforcement authorities to domestic counterparts in Malaysia, for assistance in compelling production of documents, and for search and seizure. However in this event Malaysian agencies are required to forward the request to the Attorney General to seek his approval on whether to comply with it.

Recommendation 37 (dual criminality relating to mutual legal assistance)

1001. In the absence of dual criminality mutual legal assistance under the MACMA cannot be given, even in the case of non-intrusive measures.

1002. Malaysia provides mutual legal assistance where both countries criminalise the conduct underlying the offence. A restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence, and technical differences between laws do not appear to impede the provision of assistance.

Recommendation 38 (foreign freezing and forfeiture orders)

1003. Foreign forfeiture orders are able to be enforced in Malaysia where they have been made in any judicial proceedings instituted in that foreign State, against property that is reasonably believed to be located in Malaysia. Similar provision is made for foreign restraining orders. Following the receipt of a request for mutual legal assistance, the Attorney General can apply to the High Court for registration of the foreign forfeiture order. Once registered the foreign forfeiture order is enforceable as if it were an order made in Malaysia.

1004. Section 35 of the MACMA provides for the making of requests to Malaysia for the search and seizure of material relating to a criminal matter in the foreign State, where there are reasonable grounds for believing that the material is located in Malaysia.

1005. Malaysia is also able to enforce requests from foreign countries for confiscation of proceeds or of instruments, in terms of the value of property. This is recoverable as a fine. In addition a pecuniary penalty order may be made against a person from whom property is forfeited, in respect of benefits derived by the person from the commission of a money laundering offence.

1006. Compliance with all the above requests is subject to the requirement for dual criminality.

1007. Malaysia does not have formal arrangements for co-ordinating seizure and confiscation actions with other countries, but in practice strives to do so wherever possible.

1008. Property forfeited under the AMLA is vested in the Federal Government. Under section 62 of the AMLA, such property can be retained by an enforcement agency for its official use or transferred to the Federal Government. In the latter case, forfeited funds are treated as Government revenue which will be used for annual operating budgets. Malaysia has no provision or formal mechanism for sharing of confiscated assets with other countries. However, where confiscation is directly or indirectly a result of co-ordinated law enforcement initiatives, asset sharing can be done by on an informal basis by mutual agreement with the other country or countries.

1009. Foreign non-criminal confiscation orders are recognised and enforced under section 4 of the *Reciprocal Enforcement of Judgments Act* 1958. Civil procedures for the enforcement of such orders are provided in the *Rules of the High Court* 1980.

Special Recommendation V

1010. The obligations of mutual legal assistance apply to terrorist financing and terrorist offences in the same manner as they do to other serious offences. As noted, absence of dual criminality is a mandatory ground for refusal of assistance. Prior to

the entry into force of the new terrorism provisions, this factor together with the previous absence of fully effective offences of terrorism and terrorist financing offences had the potential to impede Malaysia's ability to provide assistance in terrorism-related matters. Arguably this potential remains in the case of requests for assistance where the foreign offence was committed prior to the entry into force of the new offences. However it should be noted that the requirement of dual criminality does not appear to have prevented Malaysia from providing a significant level of mutual legal assistance in terrorism-related cases. Based on AGC records, of the 48 requests for assistance which Malaysia received from 2002 to January 2007, 17 were terrorism-related offences and none were refused.

1011. See comments above regarding the requirement for dual criminality and the previous absence of fully effective offences of terrorism and terrorist financing. It should however be noted that Malaysia has provided assistance in relation to foreign freezing orders based on terrorist financing offences.

1012. The additional elements apply to terrorist financing offences to the extent that they apply to other offences.

R.30 (Resources and training: prosecution agencies involved in mutual legal assistance and extradition)

1013. The Attorney General is the central authority for mutual legal assistance. Mutual legal assistance and extradition are under the purview of the International Affairs Division of the AGC, and have their own specialised units within this Division. Coordination of extradition requests is undertaken by the Preventive Crime Unit of the Ministry of Internal Security in conjunction with the AGC.

1014. The AGC's Mutual Assistance Unit and Extradition Unit have 9 and 8 allocated positions respectively. However Malaysian officials advised that of these 17 positions only 7 have been filled (4 in the Mutual Assistance Unit and 3 in the Extradition Unit), due to difficulty in obtaining people with the appropriate experience.

1015. The Preventive Crime Unit is staffed with ten personnel who are responsible for extradition and other areas.

1016. As public servants, officers of the AGC and the MOIS are subject to the *Official Secrets Act* which binds all public servants to maintain confidentiality in discharging their functions. Officers are also required to sign a letter of undertaking with the government, and are subject to security clearance before appointment in the public service sector. Public officers are subject to a number of processes and procedures coordinated by the Public Service Department, and which are designed to maintain standards of integrity. These include Internal Recruitment Procedures, the Rules of Disciplinary Board of Public Service, and Public Service Instructions.

1017. Specialised training for public officers is also provided by the National Institute of Public Administration.

1018. Government officers are required to undertake training for a minimum of seven days per year. Malaysian officials advised that officers of the MOIS had attended

special training courses organised by BNM and the Judicial and Legal Services Training Institute (ILKAP) in the area of AML/CFT and extradition related issues.

1019. In handling mutual legal assistance requests, the International Affairs Division works with the Prosecution Division's Forfeiture of Property Unit and is assisted by them on money laundering and confiscation issues. The AGC advised that it did not currently provide its officers with specialised training to assist them in dealing with requests for mutual legal assistance in the areas of money laundering, terrorist financing and confiscation although some of the officers of the International Affairs Division have received training in these areas in previous years. This shortcoming is recognised and the AGC has plans to provide such training in the near future

1020. Malaysia maintains adequate statistics on requests made and received for mutual assistance, the type of matters to which the requests relate, and the outcomes of such requests. The following table summarises the number of requests for mutual legal assistance that were received and granted for the years 2004 to 2006.

Table 46: Mutual legal assistance requests received and made

	2002	2003	2004	2005	2006	Total
Number of requests received	-	-	12	14	22	48
Number of requests made	-	3	1	3	2	9
Number of requests completed	-	-	9	7	11	27
In progress			3	7	11	21
Number of request refused	-	-	-	-	-	-

1021. Of the 48 requests received since 2004, Malaysia advised that 27 have been fully executed as at 31 December 2006 and the remaining 21 are still in progress. Malaysia further advised that 23 of the 48 requests related to money laundering and/or terrorist financing matters. None of these had been refused, and 13 of the 23 had been fully executed.

1022. The above figures indicate that Malaysia does not receive or make a large number of requests for mutual legal assistance, although the number of requests received is increasing. Notably a high proportion of the requests relate to money laundering and terrorist financing. The AGC has advised that the average time needed to complete a request is affected by numerous factors, including the quality of the requesting documents and the complexity of the request. In general the time needed for completion of requests appears reasonable when considered within the international context.

1023. A small concern is the time taken for the initial processing of a request to enable a decision to be made on whether Malaysia can accede to it. Among the contributory factors are the transmission of the formal copy of the request through the diplomatic channel, preliminary consultations with the executing agencies and the need to address any shortcomings in the requests themselves such as insufficiency of information. In addition the Evaluation Team was of the view that understaffing and a lack of specialised training may be impeding the timely completion of this part of the process. AGC officials advised that the AGC has not as

yet been able to fill all its allocated positions within the Mutual Assistance and Extradition Units. The AGC further advised that it did not currently provide its officers with specialised training to assist them in dealing with requests in the areas of money laundering, terrorist financing and confiscation, although some of the officers of the International Affairs Division have received training in these areas in previous years. This shortcoming is recognised and the AGC has plans to provide such training in the near future.

6.3.2 RECOMMENDATIONS AND COMMENTS

1024. Malaysian laws and procedures regarding mutual legal assistance are comprehensive and effective, and are available in relation to all serious offences. Two potential impediments are the requirement for dual criminality even for non-intrusive measures, and the prohibition of requests where the material sought is not considered to be of sufficient importance to an investigation.

1025. As noted, Malaysian officials have submitted that a flexible approach is applied to the principle of dual criminality and that to date Malaysia has not refused a request for assistance on this ground.

1026. Nevertheless it was considered that both requirements had the potential to impede the effectiveness of Malaysia's response to mutual assistance requests. Similar comments apply with regard to Malaysia's effectiveness in dealing with requests to enforce foreign forfeiture orders.

1027. Malaysia should consider making the absence of dual criminality a discretionary rather than a mandatory ground for refusal, at least in relation to less intrusive measures, and should consider removing the requirement that the assistance sought be of 'sufficient importance'. In addition Malaysia could consider entering into agreements for asset-sharing, in the interests of enhanced international cooperation.

1028. In general Malaysia appears to provide mutual assistance in a cooperative and effective manner. The AGC appears to operate effectively as a central authority to streamline the processing of mutual assistance requests. Officers of the AGC and MOIS are appropriately skilled and subject to high standards of integrity. However the AGC should consider strategies for filling its allocated staff positions in International Affairs area as soon as possible, and should provide specialised training in mutual legal assistance requests relating to money laundering, terrorist financing and confiscation.

1029. It is recommended that:

- Malaysia make the absence of dual criminality a discretionary rather than a mandatory ground for refusal of mutual legal assistance;
- Malaysia consider removing the requirement that the assistance sought be of 'sufficient importance';
- Malaysia consider entering into international agreements for sharing of confiscated assets; and
- The AGC take steps to fill its allocated staff positions in the International Affairs branch.

6.3.3 COMPLIANCE WITH RECOMMENDATIONS 36 TO 38 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.32	**LC**	• This Recommendation is rated in more than one section
R.36	**LC**	• Mandatory requirements as to dual criminality and sufficient importance present potential impediments.
R.37	**LC**	• The requirement for dual criminality in respect of all types of mutual legal assistance is restrictive.
R.38	**LC**	• There are no provisions for effective sharing of confiscated assets.
SR.V	**LC**	• As with other serious offences, mandatory requirements as to dual criminality and 'sufficient importance' present potential impediments. • the potential impediment to legal assistance remains in the case of requests relating to conduct prior to March 2007, but Malaysia has demonstrated that a flexible approach is taken to the requirement for dual criminality • This Recommendation is rated in more than one section; please see section 6.4.3 for additional reasons for this rating.

6.4 EXTRADITION (R.37, 39, SR.V)

6.4.1 DESCRIPTION AND ANALYSIS

Recommendation 39 (mechanisms for extradition)

1030. Extradition matters are governed by the *Extradition Act* 1992. They are coordinated through the Ministry of Internal Security, which conducts all communications with the requesting State and processes the request on the advice of the AGC. Execution of extradition requests frequently involves other agencies including the RMP.

1031. Section 12 of the *Extradition Act* requires that an extradition request to Malaysia be supported by:

- a warrant for the fugitive's arrest issued in the requesting country, or a certificate of the fugitive's conviction in that country
- particulars of the fugitive
- the relevant facts and the law under which the fugitive is accused or was convicted
- evidence sufficient to justify the issue of a warrant of arrest in Malaysia.

1032. Malaysia has concluded extradition treaties with five other jurisdictions, being: Thailand; Hong Kong, China; Indonesia; the United States; and Australia. Malaysia

is able to consider extradition requests from countries where there is no bilateral or regional extradition treaty, or multilateral convention.

1033. The *Extradition Act* defines an extradition offence as an offence, however described, which is punishable with death or with imprisonment for not less than one year, and where the offence if committed in Malaysia would be punishable with death or with imprisonment for not less than one year. Money laundering is such an offence. Attempts, abetments and conspiracies to commit such offences are included.

1034. The Minister has a discretion to refuse to extradite a Malaysian citizen. In that event the case must be submitted to the AGC for consideration of prosecution of that person in Malaysia.

1035. Malaysian officials advised that Malaysian nationals have been extradited to face prosecution in foreign countries. They further advised that to date Malaysia has not been requested to prosecute a Malaysian national in lieu of extradition. Were Malaysia to do so, it would seek the cooperation of the requesting country either through formal or informal channels to ensure the efficiency of the prosecution.

1036. The *Extradition Act* does not prescribe time limits to govern the processing of an extradition request, including extradition requests in relation to money laundering offences. However, when a fugitive is arrested in Malaysia on the basis of a provisional warrant he or she may not be remanded in custody for an indefinite period of time. The fugitive is to be discharged from custody if the court has not received from the Minister, within such reasonable period of time as the Minister may fix, notification that a formal request has been made for the fugitive's surrender.

1037. Although simplified procedures exist for the extradition of fugitives from Brunei and Singapore, fugitives wanted in other jurisdictions cannot be extradited from Malaysia on the basis only of warrants of arrest or judgments. The *Extradition Act* requires that a prima facie case be established in support of the request, requiring the submission of sworn evidence. This procedure is able to be waived with the consent of the fugitive.

Recommendation 37 (dual criminality relating to extradition)

1038. Dual criminality is a requirement when considering extradition.

1039. Malaysia is able to extradite persons where both countries criminalise the conduct underlying the offence. A restrictive approach is not taken when considering how the requesting country categorises or names the relevant offence, and technical differences between laws do not appear to impede the provision of assistance.

Special Recommendation V

1040. Malaysia's extradition laws and procedures apply to extradition proceedings related to terrorist financing and terrorist acts. Prior to the enactment of Malaysia's new terrorism and terrorist financing offences, the absence of fully effective offences of terrorism and terrorist financing was a concern, as there was the potential that extradition may not have been available in relation to such offences. There is still the

potential that extradition cannot be provided where the foreign offence was committed prior to the AMLA Amendment, if the view is taken that dual criminality requires that the conduct be conduct which was criminalised in Malaysia at the relevant time.

1041. The additional elements in Recommendations 36 and 38 apply to terrorist financing offences in the same manner as they do for other serious offences.

1042. Simplified procedures for extradition are not available in respect of terrorist financing offences or terrorist acts except in the case of requests from Singapore and Brunei.

Table 47: Extradition requests received and made

	2002	2003	2004	2005	2006
Number of requests received	-	1	9	2	7
Number of requests made	-	-	-	1	-
Number of requests completed	-	1	1	3	5
Number of request refused	-	-	-	-	-

1043. Of the 19 requests received, 10 have been completed and the remaining 9 are still in progress. None of the requests have related to money laundering or terrorist financing offences.

1044. Malaysian officials advised that the time required to complete an extradition request was affected by many factors, including the quality of the documents received and the extent to which fugitives exercised their rights of challenge.

6.4.2 RECOMMENDATIONS AND COMMENTS

1045. Malaysia's legislative scheme for extradition broadly meets all essential criteria for this FATF Recommendation. The recent enactment of effective terrorism and terrorist financing offences alleviates previous concerns as to whether extradition could be provided in relation to persons alleged to have engaged in this conduct.

1046. A small concern is the requirement for establishment of a prima facie case in extradition matters. It was submitted that in the majority of cases fugitives have waived their right to a formal hearing. While the effect of waiver will be to reduce litigation costs and time, the requesting country must still prepare the extradition request on a 'prima facie case' basis, and officers of the AGC must initially consider and process the material on this basis.

1047. It is recommended that Malaysia consider simplifying its extradition procedures by removing this requirement for the establishment of a prima facie case in extradition matters.

1048. It is recommended that Malaysia remove the requirement that a requesting jurisdiction establish a prima facie case in support of an extradition request.

6.4.3 COMPLIANCE WITH RECOMMENDATIONS 37 & 39, AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.32	**LC**	• This Recommendation is rated in more than one section
R.37	**LC**	• Dual criminality is required for extradition. In general a flexible approach appears to be taken to the principle.
R.39	**LC**	• Malaysia's extradition laws and procedures broadly meet all the essential criteria, although efficiency of their implementation is hampered by complex procedures.
SR.V	**LC**	• For terrorism-related offences committed before the entry into force of the new terrorism provisions, existing laws would continue to apply, including the Penal Code • This Recommendation is rated in more than one section

6.5 OTHER FORMS OF INTERNATIONAL CO-OPERATION (R.40 & SR.V)

6.5.1 DESCRIPTION AND ANALYSIS

1049. The provisions governing cooperation with foreign counterparts is limited with respect to both BNM and LOFSA. Both the BAFIA and LOFSAA permit exchange of information of a general nature about institutions that they supervise, but both laws have very specific prohibitions on the disclosure of information relating to customers of those institutions. Section 102 of the BAFIA makes provision for a general cooperation gateway, but specifies "that the Bank shall not provide any information relating to the account or affairs of any particular customer of such office, representative office, or institution". To some extent this is at odds with the concept of section 101 which provides for onsite examination in Malaysia by the home supervisors of foreign institutions, although such examinations must be within any limits (unspecified in the law) imposed by BNM.

1050. The constraints on LOFSA are similarly restrictive. Section 28B of the LOFSAA permits the exchange of individual customer information only in respect of credit facilities granted by licensed banks, or where there is evidence that a criminal offence has been or is likely to be committed. In addition section 21 of the Offshore Banking Act specifically precludes enquiries by LOFSA into the affairs of bank depositors (but see also the discussion under Recommendation 4 above). The limitations affecting LOFSA were referenced in the 2001 APG report on Labuan, and they have still to be addressed. The authorities have indicated that approval has now been obtained to put amendments before parliament, and that it is hoped that they will be enacted in the course of 2007.

1051. The SC, on the other hand, has general powers of cooperation under section 150 of the SCA, which permits it to share any information relevant to an alleged breach of legal or regulatory requirements. The SC has applied for accession to the IOSCO Multilateral MOU and is expecting to be admitted in the course of 2007.

1052. The AMLA enables the FIU in BNM to exchange financial intelligence with its foreign counterparts if there exists an arrangement between the two governments. Section 10 of the AMLA enables such exchanges when BNM is satisfied that the corresponding authority has given appropriate undertakings for protecting the confidentiality of the information disclosed and such information will not be used as evidence in any proceedings.

1053. Within the BNM FIU, intelligence is shared with various counterparts in a rapid, constructive and effective manner. For instance, the exchanges of intelligence are done through the Egmont Secure Web and other secured means. The following are some of the areas for the FIU in BNM to co-operate with foreign counterparts:

1054. *Sharing of intelligence* - The FIU in BNM has concluded MoUs for the sharing of financial intelligence with the FIUs of Australia, Indonesia, the Philippines, Thailand and the People's Republic of China. The FIU is currently at various stages of negotiation with other FIUs.

1055. *Asia/Pacific Group on Money Laundering (APG)* - Malaysia is a leading member of the APG. Malaysia has held the APG Co-chair, sat on the APG Steering Group and is currently the Chair of the APG Implementation Issue Working Group. BNM has been requested to assist Cambodia, Lao PDR, Myanmar and Vietnam in developing their AML/CFT regime.

1056. *Egmont Group of* Financial *Intelligence Units* - The FIU in BNM cooperates actively as a member of the Egmont Group. Currently, the FIU in BNM is the representative for Asia in the Egmont Group Committee.

1057. *Association of South East Asia Nations (ASEAN)* - Malaysia is the "Lead Shepherd" for anti-money laundering as part of the ASEAN Senior Officials Meeting on Transnational Crime's initiatives.

1058. *Study Visits to the FIU* - Malaysia has hosted study visits from the following jurisdictions to share experience and improve understanding of each other's FIU:

- Hong Kong, China;
- Indonesia;
- Japan;
- Sri Lanka;
- Fiji;
- China;
- Bangladesh;
- Afghanistan; and
- Vietnam.

1059. Malaysia renders and makes requests for assistance directly through the existing bilateral and multilateral networks for cooperation between law enforcement agencies.

1060. The assistance requested through informal channels involves obtaining intelligence information, whether from the records of the law enforcement agencies or through the interview of witnesses and suspects located in Malaysia, obtaining of

evidence for investigative or prosecutorial purposes and other types of assistance. For investigative purposes, assistance can be provided on a reciprocal basis and on the understanding that the information provided will only be used for investigative purposes.

1061. Bilateral meetings between the RMP and their counterparts from Indonesia, Singapore and Thailand are held annually to share information on transnational crime. Malaysia also co-operates closely with enforcement agencies from the United States, Australia, New Zealand, Netherlands and Germany on investigations of cross-border criminal activities.

1062. The ACA's international cooperation includes exchange of information with counterparts in Singapore, Hong Kong, Brunei, among others.

1063. The SC regularly assists other market regulators (especially emerging economies) in the area of education and training. Training assistance may be in the form of attachments and study tours to the SC, where the operations and experience of the SC and various sectors of the capital market are shared with its counterparts (eg Kenya, the Russian Federation, Thailand, and Vietnam).

1064. With regard to information sharing on NPOs with foreign counterparts, the ROS and CCM do not have formal mechanisms or explicit powers at present unless the information is publicly available. Public information on the company/organisation concerned or details of an individual's participation as a director of the company/organisation may be given upon request. The IRB will disclose information on suspected NPO only if there is a Double Taxation Agreement between Malaysia and the foreign country and there is a clause for exchange of information in the agreement.

1065. The ACA has a multilateral MoU with the Corruption Practices Investigation Bureau (CPIB) of Singapore, Corruption Eradication Commission of Indonesian Republic (KPK) and the Anti-Corruption Bureau (ACB) of Brunei Darussalam.

1066. The RMP and the Australian Federal Police signed a statement of intent to combat transnational crimes by exchanging intelligence and provision of technical assistance.

1067. To date the SC has signed 25 MOUs with various countries, which include coverage of information exchange and cooperation on investigations. In April 2007 the SC was accepted as a signatory to the IOSCO's multilateral MOU.

1068. The RMC co-operates with its foreign counterparts through various organisations and arrangements such as the World Customs Organisation, Regional Intelligence Liaison Office, Customs Enforcement Network as well as various MoUs or bilateral agreements with other jurisdictions' customs departments/agencies.

1069. Malaysia has also signed the following agreements with regard to international cooperation in combating terrorism:

- agreement on information exchange and communication procedures in 2002 / 2003 with Indonesia, the Philippines, Cambodia, Thailand and Brunei which provides for the framework for cooperation among participating countries in

addressing issues relating to terrorism, money laundering and transnational crimes;

- Malaysia has signed the Joint Declaration of Co-operation to Combat International Terrorism with the United States in 2002, which among others, allows for the disclosure of intelligence and terrorist financing information, documents or data received. Subsequently, an ASEAN-US Joint Declaration on Co-operation to Combat International Terrorism was signed in August 2002; and
- a Memorandum of Understanding on Cooperation to Combat International Terrorism was signed on 2 August 2002 with Australia.

1070. The MoUs executed between the BNM, RMP, RMC and their various counterparts enables information relating to money laundering and the underlying predicate offences to be exchanged spontaneously and upon request.

1071. While there are some constraints on BNM (as supervisor) and LOFSA, the SC, RMP and RMC are able to conduct enquiries on behalf of foreign counterparts.

1072. The FIU in BNM is authorised to make enquiries on behalf of foreign counterparts. Section 8 of the AMLA empowers the FIU in BNM to receive and analyse information and reports from any person, including reports issued by reporting institutions. The suspicious and cash transaction reports made under section 14 of the AMLA are vested in the database of the FIU.

1073. Section 10 of the AMLA provides for the communication of STR and other information to foreign counterparts.

1074. The FIU may also exchange information obtained from the National Registration Department database for particulars on identity of natural persons; CCM (registration of legal persons); ROS; Road Transport Department database; and other databases determined by the FIU in accordance with the AMLA or other written laws.

1075. Section 29 of the AMLA provides as follows:

'29(3) The competent authority and the relevant enforcement agency shall co-ordinate and co-operate with any other enforcement agency in and outside Malaysia, with respect to an investigation into any serious offence or foreign serious offence, as the case may be.'

1076. In the past, Malaysia has received requests for mutual legal assistance in criminal matters from countries where Malaysian enforcement agencies have co-operated actively under the MACMA provisions. MACMA does not prevent the provision or obtaining of international assistance in criminal matters under any other written laws.

1077. Generally for the FIU, enforcement and supervisory agencies, there is no disproportionate or unduly restrictive condition except for normal reciprocal requirements for preservation of secrecy and requirements for the control of the use of the information disclosed including for the information not to be used in any proceedings.

1078. Exchanges of intelligence between the FIUs are not refused on the ground that such request is considered to involve fiscal matters. In any case, sections 133 and 135 of the CA are listed as serious offence under the AMLA. Hence, such information may be shared with the foreign corresponding authorities.

1079. All IRB double taxation agreements with other tax authorities provide for the exchange of information. Any information received by the Contracting State shall be treated as secret and shall only be disclosed to persons or authorities (including courts or administrative bodies) concerned with the assessment and collection, the enforcement or prosecution, in respect of, or the determination of appeals, in relation to taxes covered by the double tax agreement.

1080. Section 79 of the AMLA provides for preservation of secrecy. Any information or matter which has been obtained by any person in the performance of his duties or the exercise of his functions under the AMLA shall not be disclosed except for the purpose of the performance of his duties or the exercise of his functions under the AMLA. Any person who contravenes this section shall be liable on conviction for a fine not exceeding RM1 million (equivalent to approx. USD 272,480) or to imprisonment for a term not exceeding one year or to both.

1081. Section 10 of the AMLA as well as the MoU concerning the exchange of financial intelligence with foreign counterparts stipulates that information exchange is to be treated with the same confidentiality standard as it was received under the national law.

1082. In Malaysia, the OSA serves to control the use and disclosure of any information which has been classified as official secret. Information or intelligence exchange under the respective MoUs between competent authorities may be construed to fall under the ambit of the OSA which is accorded the same confidentiality requirement as similar information received in Malaysia.

1083. The FIU in BNM may obtain from other competent authorities or other persons the relevant information requested by a foreign counterparts on case-to-case basis. Such information sharing is permissible provided that the information required is available and not subjected to the OSA.

Recommendation 32

Table 49: Requests received and made by the FIU

	2002	2003	2004	2005	2006
Number of request received	-	5	20	29	41
Number of request made	-	-	8	12	10

Table 50: Number of disclosure to/from foreign counterparts to the FIU

	2002	2003	2004	2005	2006
Number of disclosures	-	3	9	19	17
Number of spontaneous disclosures made	-	-	-	2	-

Number of spontaneous disclosures received	-	-	1	7	-

Table 51: Requests received by the ACA

	Foreign Counterpart	Number of Requests	Year
1	CPIB Singapore	31	2002 - 2005
2	ACB Brunei	8	2002 - 2005
3	ICAC Hong Kong	6	2003 - 2004
4	National Accountability Bureau, Pakistan	1	2004

Table 52: Requests made by ACA

	Foreign Counterpart	Number of Requests	Year
1	CPIB Singapore	9	2003 - 2004
2	ICAC Hong Kong	1	2004
3	KPK Indonesia	1	2005
4	Dept. of Justice Switzerland	1	2004
5	Dept. of Justice Japan	1	2005

Table 53: Requests received and made by the RMC

	2002	2003	2004	2005	2006
Requests received	-	65	68	59	20
Requests made	-	-	5	3	9
Requests granted	-	-	5	3	5
Requests refused	-	50	28	19	19

Table 54: Requests received and made by the SC

	2002	2003	2004	2005	2006
Requests received	1	-	8	8	5
Requests made	-	1	10	7	14

Table 55: Requests received and made by the RMP

	2002	2003	2004	2005	2006
Requests received	-	-	-	1	2
Requests made	-	-	-	1	2

6.5.2 RECOMMENDATIONS AND COMMENTS

1084. Overall Malaysia has demonstrated a strong commitment to share information with foreign counterparts, in particular through the FIU, the SC and law enforcement agencies. There are various mechanisms and pathways in place, which are being utilised.

1085. The provisions governing cooperation with foreign counterparts is limited with respect to both BNM and LOFSA. Both the BAFIA and LOFSAA permit exchange of information of a general nature about institutions that they supervise, but both laws have very specific prohibitions on the disclosure of information relating to customers of those institutions.

1086. The limitations affecting LOFSA were referenced in the 2001 APG report on Labuan, and they have still to be addressed.

1087. The constraints on BNM, in its role as supervisor, to share information should be addressed to ensure that BNM is able to provide the widest range of international cooperation to foreign counterparts.

1088. The constraints on LOFSA's ability to exchange information relating to individual customer information should be addressed as a matter of priority. The authorities have indicated that approval has now been obtained to put amendments before parliament, and that it is hoped that they will be enacted in the course of 2007.

6.5.3 COMPLIANCE WITH RECOMMENDATION 40 AND SPECIAL RECOMMENDATION V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.32	**LC**	• This Recommendation is rated in more than one section
R.40	**PC**	• The provisions governing cooperation with foreign counterparts is limited with respect to both BNM and LOFSA. • Both the BAFIA and LOFSAA permit exchange of information of a general nature about institutions that they supervise, but both laws have very specific prohibitions on the disclosure of information relating to customers of those institutions.
SR.V	**LC**	• This Recommendation is rated in more than one section; please see sections 6.3.3 and 6.4.3 for the reason for this rating.

7 OTHER ISSUES

7.1 RESOURCES AND STATISTICS

Remark: the text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report primarily contains the boxes showing the rating and the factors underlying the rating.

Recommendation 30 - Resources

1089. Overall, Malaysia places considerable emphasis on coordinating adequate resources, appropriate structures and sufficient technical expertise to effectively implement national AML/CFT measures. Similarly, a great deal of effort has gone into supporting professional training and accreditation for AML/CFT across government and the reporting entities.

1090. In relation specific concerns, more focused resources and structures should be applied in the following areas:

- the capacity constraints in the International Affairs department of the AGC should be addressed;
- there is a need for greater supervisory resources to be deployed within the BNM FIU to support the BNM FIU's role as AML/CFT supervisor for DNFBPs and other covered institutions;
- there is also need for establishing a stand-alone international division to accommodate the increasing international demand to visit the Malaysian FIU and to receive advice and technical assistance from the FIU in BNM;
- RMC and other authorities require additional capacity, resources and structures to implement an effective cross border currency reporting system. Related training is also required to support use of the system;
- there is a need for improved structures, resources and training to be applied to the RMC to more closely include customs staff in efforts to detect, investigate and prosecute money laundering and terrorist financing; and
- there is a need for improved structures, resources and training in relation to effective outreach and regulation of the NPO sector to support AML/CFT implementation.

Trainings of Judges and Courts

1091. AML/CFT training has been provided to judges and prosecutors. The FIU continues to develop training for judicial officers, under the coordination of the NCC and in cooperation with the AGC.

Recommendation 32

1092. Malaysia generally takes a proactive approach to reviewing effectiveness of systems for combating money laundering and terrorist financing and maintains comprehensive statistics on matters relevant to effectiveness and efficiency of AML/CFT systems.

1093. Recommendation 32 is addressed at a number of points in this report. More efforts should be made in collecting comprehensive figures in the following areas:

- use of powers to compel production of, search persons or premises for, and to seize and obtain, records, documents and information in relation to ML or TF investigations;
- outreach to the NPO sector on AML and CFT risks; and
- supervisory actions taken by BNM and LOFSA.

1094. Accurate statistics and records of data obtained through the existing cross border reporting systems should be retained or made available to competent authorities.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	**PC**	• Capacity constraints in the International Affairs department of the AGC • Inadequate staff resources for the BNM FIU to discharge its role as AML/CFT supervisor for DNFBPs and other covered institutions • Inadequate capacity, resources and structures in relation to cross border currency reporting and related detection of AML/CFT by RMC and other border agencies
R.32	**LC**	• Minimal statistics are maintained on supervisory actions taken by BNM. • Accurate statistics and records of data obtained through the existing cross border reporting systems are not retained or made available to competent authorities. • Statistics are not maintained on the use of powers to compel production of, search persons or premises for, and to seize and obtain, records, documents and information in relation to ML or TF investigations;

7.2 OTHER RELEVANT AML/CFT MEASURES OR ISSUES

1095. In 2003 Malaysia established the Southeast Asia Regional Centre for Counter-Terrorism (SEARCCT) to support regional responses and efforts to combat terrorism. The SEARCCT, which is fully funded by the Malaysian Government, is under the purview of the MOFA and serves as a major centre in the region to train and build capacity of enforcement and security officials of Governments and non-government representatives in the region.

1096. Besides technical assistance, BNM also provides resource persons in various international conferences and seminars including the following:

- International Seminar in Money Laundering in Islamabad, Pakistan (2005);
- IMF Workshop on Money Laundering, Singapore (2005);
- World Bank Train the Trainers Workshop, Bangkok (2005);
- AML/CFT Symposium, China (2005); and
- Workshop on Information Management for China Anti-Money Laundering Monitoring and Analysis Centre (2006)

7.3 7.3 GENERAL FRAMEWORK FOR AML/CFT SYSTEM (SEE ALSO SECTION 1.1)

1097. There are no elements of the general framework of the Malaysian AML/CFT system that significantly impair or inhibit its effectiveness.

8 TABLES

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF Recommendations are made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

These ratings are based only on the essential criteria, and defined as follows:

Compliant (C)	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant (LC)	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant (PC)	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant (NC)	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable (NA)	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

Forty Recommendations	**Rating**	**Summary of factors underlying rating**
Legal systems		
1. ML offence	PC	• The legislative scheme is being implemented in a reasonably effective manner, however there is incomplete coverage of serious offences • The money laundering legislative scheme is not used for drug-based offences, either through AMLA or the DD(FOP).
2. ML offence – mental element and corporate liability	LC	• The legislative scheme is comprehensive. However criminal sanctions for AMLA prosecutions are inadequate.
3. Confiscation and provisional measures	LC	• Comprehensive schemes for freezing, seizing and identification of property are in place only for offences of money laundering, terrorist financing, corruption, and narcotics.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	PC	• OBA provisions inhibit ability of LOFSA legally to acquire customer information in the normal course of its supervisory role • Legal constraints on BNM (as a bank supervisory authority) and LOFSA to share customer information with foreign counterparts.
5. Customer due diligence	LC	• Uncertainties about current level 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 • Uncertainty about the extent to which insurers can verify CDD undertaken by agents
6. Politically exposed persons	PC	• Specific requirements on PEPs not provided in the securities industry guidelines • Uncertainties about current level of implementation
7. Correspondent banking	LC	• Uncertainties about current level of implementation
8. New technologies & non-face-to-face business	C	• This Recommendation is fully observed
9. Third parties and introducers	PC	• Potential exists for reliance on unregulated third parties • No reference to any limitations on the jurisdictions in which introducers may be based
10. Record keeping	C	• This Recommendation is fully observed
11. Unusual transactions	C	• This Recommendation is fully observed
12. DNFBP – R.5, 6, 8-11	PC	• AMLA requirements are only recently extended to the domestic trust companies and real estate agents. • AMLA requirements not yet invoked for dealers in precious metals and stones. • Very little evidence of effective implementation given the recent introduction of the CDD requirements
13. Suspicious transaction reporting	PC	• Limited scope since not all the required predicates offences for STR reporting are included within the schedule to AMLA • No explicit obligation in law or regulation to report suspicions of terrorist financing • Uncertainties about the effectiveness of the system in certain sectors of the financial industry
14. Protection & no tipping-off	LC	• Lack of clarity about the tipping-off offence
15. Internal controls, compliance & audit	LC	• Uncertainties regarding effectiveness of implementation over entities for which by BNM FIU is responsible for compliance monitoring.
16. DNFBP – R.13-15 & 21	PC	• Obligations not yet extended to dealers in precious metals and stones • Limited scope since not all the required predicates offences for STR reporting are included within the schedule to AMLA • No explicit obligation in law or regulation to report suspicions of terrorist financing • Major doubts about the level and effectiveness of implementation
17. Sanctions	LC	• Uncertainties about implementation arising from limited use of sanctions actions other than administrative letters, and lack of sanctions actions initiated by BNM FIU over non-bank financial institutions.
18. Shell banks	C	• This Recommendation is fully observed

19. Other forms of reporting	C	• This Recommendation is fully observed
20. Other DNFBP & secure transaction techniques	C	• This Recommendation is fully observed
21. Special attention for higher risk countries	LC	• There is uncertainty as to whether effective implementation of recently–issued requirements to conduct enhanced and on-going due diligence and monitoring has yet been achieved. • Limited scope for country-specific countermeasures
22. Foreign branches & subsidiaries	C	• The Recommendation is fully observed
23. Regulation, supervision and monitoring	LC	• Gaps in effectiveness of implementation of AML/CFT monitoring and supervision by BNM FIU and LOFSA • Invocation of the non-STR related AMLA Part IV requirements and the respective guidelines not yet completed for a few categories of non-bank financial institutions,
24. DNFBP - regulation, supervision & monitoring	PC	• Weaknesses in effectiveness of compliance monitoring and absence of on-site examinations. • Inadequate resources for effective supervision of entities under the responsibility of BNM FIU. • Absence of AML/CFT requirements for dealers in precious metals and stones.
25. Guidelines & Feedback	LC	• Guidance has not been updated consistent with current AML/CFT requirements.
Institutional and other measures		
26. The FIU	C	• The recommendation is fully observed
27. Law enforcement authorities	LC	• RMC has not yet developed sufficient capacity to effectively investigate money laundering or terrorist financing offences • Until March 2007 terrorist financing matters were not adequately covered and there is still a need to focus on CFT investigations.
28. Powers of competent authorities	C	• The recommendation is fully observed
29. Supervisors	LC	• Limited implementation of AMLA powers by BNM FIU over non-bank financial institutions • BNM FIU was unable to enforce CFT compliance until AMLA CFT amendment was invoked in March 2007. • Constraints on powers of LOFSA to access bank customer-specific information under OBA.
30. Resources, integrity and training	PC	• Insufficient resources available to BNM FIU Compliance Section to conduct on-site examinations of non-bank financial institutions and DNFBP. • Limited resources in LOFSA committed to AML/CFT compliance and on-site examinations.
31. National cooperation	LC	• Limited focus on cross-agency coordination of supervisory initiatives specific to AML/CFT. • A need for inter-agency coordination in relation to establishing and implementing effective cross-border currency reporting systems

32. Statistics	LC	• This Recommendation is rated in more than one section • Minimal statistics on supervisory actions taken by BNM.
33. Legal persons – beneficial owners	PC	• The CCM maintains a central registry of information about companies which is publicly accessible, but it is not obliged to include information about beneficial ownership. • Company registers do not have to include information on beneficial ownership. However records of such information must now be maintained by a wide range of DNFBPs. • While law enforcement and regulatory agencies have strong powers to obtain information on beneficial ownership, the timeliness and adequacy of such information is hampered by the CCM and company registers not being obliged to maintain this information.
34. Legal arrangements – beneficial owners	PC	• While competent authorities have some powers to access information on beneficial ownership of arrangements such as trusts, availability of such information is limited by the fact that only trusts administered by trustee companies and trust company service providers are obliged to maintain such information.
International Co-operation		
35. Conventions	LC	• Full implementation of the Palermo Convention has not been achieved because of incomplete coverage of serious offences, inadequate penalties for the money laundering offence, and the requirement for dual criminality for all forms of mutual legal assistance.
36. Mutual legal assistance (MLA)	LC	• Mandatory requirements as to dual criminality and sufficient importance present potential impediments.
37. Dual criminality	LC	• The requirement for dual criminality in respect of all types of mutual legal assistance is unduly restrictive.
38. MLA on confiscation and freezing	LC	• There are no provisions for effective sharing of confiscated assets.
39. Extradition	LC	• Malaysia's extradition laws and procedures broadly meet all the essential criteria, although efficiency of their implementation is hampered by complex procedures.
40. Other forms of cooperation	PC	• The provisions governing cooperation with foreign counterparts is limited with respect to both BNM and LOFSA. • Both the BAFIA and LOFSAA permit exchange of information of a general nature about institutions that they supervise, but both laws have very specific prohibitions on the disclosure of information relating to customers of those institutions.
Nine Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.1 Implement UN instruments	LC	• Malaysia has not yet acceded to the Terrorist Financing Convention, although laws and measures have recently been put in place to cover its requirements. • It is not yet possible to comment on effectiveness of implementation.
SR.II Criminalise terrorist financing	LC	• While the new offences meet all the essential criteria of SR II, there is as yet no basis to evaluate the effectiveness of their implementation.

SR.III Freeze and confiscate terrorist assets	LC	• While the new legislation comprehensively provides for the freezing of terrorist funds and for the implementation of SR 1267 and, to a large extent, SR 1373 it is too soon to determine the effectiveness of its implementation. • Prior to the new provisions there was a partially effective procedure in place to implement SR 1267, and action was taken pursuant to it, however there was no effective procedure to implement SR 1373. • Authorities do not appear to have issued guidelines or directions to entities holding real estate or securities
SR.IV Suspicious transaction reporting	PC	• No explicit obligation in law or regulation to report suspicions of terrorist financing • Uncertainties about the effectiveness of the current system in certain sectors of the financial industry
SR.V International cooperation	LC	• As with other serious offences, mandatory requirements as to dual criminality and 'sufficient importance' present potential impediments. • the potential impediment to legal assistance remains in the case of requests relating to conduct prior to March 2007, but Malaysia has demonstrated that a flexible approach is taken to the requirement for dual criminality
SR VI AML requirements for money/value transfer services	PC	• Large scale unregulated remittance channels exist, with a continuing need for structures or strategies to support increased uptake of remittance through formal channels; • Limited implementation of CDD, record keeping and compliance provisions of AMLA as not invoked until March 2007 for certain non-bank remittance operators • Limited implementation of AML/CFT compliance monitoring and sanctions by BNM over remittance operators. • Malaysia has not ensured that all MVT service operators are subject to applicable FATF recommendations
SR VII Wire transfer rules	LC	• Uncertainties about extent of implementation • Inspection powers yet to be used with respect to the majority of non-bank remitters
SR.VIII Non-profit organisations	PC	• No ongoing strategy to identify and mitigate AML/CFT risks within NPO sector; • Limited outreach to the NPO sector or focus on CFT risks by NPO sector authorities to date; • Inadequate mechanisms for information exchange with foreign counterparts
SR. IX Cash courriers	NC	• While Malaysia has a system for completing a cross-border declaration for cash and travellers cheques, in practice the systems is deficient and does not meet the requirements as set down in the FATF recommendations. • While sanctions are available for false disclosure of cross border currency movements, they are rendered ineffective due to deficiencies in the declaration system. • While a limited number of cross border currency detections have occurred over the past 10 years, they generally do not derive from the operation of the declaration system.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Actions (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 & 2)	• It is recommended that Malaysia: ▪ act quickly to include offences specific to piracy, counterfeiting of all goods and environmental crime as predicate offences. ▪ take steps to utilise money laundering offence provisions (whether under the AMLA or the DD(FOP) Act) in appropriate narcotics-based cases. ▪ increase available custodial sentences for offences under the AMLA to compare with maximum terms available for other serious economic crimes under Malaysian law; ▪ take steps to ensure the speedy resolution of money laundering prosecutions;
Criminalisation of Terrorist Financing (SR.II)	• It is strongly recommended that that Malaysia enact an offence provision which directly criminalises the provision or collection of property for the support of terrorist individuals or groups. • Authorities should consider applying the revised legislation to investigate and prosecute terrorist financing related to identified terrorist groups with a presence in Malaysia.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Malaysia should ensure that comprehensive measures are available to identify, freeze and confiscate proceeds and instruments of all serious offences. • Malaysia could consider: ▪ the enactment of a single and comprehensive 'Proceeds of Crimes Act' to deal with the identification, freezing and confiscation of proceeds and instruments of all serious offences. ▪ making the standard of proof for confiscation the civil standard in all matters. ▪ clarifications to the Anti-Corruption Act to specifically provide for confiscation of indirect proceeds.
Freezing of funds used for terrorist financing (SR.III)	• Authorities should ensure that guidelines and directions are issued to entities holding other kinds of property which could be terrorist-related, such as real estate and securities.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	• Given the success of the FIU in BNM, there is increasing international demand from other jurisdictions in the Asia/Pacific region to receive advice and technical assistance from the FIU in BNM. Authorities may wish to consider additional resources and adjustments of current structures to meet this demand.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 & 32)	• Malaysia should ensure that RMC develops an effective AML/CFT investigation capacity as a matter of priority. • Given the significant terrorist financing vulnerabilities identified and the recent amendments to the Penal Code in relation to terrorist financing, Malaysia should take steps to enhance the

	skills, training and resources of the RMP in relation to detecting and investigating terrorist financing.
Cross-border declaration or disclosure (SR.IX)	• Malaysian authorities should establish a cross border currency and bearer negotiable instruments declaration or disclosure system that meets purpose and intent of the FATF standards as a matter of priority. • There is a need for enhanced coordination between agencies to design an implement an effective cross border currency declaration/disclosure system which is supported by effective powers of competent authorities, information sharing provisions and sanctions for non-compliance. • RMC should establish a specialised unit to detect cross-border transportation of currency and bearer negotiable instruments in relation to money laundering and terrorist financing.
3. Preventive Measures – Financial Institutions	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• Malaysia should provide clarification to the industry on what exactly is required in the area of beneficial ownership. • The requirements under the BNM Standard Guidelines relating to the identification of beneficial ownership with respect to a legal arrangement would benefit from some clarification. • Malaysia should ensure that insurance agents systematically implement CDD requirements. • Malaysia should provide guidance on the range of measures that might be considered appropriate and the circumstance in which in which financial institutions may delay the verification of a customer's identity. • Provisions should be added to the guidelines to specify that institutions in the securities sector are required to close any existing accounts where they can no longer be satisfied about the identity of the client. • The equivalent requirements to those specified for the rest of the financial sector (in the BNM Standard Guidelines) to treat PEPs as potential high risk customers should be extended to the securities sector.
Third parties and introduced business (R.9)	• Malaysia should clarify the obligation to ensure that financial institutions deal only with properly regulated introducers. • Malaysia should provide direction to financial institutions regarding which countries eligible intermediaries may be based, taking into account information on whether those countries adequately apply the FATF Recommendations.
Financial institution secrecy or confidentiality (R.4)	• Malaysia should address: • OBA provisions that inhibit the ability of LOFSA to legally acquire customer information in the normal course of its supervisory role; and • Legal constraints on BNM (as a bank supervisory authority) and LOFSA to share customer information with foreign counterparts.
Record keeping and wire	• Malaysia should undertake supervision and surveillance to ensure

transfer rules (R.10 & SR.VII)	the current level of compliance with wire transfer rules, particularly with respect to the non-bank institutions.
Monitoring of transactions and relationships (R.11 & 21)	• Malaysia should: ▪ ensure that reporting institutions adopt more rigorous countermeasures where a country does not, or insufficiently applies the FATF recommendations. ▪ establish a mechanism for detailed countermeasures to be imposed on specifically-identified countries.
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• There is no explicit obligation to report transactions suspected of being linked to terrorist financing, other than when the financing is the proceeds of an unlawful activity. It is recommended that this be addressed in amendments to the AMLA expected to be presented to parliament in the course of 2007. • The authorities have indicated that, in order to remove any further doubt about the intention of the two sub-clauses (sections 14(a) and 14(b)), they may seek to amend the section further to specify that the two reporting obligations are separate and distinct. Such an amendment is recommended. • Pos Malaysia should apply more dynamic and less rigid criteria for determining suspicion. • BNM should seek to explore the generally low level of reporting by money changers, including exercising powers for onsite examination. • It is essential that the authorities substantiate the causes of the low level and reducing trend of reports across the offshore financial sector by means of comprehensive compliance inspections. • The authorities are encouraged to continue their outreach and inspection programs to assist institutions to understand the STR obligation. • While there appears to be a widespread recognition among the financial institutions about the need not to alert their clients to the fact that an STR has been filed, the legal provisions should be reviewed to ensure that there is a clear prohibition on this specific action.
Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Supervision should be undertaken to determine the extent of compliance with the newly invoked section 19 of AMLA for certain categories of financial institutions.
Shell banks (R.18)	• The Authorities should consider re-wording of section 4.14 of BNM guidelines SG1 if it is intended that the requirement applies to correspondent bank accounts provided by Malaysian banks to respondent banks.
The supervisory and oversight system - competent authorities and SROs Role, functions, duties	• The BNM Banking supervision examination manual sections on AML/CFT should be updated to be consistent with the latest Standard and Sectoral Guidelines. • The BNM FIU Compliance Unit should consider undertaking risk-

and powers (including sanctions) (R. 23, 30, 29, 17, 32, & 25).	targeted on-site compliance examinations and themed visits of covered entities. • The BNM FIU has relatively few staff committed to its compliance monitoring responsibilities and Malaysia should consider committing additional staff resources to enhance the effectiveness of AML/CFT supervision of non-bank financial institutions and DNFBP. • Invocation of the non-STR (e.g. CDD and compliance) aspects of Part IV of the AMLA has not yet occurred for a few categories of small non-bank financial institutions and should be completed as soon as possible. • While contravention of the AML/CFT Guidelines may be sanctioned under section 86 of the AMLA, for the avoidance of doubt about the application of the offence provisions of section 86 of the AMLA in respect of guidelines issued under section 83, the authorities may wish to consider making explicit reference in section 86 to 'guidelines'. • To implement the AEF, the financial supervisory authorities and BNM FIU should share information on AML/CFT supervisory issues (enforcement actions, typologies and trends, and ensuring there are no gaps in coverage or effectiveness) and to ensure that responsibility is clearly allocated for all types of corrective action over reporting institutions. • The BNM FIU should ensure that reporting institutions have ready access to all relevant reference information, typologies, updated legislation, guidelines and other advisories, to replace the now outdated AML Compliance Handbook • The SC should update and consider making the relevant AML/CFT sections of the SC Institution Examination Manual available to securities entities to provide further guidance on expected best practices. • The AML/CFT Compliance Handbook should be updated and made available via the FIU website.
Money value transfer services (SR.VI)	• The authorities should proceed without delay to ensure that the non-bank remittance operators are fully included in the AML/CFT framework, including requiring checks against the UNSCR 1267 lists. • The BNM supervision department should conduct targeted on-site examinations of non-bank remitters. • The authorities should undertake further study of the nature of informal remittance business carried out from Malaysia and consider additional measures to build incentives that encourage a shift of remittance from informal to regulated channels. Such a review may seek to consider information from government and the private sectors and may include an outreach program to the informal remittance sector. The reviewers may wish to have regard to the experiences of other countries and typologies and best practices identified by international bodies including FATF,

	APG and World Bank for supporting better regulation of remittance for AML/CFT.
4. Preventive Measures – Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• It is important that the authorities should complete the process of extending the full AMLA requirements to all categories of DNFBPs, and institute a process to monitor implementation.
Suspicious transaction reporting (R.16) (applying R.13-15, 17 & 21)	• Malaysian authorities should undertake an awareness campaign within the DNFBP sector, and seek to institute the compliance monitoring program as soon as possible, in order to determine the cause of the apparent under-reporting.

Regulation, supervision and monitoring (R. 24-25)	• The BNM FIU should ensure that DNFBP have access to up to date guidance and advisories in respect of the new requirements under the AMLA and standard and sectoral guidelines. The respective industry associations and SROs should be encouraged to revise their guidance notes, particularly increasing the industry's awareness of terrorist financing risks.
	• The BNM FIU should also ensure that a systematic process is in place for regularly obtaining and reviewing internal audit reports on AML/CFT compliance from all DNFBP reporting institutions with an internal audit function, commencing with all medium and large-sized entities, to assist in targeting subsequent on and off-site supervisory efforts.
	• It is recommended that the BNM:
	  • Review the current self-assessment questionnaire form so that respondents are encouraged to provide additional qualitative information on strengths and weaknesses of the current policy and control environment in the reporting institution, to enhance the assessment of risk within the sector and targeting of subsequent supervisory action.
	  • Review the functions and available staff resources of the FIU Compliance Unit with the objective of increasing the effectiveness of AML/CFT supervision of DNFBP (and other non-bank financial institutions).
	  • Undertake targeted onsite examination visits of higher-risk categories of institutions including the casino and other large DNFBP (and other non-bank financial institutions it is responsible for) to establish the existence and effectiveness of AML/CFT policies and procedures in place and the processes used for identifying suspicious transactions.
	  • Complete the coverage of AMLA requirements over dealers in precious metals and stones as soon as possible.
	• It is recommended that the LOFSA:
	  • Review the current self-assessment questionnaire form so that respondents are encouraged to provide additional qualitative information on strengths and weaknesses of the current policy and control environment in the reporting institution, to enhance the assessment of risk within the sector and targeting of subsequent supervisory action.

5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	• Malaysia should consider making information on beneficial ownership more readily available, by obliging the CCM and companies to record this information on their registers. • It is recommended that Malaysia o require the CCM to maintain information as to whether shares of registered entities are held beneficially and if so, to maintain details of the beneficial owner o require company registers to maintain records of the same information o clarify obligations of capital market intermediaries in relation to identification and recording of beneficial ownership details.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	• It is recommended that, Malaysia consider obliging entities registered with the CCM and LOFSA to maintain information on beneficial ownership of trust arrangements administered by those entities. • Also, in the case of those trusts which are required to lodge tax returns, Malaysia should consider authorising the IRB to spontaneously make available to law enforcement and investigative agencies relevant information which it holds as to trust beneficiaries, where it appears that serious offences may have been committed.
Non-profit organisations (SR.VIII)	• The authorities may consider adding to the responsibilities of an appropriate working group such as the NCC sub-committee for CFT, the development and implementation of NPO sector strategies consistent with the measures outlined in the FATF's Interpretative Note and Best Practices Paper to SR VIII. This would also ensure more effective NPO policy and operational coordination and information exchange between the respective agencies in the future. • The authorities should consider increasing the participation of the ROS in national AML/CFT initiatives, including by making it a permanent member of the NCC and relevant sub-committees and greater inclusion of ROS staff in training programs to enhance awareness of AML/CFT risks. • The ROS and IRB should establish a dedicated AML/CFT function including liaison with other relevant agencies, CFT investigations, outreach and providing training for staff. • Further outreach initiatives to the NPO sector should be conducted (including jointly with the BNM FIU and various NPO regulators) to increase awareness amongst NPOs and the public of AML/CFT issues and risks. • The NCC should support a national strategy to raise awareness of TF risks and AML/CFT best practice by NPOs and their regulators (CCM, ROS and Islamic Councils). • The Malaysian authorities should consider establishing effective powers and mechanisms for the IRB, ROS and CCM to be able to

	share information regarding NPOs of concern directly with their foreign counterparts, subject to adequate protections being in place.
6. National and International Co-operation	
National cooperation and coordination (R.31)	• The financial sector supervisory authorities should consider establishing a more formal mechanism for supervisory coordination and regular information exchange specific to the financial regulatory authorities, which could be a general framework incorporating AML/CFT coordination as one aspect, or could be dedicated to AML/CFT supervisory coordination. • Authorities may consider encouraging the establishment of CONG-type groups in other parts of the financial sector such as the securities sector and offshore sector.
The Conventions and UN Special Resolutions (R.35 & SR.I)	• Malaysia should accede to the UN Convention on the Suppression of the Financing of Terrorism as soon as possible.
Mutual Legal Assistance (R.32, 36-38, SR.V)	• It is recommended that o Malaysia make the absence of dual criminality a discretionary rather than a mandatory ground for refusal of mutual legal assistance o Malaysia consider removing the requirement that the assistance sought be of 'sufficient importance'. o Malaysia consider entering into international agreements for sharing of confiscated assets. o The AGC take steps to fill its allocated staff positions in the International Affairs branch.
Extradition (R.32, 37 & 39, & SR.V)	• It is recommended that Malaysia consider simplifying its extradition procedures by removing this requirement for the establishment of a prima facie case in extradition matters. • It is recommended that Malaysia remove the requirement that a requesting jurisdiction establish a prima facie case in support of an extradition request.
Other Forms of Co-operation (R.32 & 40, & SR.V)	• The constraints on BNM, in its role as supervisor, to share information should be addressed to ensure that BNM is able to provide the widest range of international cooperation to foreign counterparts. • The constraints on LOFSA's ability to exchange information relating to individual customer information should be addressed as a matter of priority. The authorities have indicated that approval has now been obtained to put amendments before parliament, and that it is hoped that they will be enacted in the course of 2007.
7. Other Issues	
Other relevant AML/CFT measures or issues	• In relation specific concerns, more focused resources and structures should be applied in the following areas: o The capacity constraints in the International Affairs department of the AGC should be addressed. o There is a need for greater supervisory resources to be

	deployed within the BNM FIU to support the BNM FIU's role as AML/CFT supervisor for DNFBPs and other covered institutions. o There is also need for establishing a stand-alone international division to accommodate the increasing international demand to visit the Malaysian FIU and to receive advice and technical assistance from the FIU in BNM. o RMC and other authorities require additional capacity, resources and structures to implement an effective cross border currency reporting system. Related training is also required to support use of the system. o There is a need for improved structures, resources and training to be applied to the RMC to more closely include customs staff in efforts to detect, investigate and prosecute money laundering and terrorist financing. o There is a need for improved structures, resources and training in relation to effective outreach and regulation of the NPO sector to support AML/CFT implementation. • More efforts should be made in collecting comprehensive figures in the following areas: o Use of powers to compel production of, search persons or premises for, and to seize and obtain, records, documents and information in relation to ML or TF investigations; o Outreach to the NPO sector on AML and CFT risks; o Supervisory actions taken by BNM and LOFSA. • Accurate statistics and records of data obtained through the existing cross border reporting systems should be retained or made available to competent authorities.

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION

1. The Malaysian authorities, in particular members of the National Co-ordination Committee to Counter Money Laundering (NCC), expressed its congratulation and appreciation to the APG Secretariat and the team of expert assessors for the successful completion of the APG Mutual Evaluation Exercise (MEE) on Malaysia. The professionalism and commitment shown by the assessment team during their on-site visit and the subsequent review on Malaysia's responses to the draft Mutual Evaluation Report (MER) were laudable and exemplary. The positive contributions of the mutual evaluation process itself are multi-facet. The various authorities gained a more precise and thorough understanding on the requirements of the FATF 40+9 Recommendations. Secondly, it provided a platform for members of the NCC to forge greater collaboration and co-operation in ensuring Malaysia's commitment in implementing the AML/CFT measures effectively. On the whole, Malaysia acknowledged that the MER is a balance report and in many ways reflects Malaysia's AML/CFT programme at the time of the evaluation.

2. The recommendations of the assessment team are appreciated and accepted by Malaysia as critical to enhance the AML/CFT programme. Subsequent to the completion of the MEE, Malaysia has proceeded to implement a number of recommendations put forward in the MER. The major developments are as follows:-

- Lodgement of the accession instrument for the UN International Convention for the Suppression of the Financing of Terrorism at the United Nations in New York on 29 May 2007 and the effective date for Malaysia's accession to the Convention is on 29 June 2007.
- The Minister of Finance has approved for the gazetting of a Ministerial Order to bring into effect dealers in precious metals and precious stones as reporting institutions under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLA).
- The Minister of Finance has also given the approval to include environmental offences, as recommended by the FATF, as predicate offences under the AMLA. Offences relating to illegal loggings and the offence of counterfeiting of goods would be included in the Second Schedule to the AMLA.
- Creation of a sub-committee under the NCC to address the existing gaps pertaining to Special Recommendation IX on cash couriers. A Task Force on Cross-Border Transportation of Currency (CBTC), which comprises Bank Negara Malaysia (the Central

Bank of Malaysia), the Royal Malaysian Customs (RMC) and the Immigration Department, has been established and few meetings have been held to work on the action plan.

- Law enforcement agencies have increased their investigations into money laundering offences. In this respect, the RMC has established a designated AMLA unit within the Special Investigation Branch. The AMLA unit has initiated AMLA investigations in relation to the offence of making incorrect declarations and falsifying of documents.
- Amendments to the AMLA to strengthen the law with regards to its punishment, reporting obligations, power of the competent authorities and power to freeze, seize and forfeit proceeds of crimes.
- Drafting of a new legislation for the purpose of asset management, equitable asset sharing and the setting-up of a centralised asset management body to effectively manage seized and forfeited assets under any written Malaysian laws.
- Compliance monitoring for the designated non-financial businesses and professions (DNFBPs) were enhanced through the implementation of self-assessment questionnaires and planned on-site examination to higher risk DNFBPs.
- Ongoing update to the AMLA supervisory manuals for financial institutions to enhance the supervisory framework.
- Malaysia has taken the necessary steps to promote financial inclusion by bringing the remittance service providers into the formal sector, which include the non-bank remittance operators. All remittance operators, banks and non-banks, are reporting institutions under the AMLA and must comply with the relevant AML/CFT Guidelines and subject to sanctions under the AMLA for non-compliance.

3. The Malaysian FIU has been formally accepted by the Egmont Group at the recent Bermuda Plenary held in May 2007 as compliant with the revised Egmont definition, which basically makes it mandatory for an FIU to have a legal obligation to accept reports relating to suspicion of terrorism financing activities. This is made possible with the coming into force of the AMLA amendments for terrorism financing offences and the inclusion of the related terrorism financing offences in the Penal Code as predicate offences under the AMLA.

4. Malaysia looks forward to continuous good working relationship with the APG in enhancing not only Malaysia's but the Asia Pacific region's AML/CFT regime. In this regards, the NCC will continue to strengthen the AML/CFT national programme to achieve higher level of compliance with the FATF 40+9 Recommendations.

9 ANNEXES

Annex 1

PROGRESS SINCE THE PREVIOUS MUTUAL EVALUATIONS OF MALAYSIA AND LABUAN IOFC

APG Mutual Evaluation Report on Malaysia – June 2002

Legal Recommendations	***Malaysia's Progress***
Pass the Mutual Assistance in Criminal Matters Bill.	The Mutual Assistance in Criminal Matters Act 2002 (MACMA) came into force on 1 May 2003.
Expand the scope of predicate offences in the AMLA to include the crimes of smuggling illegal immigrants, trafficking in women and children and child pornography.	The scope of coverage of predicate offences under the AMLA was expanded variously in 2002, 2003 and 2004 in line with the 2002 recommendation.
Become party to the UN Palermo Convention	Malaysia ratified the Convention in September 2004
Harmonise obligations under AMLA with record-keeping requirements of various laws.	Completed – see section 3.5 of the MER.

Financial Recommendations	***Malaysia's Progress***
Expand the AMLA reporting entities to include accountants, lawyers, casinos, pawnbrokers, trustee companies, bookmakers, pension and provident funds and the Pilgrims Board.	Malaysia has included all the recommended DNFBPs as reporting entities. Malaysia has not included the Employee Provident Fund (EPF), having assessed that the Fund poses minimal ML/TF risks (does not accept funds from the public).
Ensure that reporting entities understand the distinction between STR and threshold reporting obligations.	Malaysia has issued guidance and undertaken significant awareness raising and training to ensure reporting entities understand their obligations. See section 3.10 of the MER
The National Savings Bank, the Pilgrims Fund Board and all pension and provident funds should be brought under the supervision of Bank Negara Malaysia.	The National Savings Bank came under BNM regulation and supervision pursuant to the DFIA in 2002 and under AMLA in 2003. The Pilgrims Fund Board came under AML/CFT regulation and supervision by BNM in 2003
The supervision regime for money changers should be tightened to ensure they meet the requirements of the AMLA.	Not yet done. Money changers have been obliged to report STRs to the FIU since 1 June 2002. The remaining AMLA reporting obligations were invoked on money changers from 1 October 2003. BNM has not yet

	conducted AML/CFT examinations of money changers to assess the effectiveness of implementation of AMLA requirements and 'fit and proper' requirements for directors and officers. Amendment to law required to enable revocation of licences for offences under the AMLA. See Section 3.10 of the MER
Ensure that new financial products and systems are not used for money laundering purposes.	Relevant regulatory/supervisory authorities address money laundering concerns in their approval process.

Law Enforcement	***Malaysia's Progress***
Conduct more research on the different methods of ML in Malaysia to improve capacity to investigate and take counter-measures.	Malaysia has conducted numerous in-country and regional research projects and training seminars to understand the nature of ML and TF methods and trends and to consider the effectiveness of countermeasures. These efforts have included a wide range of stakeholders from across Malaysia.
Establish a law enforcement co-ordination body in collaboration with the Malaysian FIU to enhance the ability to analyse and investigate suspicious transactions.	The NCC has established a Sub-Committee for Investigation Support (SIS). The NCC also developed the AMLA Investigation Reference Guide. BNM has appointed an experienced senior police officer mentor to train FIU analysts and to provide guidance and advice on intelligence matters. (See section 2.5, 2.6 and 6.1 of this report).
Increase RMP's capacity to investigate money laundering offences, seize criminal assets etc,	The RMP has increased its resources to handle ML cases at state and federal levels. See section 2.6 of this report)
Define the roles of various agencies involved in AML and ensure sufficient resources including training of staff are provided to effectively fulfil those roles.	See Section 1.5 and various sections on Recommendation 30 throughout the MER
The Competent Authority (FIU) should be provided with sufficient and appropriate resources in terms of personnel, technology and training in order for it to effectively carry out its vital function within the anti-money laundering regime.	The BNM FIU has sufficient resources to carry out its function in relation to its FIU function, however resource constraints are noted in relation to it role as AML/CFT supervisor for various reporting entities. See sections 2.5, 3.10 and relevant sections on Recommendation 30 throughout the MER.

Training	***Malaysia's Progress***
Provide training for prosecutors and judges in the application of the Anti-Money Laundering Act.	Malaysia participated in training seminars under the Asia Europe Meeting (ASEM) Anti-Money Laundering Project: • Prosecutor Training for Malaysia, l 2005 • Regional Judicial Officers Training, 2005 • UNODC Anti-Money Laundering Computer-Based Training, 2006
Law enforcement agencies should be given training on AML including improving skills on investigating e-commerce money laundering.	The RMP officers have received a wide range of training (domestic and international). See section 2.6 and Recommendation 30 throughout the MER
Issue AML Guidelines to the financial sector. Ensure the sector and competent authorities are trained in the obligations under the guidelines.	The AMLA Competent Authority has issued the Standard Guidelines on AML/CFT, supplemented by the respective Sectoral Guidelines to assist the reporting institutions in discharging their obligations under the AMLA. BNM and other regulators have conducted training of reporting institutions and relevant staff to ensure their implementation. See section 3.10 in relation to guidelines.

International cooperation	***Malaysia's Progress***
Ensure that the mutual legal assistance process is expanded to include all serious offences, not just drug offences.	The MACMA provides for mutual legal assistance for all offences that carry a penalty of one year's imprisonment, or the death penalty. The MACMA came into force 1 May 2003.
Ensure that the channels and procedures be streamlined by the establishment of a central authority for mutual legal assistance and extradition matters.	The Attorney General is the central authority for MLA under the MACMA. A request to/by Malaysia by/to a Foreign State is to be made to/by the Attorney General through diplomatic channel. Malaysia is a signatory of the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Malaysia has ratified the Treaty and it has come into force between Malaysia, Brunei Darussalam, Singapore and Vietnam since 15 February 2006. The completion of the ratification process by the six remaining signatory States in the coming year will fully operationalise the Treaty among the ten like-minded ASEAN member countries.
Malaysia should take steps to ensure that the Competent Authority avails itself of the Interpol and 'police to police' methods of acquiring information from other countries.	Malaysia has taken such steps. See Section 6.5 of the MER.

APG Mutual Evaluation of the Labuan International Offshore Centre, June 2001

Recommendations	***Malaysia's Progress***
To introduce amendments to regulatory laws to rationalise the secrecy provisions and to remove any perceived impediments to the access by LOFSA of information relating to the business of regulated entities, including entity of customers.	Not yet done. See section 3.2 of the MER. LOFSA has obtained approval from the Minister of Finance to amend the Labuan Offshore Financial Services Authority Act 1996 (LOFSAA) to remove any impediments to the access by LOFSA of information relating to the business of regulated entities, including the identity of customers.
To make explicit the ability of LOFSA to acquire information from regulated institutions on behalf of overseas regulatory authorities, and clarify that the sharing of information is not restricted in relation to customer's details, subject to reciprocal confidentiality provisions.	Not yet done. See section 3.2 of the MER. The LOFSA has obtained the approval from the Minister of Finance to amend the LOFSAA to rationalise the secrecy provision and enable cooperation with other regulatory agencies. .
Produce updated guidelines for the financial sector in relation to anti-money laundering systems and procedures, once the AMLA is enacted.	The LOFSA has issued various guidelines in relation to AMLA obligations in the offshore sector. See Section 4.3 of the MER.
Introduce procedures into the on-site examination process undertaken by LOFSA to focus on institutions' compliance with proper anti-money laundering systems.	See Section 4.3 of the MER for discussion of LOFSA's onsite supervision procedures and practice.
Require internal and external auditors, as part of their audits, to report routinely on their assessment of the adequacy of the AML systems and control.	Amendment to the Offshore Insurance Act 1990 (OIA) expanded the scope of duty for both internal and external auditors to include their assessment of the adequacy of AML systems and control.
Amend the guidelines for internal auditors to indicate extent to which their work should address money laundering issues.	Amendments made to the LOFSA's Guidelines on Minimum Audit Standards for Internal Auditors of Offshore Banks issued on 8 April 1997 are through the LOFSA's Circular to the Association of Offshore Banks (Circular No 2001/1/OB) dated 1 August 2001.
Oblige auditors to report to LOFSA evidence of criminal activity that they identify in the course of their audit. Provide auditors with statutory protection against civil liability for making such reports.	Amendments to the OIA completed in 2004. Section 24 of AMLA provides protection to persons reporting.
Introduce 'fit and proper' requirements for the controllers and directors of all trust companies.	The Labuan Trust Companies Act 1990 (LTCA) was amended to incorporate the requirements for directors and trust officers of trust companies to be

	‘fit and proper’ persons.

ANNEX 2: LIST OF ABBREVIATIONS

9MP – Ninth Malaysia Plan
AA – Accountants Act 1967
ACA – Anti-Corruption Agency
ACA'97 – Anti-Corruption Act 1997
AEF – AMLA Enforcement Framework
AG – Attorney General
AGC – Attorney General's Chambers
ALTC – Association of Labuan Offshore Companies
AML/CFT – Anti-Money Laundering and Counter Financing of Terrorism
AMLA – Anti-Money Laundering and Anti-Terrorism Financing Act 2001
AMLA Regulations (Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2006
APG – Asia/Pacific Group on Money Laundering
ASEAN – Association of Southeast Asian Nations
ASEM – Asia Europe Meeting
AUSTRAC – Australian Transaction Reports and Analysis Centre
BA – Betting Act 1953
BAFIA – Banking and Financial Institutions Act 1989
BIS – Banks for International Settlements
BMDB – Bursa Malaysia Derivatives Berhad
BMR – Anti-Corruption Bureau of Brunei
BMSB – Bursa Malaysia Securities Berhad
BSN – National Savings Bank
BVAEA – Board of Valuers, Appraisers and Estate Agents Malaysia
CA – Customs Act 1967
CA'65 – Companies Act 1965
CAMELS – Capital, Assets, Management, Earnings, Liquidity and Sensitivity to Market Risk
CBA – Central Bank of Malaysia Act 1958
CCID – Commercial Crime Investigation Department
CCM – Companies Commission of Malaysia
CDD – Customer Due Diligence
CDS – Central Depository System
CEO – Chief Executive Officer
CGHA – Common Gaming Houses Act 1953
CID – Criminal Investigation Department
CLRC – Corporate Law Reform Committee
CMA – Communications and Multimedia Act 1998
CMCD – Consumer and Market Conduct Department
COJA – Courts of Judicature Act 1964
CONG – Compliance Officers Networking Group
CPC – Criminal Procedure Code
CPIB – Corrupt Practices Investigation Bureau of Singapore
CRS – Compliance and Risk-based Supervision
CTC – United Nations Counter Terrorism Committee
CTR – Cash Transaction Report
DD(FOP) – Dangerous Drugs (Forfeiture of Property) Act 1988
DDA – Dangerous Drugs Act 1952

DFI – Development Financial Institution
DFIA – Development Financial Institutions Act 2002
DNFBPs – Designated Non-Financial Businesses and Professions
DPP – Deputy Public Prosecutor
DTA – Double Taxation Agreement
EA – Extradition Act 1992
ECA – Exchange Control Act 1953
ECM – Exchange Control (Import and Export of Currency Notes and Traveller's Cheques) Notice of Malaysia 2006
ECM 4 – Exchange Control Notice of Malaysia
EMAS – Earnings, Management, Asset Quality and Solvency
EPF – Employee Provident Fund
FATF – Financial Action Task Force on Money Laundering
FBLC – Federation of Public Listed Companies
FIA – Futures Industry Act 1993
FIAP – Financial Investigator Accreditation Programme
FIR – Futures Industry Regulation 1995
FIU – Financial Intelligence Unit
GDP – Gross Domestic Product
HHSCA – House to House and Street Collection Act 1947
HRDC – Human Resource Development Centre
IA – Insurance Act 1996
IACS – Institute of Approved Company Secretaries
IAIS – International Association of Insurance Supervisors
IBA – Islamic Banking Act 1983
ICAC – Independent Commission Against Corruption of Hong Kong
ICIT – Inter-Agency Committee on International Terrorism
IEAF – Informal Enforcement Action Framework
IFSB – Islamic Financial Services Board
IGP – Inspector-General of Police
IIM – Integrity Institute of Malaysia
IISD – Institutions and Intermediaries Supervision Department
ILKAP – Judicial and Legal Services Training Institute
IMF – International Monetary Fund
INTERPOL – International Criminal Police Organisation
IOFC – International Offshore Financial Centre
IOSCO – International Organisation of Securities Commission
IR – Insurance Regulation 1996
IRB – Inland Revenue Board
ISA – Internal Security Act 1960
ITA – Income Tax Act 1967
ITIS – International Transaction Information System
ITSD – Insurance and Takaful Supervision Department
JCE – Judges' Code of Ethics 1994
KA – Kidnapping Act 1961
KPK – Corruption Eradication Commission of Indonesian Republic
KYC – Know Your Customer
LFX – Labuan International Financial Exchange
LOFSA – Labuan Offshore Financial Services Authority
LOFSAA – Labuan Offshore Financial Services Authority Act 1996
LOSIA – Labuan Offshore Securities Industry Act 1998

LOTA – Labuan Offshore Trust Act 1996
LOU – Letter of Undertaking
LPA – Legal Profession Act 1976
LTCA – Labuan Trust Companies Act 1990
LTH – Lembaga Tabung Haji (Pilgrims Fund Board)
MACA – Malaysia Anti-Corruption Academy
MACMA – Mutual Assistance in Criminal Matters Act 2003
MACS – Malaysian Institute of Chartered Secretaries
MAICSA – Malaysian Institute of Chartered Secretaries and Administrators
MCA – Money Changing Act 1998
MDIC – Malaysia Deposit Insurance Corporation Act 2005
MDTCA – Ministry of Domestic Trade and Consumer Affairs
MIA – Malaysian Institute of Accountants
MICPA – Malaysian Institute of Certified Public Accountants
MIFC – Malaysia International Islamic Financial Centre
ML/TF – Money Laundering and Terrorism Financing
MLA'51 – Moneylenders Act 1951
MOF – Ministry of Finance
MOFA – Ministry of Foreign Affairs
MOHA – Ministry of Home Affairs
MOIS – Ministry of Internal Security
MoU – Memorandum of Understanding
NCC – National Co-ordination Committee to Counter Money Laundering
NID – Narcotics Investigation Department
NIP – National Integrity Plan
NPO – Non-Profit Organisation
NRIC – National Registration Identity Card
OBA - Offshore Banking Act 1990
OCA – Offshore Companies Act 1990
OFI – Offshore Financial Institution
OIA – Offshore Insurance Act 1990
OIC – Organisation of Islamic Conference
OSA – Official Secrets Act 1972
OSG1 – AML/CFT Sectoral Guidelines 1 for Banking
OSG2 – AML/CFT Sectoral Guidelines 2 for Insurance and Insurance Related Business
PA – Police Act 1967
PA'72 – Pawnbrokers Act 1972
PEP – Politically Exposed Person
PSA – Payment Systems Act 2003
PSP – Partner and Support Plan
PTCA – Public Trust Corporation Act 1995
RBMD – Rules of Bursa Malaysia Depository
RBMDB – Rules of Bursa Malaysia Derivatives Berhad
RBMSB – Rules of Bursa Malaysia Securities Berhad
RCAM – Royal Customs Academy of Malaysia
RMC – Royal Malaysian Customs
RMP – Royal Malaysia Police
ROBA - Registration of Businesses Act 1956
ROS – Registration of Societies Department
SA – Societies Act 1966
SB – Special Branch

SBDSA - Statutory Bodies (Discipline and Surcharge) Act 2000
SC – Securities Commission of Malaysia
SCA – Securities Commission Act 1993
SDA – Statutory Declaration Act 1960
SEARCCT – Southeast Asia Regional Centre for Counter-Terrorism
SED – Supervision and Enforcement Division
SG1 – AML/CFT Sectoral Guidelines 1 for Banking and Financial Institutions
SG2 – AML/CFT Sectoral Guidelines 2 for Insurance and Takaful Industries
SG3 – AML/CFT Sectoral Guidelines 3 for Money Changers and/or Non-Bank Remittance Operators
SG5 – AML/CFT Sectoral Guidelines 5 for Licensed Casino
SG6 – AML/CFT Sectoral Guidelines 6 for DNFBPs
SG7 – AML/CFT Sectoral Guidelines 7 for Licensed Gaming Outlets
SIA – Securities Industry Act 1983
SIB – Special Investigation Branch
SICDA – Securities Industry (Central Depository) Act 1991
SIDC – Securities Industry Development Centre
SIS – Sub-Committee for Investigation Support
SRO – Self-Regulatory Organisation
STR – Suspicious Transaction Report
T&C – Terms and Conditions of Licence
TA – Takaful Act 1984
TA'49 – Trustee Act 1949
TCA – Trust Companies Act 1949
TDF – Travellers Declaration Form
THA – Tabung Haji Act 1995
TIA – Trust (Incorporation) Act 1952
UN – United Nations
YDA – Yang Di-Pertuan Agong (His Royal Highness)

Annex 3: List of bodies met during Mutual Evaluation onsite visit

National Co-ordination Committee to Counter Money Laundering (NCC)
Ministry of Finance
Bank Negara Malaysia (BNM)
Financial Intelligence Unit in BNM (FIU)
Inland Revenue Board (IRB)
Attorney-General's Chambers (AGC)
Securities Commission (SC
Bursa Malaysia
Companies Commission of Malaysia (CCM)
Labuan Offshore Financial Services Authority (LOFSA)
Ministry of Internal Security and Ministry of Foreign Affair
Registrar, Registration of Societies Department
Anti-Corruption Agency (ACA)
Royal Malaysian Customs
Immigration Department of Malaysia
Royal Malaysia Police
Department of Islamic Development Malaysia (JAKIM)
Federal Territory Islamic Department (JAWI)
Islamic Missionary Foundation Malaysia (YADIM)
Association of Banks in Malaysia
CIMB Group (banking and futures industries)
Pos Malaysia Berhad
IME Impex Sdn Bhd (non-bank remittance operator for Nepali workers)
HSBC
Federation of Goldsmiths and Jewellers Associations of Malaysia
Bar Council
Malaysian Institute of Accountants and Malaysian Institute of Chartered Secretaries and Administrators
Board of Valuers, Appraisers and Estate Agents
Genting Casino
Labuan Offshore Trust Association
ZI Labuan Trust Company
Maybank International (L) Ltd
Salamath Ali Sdn Bhd (money changer)
Great Eastern Life Assurance (Malaysia) Berhad
OSK Securities Berhad