



**GUIDELINES ON
ANTI-MONEY LAUNDERING AND COUNTER
FINANCING OF TERRORISM (AML/CFT)

TRUST COMPANY SECTOR**

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PART A OVERVIEW

1. Introduction

- 1.1 Money laundering and terrorism financing (ML/TF) continues to be an on-going threat which has the potential to adversely affect the country's reputation and investment climate which may lead to economic and social consequences. The globalisation of the financial services industry and advancement in technology has posed challenges to regulators and law enforcement agencies as criminals have become more sophisticated in utilizing reporting institutions to launder illicit funds and use them as conduits for ML/TF activities.

- 1.2 Since the formation of the National Coordination Committee to Counter Money Laundering (NCC), efforts have been undertaken to effectively enhance the AML/CFT compliance framework of reporting institutions resulting in the introduction of the Standard Guidelines on Anti-Money Laundering and Counter Financing of Terrorism AML/CFT and the relevant Sectoral Guidelines. While these efforts have addressed the ML/TF risks and vulnerabilities, there is a need to continuously assess the effectiveness of our AML/CFT framework to ensure that it continues to evolve in line with developments in international standards and the global environment.

- 1.3 Besides bringing the recommendation up to date in addressing new and emerging threats, the 2012 revision of the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (FATF 40 Recommendations), sought to clarify and strengthen many of its existing obligations as well as to reduce duplication of the Recommendations. One of the new Recommendations introduced is on the obligation of countries to adopt a risk-based approach in identifying, assessing and understanding the countries' ML/TF risks, which places further

expectation on reporting institutions to assess and mitigate ML/TF risks.

- 1.4 This Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) –Trust Company Sector Guidelines is based on the principle that reporting institutions must conduct their business in conformity with high ethical standards and be on guard against undertaking any business transaction that is or may be connected with or may facilitate ML/TF. This is aim to ensure integrity and soundness of Labuan International Business and Financial Centre (IBFC) and Malaysian financial systems are safeguarded.

2. Objective

- 2.1 This guidelines is formulated in accordance with the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) and the FATF 40 Recommendations and is intended to ensure that reporting institutions understand and comply with the requirements and obligations imposed on them.

3. Scope

- 3.1 This guidelines sets out the:
- (a) obligations of reporting institutions with respect to the requirements imposed under the AMLATFA;
 - (b) requirements imposed on reporting institutions in implementing a comprehensive risk based approach in managing ML/TF risk; and
 - (c) roles of the reporting institutions' Board of Directors and senior management in putting in place the relevant AML/CFT measures.

4. Legal Provisions

- 4.1 This guidelines is issued pursuant to:
- (a) Section 13, 14, 15, 16, 17, 18, 19, 20, 66E and 83 of the AMLATFA; and

- (b) Section 4B of the Labuan Financial Services Authority Act 1996 (LFSAA).

5. Applicability

5.1 This guidelines is applicable to:

- (a) Labuan Trust Companies licensed under section 61 and Managed Trust Companies under section 71 of the Labuan Financial Services and Securities Act 2010 (LFSSA);
- (b) Persons prescribed by the Minister or licensed by the Registrar of Companies to act as a company secretary pursuant to section 93 of the Labuan Companies Act 1990 (LCA), when they, whether in person or through a firm or company, prepare or carry out the following activities for their clients :
 - (i) act as a formation agent of legal entities;
 - (ii) act as (or arrange for another person to act as) director or secretary of a company, a partner of a partnership, or a similar position related to other legal entities;
 - (iii) provide a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal entities or arrangement;
 - (iv) act as (or arrange for another person to act as) a trustee of an expressed trust; or
 - (v) act as (or arrange for another person to act as) a nominee shareholder for another person.
- (c) any other persons as specified by Labuan FSA;
- (d) branches and subsidiaries of reporting institutions referred to in Paragraph 5.1(a) and (b) which carries on any activity listed in the First Schedule of the AMLATFA; and
- (e) all products and services offered by reporting institutions referred to Paragraph 5.1(a) and (b).

5.2 The requirements of this AML/CFT – Trust Company Sector is applicable to Labuan licensees operating as foreign branches, subsidiaries and offices, wherein they are required to comply with the policies and procedures as implemented by their head office. However, if, policies and procedures as implemented by their head office are inconsistent with the requirements of this document or less stringent than stated on this document, the requirements prescribed herein on this document shall prevail.

5.3 Where the reporting institutions are subject to more than one document relating to AML/CFT matters issued pursuant to section 83 of the AMLATFA, the more stringent requirement shall apply.

6. Effective Date

6.1 This AML/CFT – Trust Company Guidelines will be effective from 30 December 2013.

7. Compliance Date

7.1 Compliance to the requirements outlined in this guideline shall take effect immediately, unless otherwise specified by the Labuan FSA.

8. Guidelines Superseded

8.1 This guidelines supersede The Standard Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) issued on 4 January 2007.

9. Relationship with Existing Policies

9.1 This guideline shall be read together with other relevant policy documents, circulars and directives issued by Labuan FSA relating to compliance with AML/CFT requirement.

10. Definition and Interpretation

10.1 The terms and expression used in this document shall have the same meanings assigned to it in the AMLATFA, LFSSA and LIFSSA as the case may be, unless otherwise defined in this document.

10.2 For the purpose of this AML/CFT – Trust Company Sector, the following definitions and interpretations apply :

“accurate”	Refers to information that has been verified for accuracy.
“Bank”	Refers to Bank Negara Malaysia
“beneficial owner”	<p>Refers to any natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those natural persons who exercise ultimate effective control over a legal person or arrangement.</p> <p>For legal persons, beneficial owner refers to person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also includes the natural person with a controlling interest and the natural persons who comprise the mind and management of company.</p> <p>Reference to “ultimately owns or control” or “ultimate effective control” refers to situation in which ownership or control is exercised through a chain of ownership or by means of control other than direct control.</p>
“beneficiary”	<p>Depending on the context:</p> <p>In trust law, a beneficiary refers to the person or persons who are entitled to the benefit of any trust arrangement. A beneficiary can be a natural or legal person or arrangement. All trusts (other than charitable or statutory permitted non-charitable trusts) are required to have ascertainable</p>

	<p>beneficiaries. While trusts must always have some ultimately ascertainable beneficiary, trusts may have no defined existing beneficiaries but only objects of a power until some person becomes entitled as beneficiary to income or capital on the expiry of a defined period, known as the accumulation period. This period is normally co-extensive with the trust perpetuity period which is usually referred to in the trust deed as the trust period.</p> <p>In wire transfer, refers to the natural or legal person or legal arrangement who is identified by the originator as the receiver of the requested wire transfer.</p> <p>In clubs, societies and charities, refers to the natural persons or groups of natural persons who receive charitable, humanitarian or other types of services of the clubs, societies and charities.</p>
<p>“beneficiary account”</p>	<p>Includes trust accounts, nominees accounts, fiduciary accounts, accounts opened for companies with nominee shareholders, accounts for mutual fund and fund managers, accounts for personal asset holding vehicles, pooled accounts, accounts opened by professional third parties and other relevant accounts.</p>
<p>“beneficiary institution”</p>	<p>Refers to the institution which receives the wire transfer from the ordering reporting institution directly or through an intermediary reporting institution and makes the fund available to the beneficiary.</p>
<p>“Board of Directors”</p>	<p>Refers to a governing body or a group of directors. A director includes any person who occupies a position of a director, however styled, of a body corporate or unincorporated.</p> <p>(a) a corporation, the same meaning assigned to it in</p>

	<p>subsection 2(1) of the Labuan Companies Act 1990;</p> <p>(b) a sole proprietorship, means the sole proprietor; and</p> <p>(c) a partnership, means the senior or equity partners.</p>
“customer”	Refers to both account holder and non-account holder, and the term also refers to a client.
“customer due diligence”	Refers to any measures undertaken pursuant to section 16 of the AMLATFA.
“family members”	Refers to legal spouse, children (including legally adopted or step child), parents, siblings, in-laws, or relatives that might benefit from the relationship.
“financial group”	Refers to a group that consists of a holding company incorporated in Malaysia or of any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to AML/CFT policies and procedures at the group level.
“Government-linked company”	Refers to a corporate entity that may be private or public (listed on a stock exchange) where the government owns an effective controlling interest, or is owned by any corporate entity where the government is a shareholder.
“higher risk”	<p>Refers to circumstances where the reporting institutions assess the ML/TF risks as higher, taking into consideration, and not limited to the following factors:</p> <p>(a) Customer risk factors:</p> <ul style="list-style-type: none"> • the business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between the reporting institution and the customer); • non-resident customer; • legal persons or arrangements that are personal asset-holding vehicles;

- companies that have nominee shareholders or shares in bearer form;
- business that are cash-intensive;
- the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;
- high net worth individuals;
- persons from locations known for their high rates of crime (e.g. drug producing, trafficking, smuggling);
- businesses or activities identified by the FATF as having higher risk for ML/TF;
- legal arrangements that are complex (e.g. trust, nominee); and
- persons who match the red flags criteria of the reporting institutions.

(b) Country or geographic risk factors :

- countries having inadequate AML/CFT systems;
- countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations;
- countries having significant levels of corruption or other criminal activity; and
- countries or geographic areas identified as providing funding or support for terrorist activities, or that have designated terrorist organisations operating within their country.

In identifying countries and geographic risk factors, reporting institutions may refer, to credible sources such as mutual evaluation reports, detailed assessment reports, follow up reports and other relevant reports published by

	<p>international organisations such as the United Nations.</p> <p>(c) Product, service, transaction or delivery channel risk factors:</p> <ul style="list-style-type: none"> • anonymous transactions (which may include cash); • non face-to-face business relationships or transactions; • payment received from multiple persons and/or countries that do not fit into the person’s nature of business and risk profile; and • payment received from unknown or un-associated third parties.
“higher risk countries”	Refers to countries that are listed by FATF or the Government of Malaysia with either on-going or substantial ML/TF risks or strategic AML/CFT deficiencies that pose a risk to the international financial system.
“home supervisor”	Refers to the Bank Negara Malaysia, Securities Commission and Labuan Financial Services Authority and any other person as defined under Section 28A of Labuan Financial Services Authority Act 1996.
“international organisations”	<p>Refers to entities established by formal political agreements between their member States that have the status of international treaties; their existence is recognised by law in their member countries; and they are not treated as residential institutional units of the countries in which they are located. Examples of international organisations include the following:</p> <p>(a) United Nations and its affiliated international organisations;</p> <p>(b) regional international organisations such as the Association of Southeast Asian Nations, the Council of</p>

	<p>Europe, institutions of the European Union, the Organisation for Security and Co-operation in Europe and the Organization of American States;</p> <p>(c) military international organisations such as the North Atlantic Treaty Organization; and</p> <p>(d) economic organisations such as the World Trade Organization.</p>
“Labuan FSA”	Refers to Labuan Financial Services Authority
“legal arrangement”	Refers to express trusts or other similar legal arrangements.
“legal person”	Refers to any entities other than natural persons that can establish a permanent customer relationship with a reporting institution or otherwise own property. This includes companies, bodies corporate, foundations, partnerships, or associations and other similar entities.
“LIBFC”	Refers to Labuan International Business and Financial Centre
“originator”	Refers to the account holder who allows the wire transfer from that account, or where there is no account, the natural or legal person that places the order with the ordering institution to perform the wire transfer.
“person”	Includes a body of persons, corporate or unincorporated.
“politically exposed persons (PEPs)”	<p>Refers to:</p> <p>(a) foreign PEPs – individuals who are or who have been entrusted with prominent public functions by a foreign country. For example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials;</p> <p>(b) domestic PEPs – individuals who are or have been entrusted domestically with prominent public functions. For example, Heads of State or of government, senior</p>

	<p>politicians, senior government, judiciary or military officials, senior executives of state owned corporations and important political party officials; or</p> <p>(c) persons who are or have been entrusted with a prominent function by an international organisation which refers to members of senior management. For example, directors, deputy directors and members of the board or equivalent functions.</p> <p>The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foreign countries.</p>
“requirements”	Refers to requirements that are issued pursuant to substantive provisions in the relevant laws administered by Labuan FSA and are binding. In the event of non-compliance, Labuan FSA may take enforcement actions.
“satisfied”	Where reference is made to a reporting institution being “satisfied” as to a matter, that reporting institution must be able to justify its assessment to the supervisory authority.
“Self-Regulatory Body (SRB)”	Refers to a body that represents a profession (e.g. lawyers, notaries, other independent legal professionals or accountants), and which is made up of members from the profession, has a role in regulating the persons that are qualified to enter and who practice in the profession, and also performs certain supervisory or monitoring type functions. Such bodies should enforce rules to ensure that high ethical and moral standards are maintained by those practicing the profession.
“senior management”	Refers to any person(s) having authority and responsibility for planning, directing or controlling the activities including the management and administration of a reporting institution (Labuan Entity) including Principal Officer.
“serial payment”	Refers to a direct sequential chain of payment where the wire transfer and accompanying payment message travel

	<p>together from the ordering reporting institution to the beneficiary reporting institution directly or through one or more intermediary reporting institutions (e.g. correspondent banks).</p>
<p>“shell bank”</p>	<p>Refers to a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.</p> <p>Physical presence means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.</p>
<p>“third parties”</p>	<p>Refers to reporting institutions that are supervised and monitored by a relevant competent authority and that meet the requirements under Paragraph 16 on Reliance of Third Parties, namely persons or businesses who are relied upon by the reporting institution to conduct the customer due diligence process.</p> <p>Reliance on third parties often occurs through introductions made by another member of the same financial group or by another financial institution.</p> <p>This definition does not include outsourcing or agency relationships because the outsourced person, service provider or agent is regarded as synonymous with the reporting institution.</p>

PART B AML/CFT REQUIREMENTS

11. Applicability to Branches, Subsidiaries and Offices of Labuan Home Grown Entities

- 11.1 Reporting institutions are required to closely monitor the reporting institution's foreign branches, subsidiaries or offices operating in jurisdiction with inadequate AML/CFT laws and regulations as highlighted by the FATF or the Government of Malaysia.
- 11.2 Reporting institutions are required to ensure that their foreign branches, subsidiaries and offices apply AML/CFT measures consistent with the home country requirements. Where the minimum AML/CFT requirements of the host country are less stringent than those of the home country, the reporting institution must apply the home country requirements, to the extent that host country laws and regulations permit.
- 11.3 If the host country does not permit the proper implementation of AML/CFT measures consistent with the requirement in Malaysia, the reporting institution and financial group are required to apply appropriate additional measures to manage the ML/TF risks, and report to Labuan FSA or their supervisors in Malaysia on the AML/CFT gaps and additional measures implemented to manage the ML/TF risks arising from the identified gaps.
- 11.4 In addition, the reporting institution may consider ceasing the operations of the said branch, subsidiary or office that unable to put in place the necessary mitigating control as required under Paragraph 11.3.

12. Risk-Based Approach Application

12.1 Risk Management Functions

- 12.1.1 In the context of "Risk-Based Approach", the intensity and extensiveness of risk management functions shall be

proportionate to the nature, scale and complexity of the reporting institution's activities and ML/TF risk profile.

12.1.2 The reporting institution's AML/CFT risk management function must be aligned and integrated with their overall risk management control function.

12.2 Risk Assessment

12.2.1 Reporting institutions are required to take appropriate steps to identify, assess and understand their ML/TF risks in relation to their customers, countries or geographical areas and products, services, transactions or delivery channels.

12.2.2 In assessing ML/FT risks of their customers, reporting institutions are required to establish internal policies and procedures by having the following processes:

- (a) documenting their risk assessments and findings;
- (b) considering all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) keeping the assessment up-to-date through a periodic review; and
- (d) having appropriate mechanisms to provide risk assessment information to the supervisory authority.

12.2.3 Reporting institutions are required to conduct additional assessment as and when required by Labuan FSA and other supervisory authorities.

12.2.4 Reporting institutions may be guided by the results of the National Risk Assessment issued by Bank Negara Malaysia or Labuan FSA in conducting their own risk assessments.

12.3 Risk Control and Mitigation

12.3.1 Reporting institutions are required to:

- (a) have policies, controls and procedures, to manage and mitigate ML/TF risks that have been identified;
- (b) monitor the implementation of those policies, controls, procedures and to enhance them if necessary; and
- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

12.3.2 Reporting institutions shall conduct independent control testing on their policies, controls and procedures for the purpose of monitoring the implementation thereof under Paragraph 12.3.1(b)

12.4 Risk Profiling

12.4.1 Reporting institutions are required to conduct risk profiling, identify and categorise the risks based on risk level.

12.4.2 A risk profile must consider to include the following factors:

- (a) customer risk (e.g. resident or non resident, type of customers, occasional or one-off, legal person structure, types of PEP, types of occupation);
- (b) geographical location of business or country of origin of customers;
- (c) products, services, transactions or delivery channels (e.g. cash-based, face or non face-to-face, cross border); and
- (d) any other information suggesting that the customers is of higher risk.

12.4.3 The risk control and mitigation measures implemented by reporting institutions shall commensurate with the risk profile of a particular customer or type of customer.

12.4.4 Upon the initial acceptance of the customer, reporting institutions are required to regularly review and update the customer's risk profile based on their level of ML/FT risk.

12.5 **AML/CFT Risk Reporting**

12.5.1 Reporting institutions shall provide timely reporting of the risk assessment, ML/TF risk profile and the effectiveness of risk control and mitigation measures to the Board and senior management. The frequency and intensity of reporting shall commensurate with the level of risks involved and the reporting institution's operating environment.

12.5.2 The report referred to under Paragraph 12.5.1 may include, the following:

- (a) results of AML/CFT monitoring activities carried out by the reporting institution such as level of the reporting institution's exposure to ML/TF risks, break-down of ML/TF risk exposures based on key activities or customer segments, trends of suspicious transaction reports and trends of orders received from law enforcement agencies;
- (b) details of recent significant risk events, that occur either internally or externally, modus operandi and its impact or potential impact to the reporting institution; and
- (c) recent developments in AML/CFT laws and regulations, and its implication to the reporting institution.

13. Customer Due Diligence (CDD)

13.1 When CDD is required

13.1.1 Reporting institutions are required to conduct CDD on the customer and the person conducting the transaction, in the circumstances set as below:

- (a) establishes business relationship with customer;

- (b) it has any suspicion of ML/FT regardless of the amount of transaction; or
- (c) it has any doubt about the veracity or adequacy of previously obtained information.

13.1.2 Reporting institutions are also required to comply with other specific CDD measures as may be specified by Labuan FSA.

13.2 What is required

13.2.1 The CDD measures undertaken by reporting institutions shall comprise, the following:

- (a) identify the customer and verify that customer's identity using reliable, independent source documents, data or information.
- (b) verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person;
- (c) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the reporting institution is satisfied that it knows who the beneficial owner is; and
- (d) understand and, where relevant, obtain information on the purpose and intended nature of the business relationship.

13.2.2 In conducting CDD, reporting institutions are required to comply with the requirements on combating the financing of terrorism under Paragraph 25.

13.3 Timing of Verification

- 13.3.1 Reporting institutions are required to verify the identity of the customer and beneficial owner and beneficiary before, or during the course of establishing business relationship.
- 13.3.2 In certain circumstances where the ML/TF risks are assessed as low and verification is not possible at the point of establishing the business relationship, the reporting institution may complete verification after the establishment of the business relationship to allow some flexibility for its customer and beneficial owner to furnish the relevant documents.
- 13.3.3 Where delayed verification applies, the following conditions must be satisfied:
- (a) this occurs as soon as reasonably practicable;
 - (b) the delay is essential so as not to interrupt the reporting institution's normal conduct of business;
 - (c) the ML/TF risks are effectively managed; and
 - (d) there is no suspicion of ML/FT risks.
- 13.3.4 The term "reasonably practicable" under Paragraph 13.3.3(a) shall not be later than ten working days or any other period specified by Labuan FSA.
- 13.3.5 Reporting institutions are required to adopt risk management procedures relating to the conditions under which the customer may utilise the business relationship prior to verification, and procedures to mitigate or address risk of delayed verification.
- 13.3.6 Reporting institutions are required to document the rationale and procedures concerning the conditions under which the customer may utilise the business relationship prior to verification.

13.3.7 Reporting institutions are required to adopt risk management procedures relating to the conditions under which the customer may utilise the business relationship prior to verification and procedures to mitigate or address the risk of delayed verification.

13.3.8 The measures that reporting institutions may take to manage such risks of delayed verification may include limiting the number, types and/or amount of transactions that can be performed.

13.4 **CDD Requirements**

Individual Customer and Beneficial Owner

13.4.1 In conducting CDD on an individual customer and beneficial owner, the reporting institution is required to obtain at least the following information:

- (a) full name;
- (b) National Registration Identity Card (NRIC) number or valid passport number or reference number of any other official documents bearing the photograph of the customer or beneficial owner;
- (c) residential and mailing address;
- (d) date of birth;
- (e) nationality;
- (f) occupation type;
- (g) name of employer or nature of self-employment / nature of business;
- (h) the purpose of transaction
- (i) source of wealth(i.e if the income does not match with the occupation)
- (j) contact number (home, office or mobile).

- 13.4.2 Reporting institutions can accept any other official documents bearing the photograph of the customer or beneficial owner, as the case may be, under Paragraph 13.4.1 (b) provided that the reporting institution can be satisfied with the authenticity of the documents which contain the necessary required information.
- 13.4.3 Reporting institutions shall verify the documents referred to under Paragraph 13.4.1(b) by requiring the customer or beneficial owner, as the case may be, to furnish the original document and make a copy of the said document. However, where biometric identification method is used, verification is deemed to be satisfied.
- 13.4.4 Where there is any doubt, reporting institutions are required to request the customer and beneficial owner, as the case may be, to produce other supporting official identification documents bearing their photographs, issued by an official authority or an international organisation, to enable their identity to be ascertained and verified.

Legal Persons

- 13.4.5 For customers that are legal persons, the reporting institutions are required to understand the nature of the customer's business, its ownership and control structure..
- 13.4.6 Reporting institutions are required to identify the customer and verify its identity through the following information:
- (a) name, legal form and proof of existence such as Memorandum/Article/Certificate of Incorporation/ Partnership (certified true copies/duly notarised copies, may be accepted) or any other reliable references to verify the identity of the customer;

- (b) the powers that regulate and bind the customer such as directors' resolution, as well as the names of relevant persons having a senior management position; and
- (c) the address of the registered office and, if different, from the principal place of business.

13.4.7 Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (a) the identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person. At a minimum , this includes the following:
 - (i) identification document of Directors/ Shareholders with equity interest of more than twenty five percent/Partners (certified true copy/duly notarised copies or the latest Form 24 and 49 as prescribed by the Companies Commission of Malaysia or Form 13 and Form 25 as prescribed by the Registrar of Companies, Labuan FSA or foreign incorporation, or any other equivalent acceptable documents for other types of legal person are acceptable;
 - (ii) authorisation for any person to represent the company or business either by means of a letter of authority or directors' resolution; and
 - (iii) relevant documents such as NRIC for Malaysian/permanent resident or passport for foreigner, to identify the identity of the person authorised to represent the company or business in its dealing with the reporting institution.
- (b) to the extent that there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) under Paragraph 13.4.7(a) or

where no natural person(s) exert control through ownership interests, the identity of the natural person (if any) exercising control of the legal person through other means; and

- (c) where no natural person is identified under Paragraphs 13.4.7(a) or (b) above, the identity of the relevant natural person who holds the position of senior management.

13.4.8 Where there is any doubt to comply with the requirements under Paragraphs 13.4.6 and 13.4.7, the reporting institution shall:

- (a) conduct a basic search or enquiry on the background of such person to ensure that the person has not been or is not in the process of being dissolved or liquidated, or is a bankrupt; and
- (b) verify the authenticity of the information provided by such person with the Labuan Financial Services Authority, Companies Commission of Malaysia or any other relevant agencies.

13.4.9 Reporting institutions are exempted from obtaining a copy of the Memorandum and Articles of Association or certificate of incorporation and from identifying and verifying the directors and shareholders of the legal person which fall under the following categories:

- (a) public listed companies or corporations listed in Labuan International Financial Exchange and Bursa Malaysia;
- (b) foreign public listed companies:
 - (i) listed in recognised exchanges; and
 - (ii) not listed in higher risk countries;
- (c) foreign financial institutions that are not from higher risk countries;
- (d) government-linked companies in Malaysia;

- (e) state-owned corporations and companies in Malaysia;
- (f) an authorized person, an operator of a designated payment system, a registered person, as the case may be, under the Financial Services Act and Islamic Financial Services Act;
- (g) persons licensed or registered under the Capital Markets and Services Act 2007;
- (h) licensed entities under the Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010; or
- (i) prescribed institutions under the Development Financial Institutions Act 2002.

13.4.10 Reporting institutions may refer to the Directives in relation to Recognised Stock Exchanges (R/R 6 of 2012) issued by Bursa Malaysia in determining foreign exchanges that are recognised.

Legal Arrangements

13.4.11 For customers that are legal arrangements, reporting institutions are required to understand the nature of the customer's business, its ownership, and control structure.

13.4.12 Reporting institutions are required to identify the customer and verify its identity through the following information:

- (a) name, legal form and proof of existence, or any reliable references to verify the identity of the customer;
- (b) the powers that regulate and bind the customer, as well as the names of relevant persons having a senior management position in the customer; and
- (c) the address of the registered office, and if different, a principal place of business.

13.4.13 Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ ownership); or
- (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.

13.4.14 For the purpose of identifying beneficiaries of trusts that are designated by characteristics or by class under Paragraph 13.4.13, reporting institutions are required to obtain sufficient information concerning the beneficiary in order to be satisfied that it would be able to establish the identity of the beneficiary at the time of the payout or when the beneficiary intends to exercise vested rights.

13.4.15 Reporting institutions may rely on a third party to verify the identity of the beneficiaries when it is not practical to identify every beneficiary.

13.4.16 Where reliance is placed on third parties under Paragraph 13.4.15, reporting institutions are required to comply with Paragraph 16 on Reliance on Third Parties.

Clubs, Societies and Charities

13.4.17 For customers that are clubs, societies or charities, reporting institutions shall conduct CDD and require the customers to furnish the relevant identification and constituent documents (or other similar documents) including certificate of registration and the identification and verification of the office

bearer or any person authorised to represent the club, society or charity, as the case may be.

13.4.18 Reporting institutions are required to take reasonable measures to identify and verify the beneficial owners of the customers.

Counter-party

13.4.19 Where the reporting institution establishes a relationship with a counter-party, the reporting institution must be satisfied that the counter-party is properly regulated and supervised.

13.4.20 Reporting institutions are required to ensure that the counter-party's CDD process is adequate and the mechanism to identify and verify its customers is reliable.

13.5 Enhanced CDD

13.5.1 Reporting institutions are required to perform enhanced CDD where the ML/TF risks are assessed as higher risk. An enhanced CDD, shall include at least, the following:

- (a) obtaining CDD Information under Paragraph 13.4;
- (b) obtaining additional information on the customer and beneficial owner (e.g. volume of assets, occupation, and other information from reliable public database).
- (c) inquiring on the source of wealth or source of funds. In the case of PEPs, both sources must be obtained; and
- (d) obtaining approval from the senior management of the reporting institution before establishing (or continuing for existing customer) such business relationship with the customer. In the case of PEPs, senior management refers to senior management at the head office or any other person(s)¹; and

¹ Officers delegated by the Senior Management who have primary or significant responsibility for the management and

- (e) persistently conducting on-going monitoring by increasing the intensity and frequency of controls applied, and selecting patterns of transactions that require further examination.

13.5.2 In addition to Paragraph 13.5.1, reporting institutions may also consider the following enhanced CDD measures in line with the ML/TF risks identified:

- (a) obtaining additional information on the intended level and nature of the business relationship;
- (b) updating more regularly the identification data of customer and beneficial owner;
- (c) inquiring on the reasons for intended or performed transactions; and
- (d) requiring the first payment to be carried out through an account in the customer's name with a banking institution subject to similar CDD standards.

13.6 On-Going Due Diligence

13.6.1 Reporting institutions are required to conduct on-going due diligence on the business relationship with its customers. Such measures shall include:

- (a) scrutinizing transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
- (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records particularly for higher risk customers.

performance of the business activities of the Labuan Entity including the Principal Officer.

13.6.2 In conducting on-going due diligence, reporting institutions may take into consideration the economic background and purpose of any transaction or business relationship which:

- (a) appears unusual;
- (b) is inconsistent with the expected type of activity and business model when compared to the volume of transaction;
- (c) does not have any apparent economic purpose; or
- (d) casts doubt on the legality of such transaction, especially with regard to complex and large transactions or higher risk customers.

13.6.3 The frequency of the on-going due diligence or enhanced on-going due diligence, as the case may be, shall commensurate with the level of ML/TF risks posed by the customer based on the risk profiles and nature of transactions.

13.6.4 Reporting institutions are required to increase the number and timing of controls applied, and to select patterns of transactions that need further examination, when conducting enhanced on-going due diligence.

13.7 **Existing Customer – Materiality and Risk**

13.7.1 Reporting institutions are required to apply CDD requirements to existing customers on the basis of materiality and risk.

13.7.2 Reporting institutions are required to conduct CDD on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

13.7.3 In assessing materiality and risk of the existing customer under Paragraph 13.7.1, reporting institutions may consider the following circumstances:

- (a) the nature and circumstances surrounding the transaction including the significance of the transaction;
- (b) any material change in the way the account, transaction or business relationship is operated; or
- (c) insufficient information held on the customer or change in customer's information.

14. Politically Exposed Persons (PEPs)

14.1 General

14.1.1 The requirements set out under this Paragraph are applicable to family members or close associates of all types of PEPs.

14.2 Foreign PEPs

14.2.1 Reporting institutions are required to put in place a risk management system to determine whether a customer or a beneficial owner is a foreign PEP.

14.2.2 Upon determination that a customer or a beneficial owner is a foreign PEP, the requirements of enhanced CDD as set out under Paragraph 13.5 must be conducted.

14.3 Domestic PEPs or Persons entrusted with a prominent function by an international organization

14.3.1 Reporting institutions are required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person entrusted with a prominent function by an international organisation.

14.3.2 If the customer or beneficial owner is assessed as a domestic PEP or a person entrusted with a prominent

function by an international organisation, reporting institutions are required to assess the level of ML/TF risks posed by the business relationship with the domestic PEP or person entrusted with a prominent function by an international organisation.

14.3.3 The requirements of enhanced CDD as set out under Paragraph 13.5 must be conducted in respect of domestic PEPs or person entrusted with a prominent function by an international organisation which are assessed as higher risk.

14.3.4 Reporting institutions may apply CDD measures similar to other customer for domestic PEPs or person entrusted with a prominent function by an international organisation if the reporting institution is satisfied that the domestic PEPs or persons entrusted with a prominent function by an international organisation are not assessed as higher risk.

15. New Products and Business Practices

15.1 Reporting institutions are required to identify and assess the ML/TF risks that may arise in relation to the development of new products and business practices, including new delivery mechanisms, and the use of new or developing technologies for both new and pre-existing products.

15.2 Reporting institutions are required to:

- (a) undertake the risk assessment prior to the launch or use of such products, practices and technologies; and
- (b) take appropriate measures to manage and mitigate the risks.

16. Reliance on Third Parties

Customer Due Diligence

- 16.1 Reporting institutions may rely on third parties to conduct CDD or to introduce business.
- 16.2 The ultimate responsibility and accountability of CDD measures shall remain with the reporting institution relying on the third parties.
- 16.3 Reporting institutions shall have in place internal policies and procedures to mitigate the risks when relying on third parties, including those from foreign jurisdictions that have been identified as having strategic AML/CFT deficiencies that pose a ML/FT risk to the international financial system.
- 16.4 Reporting institutions are prohibited from relying on third parties located in the higher risk countries that have been identified as having on-going or substantial ML/TF risks.
- 16.5 The relationship between reporting institutions and their third parties relied upon by the reporting institutions to conduct CDD shall be governed by an arrangement that clearly specifies the rights, responsibilities and expectations of all parties. At the minimum, reporting institutions must be satisfied that the third party:
- (a) can obtain immediately the necessary information concerning CDD as required under the Paragraph 13.4;
 - (b) has an adequate CDD process;
 - (c) has measures in place for record keeping requirements;
 - (d) can provide the CDD information and provide copies of the relevant documentation immediately upon request; and
 - (e) is properly regulated and supervised by the respective authorities.

- 16.6 Reporting institutions may obtain an attestation from the third party to satisfy themselves that the requirements in Paragraph 16.5 have been met.
- 16.7 Reporting institutions may obtain written confirmation from the third party that they have conducted CDD on the customer or beneficial owner, as the case may be, in accordance with Paragraph 13.
- 16.8 The requirements under Paragraphs 16.1, 16.3 and 16.5 may be fulfilled if the reporting institution rely on a third party that is part of the same financial group subject to the following conditions:
- (a) the group applies CDD and record keeping requirements and AML/CFT programmes against in line with the requirements in this document;
 - (b) the implementation of those CDD and record keeping requirements and AML/CFT programmes are supervised at a group level by a competent authority; and
 - (c) any higher country risk is adequately mitigated by the financial group's AML/CFT policies.
- 16.9 Reporting institutions are prohibited from relying on a third party located in the countries identified by the FATF or the Government of Malaysia as having strategic AML/CFT deficiencies and have not made sufficient progress in addressing those deficiencies.

On-Going Due Diligence

- 16.10 Reporting institutions shall not rely on third parties to conduct on-going due diligence of its customers.

17. Non Face-to-Face Business Relationship

- 17.1 Reporting institutions may establish non face-to-face business relationships with its customers.

- 17.2 Non face-to-face relationships can only be established if the reporting institutions have in place policies and procedures to address any specific risks associated with non face-to-face business relationships.
- 17.3 Reporting institutions are required to be vigilant in establishing and conducting business relationships via information communication technology.
- 17.4 Reporting institutions are required to establish appropriate measures for identification and verification of customer's identity that shall be as effective as that for face-to-face customer and implement monitoring and reporting mechanisms to identify potential ML/TF activities.
- 17.5 Reporting institutions may use the following measures to verify the identity non face-to-face customer such as:
- (a) requesting additional documents to complement those which are required for face-to-face customer;
 - (b) developing independent contact with the customer; or
 - (c) verifying customer information against databases maintained by the authorities.

18. Higher Risk Countries

- 18.1 Reporting institutions are required to conduct enhanced CDD for business relationships and transaction with any person from countries identified by the FATF or the Government of Malaysia as having on-going or substantial ML/TF risks.
- 18.2 Where ML/TF risks are assessed as higher risk, reporting institutions are required to conduct enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Government of Malaysia as having strategic AML/CFT

deficiencies and have not made sufficient progress in addressing those deficiencies.

- 18.3 In addition to the enhanced CDD requirement under Paragraph 18.1 reporting institutions are required to apply appropriate countermeasures, proportionate to the risk, for higher risk countries listed as having on-going or substantial ML/TF risks, as follows:
- (a) limiting business relationship or financial transactions with identified countries or persons located in the country concerned;
 - (b) conduct enhanced external audit, by increasing the intensity and frequency, for branches and subsidiaries of the reporting institution or financial group, located in the country concerned;
 - (c) submit a report with summary exposure to customers and beneficial owners from the country concerned to the Financial Intelligence and Enforcement Department, Bank Negara Malaysia as the Competent Authority and Supervision and Enforcement Department, Labuan FSA on an annual basis; and
 - (d) conduct any other measures as specified by Labuan FSA.

19. Failure to Satisfactorily Complete CDD

- 19.1 Reporting institutions shall not commence business relations or perform any transaction in relation to potential customer, or shall terminate business relations in the case of existing customer, if the reporting institution is unable to comply with the CDD requirements.
- 19.2 In the event of failure to comply with the CDD requirements, reporting institutions must consider lodging a suspicious transaction report under paragraph 24.

20. Management Information System

- 20.1 Reporting institutions must have in place an adequate management information system (MIS), either electronically or manually, to

complement its CDD process. The MIS is required to provide the reporting institution with timely information on a regular basis to enable the reporting institution to detect irregularity and/or any suspicious activity.

- 20.2 The MIS shall commensurate with the nature, scale and complexity of the reporting institution's activities and ML/TF risk profile.
- 20.3 The MIS shall include, at a minimum, information on multiple transactions over a certain period, large transactions, anomaly in transaction pattern, customer's risk profile and transactions exceeding any internally specified threshold.
- 20.4 The MIS shall be able to aggregate customer's transactions from multiple accounts and/or from different systems.
- 20.5 The MIS may be integrated with the reporting institution's information system that contains its customer's normal transaction or business profile, which is accurate, up-to-date and reliable.

21. Group Wide Business (Labuan Home Grown Entities)

- 21.1 A parent company incorporated in Labuan is required to implement group-wide programme against ML/TF which is required to be applicable, and appropriate to, all branches and subsidiaries of the group. These shall include the following measures:
 - a) framework for AML/CFT Compliance programme at the group level;
 - b) appoint a group compliance officer at management level;
 - c) policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management;
 - d) the provision of customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes; and

e) safeguards on the confidentiality and use of information exchanged.

21.2 A group compliance officer is responsible for creating, coordinating and making a group-wide assessment for the implementation of a single AML/CFT strategy, including mandatory policies and procedures and the authorisation to give orders to all branches and subsidiaries.

22. Record Keeping

22.1 Reporting institutions are required to keep the relevant records including any account, files, business correspondence and documents relating to transactions, in particular, those obtained during CDD process. This includes documents used to verify the identity of customers and beneficial owners, and results of any analysis undertaken. The records maintained must remain up-to-date and relevant.

22.2 Reporting institutions are required to keep the records for at least six years following the completion of the transaction, the termination of business relationship or after the date of occasional transaction.

22.3 In situations where the records are subjected to on-going investigations or prosecution in court, they shall be retained beyond the stipulated retention period until such time reporting institutions are informed by the relevant law enforcement agency that such records are no longer required.

22.4 Reporting institutions are required to retain the relevant records in the form that is admissible as evidence in court and make such available to the supervisory authorities and law enforcement agencies in a timely manner.

23. AML/CFT Compliance Programme

23.1 Policies, Procedures and Controls

23.1.1 Reporting institutions are required to implement programmes to mitigate against ML/TF, which correspond to its ML/TF risks and the size of its business.

23.2 Board of Directors

23.2.1 General

- (a) Members of Board of Directors (Board members) shall understand their roles and responsibilities in managing ML/TF risks faced by the reporting institution.
- (b) Board members must be aware of the ML/TF risks associated with business strategies, delivery channels and geographical coverage of its business products and services.
- (c) Board members must understand the AML/CFT measures required by laws including the AMLATFA, subsidiary legislation and instruments issued under the AMLATFA, and the industry's standards and best practices as well as the importance of implementing AML/CFT measures to prevent the reporting institution from being abused by money launderers and financiers of terrorism.

23.2.2 Roles and Responsibilities

The Board of Directors (Board) have the following roles and responsibilities:

- (a) maintain accountability and oversight for establishing AML/CFT policies and minimum standards;
- (b) approve policies regarding AML/CFT measures within the reporting institution, including those required for risk assessment, mitigation and profiling, CDD, record keeping, on-going due diligence, reporting of

suspicious transactions and combating the financing of terrorism;

- (c) establish appropriate mechanisms to ensure the AML/CFT policies are periodically reviewed and assessed in line with changes and developments in the reporting institution's products and services, technology as well as trends in ML/TF;
- (d) establish an effective internal control system for AML/CFT and maintain adequate oversight of the overall AML/CFT measures undertaken by reporting institutions;
- (e) define the lines of authority and responsibility for implementing the AML/CFT measures and ensure that there is a separation of duty between those implementing the policies and procedures and those enforcing the controls;
- (f) ensure effective internal audit function in assessing and evaluating the robustness and adequacy of controls implemented to prevent ML/TF;
- (g) assess the implementation of the approved AML/CFT policies through regular reporting and updates by the Senior Management and Audit Committee; and
- (h) establish MIS that is reflective of the nature of the reporting institution's operations, size of business, complexity of business operations and structure, risk profiles of products and services offered and geographical coverage.

23.3 Senior Management

23.3.1 Senior management is accountable for the implementation and management of AML/CFT compliance programmes in accordance with policies and procedures established by the Board, requirements of the law, regulations, guidelines and the industry's standards and best practices.

23.3.2 Roles and Responsibilities

The senior management have the following roles and responsibilities:

- (a) be aware of and understand the ML/TF risks associated with business strategies, delivery channels and geographical coverage of its business products and services offered and to be offered including new products, new delivery channels and new geographical coverage;
- (b) formulate AML/CFT policies to ensure that they are in line with the risks profiles, nature of business, complexity, volume of the transactions undertaken by the reporting institution and its geographical coverage;
- (c) establish appropriate mechanism and formulate procedures to effectively implement AML/CFT policies and internal controls approved by the Board, including the mechanism and procedures to monitor and detect complex and unusual transactions;
- (d) undertake review and propose to the Board the necessary enhancements to the AML/CFT policies to reflect changes in the reporting institution's risk profiles, institutional and group business structure, delivery channels and geographical coverage;
- (e) provide timely periodic reporting to the Board on the level of ML/TF risks facing the reporting institution, strength and adequacy of risk management and internal controls implemented to manage the risks and the latest development on AML/CFT which may have an impact on the reporting institution;
- (f) allocate adequate resources to effectively implement and administer AML/CFT compliance programmes that are reflective of the size and complexity of the reporting institution's operations and risk profiles;

- (g) appoint a compliance officer at management level at Head Office and designate a compliance officer at management level at each branch or subsidiary;
- (h) provide appropriate levels of AML/CFT training for its employees at all level throughout the organisation;
- (i) ensure that there is a proper channel of communication in place to effectively communicate the AML/CFT policies and procedures to all levels of employees;
- (j) ensure that AML/CFT issues raised are addressed in a timely manner; and
- (k) ensure the integrity of its employees by establishing appropriate employee assessment system.

23.4 Compliance Management Arrangements

23.4.1 The Compliance Officer acts as the reference point for AML/CFT matters within the reporting institution.

23.4.2 The Compliance Officer is required to be “fit and proper” to carry out his AML/CFT responsibilities effectively.

23.4.3 For the purposes of Paragraph 23.4.2, “fit and proper” may include minimum criteria relating to:

- (a) probity, personal integrity and reputation; and
- (b) competency and capability.

23.4.4 The Compliance Officer must have the necessary knowledge and expertise to effectively discharge his roles and responsibilities, including being informed of the latest developments in ML/TF techniques and the AML/CFT measures undertaken by the industry.

23.4.5 Reporting institutions may encourage the Compliance Officer to pursue professional qualifications in AML/CFT so that they are able to carry their obligation effectively.

23.4.6 Reporting institutions are required to ensure that the roles and responsibilities of the Compliance Officer are clearly defined and documented.

23.4.7 The Compliance Officer has a duty to ensure the following:

- (a) the reporting institution's compliance with the AML/CFT requirements;
- (b) proper implementation of the AML/CFT policies;
- (c) the appropriate AML/CFT procedures, including CDD, record keeping, on-going due diligence, reporting of suspicious transactions and combating the financing of terrorism, are implemented effectively;
- (d) the AML/CFT mechanism is regularly assessed to ensure that it is effective and sufficient to address any change in ML/TF trends;
- (e) the channel of communication from the respective employees to the branch or subsidiary compliance officer and subsequently to the Compliance Officer is secured and that information is kept confidential;
- (f) all employees are aware of the reporting institution's AML/CFT measures, including policies, control mechanism and the channel of reporting;
- (g) internal generated suspicious transaction reports by the branch or subsidiary compliance officers are appropriately evaluated before submission to the Financial Intelligence and Enforcement Department, Bank Negara Malaysia and Anti-Money Laundering Compliance Unit, Labuan FSA; and
- (h) the identification of ML/TF risks associated with new products or services or arising from the reporting institution's operational changes, including the introduction of new technology and processes.

23.4.8 Reporting institutions are required to inform, in writing, the Financial Intelligence and Enforcement Department, Bank Negara Malaysia and Anti-Money Laundering Compliance Unit, Labuan FSA within ten working days on the appointment or change in the appointment of the Compliance Officer, including such details as the name, designation, office address, office telephone number, fax number, e-mail address and such other information as may be required by the Bank Negara Malaysia and Labuan FSA.

23.4.9 The Compliance Officer or any designated person as Compliance Officer needs to ensure and to check any updates or latest information or announcement on Labuan FSA website specifically on AML Compliance at least once daily during business hours. The person also responsible to take necessary action (if any) upon acknowledges the information within reasonable time.

23.5 **Employee Screening Procedures**

23.5.1 The screening procedures shall apply upon hiring the employee and throughout the course of employment.

23.5.2 Reporting institutions are required to establish an employee assessment system that is commensurate with the size of operations and risk exposure of reporting institutions to ML/TF.

23.5.3 The employee assessment system shall include an evaluation of an employee's personal information, including criminal records, employment and financial history.

23.6 **Employee Training and Awareness Programmes**

23.6.1 Reporting institutions are required to conduct awareness and training programmes on AML/CFT practices and measures

for their employees. Such training must be conducted regularly and supplemented with refresher course.

23.6.2 The employees must be made aware that they may be held personally liable for any failure to observe the AML/CFT requirements.

23.6.3 The reporting institution must make available its AML/CFT policies and procedures for all employees and its documented AML/CFT measures must at least contain at least the following:

- (a) the relevant documents on AML/CFT issued by Labuan FSA or relevant supervisory authorities; and
- (b) the reporting institution's internal AML/CFT policies and procedures.

23.6.4 The training conducted for employees must be appropriate to their level of responsibilities in detecting ML/TF activities and the risks of ML/TF faced by reporting institutions.

23.6.5 Employees who deal directly with the customer shall be trained on AML/CFT prior to dealing with customers.

23.6.6 Training for all employees may provide a general background on ML/TF, the requirement and obligation to monitor and report suspicious transactions to the Compliance Officer and the importance of CDD.

23.6.7 In addition, training may be provided to specific categories of employees:

(a) **Front-Line Employees**

Front-line employees may be trained to conduct effective on-going CDD, detect suspicious transactions and on the measures that need to be taken upon

determining a transaction as suspicious. Training may also be provided on factors that may give rise to suspicion, such as dealing with occasional customer transacting in large amount of transactions, PEPs, higher risk customers and the circumstances where enhanced CDD is required.

(b) Employees that Establishing Business Relationship

The training for employees who establish business relationship may focus on customer identification, verification and CDD procedures, including when to conduct enhanced CDD and circumstances where there is a need to defer establishing business relationship with new customer until CDD is completed satisfactorily.

(c) Supervisors and Managers

The training on Supervisors and Managers may include overall aspects of AML/CFT procedures, in particular, the risk-based approach to CDD, risk profiling of customer, enforcement actions that can be taken for non-compliance with the relevant requirements pursuant to the relevant laws and procedures related to the financing of terrorism.

23.7 Independent Audit Function

23.7.1 The Board is responsible to ensure regular independent audits of the internal AML/CFT measures to determine their effectiveness and compliance with the AMLATFA, its regulations, subsidiary legislations and relevant policies, circulars and directives on AML/CFT issued by Labuan FSA as well as the requirements of the relevant laws and

regulations of other supervisory authorities, where applicable.

23.7.2 The Board is required to ensure that the roles and responsibilities of the auditor are clearly defined and documented. The roles and responsibilities of the auditor shall include, at a minimum:

- (a) checking and testing the compliance with, and effectiveness of the AML/CFT policies, procedures and controls; and
- (b) assessing whether current measures are in line with the latest developments and changes to the relevant AML/CFT requirements.

23.7.3 The scope of independent audit shall include, at a minimum:

- (a) compliance with AMLATFA, its subsidiary legislation and instrument issued under the AMLATFA;
- (b) compliance with the reporting institution's internal AML/CFT policies and procedures;
- (c) adequacy and effectiveness of the AML/CFT compliance programme; and
- (d) reliability, integrity and timeliness of the internal and regulatory reporting and management information systems.

23.7.4 The auditor must submit a written audit report to the Board to highlight the assessment on the effectiveness of AML/CFT measures and any inadequacy in internal controls and procedures.

23.7.5 Reporting institutions are to ensure that independent audits are carried out at the institution level at least on an annual basis.

23.7.6 Reporting institutions must ensure that such audit findings and the necessary corrective measures undertaken are submitted to the Supervision and Enforcement Department, Labuan FSA within three months after the completion of the internal audit and within ten working days after submission to Board.

24. Suspicious Transaction Report

24.1 General

24.1.1 Reporting institutions are required to promptly submit a suspicious transaction report to the Financial Intelligence and Enforcement Department, Bank Negara Malaysia and to Anti-Money Laundering Compliance Unit, Labuan FSA whenever the reporting institution suspect or have reason to suspect that the transaction (including attempted or proposed), regardless of the amount:

- (a) appears unusual;
- (b) has no clear economic purpose;
- (c) appears illegal;
- (d) involves proceeds from an unlawful activity; or
- (e) indicates that the customer is involved in ML/TF.

24.1.2 Reporting institutions must provide the required and relevant information that giving rise to suspicion in the suspicious transaction report form, which includes but is not limited to the nature or circumstances surrounding the transaction and business background of the person conducting the transaction that is connected to the unlawful activity.

24.1.3 Reporting institutions must establish a reporting system for the submission of suspicious transaction reports.

24.1.4 Reporting institutions may refer to Appendix I to this document which provides examples of transactions that may

constitute triggers for the purposes of reporting suspicious transactions.

24.2 Reporting Mechanisms

24.2.1 Reporting institutions are required to ensure that the designated branch or subsidiary compliance officer is responsible for channelling all internal suspicious transaction reports received from the employees of the respective branch or subsidiary to the Compliance Officer at the head office. In the case of employees at the head office, such internal suspicious transaction reports shall be channelled directly to the Compliance Officer.

24.2.2 Reporting institutions are required to have in place policies on the duration upon which internally generated suspicious transaction reports must be reviewed by the Compliance Officer, including the circumstances when the timeframe can be exceeded, where necessary.

24.2.3 Upon receiving any internal suspicious transaction report whether from the head office, branch or subsidiary, the Compliance Officer must evaluate the grounds for suspicion. Once the suspicion is confirmed, the Compliance Officer must promptly submit the suspicious transaction report. In the case where the Compliance Officer decides that there are no reasonable grounds for suspicion, the Compliance Officer must document and file the decision, supported by the relevant documents.

24.2.4 The Compliance Officer must submit the suspicious transaction report in the specified suspicious transaction report form through the following modes:

Mail : Director
Financial Intelligence and Enforcement
Department
Bank Negara Malaysia
Jalan Dato' Onn
50480 Kuala Lumpur
(To be opened by addressee only)

Fax : +603-2693 3625

Email : str@bnm.gov.my

AND

Mail : Director
Supervision and Enforcement Department
Labuan Financial Services Authority
Level 17, Main Office Tower
Financial Park Complex
Jalan Merdeka
87000 Labuan F. T.
Attention to: Anti-Money Laundering
Compliance Unit
(To be opened by addressee only)

Fax : +6087-411496

Email : aml@labuanfsa.gov.my

24.2.5 Where applicable and upon the advice of the Financial Intelligence and Enforcement Department, Bank Negara Malaysia and/or Anti-Money Laundering Compliance Unit, Labuan FSA, the compliance officer of a reporting institution must submit its suspicious transaction reports on- line:

Website : <https://bnmapp.bnm.gov.my/fins2>

24.2.6 The Compliance Officer must ensure that the suspicious transaction report is submitted within the next working day,

from the date the Compliance Officer establishes the suspicion.

24.2.7 Reporting institutions must ensure that in the course of submitting the suspicious transaction report, utmost care must be undertaken to ensure that such reports are treated with the highest level of confidentiality. The Compliance Officer has the sole discretion and independence to report suspicious transactions.

24.2.8 Reporting institutions must provide additional information and documentations as may be requested by Labuan FSA and to respond promptly to any further enquiries with regard to any report received under Section 14 of the AMLATFA.

24.2.9 Reporting institutions must ensure that the suspicious transaction reporting mechanism is operated in secured environment to maintain confidentiality and preserve secrecy.

24.2.10 Where a suspicious transaction report has been lodged, reporting institutions are not precluded from making a fresh suspicious transaction report when a new suspicion arises.

24.3 **Tipping Off**

24.3.1 In cases where the reporting institution form a suspicion of ML/TF and reasonably believe that performing the CDD process would tip off the customer, the reporting institution is permitted not to pursue the CDD process. In such circumstances, the reporting institution shall proceed with the transaction and immediately file a suspicious transaction report.

24.3.2 Tipping off in relation to suspicious transaction report is not applicable if :

- (a) the purpose of the disclosure is made to inform the ML/TF risks involved in dealing with the customer within the financial group; or
- (b) such disclosure is made to a supervisory authority of the reporting institution.

24.3.3 Provisions under Paragraph 23.3.2 will not come into effect until such date as specified by Labuan FSA.

24.4 Triggers for Submission of Suspicious Transaction Report

24.4.1 Reporting institutions are required to establish internal criteria (“red flags”) to detect suspicious transactions.

24.4.2 Reporting institutions may be guided by examples of suspicious transactions provided by Labuan FSA or other corresponding competent authorities, supervisory authorities and international organisations.

24.4.3 Reporting institutions must consider submitting a suspicious transaction report when any of its customer’s transaction or attempted transaction fits the reporting institution’s list of “red flags”.

24.5 Internally Generated Suspicious Transaction Reports

24.5.1 Reporting institutions must ensure that the Compliance Officer maintain a complete file on all internally generated reports and any supporting documentary evidence regardless of whether such reports have been submitted. If there is no suspicious transaction reports submitted to Financial Intelligence and Enforcement Department, Bank Negara Malaysia, and also to AML Compliance of Labuan FSA, the internally generated reports and the relevant

supporting documentary evidence must be made available to the relevant supervisory authorities upon request.

25. Combating the Financing of Terrorism

- 25.1 Where relevant, the references to a customer in this Paragraph include a beneficial owner and beneficiary.
- 25.2 Reporting institutions are required to keep updated with the various resolutions passed by the United Nations Security Council (UNSC) on counter terrorism measures in particular the UNSC Resolutions 1267 (1999), 1373 (2001), 1988 (2011) and 1989 (2011) which require sanctions against individuals and entities belonging or related to the Taliban, Osama bin Laden and the Al-Qaida organisation.
- 25.3 Reporting institutions are required to maintain a list of individuals and entities (the Consolidated List) for this purpose. The updated UN List can be obtained at:
http://www.un.org/sc/committees/1267/afq_sanctions_list.shtml
- 25.4 Reporting institutions are required to maintain a database of names and particulars of listed persons in the UN Consolidated List and such orders as may be issued under sections 66B and 66C of the AMLATFA by the Minister of Home Affairs.
- 25.5 Reporting institutions shall ensure that the information contained in the database is updated and relevant, and made easily accessible to its employees at the head office, branch or subsidiary.
- 25.6 Reporting institutions are required to conduct regular checks on the names of new, potential and existing customers against the names in the database. If there is any name match, reporting institutions are required to take reasonable and appropriate measures to verify and

confirm the identity of its customer. Once confirmation has been obtained, reporting institutions must immediately:

- (a) freeze the customer's funds or block the transaction (where applicable), if it is an existing customer;
- (b) reject the potential customer, if the transaction has not commenced;
- (c) submit a suspicious transaction report; and
- (d) inform the relevant supervisory authorities.

25.7 Reporting institutions are required to submit a suspicious transaction report when there is an attempted transaction by any of the persons listed in the Consolidated List or orders made by the Minister of Home Affairs under section 66B or 66C of the AMLATFA.

25.8 Reporting institutions are required to ascertain potential matches with the Consolidated List to confirm whether they are true matches to eliminate "false positive". The reporting institutions are required to make further inquiries from the customer or counter-party (where relevant) to assist in determining whether the match is a true match.

25.9 Reporting institutions may also consolidate their database with the other recognized lists of designated persons or entities issued by other jurisdictions.

26. Non-Compliance

26.1 Enforcement action can be taken against the reporting institutions including its Directors, Officers, and employees for any non-compliance with provision under:

- (a) Sections 22, 66E, 86, 87,88 ,92 and 93 of the AMLATFA; and/or
- (b) Section 4B of the Labuan Financial Services Authority Act 1996 (LFSAA).

Appendix I

Examples of Transactions that May Trigger Suspicion

Designated Non-Financial Businesses and Professions

1. Transactions that appear inconsistent with a customer's known profile or unusual deviations from normal transaction or relationship.
2. Transactions that require the use of complex and opaque legal entities and arrangements.
3. Transaction with entity established in jurisdictions with weak or absent AML/CFT laws and/or secrecy laws.
4. A customer who is reluctant to provide evidence of his identity or where the customer is a corporate entity, evidence of its place of incorporation and the identity of its major shareholders and its director(s) or relevant officer(s).
5. A customer is a known or suspected triad member, drug trafficker or terrorist, or where the customer has been introduced by any such persons.
6. Any situation where the identity of the customer is difficult to be determined.
7. Account only used for withdrawals, and not for purchases.
8. Transactions that appear inconsistent with a customer's known profile or unusual deviations from normal transaction or relationship.
9. Transactions that require the use of complex and opaque legal entities and arrangements.
10. Transactions with entity established in jurisdictions with weak or absent of AML/CFT laws and/or secrecy laws.
11. A customer who is reluctant to provide evidence of his identity or where the customer is a corporate entity, evidence of its place of incorporation and a customer is a known or suspected triad member, drug trafficker or terrorist, or where the customer has been introduced by any such persons.