Approach under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLA/ATFA)

Financial Intelligence and Enforcement Department
Bank Negara Malaysia
8 January 2014
Scope

- Background
- Overview of the AML/CFT Regime in Malaysia
- Mutual Evaluation of Malaysia 2014
What is Money Laundering and Terrorism Financing (ML/TF) ?

1. Engages, directly/indirectly, in transactions involve proceeds of unlawful activities

2. Acquires, receives, disguise, transfers, converts (..etc) proceeds of unlawful activities

3. Conceals, disguise or impedes the establishment of the true nature, origin, location, movement (...etc) with respect to, or ownership of proceeds of unlawful activities

“Process of financing terrorist activity either through legitimate or illegitimate source.”
Serious Offences

Laundering of Illegal Proceeds Activities

**Placement**
- to distant sources from illegal activities

**Layering**
- making it difficult to trace origin of funds

**Integration**
- to give legitimate appearance to illegal proceeds

**Examples**:
- Smurfing or structuring
- Setting up cash businesses

**Examples**:
- Insurance, Investment
- Wire transfer
- Sale of assets
- Trade based

**Examples**:
- Repatriate money as business income
- Providing business loans

Money Laundering Process - Giving legitimate appearance to ‘dirty’ money to distance from origin...

- FATF outlines 20 categories of predicate offences related to money laundering activities
International Efforts to Combat ML/TF

**UN Conventions & Resolutions**
- The Vienna Convention
- The Palermo Convention
- International Convention for the Suppression of the Financing of Terrorism
- Security Council Resolution 1373
- Security Council Resolution 1267 and its Successors

**Implementing Groups for AML/CFT**
- Financial Action Task Force (FATF)
  - International standard setter for AML/CFT
  - Conduct Mutual Evaluation
- Egmont Group of FIU
  - International cooperation
  - Exchange of financial intelligence, best practices
- Asia/Pacific Group on Money Laundering (APG)
  - Conduct Mutual Evaluation of Member Countries
  - Typology Research
  - Technical Assistance
- Other International Bodies
  eg. BASEL, IOSCO, IAIS

Malaysia became a member of APG in 2000 and will be undergoing the Mutual Evaluation Exercise (MEE) in 2014. The MEE is aimed at assessing Malaysia’s compliance with the FATF Standards of Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT)
Standards by themselves are useless ... 

... without effective enforcement

FATF Recommendations are enforced through:

- Mutual Evaluation Exercise (MEE)
- International Cooperation Review Group (ICRG)
- FATF Public Statements
Scope

- Background

- Overview of the AML/CFT Regime in Malaysia

- Mutual Evaluation of Malaysia 2014
Overview of AML/CFT Regime in Malaysia

Key Legislation

Anti-Money Laundering and Anti-Terrorist Financing Act (AMLATFA) 2001

Number of Predicate Offences under AMLATFA

288 drawn from 42 legislations

Competent Authority

Bank Negara Malaysia (appointment by Minister of Finance)

Law Enforcement Agencies (LEAs)

1. PDRM
2. Jabatan Kastam Diraja Malaysia
3. SPRM
4. LHDN
5. BNM
6. SC
7. LFSA
8. KPDNKK
9. SSM
10. MITI
Overview of AML/CFT Regime in Malaysia

The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA)

- Came into force on 15 January 2002 (amended in 2003)*
- Criminalises money laundering and terrorism financing.
- Number of reporting institutions:
  - More than 38,000 entities.
  - Includes financial institutions and designated non-financial business and professions (DNFBPs) sector such as lawyers, accountants, casino and dealers in precious metals and stones
  - Subject to the relevant AML/CFT Policies/Guidelines issued by the supervisory authorities (BNM, Securities Commission and Labuan FSA)

Bank Negara Malaysia as Competent Authority under AMLATFA

- Mandated to receive from reporting institutions and analyse:
  - suspicious transaction reports (STR)
  - cash transaction reports (CTR)
- Disseminate financial intelligence to law enforcement agencies and foreign financial intelligence units (FIUs).
- Review and develop AML/CFT policies governing the reporting institutions.
- Acts as Secretariat to the National Coordination Committee to Counter Money Laundering (NCC)

* AMLATFA will be amended this year to ensure compliance with requirements of international standards
AML/CFT Initiatives are Coordinated via the NCC

National Coordinating Committee to Counter Money Laundering (NCC)

Agencies under the NCC

**Supervisory/Regulatory**
- Bank Negara Malaysia (FIU)
- Companies Commission of Malaysia
- Labuan Financial Services Authority
- Registrar of Societies
- Securities Commission

**Enforcement**
- Inland Revenue Board
- Immigration Department of Malaysia
- Malaysia Anti-Corruption Commission
- Royal Malaysian Customs
- Royal Malaysia Police

**Policy**
- Ministry of Finance
- Ministry of Foreign Affairs
- Home Ministry
- Ministry of Domestic Trade Cooperatives and Consumerism
- Attorney-General’s Chambers
- Ministry of International Trade and Industry

**Objectives:**
✓ Develop national policy measures to counter money laundering / terrorist financing (ML/TF)
✓ Develop and ensure proper implementation of measures to counter ML/TF based on internationally accepted standards
AML/CFT Measures - ‘Double-layer protection’ through detection and deterrence frameworks...

Effective preventive measures
- AML/CFT reporting & compliance programme
- Customer due diligence
- Red flag on suspicious and high risk transactions
- Record keeping

Comprehensive legal & enforcement framework
- Criminalisation of ML/TF
- Fully functional FIU - receive, analyse, disseminate STR/CTR
- Adequate investigation powers
- Freezing, seizure & forfeiture of properties

Domestic & International Cooperation as Fundamental
AML/CFT Measures- ML/TF detection & deterrence - financial institutions (FIs) are the main gatekeepers...

**Reasons:**
- Huge volume and amount of transaction from various locations
- Inconsistent with their age (20-30 years old)
- Reported to be working with one company

**Findings:**
- Suspected to be involved in illegal activities
- Camouflage the illegal activities with legal business (computer)

**Findings:**
- Confirmed the involvement in illegal gambling, gangsterism and illegal money lending
- Using the account of its employee to avoid detection

...close relationship between FIs, FIU and LEAs successfully unveiled the illegal activities
## Breakdown of Predicate Offences by the LEAs

<table>
<thead>
<tr>
<th>No</th>
<th>LEAs</th>
<th>Legislations</th>
<th>No. Of Predicate Offence under AMLATFA</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>PDRM</td>
<td>Penal Code</td>
<td>119</td>
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<td>Anti-Trafficking in Persons Act</td>
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<td>Betting Act</td>
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<td>Kidnapping Act</td>
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<td>Internal Security Act</td>
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<td></td>
<td>Dangerous Drugs Act</td>
<td>6</td>
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<td>Dangerous Drugs (Forfeiture of Property) Act</td>
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<td></td>
<td>Firearms (Increased Penalties) Act</td>
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<td>Explosive Act</td>
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<td>Common Gaming Houses Act</td>
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<td>Corrosive and Explosive Substances and Offensive Weapons Act</td>
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<td>Moneylenders Act</td>
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<td>Pawnbrokers Act 1972</td>
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<td>Malaysian Timber Industry Board (Incorporation) Act 1973</td>
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<td>2</td>
<td>JKDM</td>
<td>Customs Act 1967</td>
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<td>3</td>
<td>SPRM</td>
<td>Malaysia Anti-Corruption Commission Act</td>
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<td>4</td>
<td>LHDN</td>
<td>Income Tax Act</td>
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<td>5</td>
<td>MITI</td>
<td>Strategic Trade Act 2010</td>
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<td>6</td>
<td>SSM</td>
<td>Companies Act</td>
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<td></td>
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<td>Kooto Funds (Prohibition) Act</td>
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<tr>
<td>7</td>
<td>BNM</td>
<td>Banking and Financial Institutions Act</td>
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<td>Development Financial Institutions Act</td>
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<td>Insurance Act</td>
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<td>Exchange Control Act</td>
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<td>Islamic Banking Act</td>
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<td>Money Changing Act</td>
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<tr>
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<td></td>
<td>Payment Systems Act</td>
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<td></td>
<td></td>
<td>Takaful Act</td>
<td>5</td>
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<td>AMLATFA</td>
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<tr>
<td>8</td>
<td>SC</td>
<td>Futures Industry Act</td>
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<td>Securities Commission Act</td>
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<td>Securities Industry Act</td>
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<tr>
<td>9</td>
<td>LFSA</td>
<td>Labuan Offshore Securities Industries Act</td>
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<tr>
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<td>Offshore Banking Act</td>
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<td>Offshore Insurance Act</td>
<td>1</td>
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<td></td>
<td>Labuan Trust Companies Act</td>
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<tr>
<td>10</td>
<td>KPDNK</td>
<td>Copyright Act</td>
<td>1</td>
</tr>
<tr>
<td></td>
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<td>Optical Disc Act</td>
<td>2</td>
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<tr>
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<td>Trade Description Act</td>
<td>1</td>
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<tr>
<td></td>
<td></td>
<td>Direct Sales and Anti-Pyramid Scheme Act 1993</td>
<td>2</td>
</tr>
<tr>
<td></td>
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<td>Control of supplies Act 1961 and Control of Supplies Regulations 1974</td>
<td>3</td>
</tr>
</tbody>
</table>
### Reporting Institutions under the AMLATFA

<table>
<thead>
<tr>
<th>Year</th>
<th>Institutions</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>Commercial banks, Investment banks, Islamic banks, Insurers, Insurance brokers, Takaful operators, Offshore banks, Offshore insurers, Offshore trust companies, Money changers</td>
</tr>
<tr>
<td>2003</td>
<td>Pilgrims Fund Board, Pos Malaysia Berhad, Bank Simpanan Nasional, Bank Kerjasama Rakyat Malaysia Berhad, Licensed casino</td>
</tr>
<tr>
<td>2004</td>
<td>Stockbrokers, Futures brokers, Accountants, Lawyers, Company secretaries</td>
</tr>
<tr>
<td>2005</td>
<td>Licensed gaming outlets, Notaries public, Bank Pertanian Malaysia, Offshore listing sponsors, Offshore trading agents</td>
</tr>
<tr>
<td>2006</td>
<td>Trust companies, Real estate agents, Moneylenders, Pawnbrokers, Non-bank designated payment instrument issuers, Unit trust management companies, fund managers, future fund managers, Non-bank remittance operators, Malaysia Building Society Berhad</td>
</tr>
<tr>
<td>2007</td>
<td>Moneylenders in Sabah, Sarawak and Labuan, Sabah Credit Corporation, Borneo Housing Mortgage Finance Berhad, Leasing and factoring businesses, Electronic money issuers, SME Bank, Dealers in precious metals or precious stones, Insurance financial advisers</td>
</tr>
<tr>
<td>2009</td>
<td>Bank Pembangunan Malaysia Berhad, Export-Import Bank of Malaysia Berhad</td>
</tr>
<tr>
<td>2010</td>
<td>Licensed wholesale money changing operators</td>
</tr>
</tbody>
</table>
Scope

- Background
- Overview of the AML/CFT Regime in Malaysia
- Mutual Evaluation of Malaysia 2014
Malaysia will be among the first country to be assessed under the new FATF methodology based on the Revised FATF Standards.

Focus on:

- Comprehensiveness of AML/CFT Laws and Regulations
- Effectiveness of Implementation

Overall Ratings from MER 2007

- Compliant: 9
- Largely Compliant: 24
- Partially compliant: 15
- Non-Compliant: 1
MEE 2014 will be more onerous - Assessment will be based on the two inter-linked components under the New Methodology

1. Technical Compliance
   - Address specific requirements of each of the FATF Recommendations.
   - Principally relate to the relevant legal and institutional framework and the powers and procedures of competent authority

2. Effectiveness
   - Assess the extent to which a country achieves a defined set of outcomes that are central to a robust AML/CFT system
   - Analyse the extent to which a country’s legal and institutional frameworks is producing the expected results

Level of compliance will be indicated with one of the following ratings: Compliant, Largely Compliant, partially Compliant or Non-Compliant

How effectively each of the Immediate Outcomes in the Methodology is achieved will be set out in the report.

Will include one of the following ratings: high-level of effectiveness, substantial level of effectiveness, moderate level of effectiveness and low level of effectiveness
The Methodology for 2014 Mutual Evaluation

40 Recommendations

Technical Compliance (TCM)

Methodology

Effectiveness Assessment (EA)

11 Immediate Outcomes

Focus: law, enforceable means and institutional framework

Focus: implementation and desired outcomes

<table>
<thead>
<tr>
<th>Technical compliance ratings</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliant</td>
<td>C</td>
</tr>
<tr>
<td>Largely compliant</td>
<td>LC</td>
</tr>
<tr>
<td>Partially compliant</td>
<td>PC</td>
</tr>
<tr>
<td>Non-Compliant</td>
<td>NC</td>
</tr>
<tr>
<td>Not applicable</td>
<td>NA</td>
</tr>
</tbody>
</table>

Levels of compliance:
- **C** - Compliant: There are no shortcomings.
- **LC** - Largely compliant: There are only minor shortcomings.
- **PC** - Partially compliant: There are moderate shortcomings.
- **NC** - Non-compliant: There are major shortcomings.
- **NA** - Not applicable: A requirement does not apply, due to the structural, legal or institutional features of a country.

When deciding on the level of shortcomings for any Recommendation, assessors should consider, having regard to the country context, the number and the relative importance of the criteria met or not met.

Effectiveness ratings:

- **High level of effectiveness**: The Immediate Outcome is achieved to a very large extent. Minor improvements needed.
- **Substantial level of effectiveness**: The Immediate Outcome is achieved to a large extent. Moderate improvements needed.
- **Moderate level of effectiveness**: The Immediate Outcome is achieved to some extent. Major improvements needed.
- **Low level of effectiveness**: The Immediate Outcome is not achieved or achieved to a negligible extent. Fundamental improvements needed.
Ensuring effectiveness of AMLCFT measures is difficult, but necessary. Above all, it requires good understanding, seamless coordination & concerted effort of all stakeholders at both domestic and international levels...

“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 AMLATFA, and with a more speedy resolution of the matters once charged.”

“It is recommended that Malaysia... take steps to ensure the speedy resolution of money laundering prosecutions.”