GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request

MALAYSIA

2019 (Second Round)

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes: Malaysia 2019 (Second Round)

PEER REVIEW REPORT ON THE EXCHANGE OF INFORMATION ON REQUEST

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Reader's guide

The Global Forum on Transparency and Exchange of Information for Tax Purposes (the Global Forum) is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 150 jurisdictions that participate in the Global Forum on an equal footing. The Global Forum is charged with the in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes (both on request and automatic).

Sources of the Exchange of Information on Request standards and Methodology for the peer reviews

The international standard of exchange of information on request (EOIR) is primarily reflected in the 2002 OECD Model Agreement on Exchange of Information on Tax Matters and its commentary, Article 26 of the OECD Model Tax Convention on Income and on Capital and its commentary and Article 26 of the United Nations Model Double Taxation Convention between Developed and Developing Countries and its commentary. The EOIR standard provides for exchange on request of information foreseeably relevant for carrying out the provisions of the applicable instrument or to the administration or enforcement of the domestic tax laws of a requesting jurisdiction. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including ownership, accounting and banking information.

All Global Forum members, as well as non-members that are relevant to the Global Forum's work, are assessed through a peer review process for their implementation of the EOIR standard as set out in the 2016 Terms of Reference (ToR), which break down the standard into 10 essential elements under three categories: (A) availability of ownership, accounting and banking information; (B) access to information by the competent authority; and (C) exchanging information.

The assessment results in recommendations for improvements where appropriate and an overall rating of the jurisdiction's compliance with the EOIR standard based on:

1. The implementation of the EOIR standard in the legal and regulatory framework, with each of the element of the standard determined to be either (i) in place, (ii) in place but certain aspects need improvement, or (iii) not in place.
2. The implementation of that framework in practice with each element being rated (i) compliant, (ii) largely compliant, (iii) partially compliant, or (iv) non-compliant.

The response of the assessed jurisdiction to the report is available in an annex. Reviewed jurisdictions are expected to address any recommendations made, and progress is monitored by the Global Forum.

A first round of reviews was conducted over 2010-16. The Global Forum started a second round of reviews in 2016 based on enhanced Terms of Reference, which notably include new principles agreed in the 2012 update to Article 26 of the OECD Model Tax Convention and its commentary, the availability of and access to beneficial ownership information, and completeness and quality of outgoing EOI requests. Clarifications were also made on a few other aspects of the pre-existing Terms of Reference (on foreign companies, record keeping periods, etc.).

Whereas the first round of reviews was generally conducted in two phases for assessing the legal and regulatory framework (Phase 1) and EOIR in practice (Phase 2), the second round of reviews combine both assessment phases into a single review. For the sake of brevity, on those topics where there has not been any material change in the assessed jurisdictions or in the requirements of the Terms of Reference since the first round, the second round review does not repeat the analysis already conducted. Instead, it summarises the conclusions and includes cross-references to the analysis in the previous report(s). Information on the Methodology used for this review is set out in Annex 3 to this report.

Consideration of the Financial Action Task Force Evaluations and Ratings

The Financial Action Task Force (FATF) evaluates jurisdictions for compliance with anti-money laundering and combating terrorist financing (AML/CFT) standards. Its reviews are based on a jurisdiction's compliance with 40 different technical recommendations and the effectiveness regarding 11 immediate outcomes, which cover a broad array of money-laundering issues.

The definition of beneficial owner included in the 2012 FATF standards has been incorporated into elements A.1, A.3 and B.1 of the 2016 ToR. The 2016 ToR also recognises that FATF materials can be relevant for carrying out EOIR assessments to the extent they deal with the definition of beneficial ownership, as the FATF definition is used in the 2016 ToR (see 2016 ToR, annex 1, part I.D). It is also noted that the purpose for which the FATF materials have been produced (combating money-laundering and terrorist financing) is different from the purpose of the EOIR standard (ensuring effective exchange of information for tax purposes), and care should be taken to ensure that assessments under the ToR do not evaluate issues that are outside the scope of the Global Forum's mandate.

While on a case-by-case basis an EOIR assessment may take into account some of the findings made by the FATF, the Global Forum recognises that the evaluations of the FATF cover issues that are not relevant for the purposes of ensuring effective exchange of information on beneficial ownership for tax purposes. In addition, EOIR assessments may find that deficiencies identified by the FATF do not have an impact on the availability of beneficial ownership information for tax purposes; for example, because mechanisms other than those that are relevant for AML/CFT purposes exist within that jurisdiction to ensure that beneficial ownership information is available for tax purposes.

These differences in the scope of reviews and in the approach used may result in differing conclusions and ratings.

More information

All reports are published once adopted by the Global Forum. For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published reports, please refer to www.oecd.org/tax/transparency and http://dx.doi.org/10.1787/2219469x.

Abbreviations and acronyms

AML	Anti-Money Laundering
AML/CFT	Anti-Money Laundering/Countering the Financing of Terrorism
AMLA	Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001
BNM	Bank Negara Malaysia
CA	Companies Act 2016
CCM	Companies Commission of Malaysia
CDD	Customer Due Diligence
CMSA	Capital Markets and Services Act 2007
CR	Company Regulations 2017
DGIR	Director General of Inland Revenue
DNFBP	Designated Non-Financial Business or Profession as defined in the Glossary to the FATF Recommendations
DTA or DTC	Double Tax Agreement or Double Tax Convention
EOI	Exchange of information
EOIR	Exchange of information on request
FATF	Financial Action Task Force
FSA	The Financial Services Act 2013
Global Forum	Global Forum on Transparency and Exchange of Information for Tax Purposes
GST	Goods and Services Tax
IBFC	International Business Financial Centre

IRBM	Inland Revenue Board of Malaysia
ITA	Income Tax Act 1967
LBATA	Labuan Business Activity Tax Act 1990
LFSA	Labuan Financial Services Authority
LIFSSA	Labuan Islamic Financial Securities and Services Act 2010
LLP	Limited liability partnership
LLPA	Limited Liability Partnerships Act 2012
LLPLLPA	Labuan Limited Partnership and Limited Liability Partnerships Act 2010
Multilateral Convention	The Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as amended by the 2010 Protocol
PRG	Peer Review Group of the Global Forum
ROBA	Registration of Businesses Act 1956
SC	Securities Commission Malaysia
TCSP	Trust and Company Service Provider
TIEA	Tax Information Exchange Agreement
2016 Methodology	2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum on 29-30 October 2015.
2016 Terms of Reference (ToR)	Terms of Reference related to Exchange of Information on Request (EOIR), as approved by the Global Forum on 29-30 October 2015.

Executive summary

1. This report analyses the implementation of the international standard of transparency and exchange of information on request in Malaysia, including Labuan, the International Business Financial Centre (IBFC) which has a separate financial regulatory and tax regime in Malaysia. It assesses both the legal and regulatory framework as at 30 April 2019 and its operation in practice against the 2016 Terms of Reference, in particular in respect of EOI requests received and sent during the review period from 1 January 2015 to 31 December 2017. The report concludes that Malaysia remains rated overall **Largely Compliant** with the international standard. In 2014, the Global Forum evaluated Malaysia against the 2010 Terms of Reference for both the legal implementation of the EOIR standard as well as its operation in practice. That evaluation (the 2014 Report) concluded that Malaysia was already overall Largely Compliant with the EOIR standard.

2. The following table shows the comparison of results from the first and second round review of Malaysia's implementation of the EOIR standard.

Element		First Round Report (2014)	Second Round Report (2019)
A.1	Availability of ownership and identity information	PC	**LC**
A.2	Availability of accounting information	LC	**LC**
A.3	Availability of banking information	C	**C**
B.1	Access to information	PC	**C**
B.2	Rights and Safeguards	C	**C**
C.1	EOIR Mechanisms	LC	**C**
C.2	Network of EOIR Mechanisms	C	**C**
C.3	Confidentiality	C	**C**
C.4	Rights and Safeguards	C	**C**
C.5	Quality and timeliness of responses	LC	**LC**
	OVERALL RATING	LC	**LC**

C = Compliant; **LC** = Largely Compliant; **PC** = Partially Compliant; **NC** = Non-Compliant

Progress made since previous review

3. Since the first round review in 2014, Malaysia has made progress in the application of the international standard on transparency and exchange of information on request. The majority of the recommendations on the legal framework and the EOI practices in the 2014 review report have been appropriately addressed. This report establishes that Malaysia has generally applied the international standard for EOIR in a satisfactory manner during the current review period (from 1 January 2015 to 31 December 2017).

4. In the 2014 review report, there was a concern that over 100 000 companies in Malaysia were dormant and did not comply with their filing obligations, which caused significant delays to Malaysia in obtaining the ownership information requested. Since 2014, Malaysia conducted periodical exercises to strike off inactive companies. Malaysia has also increased the penalties in relevant commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing and reporting obligations in relation to both ownership and accounting information.

5. Malaysia has also made progress in improving the communication mechanisms between the Malaysian competent authority and the Labuan authority to access information on entities and arrangements in Labuan IBFC, to address a concern in regards to the communication difficulties between them as raised in the 2014 review report. As a result, the exchange of information from the Labuan IBFC is now performed efficiently.

6. Some of Malaysia's EOI agreements do not contain an explicit provision allowing the exchange of banking information (akin to Article 26(5) of the OECD Model Tax Convention), but Malaysia interprets them in a way that banking information can be exchanged with all EOI partners. Malaysia notified its EOI partners to ensure that they are fully aware of the possibility of exchanging banking information with Malaysia. More generally, Malaysia has widened and upgraded its tax treaty network to be in line with the international standard. In addition, Malaysia is now participating in the Convention on Mutual Administrative Assistance in Tax Matters (Multilateral Convention), which allows a much larger number of jurisdictions to request information from Malaysia.

7. However, there remain a few elements where improvement is required.

Key recommendations

8. Key recommendations in this review report cover three essential elements: (1) the availability of ownership information including beneficial ownership information (see section A.1); (2) the availability of accounting

records regarding all entities and arrangements in Malaysia (see section A.2); and (3) the timeliness of Malaysia's responses to EOI requests from EOI partners.

9. Firstly, the availability of beneficial ownership information on companies and legal arrangements is an extension of the international EOIR standard from 2016. Malaysia has measures in place in identifying the beneficial ownership of companies or legal arrangements in its related anti-money laundering framework. However, not all entities in Malaysia are obliged to engage an AML/CFT obliged person in Malaysia, which may cause the unavailability of beneficial ownership information to certain entities. Malaysia should take actions to close the remaining gaps, and the related AML supervision and enforcement should also continue to be strengthened in regards to the AML-obliged professionals.

10. Further, as stated in the 2014 review report, there is no express requirement on certain trusts that do not carry on business in Malaysia and do not derive or receive income in Malaysia, to keep underlying documentations. This issue has not been appropriately addressed in the current review period, therefore, this recommendation remains. Both Malaysia and Labuan should also take measures to ensure the availability of accounting records for at least five years after an entity or legal arrangement ceases to exist.

11. Lastly, Malaysia has not made sufficient improvement in addressing the recommendations in relation to the timeliness of responses to EOI requests as included in the 2014 review report. The general feedback from peers in this regards is overall satisfactory, but there are concerns raised by some EOI partners about the late responses or lack of updates on the handling of EOI requests from Malaysia. Some of the challenges which caused late responses to EOI requests during the first round review (during years 2010 to 2012) still existed during the current review period (2015 to 2017), e.g. lack of awareness and incentives from the local tax auditors to the action on EOI requests and the response time has not much improved. Malaysia has recently improved its work procedures and tools, and should take actions to effectively implement them to ensure EOI requests are responded to within reasonable time and ensure that all EOI requests can be managed in a systematic and efficient manner.

Overall rating

12. Malaysia's legal and regulatory framework and its implementation in practice ensure that relevant ownership, accounting and banking information are generally available and in line with the international standard. This is also the case for beneficial ownership information which is newly covered in the second round of EOIR reviews. Improvements are recommended in

respect of certain areas covered under sections A1 (availability of ownership information) and A2 (availability of accounting information). Malaysia has put in place broad access powers for exchange of information purposes which allow obtaining all types of relevant information to be in line with the standard. Malaysia is a party to the Multilateral Convention and has a broad treaty network providing for exchange of information in line with the standard.

13. Within the current review period, Malaysia has received 155 requests. Quality and efficiency in responding to the EOI requests were confirmed by peers, who are overall satisfied with the assistance provided by Malaysia, although some further progress is expected (see section C5). During the current review period, Malaysia has made 34 outgoing EOI requests, and the number of requests is expected to increase as confirmed by Malaysia.

14. In view of the above, Malaysia is rated Compliant on elements A3, B1, B2, C1, C2, C3 and C4 and Largely Compliant on elements A1, A2 and C5. Malaysia is overall rated as Largely Compliant with the international standard of transparency and exchange of information on request.

15. This report was approved at the PRG meeting in June 2019 and was adopted by the Global Forum on 29 July 2019. A follow-up report on the steps undertaken by Malaysia to address the recommendations made in this report should be provided to the PRG no later than 30 June 2020 and thereafter in accordance with the procedure set out under the 2016 Methodology.

Summary of determinations, ratings and recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information, including information on legal and beneficial owners, for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation need improvement.	Not all trustees are required to have information available on the identity of settlors and beneficiaries of trusts.	An obligation should be established to maintain information in all cases in relation to settlors, trustees, beneficiaries and beneficial owners of trusts with a trustee in Malaysia.
	In Malaysia the primary source of beneficial ownership information is the customer due diligence obligations of AML/CFT obliged persons such as financial institutions, company secretaries, accountants and lawyers. However, not all relevant entities are obliged to engage an AML/CFT obliged person in Malaysia (excluding Labuan IBFC). This potentially impacts companies registered in Malaysia which use in-house company secretaries, and the partnerships controlled by other means. This is to some extent compensated by the requirements under the Companies Act 2016 to keep certain beneficial ownership information in Malaysia (excluding Labuan IBFC) but this information does not require identification of the beneficial owner in line with the international standard.	Malaysia should ensure that beneficial ownership information in respect of companies which use in-house company secretaries and of partnerships is available in line with the standard.

Determination	Factors underlying recommendations	Recommendations
EOIR rating: Largely Compliant	Malaysia's AML supervisory authorities carried out a variety of supervisory and enforcement measures which seem adequate to ensure the availability of beneficial ownership information. However, there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. This is a concern in respect of relevant AML obliged professionals and in particular company secretaries.	Malaysia should continue to strengthen supervision and enforcement of the implementation of AML/CFT rules to relevant AML obliged professionals, especially the company secretaries, so that beneficial ownership information is available as required under the standard.
	Although Labuan IBFC has in place a supervisory and enforcement regime, concerns arise in respect of the frequency of supervision, in particular concerning TCSPs.	Supervision and enforcement of the obligations ensuring the availability of beneficial ownership information should be strengthened in Labuan.
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The legal and regulatory framework is in place but certain aspects of the legal implementation need improvement	There is no express requirement on certain trusts that do not carry on business in Malaysia and do not derive or receive income in Malaysia, to keep underlying documentation.	There should be an express requirement for all relevant entities and arrangements to keep accounting records and underlying documentation for a minimum five year period.
	Accounting records of entities which ceased to exist are required to be available to the extent they are filed with the tax authority or the Registrar or in respect of companies which were dissolved by a liquidator. However, not all accounting records as defined under the standard are required to be filed and companies can cease to exist without being dissolved by a liquidator.	Malaysia should ensure the availability of accounting records after an entity or legal arrangement ceased to exist in line with the standard.

Determination	Factors underlying recommendations	Recommendations
	Although Labuan requirements ensure that accounting records must be kept for five years while the entity or arrangement exists, there are no adequate rules to ensure that all accounting records of entities or arrangements remain available after the entities or arrangements cease to exist.	Malaysia should ensure the availability of accounting records after an entity or legal arrangement ceases to exist in Labuan IBFC in line with the standard.
EOIR rating: Largely Compliant	Although Malaysian authorities carry out a number of supervisory measures, they have had so far only limited impact on the tax filing rate which is about 50% of registered corporate taxpayers. This is a particular concern in respect of underlying accounting documents which are not filed with the Registrar and therefore may not be subject to inspections.	Malaysia should strengthen its supervisory and enforcement measures to ensure that accounting information of all relevant entities and legal arrangements is available in line with the standard.
Banking information and beneficial ownership information should be available for all account-holders *(ToR A.3)*		
The legal and regulatory framework is in place		
EOIR rating: Compliant		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
Exchange of information mechanisms should provide for effective exchange of information *(ToR C.1)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received *(ToR C.3)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The legal and regulatory framework is in place.		
EOIR rating: Compliant		

Determination	Factors underlying recommendations	Recommendations
The jurisdiction should request and provide information under its network of agreements in an effective manner *(ToR C.5)*		
Legal and regulatory framework:	This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.	
EOIR rating: Largely Compliant	The 2014 report stated that the EOI related responsibilities and working procedures have been introduced but were not assessed in practice. During the current review period, the responsibility and working procedures are in place but are not fully effectively implemented as the challenges for delays still exist. However, Malaysia confirmed that the online EOI Case Management System (CMS-EOI) has been in place since January 2019, which has systematically improved the EOI requests management. The efficiency and functionality of the CMS-EOI cannot be assessed in the current review.	Malaysia is recommended to monitor the functionality of the CMS-EOI to ensure all EOI requests can be managed in a systematic and efficient manner.
	Malaysia has received positive feedback from peers regarding EOI during the current review period, but a few peers mentioned the lack of status update.	Malaysia should ensure provision of status updates are always provided where a substantive response cannot be provided within 90 days.

Overview of Malaysia

16. This overview provides some basic information about Malaysia that serves as context for understanding the analysis in the main body of the report. This is not intended to be a comprehensive overview of Malaysia's legal, commercial or regulatory systems.

Legal system

17. Malaysia is a federal constitutional monarchy with a parliamentary system of Government based on the Westminster model. Its legal system follows the English common law tradition, where written laws and the principles of English common law, adapted to local circumstances, case law and local customary law co-exist. The Federal Constitution is the supreme law providing the legal framework for legislation, courts and administrative aspects, which also defines the powers of the government and of the monarch, and the separation of powers amongst the executive, judicial and legislative branches. Below the Federal Constitution, legislative instruments are in the form of Acts passed by the Parliament, Regulations and other subsidiary legislation passed by the executive including Ministerial Regulations, and the State Laws and Regulations. All the guidelines made by the relevant authorities are mandatory and enforceable.

18. The Federal Constitution sets the division of competences between the Federation and the States. The federal government has legislative power over external affairs, including making laws and implementing treaties domestically, justice (except civil law cases among Malays or other Muslims and other indigenous peoples, adjudicated under Islamic and customary law), citizenship, finance, taxation, commerce and industry. States enjoy legislative power over matters such as land, local government, Shariah law and Shariah courts. Federal laws enacted by the Parliament of Malaysia apply throughout the country.

19. The superior courts are the High Court in the States of Malaya, and the High Court in the States of Sabah and Sarawak, Court of Appeal, and the Federal Court, while the Magistrates' Courts, the Sessions Courts, and other

courts are classified as subordinate courts. The application of common law in Malaysian criminal cases is specified in section 5 of the Criminal Procedure Code (Act 593) which states that English law shall be applied in cases where no specific legislation has been enacted. In addition, sections 3 and 5 of the Civil Law Act 1956 allow for the application of English common law, equity rules, and statutes in Malaysian civil cases where no specific laws have been made.

20. The Federal Government, composed of the head of state of Malaysia (i.e. Yang di-Pertuan Agong) and the Cabinet, headed by the Prime Minister, has treaty-making power including the EOI instruments (i.e. DTCs and TIEAs), while the Federal Parliament has the exclusive power to make laws to give legal effect to treaties domestically.

Tax system

21. The law governing income taxation in Malaysia is the Income Tax Act 1967 (ITA 1967). Income tax is charged on a territorial basis and upon remittance. However, the businesses of banking, insurance and air and sea transport are subject to taxes on worldwide income. Income tax rates for resident individuals range from 1% to 28%, and non-resident individuals are taxed at a flat rate of 28%. Companies with paid-up capital of MYR 2.5 million (EUR 0.53 million) or less are subject to corporate tax at 18% on chargeable income up to MYR 0.5 million (EUR 0.1 million), and 24% on chargeable income above that threshold. For companies with paid-up capital of more than MYR 2.5 million (EUR 0.53 million) and non-resident companies, chargeable income is taxed at 24%. An individual is resident if he is present in Malaysia for more than 182 days in a year, while a company is deemed resident if its management and control are exercised in Malaysia.

22. Corporate profits are subject to a one-tier corporate tax system, and thus dividends paid by resident companies are not subject to withholding tax. The withholding tax on interest is 15%, and for royalties, fees for technical services and other income is 10%. There are also other direct taxes such as real property gains tax, and indirect taxes such as excise duty and import duty. There is no tax on capital gains.

23. The Labuan Business Activity Tax Act 1990 (LBATA 1990) establishes a separate regime for taxing business activities in the Labuan International Business and Financial Centre (IBFC). The Inland Revenue Board of Malaysia (IRBM) is the authority responsible for administering the LBATA 1990. Pursuant to the amendment made under the Finance Act 2018 to the LBATA 1990, Labuan IBFC entities carrying out Labuan activities are now taxed at the rate of 3% of the net audited profits, provided that they meet the substantial requirement prescribed under the Act. Whereas, entities

undertaking non-trading activities will not be subjected to tax, whether or not they meet the substantial requirement. There are no withholding taxes on dividends, interest, royalties, management and technical fees or lease rental received from Labuan IBFC entities. In addition, they are exempted from stamp duties on instruments made in connection with the Labuan IBFC business activities. A Labuan IBFC entity may also make an irrevocable election to be taxed under the ITA 1967.

24. The free zones (FZs) of Malaysia include 20 free commercial zones and 19 free industrial zones. Within the FZs, companies are subject to minimum customs formalities and are exempt from import duties on raw materials, machinery and component parts. Companies established at the FZs are subject to the same reporting requirements applicable to Malaysian companies in general.

25. DTCs under section 132 of ITA 1967, TIEAs under section 132A and Mutual Administrative Assistance Arrangements under section 132B of ITA 1967 prevail over all domestic laws. Malaysia committed to the internationally agreed standard for EOI in 2009. As of September 2018, Malaysia is signatory to 72 DTCs and one TIEA providing for international exchange of information in tax matters. A complete list of Malaysia's DTCs is set out in Annex 2 to this report. On AEOI, Malaysia signed the Multilateral Convention on 25 August 2016, and signed the Multilateral Competent Authority Agreement (MCAA) on the Common Reporting Standard (CRS) as well as the MCAA Country-by-country reporting on 27 January 2016. Malaysia started exchanging financial account information under CRS with other Appropriate Interested Partners (AIPs) automatically in September 2018.

Financial services sector

26. Malaysia has a well-developed financial sector, with total financial assets amounting to more than three times its GDP. In 2017, the financial services sector contributed 6.7% to Malaysia's GDP. Malaysia has a dual financial system where both conventional and Islamic financial systems operate in parallel. At the end of 2017, the equity market capitalisation and nominal value of domestic debt securities outstanding were 140.9% and 95.5% of nominal GDP, respectively.

27. As of June 2018, there were 836 local and foreign financial institutions in Malaysia, including 27 commercial banks, 11 investment banks, 16 Islamic banks, 2 international Islamic banks, 6 development financial institutions, 35 insurance companies, 7 reinsurance companies, 12 takaful operators (i.e. Islamic insurance companies), 4 retakaful operators (i.e. Islamic reinsurance companies), 32 insurance/takaful brokers, 47 loss

adjusters, 28 regulated financial advisers, 5 money brokers, 8 payment system operators, 37 payment instruments issuers and 334 money changers/ remittance providers. Types of regulated institutions and the legislations administered by the central bank of Malaysia include the following:

No.	Regulated institutions	Relevant legislations
1	Commercial Banks	Financial Services Act 2013
2	Investment Banks	
3	Islamic Banks	Islamic Financial Services Act 2013
4	International Islamic Banks	
5	Development Financial Institutions	Development Financial Institutions Act 2002
6	Insurance Companies	Financial Services Act 2013
7	Re-Insurance Companies	
8	Takaful Operators	Islamic Financial Services Act 2013
9	Re-Takaful Operators	
10	Payment System Operators	Financial Services Act 2013
11	Payment Instruments Issuers	
12	Money Services Business Operators	Money Services Business Act 2011

28. Malaysia has a developed and comprehensive Islamic finance marketplace. The total size of the Malaysian Islamic capital market as at end-2017 stood at MYR 1 893 billion (EUR 402 billion) or 59.2% of the total domestic capital market. Malaysia continued to be the world leader in the global Islamic bond (sukuk) market, accounting for 51.1% of sukuk outstanding as at the end of 2017. Islamic banking assets grew by 11.6% to MYR 829.8 billion (EUR 176 billion) as at the end of 2017 from 2016. The total assets of the takaful industry was MYR 29.3 billion (EUR 6 billion), with takaful assets and net contributions experienced average annual growth of 8.8% and 9.2% respectively from 2014 to 2017.

29. For the capital market sector, all financial market including capital market intermediaries which carry out regulated activities of dealing in securities, derivatives and fund management are reporting institutions under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA 2001) and they are also subject to the Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries (AMLA Guidelines) issued by the Securities Commission pursuant to section 158(1) of the Securities Commission Malaysia Act 1993 (SCMA 1993).

30. The Financial Services Act 2013 (FSA) and Islamic Financial Services Act 2013 (IFSA) that came into force on 30 June 2013 amalgamated six statutes, namely the Banking and Financial Institution Act 1989,

Insurance Act 1996, Payment System Act 2003, Exchange Control Act 1953, Islamic Banking Act 1983 and Takaful Act 1984. They provide a cohesive and integrated legal framework in Malaysia to govern the financial sector under a single legislative framework for the conventional and Islamic financial sectors, respectively. Those laws provide Central Bank of Malaysia (Bank Negara Malaysia) with enhanced powers to govern the conduct and supervision of financial institutions in Malaysia towards maintaining financial stability, supporting inclusive growth in the financial system and the economy, as well as providing adequate protection for consumers. The FSA and IFSA explicitly allow for disclosure of customer documents or information by financial institutions to the tax authority for purposes of exchange of information under international agreements.

31. In the Labuan IBFC, banking, insurance, leasing and capital market entities and other professions (service providers) are licensed, regulated, and supervised by the Labuan Financial Services Authority (LFSA), the sole regulatory authority in the IBFC. The LFSA is also responsible for the registration of Labuan IBFC companies, limited partnerships and limited liability partnerships and for the establishment of trusts and foundations. Its principal functions are to administer, enforce and carry into effect the provisions of the legislation applicable to financial services carried on in the Labuan IBFC. The Labuan Financial Securities and Services Act (LFSSA) 2010 provides the main regulatory framework that brings together the key rules including the licencing requirement for a range of financial products. The shariah related activities are governed by the Labuan Islamic Financial Securities and Services Act (LIFSSA) 2010 applicable for shariah-compliant institutions including Islamic trusts, partnerships and foundations as well as providing for the establishment of a Shariah Supervisory Council. The amount of assets held by banks licensed in the Labuan IBFC in 2017 was EUR 44.49 billion (2016: EUR 44.76 billion) whilst insurance gross written premium is EUR 1.23 billion (2016: EUR 1.23 billion). In 2015, the assets size of Labuan banks stood at EUR 41.6 billion and insurance gross written premium was EUR 1.14 billion. Other financial activities in Labuan include Labuan international trading company (LITC) and wealth management related sectors.

Composition of key activities in Labuan financial sector	2015	2016	2017
Labuan Banks	54	53	54
Labuan Insurance and insurance related	209	204	203
Labuan Trust Company	41	46	50
Labuan Leasing	373	383	380
LITC	43	50	57
Private Fund	65	73	54
Fund Manager	11	12	14
Labuan Foundation	166	188	151

32. Bank Negara Malaysia (the Central Bank of Malaysia) regulates and supervises financial institutions and financial intermediaries which are subject to the laws enforced by the Bank Negara Malaysia.

33. For Labuan companies, all of the international standards for effective EOI are applicable to Labuan entities. LBATA 1990 provides DGIR with specific authority to access information in Labuan for EOI purposes. Section 22A LBATA 1990 allows disclosure of information in respect of DTC, TIEA and automatic exchange of information under the Multilateral Convention on Mutual Administrative Assistance in Tax Matters. Besides the sharing of information from various countries with which Malaysia has signed DTC, information has also been shared with other countries to ensure financial soundness and to facilitate investigation of Labuan entities by international supervisory and monetary authorities.

Malaysia's compliance with the AML/CFT standard

34. The governing law on anti-money laundering and terrorism financing (AML/CFT) regime in Malaysia is the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (2001) (AMLA).

35. The AMLA provides for the offences of money laundering and terrorism financing and the measures to be undertaken for the prevention of these offences which include reporting institutions' obligation to conduct due diligence (CDD) on customers as well as identifying beneficial owners. Reporting institutions are the financial institutions and a range of designated non-financial businesses and professions (DNFBPs) who carry out activities listed in the First Schedule of AMLA, including lawyers, accountants, company secretaries, etc. The enforcement of the AMLA is undertaken by various ministries/agencies under their respective purview based on the 416 predicate offences under 49 pieces of legislations listed under the Second Schedule of the AMLA.

36. In November 2014, Malaysia underwent a Mutual Evaluation by the Financial Action Task Force (FATF) and the Asia/Pacific Group on Money Laundering (APG). FATF published a report in September 2015 and Malaysia is acknowledged to have a "high degree" of technical compliance and "a substantial to moderate" level of effectiveness in the implementation of the international standards. In the report, FATF concluded that overall Malaysia has demonstrated a moderate level of effectiveness for Immediate Outcome 5, and Malaysia is rated largely compliant with FATF Recommendation 10 regarding assessing risks and applying a risk-based approach; largely compliant with FATF Recommendation 22 regarding the customer due diligence of DNFBPs; partially compliant with FATF Recommendation 24 regarding the

transparency and beneficial ownership of legal persons; partially compliant with FATF Recommendation 25 regarding the transparency and beneficial ownership of legal arrangements (refer to the Mutual Evaluation Report in September 2015 and the follow-up report in October 2018).

37. Malaysia was accorded full membership to FATF in February 2016 as FATF recognised that Malaysia had good levels of compliance with the FATF Recommendations although improvements were needed based on the FATF 2015 Mutual Evaluation Report. FATF recognised that since the evaluation, Malaysia has worked to develop a National Strategic Plan (NSP) covering a period of 5 years (2015-20) for addressing the key effectiveness issues identified in the evaluation. The Malaysia Status Report to FATF as at October 2018 reported that in total, 82% of the 74 action plans and sub-action plans have been identified as either completed or currently in progress within the stipulated timeline. The balance of 18% are in the pipeline and currently being re-aligned within the respective agencies.

38. Malaysia has also been re-assessed and re-rated in technical compliance component ratings in October 2018.[1]

Recent developments

39. Since the last review, Malaysia signed the Convention on Mutual Administrative Assistance in Tax Matters on 25 August 2016. It entered into force in Malaysia on 1 May 2017. Malaysia also committed to automatic exchange of financial account information and signed the Multilateral Competent Authority Agreement (MCAA) on the Common Reporting Standard and MCAA on Country-by-Country Reporting on 27 January 2016. Malaysia started exchanging financial account information automatically in September 2018.

40. In addition, the Companies Act 2016 (CA 2016) has come into effect on 31 January 2017. The new CA2016 effectively replaced the CA1965. The impact of the changes made in CA2016 across the corporate landscape include (i) simplifying company incorporation; (ii) enhancing of provisions relating to updates on corporate information; (iii) facilitating share capital management and restructuring; (iv) reaffirming the importance of audit and financial reporting; (v) enhancing corporate governance and responsibilities; (vi) modernising insolvency laws to managing distressed and insolvent companies.

1. See The complete mutual evaluation and follow-up reports published at www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Malaysia-2015.pdf and www.fatf-gafi.org/countries/j-m/malaysia/documents/fur-malaysia-2018.html.

Part A: Availability of information

41. Sections A.1, A.2 and A.3 evaluate the availability of ownership and identity information for relevant entities and arrangements, the availability of accounting information and the availability of bank information.

A.1. Legal and beneficial ownership and identity information

Jurisdictions should ensure that legal and beneficial ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

42. The Malaysian legal and regulatory framework provides for the possibility to establish different types of entities and arrangements that may be relevant for exchange of information purposes. In addition, a separate legal and regulatory framework exists for the Labuan International Business Financial Centre (IBFC), providing for specific types of entities and arrangements in Labuan. The availability of legal ownership information is ensured to a large extent through the combination of supervisory and enforcement measures taken mainly by the Companies Commission of Malaysia (CCM) and the IRBM in Malaysia and LFSA in Labuan IBFC. These measures include preventive programmes, audits and inspections, enforcement and strike-offs of non-compliant entities.

43. The 2014 review report identified certain aspects of the legal implementation of the EOIR standard that needed improvement. In particular, not all nominees are required to have information available on the persons for whom they act, thus Malaysia was recommended that an obligation should be established for all nominees to maintain relevant ownership and identity information where they act as the legal owner on behalf of other persons. Malaysia addressed this issue. Under section 56 of the CA 2016, companies have the power to require any of their members to disclose information whether the member holds shares as beneficial owner or trustee, and any person who fails to comply with the company request or provides false information commits an offence. Malaysia also confirmed that companies are required to indicate whether or not any of their shareholders are holding shares as ultimate beneficial owners or as trustees as required by CCM. If the

shareholders are holding shares as trustees, they are required to disclose the ultimate beneficial owners.

44. The 2014 report also stated that not all trustees are required to have information available on the identity of settlors and beneficiaries of trusts, thus it was recommended that an obligation should be established to maintain information in all cases in relation to settlors, trustees and beneficiaries of trusts with a trustee in Malaysia. In the current review period, there were no changes of policies or laws in Malaysia to address this, therefore the potential risks still exist. Malaysia confirmed that trust business is primarily carried out by the AML obliged parties under the AML law and they are subject to the requirement of the identification and verification of information on settlors, beneficiaries, etc. Where the trustees hold deposits for the trusts in banks, they would also be covered by the AML legal framework. However, there is no restriction in Malaysia on who can provide trust services, and thus a non AML obliged individual or entity could also act as a trustee. Even though Malaysia claimed that this group of trustees would constitute "a very narrow category", the authorities could not confirm the number of entities that did not have bank accounts. Malaysia is recommended to make changes to the current laws and make sure that all trustees including those acting on a non-professional basis are required to keep records of the identity information related to the trusts they act for.

45. The 2014 report identified material deficiencies in the implementation of the legal and regulatory framework in practice. Following the 2014 review, regulatory measures have been strengthened so as to address the recommendation made in relation to appropriately sanctioning the non-compliance of the filing and reporting obligations of companies. According to section 68(8) of the CA 2016, the Registrar is empowered to strike a company off the register if the company fails to lodge an annual return for three or more consecutive years, and penalties for failure to lodge annual returns and financial statements were increased. The CCM of Malaysia also conducts an ongoing periodical exercise to strike off inactive companies. As confirmed by Malaysia, the CCM has struck off 110 632 companies since the last review. Consequently, the recommendation is considered addressed.

46. In the 2014 report, Malaysia was recommended to ensure that the obligations to keep ownership information in the Labuan IBFC were being appropriately monitored and enforced. The LFSA confirmed that related actions have been taken including issuing a circular specifically requiring all Labuan companies or trust service providers (i.e. trust companies) to keep and maintain the ownership information of Labuan entities, and the LFSA's supervision team checks on the compliance of the ownership/identity and accounting records maintained by the Labuan trust companies through periodic on-site examinations. Labuan IBFC has a supervisory and enforcement regime in place now, however concerns arise in respect of the frequency of

supervisions, thus it is recommended that the supervision and enforcement of the obligations ensuring the availability of ownership information including beneficial ownership information should be strengthened in Labuan.

47. The legal framework of the LLPs and business trusts became effective right before the end of the first round review period, thus the related enforcement and monitoring actions of the CCM could not be assessed. Malaysia has confirmed that no business trusts have ever been approved by the Securities Commission Malaysia, i.e. there were and are no business trusts in Malaysia. As for the LLPs, the CCM confirms that the LLPs maintain the database of ownership information of LLPs, and enforcement actions have been taken since the first round review to ensure that LLPs comply with all provisions in the LLPA 2012.

48. Under the 2016 ToR, beneficial ownership of relevant entities and arrangements is now required to be available. The main requirements ensuring availability of beneficial ownership information are contained under AML rules in Malaysia and the Labuan IBFC. In Malaysia, all companies must have company secretaries, which are mostly reporting institutions under AML laws required to identify the beneficial owners of the companies. However, in case of companies having in-house company secretaries and no business interaction with other reporting institutions like banks, beneficial ownership information may not be available as in-house secretaries are not AML obliged persons. Similarly, in Malaysia, partnerships are also not legally required to engage AML obliged persons, which may give rise to the unavailability of the beneficial ownership information. Nevertheless, the materiality of the potential risk would be mitigated by statutory requirements for businesses in Malaysia to engage AML obliged persons, e.g. banks, including provisions of paying employee provident funds, sales tax, social security, etc. Furthermore, in Malaysia the express trusts set up with non-professional trustees (which are not reporting institutions under AML) only have the common law fiduciary obligation to keep the beneficial ownership information of the trust. Therefore, Malaysia should ensure that beneficial ownership information is always available for companies which only have in-house company secretaries, general partnerships and LLPs, and express trusts with non-professional trustees. Malaysia is also recommended to continue strengthening its oversight and monitoring procedures for the DNFBPs, so as to ensure that the availability requirement of beneficial ownership information of entities or arrangements under AML is effectively implemented.

49. Reporting institutions are only required to conduct on-going due diligence commensurate with the risk profile of the client which requires the CDD information (including the beneficial ownership information) to be updated and relevant, which means not all documents and information collected by the reporting institutions are regularly reviewed and updated. This is understood to be the case in both Malaysia and Labuan. Therefore Malaysia and Labuan

should take measures to ensure that all the beneficial ownership information maintained by the reporting institutions is valid and up to date.

50. With regards to the availability of beneficial ownership information of the entities and arrangements in Labuan, all companies, partnerships, trusts or foundations in Labuan IBFC are required to engage a local trust company in Labuan, and Labuan trust companies as reporting institutions under AML laws, are required to identify and maintain the accurate and up-to-date information on the beneficial owners of those entities and arrangements in their management information system (MIS). During the current review period, oversight and enforcement to the trust companies in Labuan appear not to be sufficient, thus LFSA is recommended to reinforce the monitoring and enforcement of the obligations regarding the information record keeping of beneficial ownership of entities and arrangements in Labuan IBFC.

51. Overall, the availability of ownership information in Malaysia was confirmed in the EOI practice. During the current review period, Malaysia received 111 EOI requests which requested for the ownership information, and only 1 of them is related to the beneficial ownership information. Malaysia confirms that all ownership information requested during the review period (including concerning beneficial ownership) was provided. No issue in this respect was reported by peers either, as they generally stated that they are satisfied with Malaysia's EOI co-operation (see further section C.5).

52. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	Not all trustees are required to have information available on the identity of settlors and beneficiaries of trusts.	An obligation should be established to maintain information in all cases in relation to settlors, trustees, beneficiaries and beneficial owners of trusts with a trustee in Malaysia.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
	In Malaysia the primary source of beneficial ownership information is the customer due diligence obligations of AML/CFT obliged persons such as financial institutions, company secretaries, accountants and lawyers. However, not all relevant entities are obliged to engage an AML/CFT obliged person in Malaysia (excluding Labuan IBFC). This potentially impacts companies registered in Malaysia which use in-house company secretaries, and partnerships controlled by other means. This is to some extent compensated by the requirements under the Companies Act 2016 to keep certain beneficial ownership information in Malaysia (excluding Labuan IBFC) but this information does not require identification of the beneficial owner in line with the international standard.	Malaysia should ensure that beneficial ownership information in respect of companies which use in-house company secretaries and of partnerships is available in line with the standard.
The legal and regulatory framework is in place but certain aspects of the legal implementation need improvement.		

Practical Implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Malaysia's AML supervisory authorities carried out a variety of supervisory and enforcement measures which are generally adequate to ensure the availability of beneficial ownership information. However, there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. This is a concern in respect of relevant AML obliged professionals and in particular company secretaries.	Malaysia should continue to strengthen supervision and enforcement of the implementation of AML/CFT rules to relevant AML obliged professionals, especially the company secretaries, so that beneficial ownership information is available as required under the standard.
	Although Labuan IBFC has in place a supervisory and enforcement regime, concerns arise in respect of the frequency of supervision, in particular concerning TCSPs.	Supervision and enforcement of the obligations ensuring the availability of beneficial ownership information should be strengthened in Labuan.
EOIR rating: Largely Compliant		

ToR A.1.1. Availability of legal and beneficial ownership information for companies

53. The legal and regulatory framework of Malaysia provides for the possibility to establish different types of companies. In addition, a separate legal and regulatory framework exists for the Labuan IBFC, providing for specific types of companies that can be established in the financial centre. This section will address in separate items ownership information available in Malaysia and in the Labuan IBFC.

Companies in Malaysia

54. Malaysia law provides for the creation of several types of companies. Depending on the nature of the liability of their members, companies are divided into companies limited by shares, companies limited by guarantee and unlimited companies.

55. Companies limited by shares are the most common type of companies in Malaysia, which are ones where the liability of its members is limited to the amount originally invested. They may be incorporated as: (i) private limited companies, with no more than 50 members (identified through the word "Sendirian Berhad" or abbreviation "Sdn. Bhd" as part of the company's name); and (ii) public companies (identified through the expression "Berhad" or " the abbreviation of "Bhd" as part of the company's name).

56. A company limited by guarantee is one where the liability of its members is limited to the amount that the members have undertaken to contribute in the event of its being wound up. It is a public company commonly formed for non-profit making purposes, e.g. trade associations, charitable bodies, clubs, professional and learning associations, some religious bodies and alike.

57. An unlimited company is a company formed on the principle of having no limit placed on the liability of its members, and can be either a private or public company.

58. A private company qualifies as an "exempt private company" if: (i) no beneficial interest on its share is held directly or indirectly by any corporation; and (ii) it has not more than 20 members. This tax quality impacts the obligation of the entity to submit or not accounting information to the tax authorities but it remains subject to the regular obligations related to the provision of ownership information. There are 1 094 182 exempt private companies in Malaysia, out of which 538 565 are active companies. This amounted to 81.8% of the total active companies.

59. As of the end of the current review period, the total number of companies ever registered with the Registrar was 1 251 190,[2] out of which 1 248 491 were companies limited by shares (1 241 644 private and 6 847 public); 2 405 were companies limited by guarantee; and 294 were unlimited companies. Out of the above total, 658 359 are active companies, i.e. legally existing and not been dissolved. The legal concept of inactive company does not exist in Malaysia.

2. This represents the number of companies that have ever registered with the Registrar and for companies which are not active, they are dissolved or struck off.

60. The same legal requirements to maintain legal and beneficial ownership information apply in respect of all types of companies. The following table shows a summary of the scope of coverage of these rules:

Type	Company law	Tax law	AML Law
All companies	Legal – all Beneficial – some	Legal – some Beneficial – none	Legal – all Beneficial – some

Legal ownership and identity information requirements

61. The 2014 report concluded that legal ownership information in respect of domestic and foreign companies is generally available in line with the standard, with the exception of companies where shareholders are nominees. The main source of legal ownership information in practice is the information filed with the Registrar which is also shared with the tax administration. Information available with the Registrar can be further supported by information kept by companies themselves, and information available with service providers or with the tax administration based on tax filings or audits.

Information available with the Registrar and companies themselves

62. Malaysia changed its company law in 2016 and the Companies Act 2016 (CA 2016) repealed the Companies Act 1965 (CA 1965) and came into force on 31 January 2017. The new company law brings a few relevant adjustments mainly in relation to already existing filing requirements and an obligation to identify all nominee shareholders. The implementation of the amended rules under the CA 2016 is supervised in the same way as in respect of already existing obligations (see further discussed in paragraph 82).

63. Legal ownership information is required to be filed with the Registrar upon incorporation of a company in Malaysia. When applying for incorporation of a company, a statement must be submitted, which contains (i) the name of the proposed company; (ii) its private or public status; (iii) the nature of business; (iv) the address of the registered office; (v) the name, identification number, nationality and the ordinary place of residence of every person who is to be a member of the company and, where any of these persons is a body corporate, the corporate name, place of incorporation, registration number and the registered office of the body corporate; (vi) the name, identification, nationality and the principal place of residence of every director; (vii) the name, identification, nationality and the principal place of residence of the (non-in-house) secretary, if any; (viii) in the case of a company limited by shares, the details of class and number of shares to be taken by a member; (ix) in the case of a company limited by guarantee, the amount up to which the member undertakes to contribute to the assets of the

company in the event of its being wound up; and (x) any other information as the Registrar may require (section 14(3), CA 2016).

64. Under section 50(1) of the CA 2016, every company must keep a register of its members. Information in the register of members must include (i) the names, addresses, number of the identity card, if any, nationality and the usual place of residence of every member and, where any of the member is a corporation, the corporate name, place of incorporation, establishment or origin, registration number and registered office of the corporation and any other relevant information and particulars of the members; (ii) in the case of a company having a share capital, a statement of the shares held by each member, distinguishing each share by an appropriate number, or by the number of the certificate, if any, and of the amount paid or agreed to be considered as paid on the shares of each member; (iii) the date at which the name of each person was entered in the register as a member; (iv) the date at which any person who ceased to be a member during the previous seven years so ceased to be a member; and (v) in the case of a company having a share capital, the date of every allotment of shares to members and the number of shares comprised in each allotment. Failure to maintain the register of members is subject to a fine not exceeding MYR 10 000 (EUR 2 124) (with a further daily fine not exceeding MYR 500 (EUR 106) in case of a continuing offence) (section 50(4), CA 2016).

65. In principle, all the required registers must be kept at the registered office of the company, but can also be kept at another office within Malaysia if the register and index are prepared at the other office or if the company arranges with any person to prepare the register and index on its behalf within Malaysia (section 54, CA 2016). A company having a share capital may keep a branch register of members which will be deemed to be part of the company's register of members in any place outside of Malaysia. A branch register shall be kept in the same manner in which the principal register is required to be kept (section 53, CA 2016).

66. The company also needs to maintain an index of members where it has more than 50 members which should contain sufficient indications to enable the account of each member in the register to be readily accessible (section 52, CA 2016). It is also required to keep a register showing the directors' shareholdings (section 53, CA 2016).

67. In case of any changes to the information of the register of members (including new allotments of shares), the company must notify the Registrar within 14 days and is subject to a fine not exceeding MYR 20 000 (EUR 4 249) (with a further daily fine not exceeding MYR 500 (EUR 106) in case of a continuing offence) for any non-compliances (sections 51(4) and 77(1), CA 2016).

68. In addition, companies must lodge with the Registrar annual returns (section 68(3), CA 2016). A public company which has more than 500 members and provides reasonable opportunities and facilities for a person to inspect and take copies of its list of members and particulars of shares transferred is not required to provide the list of its members in the annual return, but needs to provide a list showing the prescribed particulars of the 20 largest holders of each class of equity shares (section 68(7), CA 2016). Companies which contravene the annual return provisions may be liable to a fine not exceeding MYR 50 000 (EUR 10 612) with a further daily fine not exceeding MYR 1 000 (EUR 212) for continuing offence (section 68(9), CA 2016). The Registrar may strike a company off the register if the company fails to lodge an annual return for three or more consecutive years.

69. Under section 235(1) of the CA 2016, a company must have at least one secretary. A company secretary, as a reporting institution (RI) under AML/CFT regime also has the responsibility to comply with the "Designated Non-Financial Business and Professions (DNFBPs) and Other Non-Financial Sectors (DNFBP) (sector 5) Guidelines", inter alia, to perform customer due diligence which include the identification and verification of the ownership information.

Nominee ownership

70. The 2014 report concluded that while nominees who were acting on behalf of the company's directors and those who were lawyers, certified accountants, company secretaries or financial institutions had to identify the persons for whom they acted, it was possible that some persons acting as nominees fell outside this group and were not required to maintain information on the persons for whom they acted. The new Companies Act addressed this gap through an obligation of directors and company secretaries to identify any members of the company holding shares as a nominee or a trustee and persons on whose behalf they act. These persons must be identified in an annex to the annual return required to be filed with the Registrar (sections 56 and 68, CA 2016). Malaysia confirmed that 361 nominees have been identified as of the end of the review period.

71. As it might be difficult for directors and secretaries to identify nominee shareholding, these obligations are supported by the obligation of members of the company holding shares as a nominee or a trustee to indicate the persons for whom they are holding the shares to the company and respond to any related inquiries by the company or government authorities. Any person who fails to comply with these requirements or provides false information commits an offence, and would be subject to a fine not exceeding MYR 50 000 (EUR 10 612) and a further fine not exceeding MYR 1 000 (EUR 212) for each day during which the offence continues after conviction

as imposed by the Registrar. These measures address the recommendation in the 2014 report. During the transitional period in introducing this new provision of the CA 2016, the Registrar has taken the soft approach of advisory and advocacy with regards to this requirement, pending the development of a comprehensive ownership reporting framework. As such, there are no fines imposed yet.

Foreign companies

72. Under the CA 2016, a foreign company is not allowed to carry on business in Malaysia unless it is registered as a foreign company. Upon registration in Malaysia, a foreign company must lodge with the Registrar various information including the list of its shareholders or members at its place of origin. With regards to the list of shareholders, where the number of shareholders exceeds 500, only the list of its 20 largest shareholders needs to be lodged (section 562, CA 2016). Any changes on the particulars and/or information on a business must be lodged with the CCM within 30 days of the changes pursuant to section 5B of the ROBA 1956. A foreign company is also required to lodge annual returns, which must include the list of its shareholders or members, and in case of a company with a share capital, the summary of its shareholding structure including debentures (section 576(2), CA 2016). As of 30 September 2018, there were 4 793 foreign companies registered in Malaysia.

73. As concluded in the 2014 review report, foreign companies without share capital are not required to keep a branch register. However the number of such companies is very low and ownership information for them is available from the Registrar. Information of those companies is also available on the owners of foreign companies due to customer due diligence obligations of the service providers.

Retention period of ownership information

74. Information filed by companies with the Registrar is kept in perpetuity as there is no general limitation to the obligation to keep the information filed, including the register of members (section 603, CA 2016). Companies are under a continuous obligation of maintaining the register in perpetuity throughout the existence of the company, as was confirmed by the regulator. The seven year retention period for records does not apply to the register of shareholders.

75. Under sections 518(1) and 518(2) of the CA 2016, when a company has been wound up, the liquidator must retain the books and papers of the company (which include the ownership and identity information of the company as reported by Malaysia) that are relevant to the affairs of the company

at or subsequent to the commencement of the winding up for a period of five years from the date of the dissolution of the company. Any person who contravenes this provision commits an offence and is liable to a fine not exceeding MYR 10 000 (EUR 2 124).

76. To conclude, Malaysia's law and regulations require the availability of legal ownership information in line with the standard. The Companies Act 2016 brought changes to already existing filing obligations and newly requires disclosure of nominee shareholders. It is understood that the implementation of the Companies Act 2016 is supervised through the same measures as in respect of the Companies Act 1965. However, since the new Companies Act 2016 was in force in 2017, its effectiveness of implementation could not be fully assessed in the current review period. Malaysia is recommended to monitor the effective implementation of the obligations under the Companies Act 2016 to keep legal ownership information in practice.

Implementation of obligations to keep legal ownership information in practice

77. The 2014 report concluded that improvement was needed in respect of companies which fail to file their annual returns with the Registrar and that instances of non-compliance should be appropriately sanctioned. Since then, Malaysia has taken steps to address this gap.

78. In the CA 2016, there were changes made in the supervisory and enforcement practice including requiring companies, including foreign companies, to lodge annual returns and financial statements with the Registrar. Related penalties for non-compliance were also increased in the new company laws. Dormant companies which had not been in line with the annual return requirements were struck off.

Practical availability of ownership information with the Registrar

79. The Companies Commission of Malaysia (CCM) is the authority responsible for administering the CA. Updated shareholder information is available with the CCM and can be accessed online by any person at the CCM's website subject to the payment of a fee. Subsidiary sources of information include tax returns and inquiries made directly with companies and their representatives.

80. Malaysia seems to have sufficient human resources at the Registrar to supervise the compliance of the CA. The CCM has 81 officers working at the corporate compliance division (plus 107 on-site inspection officers in 12 state offices and 7 branches in Malaysia) which is to raise the corporate compliance rate by encouraging good corporate governance values through

a continuous education programme as well as via effective surveillance and enforcement efforts. In addition, there are 57 investigation officers at the investigation division which has the primary responsibility of conducting all follow-up investigation cases and complaints that have been referred to the division, and also has the responsibility of investigating all offences committed under the CA and the ROBA. Finally, 22 officers are working at the prosecution and litigation division which is responsible for conducting prosecution, and handling litigation matters in court.

81. Following the introduction of the CA 2016, the new CCM's MyCoID portal 2016 (https://mycoid2016.ssm.com.my/) has been launched and all new registration of companies have to be done online through the portal. A person who wishes to incorporate a company through MyCoID should have the one-time off physical verification, and an Individual User or Professional User of the MyCoID must complete this verification physically over the nearest CCM counter. This can ensure that the information of the founders or promotors are kept in the CCM's database. As for other shareholders, the company secretaries have the responsibility to maintain the register of members filed and up to date. All companies in Malaysia should have a company secretary and the company secretary, as a reporting institution (RI) under the AML/CFT regime, has a responsibility to perform customer due diligence which includes the identification and verification of the ownership information. Any company's filing with the Registrar must be done by an authorised person who is normally the company secretary.

82. Under the CA 2016, the CCM is monitoring compliance with the obligations to register with the business register and to update ownership information. In line with the CCM's role to raise the corporate compliance rate, compliance monitoring was performed through off-site and on-site inspection activities which were scheduled to identify and provide alerts on entities that may have committed offences or which are suspected of non-compliance, which include:

- Analysing corporate and business information stored in CCM's database (data monitoring), including: (a) annual returns and financial statement which would include the information of the shareholders lodgement status pertaining to section 165(4) of Companies Act 1965 (CA1965), section 68(1) and section 259(1) of CA2016; (b) analysing financial statements lodged with CCM; (c) monitoring of directors' qualifications under sections 130(1) and 125(1) of CA1965 and section 130(1) of CA2016; (d) compliance by companies under liquidation to the winding up provisions under sections 234(3) and 188(1) of CA1965 and section 388 and 484 of CA2016; (e) monitoring of business registration expiry under section 12(1)(b) of ROBA 1956; (f) annual declaration lodgement by LLP pertaining to section 68(2)

of LLP 2012 (see section A.1.3 below); and (g) co-operation with local authorities and licensing agencies (e.g. Local Municipal Councils and Land Public Transport Commission) to check the compliance status of companies and businesses that have licence or permit from the agencies. Numbers[3] of inspections on off-site data monitoring in the current review period are as follows:

Year	2015	2016	2017
Analysing corporate and business information stored in CCM database	1 026 117	1 205 616	825 048

- Physical inspection of business premises and registered addresses, including: (a) compliance with the provisions under section 121(3) of CA 1965, section 30(1) of CA 2016 and Rule 12A of the Registration of Businesses Rules 1957 with regard to the display of company/ business name and registration number at business premises and section 12(2) of ROBA 1956 with regard to the display of registration certificate at business premises; (b) compliance with the provision of section 12(1)(a) and 12(1)(b) of ROBA 1956 with regard to business registration and renewal; (c) record and maintenance of statutory books which include the register information of the shareholders and also nominees by Company Secretaries pursuant to CA 1965, CR 1966, CA 2016 and CR 2017 requirements. Numbers[4] of inspections in this regards during the current review period are as follows:

Year	2015	2016	2017
Physical inspection of business premises and registered addresses	24 513	22 582	22 174

- Monitoring of web-based businesses and media advertisements, including (a) compliance with the provisions under section 121(b) CA 1965 and section 30(2) of CA2016 relating to display of company name and number in all documents and publications; (b) compliance with the provisions of section 12(1)(a) and 12(1)(b) ROBA relating to registration and renewal of businesses; and (c) concerns relating to public interest, e.g. illegal investment, interest schemes, fraud by

3. As confirmed by the CCM, the numbers of off-site data monitoring was counted as per pieces of data information investigated by the CCM.
4. As confirmed by the CCM, the numbers of physical inspections were counted as per the entities that have been physically inspected.

companies and businesses. Numbers of inspections during the current review period are as follows:

Year	2015	2016	2017
Inspection on company and business websites	2 744	4 610	4 510
Inspection on company and business advertisement	1 156	2 534	2 535

- Monitoring of corporate intermediaries, including monitoring of obligations and independence of auditors and liquidators (3 499 audit reports in the current review period); monitoring of qualifications and competency of the company secretaries (1 207 company secretaries in the current review period); and monitoring of substantial shareholders under section 69E, 69F and 69G of the CA 1965 (188 substantial shareholders in 2017).

83. In cases of non-compliance the CCM takes a variety of enforcement measures including striking-off of non-compliant companies. These measures are summarised in the table below.

Year	No. of notices to company secretaries	Issuance of compounds (fines)	Blacklisting of directors and secretaries	No. of companies being struck off
2015	65 198	65 459	53 051	11 373
2016	55 453	60 268	3 800	89 710
2017	8 785	11 162	59 230	3 180
Total	186 064	195 210	116 081	110 632

84. The above measures have a positive impact on the level of compliance with companies' filing obligations. The compliance rate for annual returns for 2015, 2016 and 2017 are 93%, 94% and 92% respectively. The CCM measures the level of corporate compliance by calculating the compliance rate which is the percentage of total submission of annual returns to CCM measured against the number of active companies in the register. Active companies are companies which are legally existing and not in the process of strike-off or liquidation.

Dormant companies

85. The 2014 report identified an issue in respect of the availability of the information on over 100 000 dormant companies in Malaysia, i.e. companies which did not comply with the filing obligations. Malaysia therefore was recommended to ensure that instances of non-compliance are appropriately sanctioned and to monitor the effectiveness of penalties to ensure that they

are effective in providing deterrence against non-compliance of the filing and reporting obligations. As described above, Malaysia has taken adequate measures to address this recommendation.

86. To sum these up, enforcement provisions have been strengthened in the new Companies Act. Where companies fail to comply with the requirements to submit the annual returns, the actions taken by the Registrar would include: (1) issuing notices of fines to companies and directors, and if the company pays the fine but fails to lodge the annual return, an action will be taken to require the company to submit the annual return pursuant to the provision under section 607 of the CA 2016; or (2) bringing an action against the company before the court and upon conviction, under section 607, to require the company to lodge the annual return.

87. According to section 68(8) of the CA 2016, the Registrar is empowered to issue penalties for failure to lodge annual returns which were increased to not exceeding MYR 50 000 (EUR 10 612) as per section 68(1) and MYR 1 000 (EUR 212) per day for continuing offence after conviction and ultimately to strike a company off the register if the company fails to lodge an annual return for three or more consecutive years. The CCM confirms that once a company is struck off the register, there would be mandatory liquidation of the company and the company will cease to exist.

88. In practice, the CCM struck off 110 632 companies in 2014-17 through periodical exercise to identify non-compliant companies.

89. Nevertheless, care should be taken that positive developments over the last three years are followed up with adequate supervision and enforcement under the new Companies Act.

Beneficial ownership information

90. Under the 2016 ToR, beneficial ownership on companies should be available. The following sections of the report deal with the requirements to identify beneficial owners of companies and their implementation in practice.

91. Malaysia's law contains two sources for the availability of beneficial ownership information. The main source is AML obligations of financial institutions and professionals such as company secretaries, lawyers and accountants, if engaged by the company. This first source of beneficial ownership information ensures the availability of beneficial ownership information as defined in the standard, but the keeping of the beneficial ownership information up to date is risk-based and might not fully meet the standard in all cases, especially when the risk of money laundering is considered low but the client may be involved in tax fraud. Further, all domestic companies and foreign companies registered with the Registrar are required under the

new Companies Act to identify and collect information on their members' beneficial interest in voting shares and maintain a register of them. Although this second requirement ensures the availability of certain beneficial ownership information, it does not provide for identification of beneficial owners as defined under the standard.

AML obligations to identify beneficial owners

92. The AML obligations in Malaysia predate the obligation for companies to identify their beneficial owners, and they are the main source of beneficial ownership information. Malaysia's AML/CFT rules require financial institutions and obliged professionals to identify and verify beneficial owners of their customers. Financial institutions[5] and relevant AML obliged service providers such as company secretaries, accountants and lawyers are required under Malaysia's law to identify and verify beneficial owners of their customers as part of their customer due diligence (CDD) obligations.

93. The requirement to conduct CDD including standard CDD and enhanced CDD is set out in the respective legislation that governs each sector of service providers, i.e. the relevant reporting institutions (RIs). The AML law in Malaysia, among others, stipulates the following obligations for all RIs:

> 1) Section 16 of the AML Law imposes customer due diligence (CDD) obligations on reporting institutions both at on-boarding stage/establishment of business relations and as well as on an on-going basis.
>
> 2) Section 17 of the AMLA, requires reporting institutions to maintain any account, record, business correspondence and document relating to an account, business relationship, transaction or activity with a customer or any person as well as the results of analysis undertaken for a period of at least 6 years from the date the account is closed/business relation is terminated.

94. The definitions of beneficial owner under each piece of legislation governing the respective service providers' sector are generally the same. These definitions define "beneficial owner" as the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. They further provide that the term beneficial owner includes those natural persons who exercise ultimate effective control over a legal person or arrangement.

5. This includes banks, non-banking FIs, leasing and factoring companies, insurance and Takaful, money changers, remittance service providers and operators, and E-money and non-bank affiliated charge and credit card issuers.

95. RIs are obliged to conduct CDD on legal persons,[6] and identify and take reasonable measures to verify the identity of BOs, which includes:

- identification of the natural person who ultimately has a controlling ownership interest in a legal person, which at a minimum includes identification of shareholders with direct or indirect equity interest of more than 25%
- if there is a doubt on the controlling interest, the identity of the natural person exercising control through other means[7]
- where there is no natural person identified, the identity of the natural person who holds the senior management position.

96. This approach regarding the definition of the beneficial ownership of legal persons is in line with the international standard. These CDD measures apply in respect of domestic as well as foreign legal persons including foreign companies with place of effective management in Malaysia. If service providers are not able to carry out proper CDD, they are prohibited to enter into a business relationship. In undertaking customer due diligence measures, the reporting institution shall verify the identity including that of the beneficial owners by reliable means or from an independent sources, or from any document, data or information, including identify card, passport, birth certificate, driver's licence, constituent document or any official or private document (section 16(3) of AMLA, and section 13.4 of the AML/CFT guidelines issued by BNM).

97. Service providers are allowed to rely on a third party to perform CDD measures (including identification of the beneficial owners) if certain conditions are met. These conditions slightly vary across the regulated sectors but overall require that the RIs must be satisfied that the third party: i) can obtain immediately the necessary information concerning CDD as required; ii) has an adequate CDD process; iii) has measures in place for

6. 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. See section 10.2 of the AMLA Sector 2, which is largely the same in other AMLA sectors.

7. As stated by BNM, the AML/CFT Policy Guidelines issued to all the reporting institutions are intended to be principle-based. In this regards, there is no specific information within the Guidelines in clarifying the meaning of the term "control through other means". Nevertheless, relevant examples of what constitutes "control through other means" for instance, the right to appoint or remove the majority of the board of directors, nominee arrangement, etc., are made known to the reporting institutions via various awareness programmes, data and compliance reports and policy queries responses.

record keeping requirements; iv) can provide the CDD information and provide copies of the relevant documentation immediately upon request; and v) is properly regulated and supervised by the respective authorities. Where the RIs rely on third parties to conduct CDD or to introduce business, the ultimate responsibility and accountability of CDD measures remain with the RIs relying on third parties. RIs should have internal policies and procedures in place to mitigate any risks and furthermore are prohibited from relying on third parties from high risk countries. Overall the rules in relation to reliance on third parties for beneficial ownership information in Malaysia are in line with the standard.

98. RIs are required to update the information obtained when opening a new business relationship and to conduct ongoing CDD which is commensurate with the level of AML/TF risks posed by the customers based on the risk profiles and nature of the transactions. Malaysia indicates that on-going CDD obligation under paragraph 8.2.1 of SC's AMLA Guidelines requires that documents, data or information collected under the CDD process is kept up to date and are relevant, by undertaking periodic reviews of existing records, particularly for higher risk categories of customer. However, the periodicity of the review depends on the level of AML/TF risk of the client, with no minimum set in regulations as the authorities prefer to keep the obligations principle-based (see also A.3). The authorities should ensure that all the beneficial ownership information maintained by the reporting institutions is valid and up to date as the information in the BO register, which is more regularly updated, is not to the standard.

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

100. Failure by RIs to comply with CDD obligations is subject to various enforcement measures in accordance with regulations of the particular sector. Such measures include: (i) administrative proceedings such as revoking or suspending the reporting institutions' licence, directing or entering into an agreement with any reporting financial institutions to implement any action plan to ensure compliance, and direction of compliance; (ii) civil proceedings such as obtaining an order against any or all of the officers or employees of that reporting institutions to enforce compliance; and (iii) criminal proceedings including fines to offences. For non-compliance with either record keeping requirements, or obligation to conduct customer due diligence procedures RIs are subject to a fine up to MYR 1 million (EUR 0.21 million), and non-compliance with requirement to retain documentation for at least six years is subject to a fine to MYR 3 million (EUR 0.64 million) or jail up to 5 years or both (sections 13, 14, 16, 17, 21, 22, 66E, 86 and 92 of the AMLA).

101. The obligations in Malaysia to identify the beneficial owners of companies are broad, but the scope of application of the AML regime in Malaysia does not fully cover all relevant entities as set in the standard, in which not all companies have to have a relationship with a reporting institution. In Malaysia, a domestic company must have a company secretary and the company secretary will be a reporting institution under AMLA if providing these services in a professional capacity. However, both CCM and BNM confirmed that companies may also choose to have in-house company secretaries (i.e. company secretaries who are employees of the company), in which case, the in-house company secretaries have no obligations to conduct the CDD under AMLA for the companies which they act as they do not provide AML obliged services to the company. Malaysia reported that as of the end of the current review period, there are about 16 000 registered individual company secretaries and about 7 000 of them are working as in-house active company secretaries. Some other legal obligations compensate this coverage gap to a great extent as companies would need a bank account for the payment of sales tax, contribution for employee provident fund and social security protection for their employees.[8] Collectively, such requirements narrow the coverage gap, especially as the Malaysian authorities indicate that most companies having an in-house secretary are large domestic groups that engage local banks, lawyers and accounting firms that are all AML-obliged entities. The risk of non-availability of beneficial ownership information for companies is therefore limited but, Malaysia should nonetheless ensure that beneficial ownership information of the companies in Malaysia using in-house company secretaries is always available.

Implementation of AML obligations to keep beneficial ownership information in practice

102. While reporting institutions are regulated by various bodies for licensing and registration purposes, the supervision of implementation of their AML obligations to identify and verify the beneficial owners is the responsibility of the BNM for most of them, and of the CCM in respect of company secretaries.

8. Regulation 12(1) of Sales Tax Regulations 2018 requires that payment of sales tax in respect of any return must be made either by cheque, bank draft or electronic banking. Section 43(1) of Employee Provident Fund Act 1991 (EPF Act) imposes mandatory obligations on employers to make monthly contribution on the amount of wages of its employee at the rate set out in the EPF Act. Section 5 of the Employees Social Security Act 1969 imposes mandatory obligations on employers to contribute for the social security protection (e.g. in events of accidents or disabilities) for their employees.

103. BNM has in place a comprehensive supervisory programme to ensure the implementation of designated RIs' obligations, including on-site examination, off-site monitoring and active industry engagement.

104. On-site examination generally includes assessment of the RIs' ML/TF inherent risk and the quality of risk management, where it includes the assessment on the compliance with the obligations under the AMLA. BNM conducted 283 on-site examinations to financial institutions in 2015, 227 in 2016 and 133 in 2017. For DNFBPs, no on-site supervisions were conducted in 2015, and a total of 138 on-site supervisory visits were conducted between 2016 and 2018. The on-site supervisions to the company secretaries appear to be low which are summarised below.

Year	2016	2017	2018 (as of October 2018)
Number of registered company secretaries in CCM register	16 102	16 028	17 470 persons (total firms : 2 822)
Number of on-site examinations to company secretaries	0	14 firms (consisting of 106 individual company secretaries)	16 firms (consisting of 26 individual company secretaries)

105. The Malaysian authorities explain that the low number of on-site supervision to the company secretaries results from the policy choice to focus on-site supervision on a risk-based approach (based on the 2014 National ML/TF Risk Assessment), and where higher institutional risks are identified, on-site assessments are undertaken, which seems not to be sufficient and disproportionately low under the standard for EOIR purposes.

106. The off-site monitoring generally includes review of submissions, self-assessment surveys/questionnaires and notification to or approval from BNM, e.g. launching new products or services. DNFBPs are required to submit the internal audit reports, periodic statistical data report, supervisory rectification by RIs, including post on-site monitoring, self-assessment report and compliance survey (also known as Data and Compliance Report) for off-site monitoring purposes.

107. Where deficiencies are identified, enforcement measures are applied. In 2015, BNM issued 32 supervisory letters to FIs and applied fines regarding non-compliance of CDD requirements in 3 cases in the total amount of MYR 82 500 (EUR 17 725). In 2016, BNM issued 33 supervisory letters to FIs and applied fines regarding non-compliance of CDD requirements in 2 cases in the total amount of MYR 3 595 000 (EUR 772 385) and applied fines regarding record retention requirements to 1 bank in the total amount of MYR 900 000 (EUR 193 365). In 2017, BNM issued 47 supervisory letters to

FIs but no cases were investigated for compliance regarding CDD and record retentions.

108. In April 2018, a dedicated AML supervision unit was set up within the banking supervision department to undertake a more structured and focused review.

109. Malaysia's authorities also conduct active industry engagements for both financial institutions and DNFBPs with other industry associations or committees and the nationwide AML/CFT awareness programmes.

110. To conclude, Malaysia's AML supervisory authorities are carrying out a variety of supervisory measures which seem adequate to ensure the availability of beneficial ownership information. These measures include preventive programmes, off-site monitoring and on-site inspections verifying the availability of beneficial ownership information, and application of enforcement measures where deficiencies are identified. Malaysia authorities have devoted significant resources to identify and target areas exposed to risks of non-compliance with the applicable AML/CFT rules. The overall supervisory regime in place is generally adequate, but there are differences across supervised sectors in terms of frequency, depth of supervision and applied enforcement. Compared with supervision activities conducted by BNM to the financial institutions, there seems not to be sufficient supervision to the DNFBPs. Malaysia is therefore recommended to continue to strengthen the supervision and oversight of the implementation of requiring the availability of beneficial ownership information for all entities to meet the standard.

Requirements to maintain a register of beneficial ownership under Company law

111. The legal requirements to maintain beneficial ownership information and to update such records by companies are provided in the CA. To do so, section 56 of the CA 2016 gives the company the power to require disclosure of beneficial interest in its voting shares. Any company may require any member of the company to inform it whether the member holds any voting shares in the company as beneficial owner or as trustee, and where the member holds the voting shares as trustee, so far as it is possible to do so, to indicate the person for whom the member holds the voting shares by name and by other particulars sufficient to enable those persons to be identified and the nature of their interest. This also applies to any other persons where they have an interest in any of the voting shares in a company.

112. In addition, any company may require any member of the company to inform the company whether any of the voting rights carried by any voting shares in the company held by the member are the subject of an agreement or arrangement under which another person is entitled to control the member's

exercise of those rights and, if so, give particulars of the agreement or arrangement and the parties to the agreement or arrangements (section 56, CA 2016).

113. According to section 2(1) of the CA 2016, the beneficial owner means the ultimate owner of the shares and does not include a nominee of any description.

114. This definition does not require the identification of beneficial owners in line with the standard as i) it does not capture beneficial ownership established through other means than ownership (e.g. beneficial ownership established based on personal connections, contractual associations or participating in the financing of the enterprise) and ii) it does not specify that the beneficial owner has to be an individual.

115. Any person who contravenes a notice for providing the beneficial ownership information or makes any statement which he/she knows to be false in a material particular or recklessly makes any statement which is false in a material particular will be guilty of an offence as provided in section 56(8) of the CA 2016.

Implementation of requirements to maintain register of beneficial ownership

116. The implementation of section 56 of the CA is to be carried out by the Registrar in a similar way as in respect of other obligations under the Companies Act. The Registrar is currently in the process of establishing further supervisory measures targeting specifically the availability of beneficial ownership information. These measures include review of annual filing forms which are proposed to contain beneficial ownership information.

Companies in the Labuan IBFC

117. As described in the 2014 report, the Labuan IBFC has autonomy to issue laws and regulations on companies. The Labuan Company Act 1990 (LCA) regulates the incorporation and management of companies in Labuan, including (i) companies incorporated in Labuan (Labuan companies); (ii) foreign Labuan companies; and (iii) Labuan protected cell companies (Labuan PCC).

118. Under LCA, a Labuan company can be incorporated as a company limited by shares, a company limited by guarantee or an unlimited company. A Labuan company limited by shares can be privately or publicly owned (section 15(7), 18 and 21, LCA). The requirements to incorporate a Labuan company are: (i) a minimum of one subscriber to the shares of the company; (ii) no minimum capital requirement, unless the company undertakes

licensed activities (minimum capital of MYR 10 million (EUR 2 million) for banks and MYR 300 000 (EUR 64 000) for captive insurance companies); (iii) minimum of one director (section 87 LCA); and (iv) a resident secretary (section 93(1) LCA).

119. A foreign Labuan company is a foreign company that has a place of business or is carrying on business in Labuan (section 120 LCA) and is registered in Labuan (sections 16 and 121 LCA). The LCA provides for a very broad definition of the expression "carrying on business in Labuan", e.g. carrying on business in, from or through Labuan as provided in section 120 of the LCA.

120. A Labuan PCC is a Labuan company established under normal company rules with the ability to segregate its assets and liabilities into different cells, separated from the general assets of the PCC (section 130 LCA). It may only be formed to conduct licensed activities dealt with in the Labuan Financial Services and Securities Act 2010 (LFSSA) and the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA). The incorporation of, or the conversion to, a Labuan PCC requires prior approval of the Labuan Financial Services Authority (LFSA). The general provisions in the LCA applicable to Labuan domestic and foreign companies, such as the reporting obligations, also apply to Labuan PCCs.

121. As of 31 December 2017, there were 14 201 Labuan companies, of which 5 789 are active companies (i.e. legally existing and not in the process of being struck off or liquidation). There were 230 foreign Labuan companies and 5 PCCs registered in the Labuan IBFC. About 30% of the existing active companies were monitored under related supervisory activities (including both off-site and on-site ones) by the LFSA.

122. The same legal requirements to maintain legal and beneficial ownership information now apply in respect of all types of companies. The following table shows a summary of the scope of coverage of these rules:

Type	Company law	Tax law	AML Law
All companies in Labuan	Legal – all Beneficial – some	Legal – some Beneficial – none	Legal – all Beneficial – all

Legal ownership and identity information requirements

123. As described in the 2014 report, the availability of legal ownership information is ensured through three main sources. The Labuan Company Act requires filing of legal ownership information of companies with the LFSA.

124. The Labuan FSA is responsible for administering the LCA. Registration of a company in Labuan must be made online to the Registrar of companies LFSA via the Online COR@L system. The registration process in the Online COR@L system is similar for all entities. Persons desiring to incorporate a company in the Labuan IBFC must lodge the memorandum and articles of association of the proposed company with the LFSA together with other documents required under the LCA. The memorandum must include information on the name of the company, the object of the company, the liability of the members and shareholders, the company's capital structure, full name and address of each member or shareholder, the company's capital structure, full name and address of each member or shareholder (section 18 LCA). Furthermore, any amendments to the memorandum or the article of association must be lodged with the LFSA (section 23 LCA).

125. Further, companies must maintain registers of their members/shareholders and any changes to the members/shareholders (section 72 of the LCA). Failure to lodge the annual return and failure to maintain the register of members are both subject to a default penalty of MYR 10 000 (EUR 2 124) (sections 109 and 105(3) respectively of the LCA).

126. Finally, all Labuan companies, Labuan foreign companies and PCCs must have registered offices at licensed Labuan trust companies that are required to identify and keep records of the ownership structure of the companies which are their clients pursuant to AMLA.

127. Companies are also registered with the Inland Revenue Board of Malaysia (IRBM) in compliance with LBATA and file annual tax returns, which however do not include ownership information.

128. Ownership information concerning Labuan foreign companies is available to the Labuan trust company that functions as the registered office of the foreign company.

129. Information filed by companies with the LFSA is kept in perpetuity as there is no general limitation to the obligation to keep the filed information including the ownership information (section 13(9) LCA), which may include the return of allotment of shares and annual returns. This is not affected by possible future events, e.g. liquidation or deregistration of the company. Moreover, sections 82(1) and 82(2) of the LFSSA require Labuan trust companies to maintain all records as may be required under the law for a period of not less than six years from the date of closure of an account or the date when the transaction has been completed or terminated.

Implementation of obligations to keep legal ownership information in practice

130. The 2014 report concluded that the LFSA did not sufficiently monitor compliance with the obligation of all Labuan entities to maintain ownership information, and the LFSA was taking action to strengthen its monitoring and enforcement mechanism (during the last review period, approximately 50% of the registered Labuan companies were not active and failed filing annual returns). As a result, Malaysia was recommended to ensure that the obligations to keep ownership information in the Labuan IBFC were being appropriately monitored and enforced.

131. Malaysia reported that the LFSA has reinforced its monitoring and enforcement of record keeping whereby detailed scrutiny checks were performed by the Supervision and Monitoring Department to the Labuan entities as well as issuance of Show Cause Letter and imposition of Administrative Penalty for non-compliance of record keeping. The supervisory monitoring activities and scope are undertaken with a risk-based approach i.e. Risk Based Supervisory Framework. LFSA conducted monitoring and supervisory activities to 3 061 entities in 2015, 2 350 in 2016 and 2 641 in 2017, including off-site monitoring (database inspection, submission monitoring and compliance on regulatory reporting) and on-site monitoring (examinations and supervisory engagements and visits). These measures covered about 30% of existing active companies annually. Based on the LFSA findings, the reported level of compliance with ownership record keeping requirements is satisfactory. The main identified deficiencies related to formal aspects of record keeping and were remedied upon issuance of written warnings. With respect to the 50% of the registered companies which were not active and had not filed annual returns as commented in the 2014 report, the LFSA clarified that this is a misunderstanding, as the total number of incorporation/registration included all companies that had historically ever registered with LFSA, including those that had been struck off or de-registered, whilst the number of companies indicated as "active companies" were actually all the companies that are currently registered with LFSA. LFSA confirmed that the rate of filing annual returns for companies was overall 100% in 2015 and 2017 and around 99% in 2016, and there are no inactive companies still legally existing.

Beneficial ownership information requirements

132. As mentioned above, under the 2016 ToR, a new requirement of the EOIR standard is that beneficial ownership information on companies should be available. In Labuan, this aspect of the standard is met through the AML laws. There is no requirement regarding availability of beneficial ownership information under the company laws and tax laws in Labuan.

133. In Labuan, the main applicable AML regulations are AMLA, the Guidelines on Anti-money Laundering and Combating the Financing of Terrorism (Guidelines on AML/CFT) and some other related directives issued by the LFSA. The AMLA requires financial institutions, trust companies, company secretaries (excluding in-house company secretaries), advocates and solicitors, and certified accountants (which are the reporting institutions) to conduct CDD on customers, including identification of the customer, his/her representative capacity, domicile, legal capacity and business purpose (section 16 of AMLA). In addition, pursuant to the binding AML/CFT Guidelines, these reporting institutions are required to identify the beneficial owners of their corporate customers and to know the ownership and control structure of the corporate customers (section 5.3.3 of the AML/CFT Guidelines).

134. The definition of the beneficial owner in the AML/CFT Guidelines mirrors the definition under the standard and requires identification of the individual who ultimately owns or controls a customer. This, in the case of companies, requires the application of cascading steps to identify any individuals with controlling ownership interest, control through other means or, if not successful in previous steps, the senior management. A controlling ownership interest is based on a threshold of 25% direct and indirect ownership (section 13.4.7 of the LFSA Guidelines on AML/CFT). The reporting institutions must identify and take reasonable measures to verify the identity of the beneficial owners through information as specified by section 13.4.7 of the Guidelines, e.g. certified true copy/duly notarised copies of the latest forms prescribed and required by the Registrar or LFSA, identity card or passport and etc.

135. All Labuan companies, PCCs and Labuan foreign companies must at all times have registered offices at licensed Labuan trust companies (sections 85 and 123 LCA). As Labuan trust companies are reporting institutions under the AMLA, they are required to identify and keep records of the beneficial ownership information of the companies which are their clients. As a result, the AMLA covers all relevant entities in Labuan since all have a business relationship with at least one reporting institution.

136. In March 2014, the LFSA issued a circular on Beneficial Ownership of an Entity Incorporated or Registered in Labuan IBFC as an addendum to the Directive on Accounts and Records Keeping Requirement for Labuan Entities dated June 2012. According to the circular, all Labuan trust companies are required to (i) lodge the LFSA with a statement to declare the trust company or its officer or any other person that has been appointed as nominee or proxy for any beneficial owners or persons; (ii) keep a detailed record of the beneficial owners; and (iii) ensure sufficient due-diligence and security vetting is conducted on beneficial owners or any persons they acted for.

137. In September 2014, LFSA also issued a directive Management Information System Information on Beneficial Ownership and Politically Exposed Persons (PEPs) as an addendum to the AML/CFT Guidelines. The new directive requires Labuan trust companies and Labuan managed trust companies to maintain an accurate and up-to-date management information system (MIS) containing the details of beneficial owners of all Labuan entities that are required to be kept at their offices, and the MIS must include as a minimum the identification/passport number, country of origin and status of the beneficial owners. The beneficial ownership information must be made available in a timely manner to LFSA upon request.

138. Persons who commit an offence to the AMLA are liable to a fine not exceeding MYR 1 million (EUR 0.21 million), which would apply, for instance, to reporting institutions failing to conduct CDD (sections 16 and 86 AMLA). In addition, an officer of a reporting institution who fails to take all reasonable steps to ensure the reporting institution's compliance with its reporting obligations will be on conviction liable to a fine not exceeding MYR 1 million (EUR 0.21 million) or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, to a further fine not exceeding MYR 3 000 (EUR 616) for each day during which the offence continues after conviction (section 22 AMLA).

Implementation of beneficial ownership information requirements

139. The LFSA can take enforcement action against the reporting institutions including its directors, officers and employees for any non-compliance with provisions under section 20 of AMLA and other directives issued by the LFSA.

140. Malaysia reported that LFSA conducted on-site and off-site examinations on Labuan Financial Institutions such as banks and insurance as well as Labuan trust companies to review and validate the documents/information to ensure that they are in compliance with the relevant laws and regulations. Arising from the on-site and off-site examinations, 15 supervisory letters were issued. In addition, LFSA also conducted interactions with internal and external auditors of Labuan entities. The supervisors also confirmed that Labuan trust companies maintained up-to-date data in the MIS which contains the relevant details of beneficial owners of all Labuan entities.

141. For Labuan Non-Financial Institutions, LFSA undertook audits on the entities to ensure compliance with relevant laws and regulations including compliance with record keeping requirements. LFSA regularly undertakes engagements with the Labuan trust companies in regard to maintenance and record keeping requirements by Labuan entities in compliance with the Directive on Accounts and Record-Keeping Requirement for Labuan Entities.

142. As per the data provided by the Labuan IBFC, among the 54 registered banks in Labuan (as of end of 2017), there were 3 on-site inspections in 2015, 4 in 2016 and 6 in 2017; and among the 50 registered TCSPs in Labuan (as of end of 2017), there were no on-site inspections in 2015 and 2016, and 12 in 2017. Ten written warnings were given to entities in the period and no penalties were issued.

143. Since TCSPs play very important parts in the availability of ownership or identity information of companies in Labuan, Labuan is recommended to reinforce the monitoring and enforcement of the obligations regarding record keeping of companies in Labuan and ensure that all the required regulations on record keeping of company information including ownership and identity information are effectively implemented, so that the beneficial ownership information can be readily available for EOI purposes.

Transparency of companies and EOI requests

144. During the current review period, Malaysia received 111 EOI requests which requested for the ownership information, and only 1 of them is related to the beneficial ownership information. Malaysia confirms that all ownership information requested during the review period (including concerning beneficial ownership) was provided. No issue in this respect was reported by peers either, as they generally stated that they are satisfied with Malaysia's EOI co-operation.

ToR A.1.2. Bearer shares

145. Malaysia law does not allow the issuance of bearer shares since 1966 (section 73, CA 2016) and the bearer of a bearer share warrant issued before 1966 can surrender it and have the name entered in the register of members. A transitional period of 12 months was given from the enforcement date (31 January 2017) of the CA 2016 for a bearer of share warrant holder to surrender the share(s) and have its name entered in the register of members. A bearer share which has not been surrendered or registered by 31 January 2018 is no longer recognised, unless an application to the court is made to allow the name of the bearer be entered in the register of members. This being the case, CCM has not received any Court order of this nature to date and considers that no such warrant remains.

146. As concluded in the 2014 report, Labuan legislation does not specifically address the issue of bearer shares, but the Malaysian authorities confirmed that bearer shares cannot be issued in Labuan.

ToR A.1.3. Partnerships

Partnerships in Malaysia (ToR A.1.3)

147. In Malaysia, there are two types of partnerships, namely (i) general partnerships (conventional partnerships) registered under ROBA 1956 and governed by the Partnerships Act 1961 (PA 1961); and (ii) Limited liability partnerships (LLPs) governed by the Limited Liability Partnerships Act 2012 (LLPA 2012).

148. Malaysia reported that all partners (individuals) of the general partnerships (conventional partnerships) are Malaysia residents and foreign residents are not allowed to be partners of the partnerships registered in Malaysia (CCM Directive BR.56/30 Jld/V/6).

149. General partnerships are not separate legal persons and each partner is liable to tax on his/her share of income in the partnerships. General partnerships are required to register under the ROBA 1956.[9] However, a LLP has a separate legal personality from its partners and is taxed as a body corporate.

150. As at 31 December 2017, there were 249 919 general partnerships (conventional partnerships (i.e. only with partners who are natural persons resident in Malaysia)) and 14 191 LLPs (of which 13 636 LLPs have only natural persons as partners) registered with CCM. No EOI requests were received on partnership in 2015-17.

Partners information

151. The 2014 report concluded that information on identity of partners in partnerships is available in Malaysia, which is in line with the international standard. Since then, there has been no change in the relevant rules or practices.

152. Sections 5(1) and 5(2)(e) of the ROBA 1956 provide that the managing partner must register the general partnership with the Registrar, stating particulars of the partnership agreement (if any) and the particulars of the partners, within 30 days from the date of the commencement of the business.

9. The ROBA only applies to registration of business in Peninsular Malaysia (s. 1(2)). The registration of partnerships in the States Sabah and Sarawak are regulated by different bodies of laws. Sole proprietorship and partnerships in Sabah are licensed by the State Government under the Trades Licensing Ordinance 1948 (TLO 1948). Business in Sarawak are governed by the Businesses and Trades Licensing Ordinance 1955 (BPTLO 1955) and the Business Names Ordinance 1948 (BNO 1948). The Malaysian authorities confirmed that information is available in respect of partners and partnerships registered in Sabah and Sarawak.

Under section 5(2)(f) of the ROBA 1956, the details of the associates of the business i.e. their full names, positions held, and dates of entry into the business must be included when registering a business. The definition of an "associate of a business" includes "every person who is a partner in any business which is the property of a partnership". Any changes on the particulars and/or information on a business must also be lodged with the Registrar within 30 days (section 5B). Under the ROBA, no foreigners are allowed to be partners.

153. To apply for registration of a LLP to the Registrar, partners information must be provided, including the name, nationality and the usual place of residence of every person who is to be a partner and, where any of the partners is a body corporate, the corporate name, place of incorporation, establishment or origin, registration number and registered office of the body corporate (section 10(2) LLPA). A LLP must also keep at its registered office relevant documents and information as required by section 19 of the LLP, which include the name and address of each partner. If any change is made or occurs in the registered particulars of a LLP, it must notify the Registrar of such change within 14 days (section 1791 LLPA). In addition, every LLP must lodge with the Registrar an annual declaration containing the particulars as required by the Registrar (section 68(1) LLPA). Failure to lodge the annual declaration is subject to fine not exceeding MYR 20 000 (EUR 4 249) and a further fine not exceeding MYR 500 (EUR 106) for each day for a continuing offence. Under the LLPA, updating of information applies equally to foreign limited liability partnerships as provided under section 17 of the LLPA. Further, section 2 of the LLPA defines limited liability partnerships to include foreign limited liability partnerships.

154. In addition, all partnerships (including general partnerships, LLPs and foreign partnerships carrying on business in Malaysia) must register with the IRBM and are required to file annual tax returns, regardless of whether or not a profit or loss is derived from the business. Besides information relating to the apportionment of partnership income, they need to disclose any changes in the constitution of the partnership during the tax year and full particulars of partners in the partnership income tax return (as required under the Partnership Return Form related to subsection 86(1) of the ITA). The partnership tax return must be filed by all partnerships that carry on business in Malaysia or that have income, deductions or credits for tax purposes in Malaysia.

155. Under the AML regime, financial institutions, lawyers and certified accountants are obliged to conduct CDD on their customers and thus to maintain full information on any partnership which is a customer, including the identity of the partners (AMLA s. 16 and AML/CFT Guidelines Paragraph 13).

156. Overall, partners information is available to the Registrar and the IRBM in respect of all partnerships. Reporting institutions including financial institutions also hold the identity information of the partnerships (as their customers) under the AML laws.

157. Information filed with the Registrar is kept in perpetuity as there is no general limitation to the obligation to keep the filed information. Information filed with the IRBM and those kept with the partnerships remains available for at least seven years from the year to which the information relates (section 69 LLP Act 2012, sections 82 and 82A Income Tax Act 1967)

158. In the 2014 report, given that the LLPA was effective only as of December 2012 and the enforcement and monitoring action of the CCM in connection to the LLPA could not be assessed, Malaysia was recommended to monitor compliance with the obligations to maintain identity information under the LLPA and tax law and take enforcement measures as appropriate. This has been appropriately addressed. As of 31 December 2017, there were 14 191 registered LLPs. Since the last review, Malaysia has taken various enforcement actions to LLPs for non-submission of annual declarations, including:

1. issuing 8 715 reminder notices in 2016 and 8 137 in 2017 to LLPs 90 days before the due date to lodge the annual declarations
2. issuing 3 407 reminders in 2016 and 382 in 2017 on the day after the due date upon failure of LLPs to lodge annual declarations
3. 145 on-site inspections to LLPs in 2015, 138 in 2016 and 256 in 2017 on the requirement of keeping accounting and other records under section 69 of the LLPA 2012
4. on-going training programmes to increase awareness on partners and compliance officers of LLPs obligations
5. initiating the striking-off procedures under section 51(1) of the LLPA 2012 to LLPS that failed to lodge annual declaration for more than two years (263 LLPs were struck off in 2017).

Beneficial ownership information

159. Beneficial ownership requirements in respect of the partnerships in Malaysia are provided under the AML laws. There is no specific requirement regarding availability of beneficial ownership information under the partnership laws and tax laws.

160. Partnership is one type of the "legal person" under the Malaysian AML laws, thus the CDD procedure in identification of the beneficial ownership of partnerships is the same as that for the companies as discussed in A.1.1. Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through various information, including: (1) the identity of the natural person(s) (if any) who ultimately have controlling ownership interest in a partnership, which at a minimum includes (i) identification document of the partners; (ii) authorisation for any person to represent the partnership either by means of a letter of authority or other resolutions; and (iii) relevant documents such as National Registration Identity Card (NRIC) for Malaysian or permanent resident or passport for foreigner, to identify the person authorised to represent the partnership in its dealings with the reporting institution; (2) where there is a doubt on the controlling interest, the identity of the natural person exercising control through other means; and (3) where there is no natural person identified through (1) and (2), the identity of the natural person who holds the senior management position. The detailed CDD procedure requirements including validation of the information of beneficial owners are the same as that for the companies (section 13.4 of the AML/CFT policies for different sectors by the BNM).

161. For general partnerships, partners can only be natural persons resident in Malaysia and they are subject to the registration requirements for all partners information with CCM. For identification of beneficial ownership information of general partnerships, there is a potential risk that the beneficial owners who control the general partnerships by other means than being a partner may not be available where they do not engage the AML obliged persons. For the LLPs, as in the case of companies, partnerships are not obliged to engage an AML obliged service provider. However, Malaysia confirmed that only 555 LLPs (less than 4% of the total LLPs) have corporate partners and all the rest have only partners who are natural persons. Further in practice most of the partnerships have an on-going relationship typically with a bank or other AML reporting institution in Malaysia, in order to operate business therein or to comply with filing obligations with the Registrar or tax authorities. However, the same potential risk in relation to the unavailability of beneficial owners where the LLPs (which only have natural persons as partners) is controlled by other means, and do not engage with AML obliged persons. The gap is limited but Malaysia should ensure that in practice beneficial ownership information for general partnerships and LLPs is always available. Financial institutions, lawyers or certified accountants are obliged to conduct CDD on their customers and thus to maintain full information on any partnerships which is a customer, including the beneficial ownership information of the partnerships (section 16 of AMLA). The requirements regarding record retention are the same as that for companies as discussed in A 1.1.

Partnerships in Labuan IBFC (ToR A.1.3)

162. There are two types of partnerships in the Labuan IBFC which are regulated by the Labuan Limited Partnership and Limited Liability Partnerships Act 2010 (LLPLLPA), namely Limited Partnerships (LPs) and the Limited Liability Partnerships (LLPs). The Labuan IBFC also allows partnerships to be established under Shariah principles as Islamic LPs or LLPs.

163. As concluded in the 2014 review report, both LPs and LLPs including those established under Shariah principles are treated as taxable entities for tax purposes (sections 15 and 16, LBTA). As of 31 December 2017, there were 47 LPs and 18 LLPs registered with the LFSA. During the current review period, no requests have been received in connection to Labuan partnerships for EOI purposes.

Partners information

164. All LPs and LLPs, including those established under Shariah principles, must register with the LFSA (sections 5(3) and 30(7) LLPLLPA). Partners information is required to be disclosed by to LFSA and kept by LPs and LLPs upon registration (sections 9 and 63, LLPLLPA).

165. There are also requirements under the LLPLLPA that LPs and LLPs (including those established as Islamic LPs and LLPs) should keep the partners information (section 9 and 63, LLPLLPA) and must have registered offices in Labuan, which will be the principal office of a Labuan trust company (sections 99(1) and 63(1)).

166. The LLPLLPA requires that every document required or permitted to be filed with the LFSA is filed through a Labuan trust company (section 76(1) LLPLLPA). As a reporting institution under the AMLA, the Labuan trust company is obliged to comply with the CDD and record keeping requirements under section 16 of the AMLA. In addition, financial institutions, lawyers, and certified accountants are required to conduct CDD on their customers and thus to maintain full information on any partnership which is a customer (section 16 of AMLA).

167. In conclusion, the partners information for Labuan partnerships is both filed with the LFSA and required to be kept by the partnership itself (at the principal offices of the trust companies) in respect of all partnerships operating in the Labuan IBFC. In addition, the reporting institutions including the financial institutions, trust companies and other service providers in Labuan are also required to identify and keep the identity information of partners in the partnerships as their customers for AML purposes.

168. The LFSA is the authority responsible for administering the LLPLLPA. As concluded in the 2014 report and confirmed by the LFSA, partnerships do not appear to be the type of entity of choice to most investors in Labuan IBFC. Labuan partnerships' identification requirements are supervised in the same way as in respect of Labuan companies (see section A.1.1). LFSA supervisory and enforcement measures ensure the availability of partners information in respect of partnerships.

Beneficial ownership information

169. The beneficial ownership information for partnerships is required to be identified and kept by the reporting institutions under the AML laws in the same way as for companies. There is no specific provision in Malaysia outside the AML laws requiring individual partners to disclose beneficial ownership information. Malaysia stated that it is highly likely that the partners will need to establish banks accounts, conduct financial transactions or engage with lawyers/accounts in their day-to-day business operation and as such the beneficial ownership information may still be captured by the reporting institutions for AML purposes.

170. As mentioned above, the total number of LPs and LLPs registered in Labuan are relatively small compared with that for companies. The Labuan IBFC confirmed that no EOI requests have been received in relation to the beneficial ownership information of the Labuan partnerships in the current review period but, if this was requested, beneficial ownership information is readily available for all the LPs and LLPs registered in Labuan.

171. As discussed in A.1.1 for beneficial ownership information of companies in Labuan, Malaysia is recommended to reinforce the monitoring and enforcement of the obligations regarding record keeping of entities in Labuan which include the partnerships, so as to ensure that the beneficial ownership information of partnerships is readily available with the trust companies.

ToR A.1.4. Trusts

Trusts in Malaysia (ToR A.1.4)

172. Trusts are recognised, and can be created under Malaysia law. In addition to the common law principles, some specific statutes and statutory provisions regulate trusts in Malaysia. As reported by the Malaysian authorities, there were no significant changes to the trust laws and regulations in Malaysia since the last review.

173. Under the Malaysian trust laws, three types of trust can be created, i.e. express trusts, unit trusts and business trusts, and trusts can be private

trusts or public trusts. An express trust is a trust created under the common law where the provisions of the trust manifest the certainty of intention, subject matter and objects, and private trusts do not need to be publicly registered in Malaysia and therefore the total number of existing express trusts is unknown. A unit trust is a pooled investment fund managed by a fund manager which invests into a portfolio of securities such as stocks of listed companies or bonds. All unit trusts are subject to regulation under the Capital Markets and Service Act 2007 (CMSA) and a pre-approval from the Securities Commission (SC) is needed by the trustee when setting up a unit trust. As of 31 December 2017, there were 644 unit trusts launched in Malaysia. A business trust is a unit trust scheme of which the underlying asset constitutes an on-going business, and it is a hybrid structure with elements of a company and of a trust, i.e. a trust that functions through a trustee manager to own and operate a business for the benefit of the unit holder. As of 31 December 2017, there were no business trusts launched in Malaysia.

Identity information requirements

174. A trustee of a Malaysian trust can be a natural person or corporate entity, and does not have to be a resident of Malaysia. In addition to individuals acting as trustees or administrators of trusts on a non-professional basis, trust business may be carried out by persons registered or authorised by the Malaysian authorities and subject to the regulation of relevant Malaysia laws, i.e. trust companies; financial institutions, insurance companies and securities companies; trust service providers; and corporations (other than trust companies) in specific cases. In particular, those entities normally are reporting institutions under AML laws and are required to identify the beneficial ownership information of the trusts they act for. Similarly, if a trust uses the services of an AML obliged person, such as a bank, identity and beneficial ownership information would be available in Malaysia.

175. As provided in the AML/CFT policy guidelines issued by BNM for each sector (paragraph 13 of each AML/CFT Guidelines), reporting institutions are required to identify and take reasonable measures to verify the identity of the beneficial owners of the trusts, which include the settlor, the trustee(s), the protector, the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through the chain of control/ownership). Steps on how the beneficial ownership information are validated are provided in the AML/CFT Guidelines (see Paragraphs 13.4.3 and 13.4.4 of the Guidelines), which include the verifications based on official identification documents (National Registration Identity Card or passport), biometric identification or 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. Those rules are equally applied in relation to Malaysian resident trustees of a foreign trust. Those provisions of the scope of beneficial owners for a trust in Malaysia are in line with the international standard.

176. However, as concluded in the 2014 report, an individual or legal entity which does not qualify as a reporting institution under the AMLATFA (i.e. not an accountant, lawyer, company secretary, insurance company or bank) could still act as a trustee by way of business. Such a trustee will not be required to identify the relevant parties of the trust as it is not subject to the AML obligations and may only keep records of the trust information under the Common Law fiduciary obligations, which however do not go as far as to require identification of any other natural person(s) exercising ultimate effective control over the trust including through a chain of control/ownership. The Malaysian authorities consider that this would cover a very narrow category of trustees but are not yet able to provide more precise information on their number and nature. It is understood that a larger review of the structure of legal arrangement including trusts in Malaysia has been included under the National AML/CFT Strategic Plan as part of the risk assessment action plan. In this regard, BNM has embarked on a risk assessment exercise to assess the AML/CFT risk of both the onshore and offshore legal arrangements. The exercise will also provide appropriate recommendations and proposals to address the risk identified. In the meantime, there were no changes of laws in Malaysia to address this in the current review period, therefore the potential risks as discussed still exist. Malaysia is therefore recommended to address this gap.

Oversight and enforcement

177. Malaysia's regulatory framework does not provide for a central registry for trusts, but targets the major avenue for trust information including the beneficial ownership information and trust administration in Malaysia through the application of AML/CFT regulations and guidelines on trust intermediaries such as trust companies, financial institutions and certain professional service providers. For unit trust funds, any person issuing, offering for subscription or purchase, or making an invitation to subscribe for or purchase, the unit trust fund must deliver a copy of the trust deed to the SC together with other information or documents as the SC may specify.

178. As concluded in the 2014 report, a trustee in Malaysia is required to file a tax return every year for the trust. The return should include the identity information of the trustee and beneficiaries, but does not necessarily include any beneficial ownership information of the trust.

179. In Malaysia there are no regulations or case law which specifically deal with the issue of duty of trustees to keep the ownership and identity

information of the settlors and beneficiaries, unless the trust is a unit trust or business trust which will be subject to various information disclosure obligations as required by the Malaysian SC as discussed above.

180. In essence, the beneficial ownership information of trusts in Malaysia being available to the competent authorities is largely based on the obligations of the reporting institutions for AML purposes. Individuals or entities which are not reporting institutions are subject to common law obligations to maintain the information on the trust when they act as the trustees, which however do not include the beneficial ownership information.

181. The SC supervises the compliance of AML for funds and unit trust management companies in Malaysia. As per data provided by SC, as of 30 June 2018 there were 83 reporting institutions under the supervision of the SC. 46 on-site and off-site assessments were conducted to unit trust management companies in 2015, 29 in 2016 and 17 in 2017.

182. The central bank of Malaysia (BNM) supervises the compliance of AML obliged persons with AMLA. During the current review period, the BNM conducted on-site examinations and off-site monitoring on the reporting institutions including the designated non-financial businesses and professionals (DNFBP), e.g. lawyers, trust companies and certified accountants. As per the data provided by BNM, 6 on-site examinations were conducted jointly with the CCM on trust companies in 2017 (none in 2016 and 2018), covering firms from AML/CFT high and medium-high risk sectors among the 34 on-shore trust companies existing in 2017 (they were 38 in 2018). All trust companies were also subjected to offsite monitoring, especially the requirements to submit data and compliance reports in 2018. Since trust companies as confirmed by Malaysia are the mostly likely cases to act as the trustees for trusts in Malaysia, the related monitoring and oversights to the trust companies appears to be not sufficient, which may lead to a risk that the obligations of identifying beneficial ownership information of trusts are not effectively implemented by the trust companies in Malaysia. Therefore, it is recommended that Malaysia conduct more frequent systematic monitoring and oversight procedures of the trust companies, as well as other relevant AML professionals, on their AML implementation so that beneficial ownership information of the trusts in Malaysia is available.

Trusts in the Labuan IBFC (ToR A.1.4)

183. In Labuan, there are five types of trust that can be created, which are all regulated by the Labuan Trusts Act 1996 (LTA):

- A purpose trust is a trust established under the framework of the LTA for a particular purpose or purposes, charitable or not.

- A charitable trust is created for charitable purposes whether or not it is to be carried out in Malaysia and whether it benefits the community in Malaysia or elsewhere.
- A Labuan special trust is a trust that enables owners of a Labuan company or a Labuan LLP to establish a trust to specifically hold shares or partnership interests in a Labuan company or Labuan LLP, irrespective of the financial benefits of holding them, without any legal duty to intervene in the management of the company.
- The Labuan spendthrift/protected trust is a trust under which the interest of the beneficiary is subject to: (i) termination; (ii) a restriction on alienation or disposal; or (iii) diminution or termination in the event of the beneficiary becoming insolvent or any of the trust property becoming liable to seizure or to sequestration for the benefit of the creditors.
- Labuan Islamic trusts: a trust established based on Shariah principles.

184. As of the end of 2017, there were 3 purpose trusts, 2 charitable trusts and 2 Labuan spendthrift/protective trusts in Labuan and no Labuan special trusts registered with LFSA.

185. As concluded in the 2014 report, the trust business is carried out by Labuan trust companies which are registered and regulated by the LFSA. With regards to all trusts in Labuan, at least one trustee must be a Labuan trust company.

186. The registration of trusts in the Labuan IBFC is not mandatory. However a trust validly created, whether in the Labuan IBFC, elsewhere in Malaysia or abroad, may be registered with the LFSA by the trustee (section 12(1)(2) LTA). The information to be provided upon registration of the trust is limited to the name of the trust, date of the creation, etc., which does not include the beneficial ownership and identification information of the trusts.

187. Trustees are required to file a return (statutory declaration) with the LFSA for tax purposes. However the return does not require that any identity or beneficial ownership information of the settlor or the beneficiaries be provided and it only requires a statement that the settlor and the beneficiaries are not citizens or permanent residents of Malaysia (section 10 LBATA).

188. Beneficial ownership information of the trusts in Labuan is available to the LFSA due to the requirements of having a Labuan trust company as one of the trustees, and then the Labuan trust company as the reporting institution is required to identify the beneficial ownership of the trusts as required under the AMLA and the Labuan AML/CFT Guidelines.

189. As discussed in A1.1 for companies and A1.3 for partnerships in Labuan, the Labuan trust companies are required to maintain an accurate and up-to-date management information system (MIS) which contains the details of the beneficial owners of all Labuan entities and arrangements including trusts, and the MIS record must be kept at their offices, which at a minimum must include the identification/passport number, country of origin and status of the beneficial owners. Labuan trust companies must identify and verify (1) for trust, 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 (2) for other types of legal arrangements, the identity of persons in equivalent or similar positions (see section 13.4.13 of the Labuan AML/CFT Guidelines for Trust Companies). The validation requirements for the beneficial ownership information of Labuan trusts is the same as those discussed for the trusts in Malaysia (see section 13.4.7 of the LFSA Guidelines on AMLCFT – Trust Company Sector). The beneficial ownership information must be made available in a timely manner to LFSA upon request.

190. The LFSA is responsible for administering the LTA in Labuan and is also responsible for supervising the compliance of the Labuan trust companies with the AML obligations. Labuan trust companies are required to inform the LFSA on an annual basis on the number of trusts in relation to which they act as trustees. The LFSA conducts supervisory and monitoring activities which include the examination on legal ownership and identity information maintained as well as the overall customer due diligence processes. It also covers the effectiveness and accuracy of the MIS maintained by the trust company, information on beneficial ownership and compliance with the record keeping requirements. Detailed discussion on this can be referred to in A.1.1 for the companies in Labuan.

191. During the current review period, Malaysia received six EOI requests related to Labuan entities, and there were no requests for information related to trusts.

ToR A.1.5. Foundations

Foundations in Malaysia

192. The 2014 review report concluded that there are no legislative or common law principles which permit the establishment of foundations under Malaysia law. While some entities are called foundations, they take the form of recognised entities, e.g. companies limited by guarantee, and are subject to the rules described in A.1.1. There has been no change in this respect since the first round review.

Foundations in the Labuan IBFC

193. Foundations can be established in the Labuan IBFC under the Labuan Foundations Act 2010 (LFA) or based on Shariah principles under the Labuan Islamic Financial Services and Securities Act 2010 (LIFSSA). The LFA also permits foundations established under the laws of another jurisdiction changing their domicile to Labuan (section 23 LFA).

194. As at 31 December 2017, 29 foundations were registered with the LFSA.

195. As confirmed by the Labuan LFSA, there were no significant changes to the legislation regarding foundations in Labuan IBFC since the last review. Labuan foundations are subject to the registration requirements with the LFSA, which require the identification of the foundation council members. Foundations must also keep documents at their registered offices for no less than six years (section 17 of the AMLA 2001), including their charters, which detail the founders and beneficiaries. In addition, a foundation must have a Labuan trust company as its secretary (section 41 LFA) and the Labuan trust company is obliged under AML/CFT legislation to identify the founders, foundations council members and beneficiaries (subsection 8(2) of the First Schedule of Labuan Foundation Act 2010). Financial institutions and some other service providers (as reporting institutions) are also required under AML/CFT legislation to conduct full CDD on foundations which are their customers.

196. Overall, the legal ownership and identify information is available in respect of all foundations in the Labuan IBFC.

197. In respect of the beneficial ownership information of the foundations in Labuan, the Labuan trust companies acting as secretary are required to identify the beneficial ownership of the foundation[10] under the AML/CFT law and regulation. As already discussed, the Labuan trust companies are required to maintain at their offices an accurate and up-to-date management information system (MIS) which contains the details of the beneficial owners of all Labuan entities including foundations, which at a minimum must include the identification/passport number, country of origin and status of the beneficial owners. Trust companies would need to adhere to the directive under the Guidelines on AML/CFT-Trust Company Sector (issued pursuant to AML Act and s. 4B of LFSAA 1996) and to identify foundation's beneficial owners, who comprise the founders, council members and the beneficiaries as defined in the Labuan Foundations Act and any other persons that they are acting on behalf. Where those parties are entities, natural persons who have

10. See page 12 of the Guidelines on AML/CFT – Trust Company Sector issued by LFSA.

ultimate control of the foundations will be identified by the trust companies (as reporting institutions under AML law) Documents must be kept for six years (AML Act, s. 17).

198. The LFSA is responsible for administering the LFA and for supervising Labuan trust companies. As discussed in detail in section A.1.1, this includes the examination on the overall customer due diligence processes (identity information, legal and beneficial ownership), the effectiveness and accuracy of the MIS maintained by the trust company and compliance with the record keeping requirements. The same measures are applied in respect of ownership information requirements concerning foundations as in respect of other entities. Therefore the same conclusions as in aspect A.1.1 apply.

199. During the current review period, there were no requests received by Malaysia related to foundations.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

200. The 2014 review report concluded that the legal and regulatory framework and its implementation in practice ensured the availability of accounting information overall in line with the standard.

201. In both Malaysia and the Labuan IBFC, the commercial laws and/or tax laws provide that all relevant entities are required to maintain accounting records and the underlying documentation which (i) correctly explain all transactions; (ii) enable the financial position of the entity or arrangement to be determined with reasonable accuracy at any time; and (iii) allow financial statements to be prepared. Accounting information is required to be remained available for at least five years. Sanctions for failure to comply with accounting information obligations are overall in place. However, as recommended in the 2014 review report, Malaysia should still make an express requirement in its local laws for all trusts to keep accounting records and underlying documentation for a minimum five years. For entities or legal arrangements which ceased to exist, Malaysia and the Labuan IBFC should make appropriate legal requirements to ensure that accounting information and underlying documentation are available for at a minimum of five years after they ceased to exist, and monitor the practical implementation of those requirements.

202. The practical implementation of the requirements on accounting records remains largely compliant with the standard. Malaysia has taken positive actions following the recommendations in the 2014 review report in relation to the dormant companies, LLPs and business trusts (see A.1).

Supervision of the implementation of accounting requirements is carried out by CCM and IRBM in Malaysia and LFSA and IRBM in Labuan IBFC. The supervision is mainly carried out through tax audits, tax filing obligations, filing with CCM and a range of preventive and enforcement programmes. However, Malaysia should ensure that instances of non-compliance of tax filings are appropriately sanctioned. The LFSA should also strengthen the monitoring and oversight activities concerning the entities and legal arrangements in Labuan IBFC to ensure that obligations to keep accounting information and underlying documentations as provided in the local regulations are being effectively implemented.

203. During the current review period, among all the requests received by Malaysia, accounting information in relation to 171 entities were requested. Malaysia confirms that all accounting information requested during the review period was provided. No issue in this respect was reported by peers either, and they generally stated that they are satisfied with Malaysia's EOI co-operation (see further section C.5).

204. The table of determination and rating is as follows:

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of the legal and regulatory framework	There is no express requirement on certain trusts that do not carry on business in Malaysia and do not derive or receive income in Malaysia, to keep underlying documentation.	There should be an express requirement for all relevant entities and arrangements to keep accounting records and underlying documentation for a minimum five year period.
	Accounting records of entities which ceased to exist is required to be available to the extent they are filed with the tax authority or the Registrar or in respect of companies which were dissolved by a liquidator. However, not all accounting records as defined under the standard are required to be filed and companies can cease to exist without being dissolved by a liquidator.	Malaysia should ensure the availability of accounting records after an entity or legal arrangement ceased to exist in line with the standard.

Legal and Regulatory Framework		
	Underlying Factor	**Recommendation**
	Although Labuan requirements ensure that accounting records must be kept for five years while the entity or arrangement exists, there are no adequate rules to ensure that all accounting records of entities or arrangements remain available after they cease to exist.	Malaysia should ensure the availability of accounting records after an entity or legal arrangement ceases to exist in Labuan IBFC in line with the standard.
The legal and regulatory framework is in place but certain aspects of the legal implementation need improvement		
Practical Implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	Although Malaysian authorities carry out a number of supervisory measures, they have had so far only limited impact on the tax filing rate which is about 50% of registered corporate taxpayers. This is a particular concern in respect of underlying accounting documents which are not filed with the Registrar and may not be subject to inspections.	Malaysia should strengthen its supervisory and enforcement measures to ensure that accounting information of all relevant entities and legal arrangements is available in line with the standard.
EOIR rating: Largely Compliant		

ToR A.2.1. General requirements and A.2.2. Underlying documentation – Malaysia

205. In Malaysia the international standard with regards to availability of accounting records is met by a combination of requirements in company laws, partnership laws, trust laws and tax laws. The various legal regimes are analysed in the below.

Company law

206. Proper requirements in relation to the accounting records including the financial statements and reports are provided under the CA 2016 (Division 3, Subdivision 1). There has been no material change in obligations relevant for the evaluation of the standard. The company, the directors and managers of a company must (i) cause to be kept the account and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheet and any documents required to be attached thereto to be prepared; and (ii) cause the account and other records to be kept in a manner as to enable the accounting and other records to be conveniently and properly audited (section 245, CA 2016).

207. The accounting records must be kept at the registered office of the company or at such other place as the directors think fit and must at all times be open for inspection by the directors. The accounting records and other records of operations outside of Malaysia may be kept by the company at a place outside Malaysia provided that such accounting and other records must be sent to and kept at a place in Malaysia and be made available for inspection by the directors at all times (section 245(3), CA 2016). These requirements under section 245 of the CA 2016 are equally applied to exempt private companies as discussed in Element A1.1.

208. Malaysian companies must lodge the financial statement and report with the Registrar for each financial year (section 259(1), CA 2016). An exempt private company is required to prepare and audit its financial statements and have them audited. However, it is allowed to file an exempt private company certificate signed by a director, company secretary and auditor confirming its status as an exempt private company instead of filing its financial statements. An exempt private company is exempted from certain regulatory accounting requirements, such as the need to submit its balance sheet and profit and loss account with its annual return. It is remains subject to the regular obligations related to keeping accounts.

209. Malaysia's company law imposes an obligation to retain underlying documentation, i.e. the accounting records that need to be kept include invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and such working papers and other documents as are necessary to explain the methods and calculations by which accounts are prepared (section 2(1), CA 2016).

Partnerships law

210. Under the Partnership Act (PA), partners of a general partnership are bound to render true accounts and full information of all things affecting the partnership to any partner or its legal representatives (section 30, PA). Partners are also required to account to the firm for any benefit derived by them without the consent of the other partners from any transaction concerning the partnership, or from any use of the partnership property, name or business connection (section 31(1), PA). However the PA does not provide guidance on which accounting records are to be prepared.

211. With regards to LLPs, the LLPA provides that every LLP must keep accounting and other records that will sufficiently explain the transactions and financial position of the LLP and enable profit and loss accounts and balance sheets to be prepared from time to time which give a true and fair view of the state of affairs of the LLP. All accounting and other records must be kept by the LLPs for a period of not less than seven years from the end of the financial year in which the transactions or operations to which those records relate are completed. The accounting and other records must be kept at the registered office or such other place as the partners of the LLPs think fit, provided that the Registrar is duly notified of that other place and the accounting and other records must at all times be open to inspection by the partners.

Trust law

212. As concluded in the 2014 report, Malaysia laws explicitly provide for the maintenance of accounting records by private trusts and unit trusts. For private trusts, the Trustee (Incorporation) Act (TIA) requires that trustees of any body or association of persons incorporated under the TIA regularly enter or cause to be entered full and true accounts of all money received and paid respectively on account of such body or association (section 15 ITA). In respect of unit trusts, there are stricter rules regarding the availability of accounting records where the management company of a unit trust fund is required to maintain such accounting records and other books as may be required under the CMSA for a period of not less than seven years (section 108(3) CMSA). In addition, relevant documents including the trust deed, latest annual report and interim report of the fund, audited accounts of the management company and the fund for the current financial year, and for the last three financial years must be made available at the principal place of business of the trustee for inspection by the investors and unit holders at all times (Paragraph 11.27 of the Guidelines on Unit Trust Funds).

213. There is no particular case law in Malaysia which deals specifically with the trustee's obligation to maintain accounting records in respect of a trust. However, Malaysia confirms that the court in Malaysia may apply

the cases in other common law jurisdictions including the English law to interpret the trustee's fiduciary obligations including the obligations to keep accounting records of the trusts. It remains that trusts that do not carry on business in Malaysia and do not derive or receive income in Malaysia (see below) are not expressly required to keep underlying documentation. There has been no change in the relevant rules and therefore the recommendation remains to be addressed.

Tax law

214. The above requirements are complemented by the tax law in Malaysia. The ITA 1967 requires every person carrying on a business in Malaysia to keep sufficient records to enable that income or loss be readily ascertained (section 82(1)(a) ITA). This includes: (i) books of account recording receipts or payments or income and expenditure; (ii) invoices, vouchers, receipts, and such other documents as required; and (iii) any other records as may be specified (section 82(9), ITA).

215. All entities or arrangements which are required to furnish tax returns of their incomes for a year of assessment under the ITA must keep and retain in safe custody sufficient documents for a period of seven years (section 82A, ITA). Malaysia confirmed that the obligation applies to companies, partnerships, trusts and foreign entities, as long as they carry on a business in Malaysia but not otherwise.

Retention requirements in Malaysia

216. The mandatory retention period for accounting and other records in Malaysia is seven years after the completion of the transactions or operations to which they refer, for companies (section 245(2) CA 2016), LLPs (section 69(2) LLPA 2012) and listed corporations and management companies for unit trusts is also seven years (section 319(4) CMSA, section 108(3) CMSA and paragraph 10.2 AMLA Guidelines). For tax purposes, section 82A of the ITA requires the retention of accounting records for a period of seven years from the end of the year which the income relate to.

217. As per the 2016 ToR, accounting records must be maintained even in cases where the relevant entity or legal arrangement has ceased to exist. Information filed with the IRBM or the Registrar is kept in perpetuity as there is no general limitation to the obligation to keep the filed information, including the accounting record information. Further, the Companies Act 2016 specifically requires that in case of companies that have been wound up, the liquidator must retain the accounting records for a period of five years from the date of the dissolution of the company (section 518(2), CA 2016). Considering this, accounting records in respect of entities and arrangements

which ceased to exist will be available to the extent they are filed with the tax authority or the Registrar or in respect of companies which were dissolved by a liquidator. However, not all accounting records as defined under the standard are required to be filed and companies can cease to exist without being dissolved by a liquidator. This is the same case for partnerships and trusts in Malaysia. This does not meet the standard and could prevent exchange of information. Malaysia is therefore recommended to ensure that all accounting records, including underlying documents, must remain available for at least five years since the end of the period to which they relate regardless if they cease to exist.

Sanctions

218. The 2014 review report identified that there were quite a few companies which did not comply with the filing obligations, which might trigger a gap in the availability of accounting information in Malaysia for EOI purposes. It was recommended that Malaysia should ensure that instances of non-compliance are appropriately sanctioned, and also should monitor the adequacy of the penalties provided under the relevant tax and commercial laws to ensure that they are effective in providing deterrence against non-compliance of the filing and reporting obligations.

219. Sanctions for failure to comply with accounting obligations include administrative fines and in severe cases criminal penalties. The penalty regime has been increased from MYR 100 (EUR 21) and MYR 2 000 (EUR 424) and/or to imprisonment not exceeding six months to a fine from MYR 200 (EUR 42) and MYR 20 000 (EUR 4 249) and/or to imprisonment not exceeding six months or to both (section 112 ITA), which appears to be at sufficient level to provide an effective deterrence against non-compliance in record keeping requirements. The IRBM rarely send files to courts in practice; it instead in most cases takes the deficiencies into account in the tax assessment (i.e. failure has tax rather than criminal consequences).

Implementation of accounting requirements in practice

220. Supervision of accounting record requirements including maintenance of underlying documentation is carried out mainly through tax audits, tax filing obligations and filing obligations with CCM. In addition, IRBM and CCM carry out a range of supervisory measures including preventive and enforcement programmes.

Supervision of accounting obligations by the IRBM

221. Persons carrying on business in Malaysia are required to register with the IRBM and file annual tax returns. The tax filing compliance rate is low, with about 50% of corporate taxpayers filing their tax returns, as the table below shows.

Tax registration and filing	FY 2014/15	FY 2015/16	FY 2016/17
Total number of taxpayers registered for corporate income tax	687 303	747 187	780 990
Total number of corporate income tax returns filed	359 717	381 942	357 678

222. It is also noted that the total number of registered corporate taxpayers does not fully correspond with the number of entities registered with the Registrar. The Malaysian tax authorities report that this is mainly due to the annual update of the tax database and ongoing process of deregistration of taxpayers which ceased to exist.

223. IRBM also conducts tax audits on a regular basis, which involve the examination of accounting records and underlying documentation. Depending on the facts and circumstances of the case, the tax audit process can also involve the performance of business surveys (i.e. to compare the taxpayer declared profits with the ones of other taxpayers in the same business), the cross checking of information with third party data, the co-operation with other government agencies, the cross-checking with information provided for other tax purposes (e.g. stamp duties). About 20% of taxpayers are subject to a tax audit annually. Out of these, about 2% are audited on-site. The following table summarises the relevant tax off-site and on-site audits performed over the last three calendar years.

Tax audits	2015	2016	2017
Companies	136 949	159 718	176 676
Partnerships	5 038	14 096	19 761
Trusts	8 663	5 884	7 757

224. To sum up, the tax authority carries out a significant number of supervisory measures. However, they have had so far only limited impact on the tax filing compliance and they are primarily focused on entities which declare taxable income since the income tax in Malaysia is mainly on a territorial basis and upon remittance (the businesses of banking, insurance and air and sea transport are subject to taxes on worldwide income).

225. For companies incorporated under CA 2016 and business entities registered under LLPA2012, compliance with the requirements on maintaining accounting and other supporting records is monitored by the Companies Commission of Malaysia (CCM). As reported by CCM, the on-going monitoring activities have created awareness among officers of companies for the need to prepare and maintain accounting records and to prepare financial statements in accordance with the applicable accounting standards.

226. In the period from 2015 to 2017, CCM conducted inspections covering about 0.7% of registered entities. Out of these inspections, 4 983 were data and physical inspections of companies with modified audit reports in their financial statements; 155 data and physical inspections on accounting records and other records of LLPs under the LLPA; 37 inspections on accounting records and other records to be kept by foreign companies for high-risk countries under the CA 1965; and 70 data inspections on accounting records and other records to be kept by trust companies under the CA 1965.

227. The overall compliance rate with the annual filing requirements with CCM was about 92% over the past three years, which includes the financial statements in 2015 and 2016 as required by the CA 1965. The new Companies Act requires separate filing of annual returns and financial statements. Due to the transition, the compliance rates for filing of annual returns and financial statements are based on different parameters/requirement. In 2017, the compliance rate for annual returns was 92%, whereas the compliance rate for financial statements was 77%.

228. In addition to the above, CCM carries out supervision of public accountants so that their procedures and audit outcomes comply with the relevant auditing standards.

229. To sum up, annual financial statements are required to be available with the Registrar which also carries out supervisory and enforcement activities but these are rather limited. Considering this, Malaysia is recommended to strengthen its supervisory and enforcement measures to ensure that accounting information of all relevant entities and legal arrangements is available in line with the standard.

ToR A.2.1. General requirements and A.2.2 underlying documentation – the Labuan IBFC

230. Similar to Malaysia, the international standard with regards to availability of accounting records in the Labuan IBFC is generally met by a combination of requirements in company laws, partnership laws, trust laws and tax laws. There has been no change in the relevant rules since the 2014 report, as summarised below.

Commercial law

231. The Labuan Companies Act (LCA) requires every Labuan company to keep proper accounting and other records as will sufficiently explain the transactions and financial position of the company. Companies are also required to make appropriate accounting entries within 90 days of the completion of the transactions to which they relate (section 110 LCA). The accounting record requirements in the LCA apply to all Labuan companies, including foreign companies and Labuan PCCs (section 110 and section 2(1) LCA).

232. The LLPLLPA requires a Labuan limited partnership and Labuan limited liability partnership to keep accounting and other records as are sufficient to explain their transactions and disclose with reasonable accuracy at any time their financial position (section 70 LLPLLPA). This also applies to a recognised limited liability partnerships and the LLPLLPA does not allow a foreign limited liability partnership to have a place of business or carry on business in Labuan unless it is registered as a recognised limited liability partnership (section 48 LLPLLPA).

233. Under the Labuan Trust Act (LTA) and the Labuan Financial Services and Securities Act (LFSSA), a Labuan trust company acting as the resident trustee keeps proper accounting and other records in Labuan that will sufficiently explain its transactions and financial position (section 175(1) LFSSA). This also applies to Labuan Islamic trusts. In addition, a Labuan trust company can provide trustee service to foreign trusts, in which case the Labuan trust company is obliged to keep proper accounting and other records of services provided as will sufficiently explain the transaction and financial position of the foreign trust (section 110(1) LCA).

234. Section 59(1) of the Labuan Foundations Act (LFA) requires a Labuan foundation to keep proper accounting and other records as will sufficiently explain its transactions and financial position. This applies to Labuan Islamic foundations as well.

Tax law

235. The Labuan Business Activity Tax Act (LBATA) implicitly requires entities carrying on trading activities in Labuan to prepare accounting records for tax purpose with regards to such trading activities (section 4(2)). In addition, under section 22 of the LBATA, the IRBM is empowered to call for any information as may be required for the purposes of the LBATA, which include accounting records information.

Underlying documentation and retention requirements

236. The LFSA issued a directive in 2012 which specifically requires all Labuan entities including companies, partnerships, trusts, foundations and other legal arrangements, to keep accounting records including related underlying documentation for a period of not less than six years from the date that the transaction has been completed. Further, any Labuan trust company that functions as the registered office of a company has AML/CFT obligations to keep transactional documentation in relation to the trusts and companies they act for.

237. Although the above requirements ensure that accounting records must be kept for six years while the entity or arrangement exists, no legal provision in the Labuan IBFC specifies how the information of entities or arrangements which have ceased to exist should be maintained after they cease to exist. It is noted that transactional information required to be kept under AML law will remain available with the service provider for at least six years but this does not necessarily cover all accounting records as required under the standard. The Labuan IBFC is therefore recommended to address this gap to ensure the availability of accounting records after an entity or legal arrangement ceased to exist.

Implementation of accounting requirements in practice

238. LFSA and IRBM are the main supervisory authorities in Labuan IBFC and are entrusted with the responsibility of ensuring that Labuan entities are in compliance with the accounting requirements under the Labuan laws. The 2014 report commented that considering the total number of Labuan legal entities, the monitoring and enforcement action of the LFSA should be strengthened. The 2012 directive detailing the scope of accounting record keeping was introduced shortly before the first round review, thus its effectiveness could not tested. Malaysia was therefore recommended to ensure that the record keeping obligations were being appropriately monitored and enforced.

239. The LFSA confirmed having strengthened its supervisory work in relation to the requirements of keeping accounting records. Since the issuance of the directive, LFSA's supervision team has conducted checks on the compliance of the ownership, identity and accounting records through periodic off-site and on-site examinations, as illustrated below. Any Labuan entity that fails to comply with the related requirements commits an offence and the Labuan entity is liable, on conviction, to a penalty as provided under Section 4(B)2 of the LFSAA.

Supervision activities	2015	2016	2017
Off-site monitoring			
• FI Risk Profiling/Surveillance	337	346	359
• database inspection	323	757	164
• submission monitoring	113	70	51
• compliance on regulatory report	2 553	1 335	2 177
On-site monitoring			
• examinations	12	9	47
• supervisory engagement/visit	80	159	208

240. As of October 2018, there were 18 officials in the Compliance and Monitoring Department. Enforcement measures were taken against the Labuan entities which failed to comply with the legal requirements, including record keeping, after the LFSA took supervision measures including checking the substance (including underlying documentation) of the accounting records. The Labuan IBFC reported that it had imposed 77 administrative penalties and 2 sanctions on compounds (i.e. notification of fines); and issued 8 revocation actions, 140 letters of reprimand on regulatory requirements and 586 show cause notices. In addition, the LFSA has conducted various programmes of greater awareness of accounting record keeping obligations.

241. To sum up, the LFSA has taken various measures to address the recommendation in the first round review report concerning supervision of accounting records and underlying documentation. These measures seem to ensure the availability of accounting information in accordance with the standard.

A.3. Banking information

Banking information and beneficial ownership information should be available for all account holders.

242. The 2014 review report concluded that banks' record keeping requirements and their implementation in practice are in line with the standard. There has been no change in the relevant provisions or practice since then. The relevant obligations are mainly contained in the AML/CFT laws and the related guidelines. Banks' compliance with their information keeping obligations is overseen by Bank Negara Malaysia (BNM) and Labuan Financial Services Authority (LFSA) (for Labuan IBFC) which take the necessary supervisory and enforcement measures.

243. The EOIR standard was strengthened in 2016 to now require banks to identify the beneficial owners of bank account holders. Banks are required to identify and verify beneficial owners of account-holders in line with the standard pursuant to their CDD obligations under the AML regime. The beneficial ownership information is required to be updated and kept for at least six years from the end of the business relation (see section 7 of the AMLA). However the CDD information including the beneficial ownership information is updated on a "risk based" approach, which may lead to the situation that not all beneficial ownership information of all account holders are regularly reviewed and updated. Malaysia should therefore ensure that all the beneficial ownership information maintained by the banks is valid and up to date. Sanctions are applicable in case of breach of these obligations. Banks obligations are adequately supervised by BNM to ensure that beneficial ownership information on account-holders is available in practice. Banks are subject to robust monitoring through off-site monitoring and on-site inspections, and application of enforcement measures including fines where breaches are identified.

244. Availability of banking information was confirmed in EOI practice. During the review period, Malaysia received 155 requests from partners. Some of these requests related to bank information, and only a few (about 2-5 as confirmed by IRBM) were related to beneficial ownership information. There was no case where the information was not provided because it was not available with the bank. No concerns in this respect were reported by peers either, as they stated that they are generally satisfied with Malaysia's EOI co-operation (see further section C.5).

245. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In Place
Practical implementation of the standard
Rating: Compliant

ToR A.3.1. Record-keeping requirements in Malaysia and in the Labuan IBFC

Availability of banking information

246. The 2014 review report concluded that banks' record keeping requirements and their implementation in practice are in line with the standard. There has been no change in the relevant provisions or practice since the first round review.

247. The obligations regarding availability of banking information are mainly contained in the AMLA and the related guidelines. Banks are defined as reporting institutions and are obliged to keep records and centralise the information within the banks. Banks licensed under the LFSA and LIFSSA are also reporting institutions under AMLA.

248. Section 17 of the AMLA also provides that a reporting institution shall maintain any account, record, business correspondence and document relating to an account, business relationship, transaction[11] or activity of a customer or any person as well as the results of any analysis undertaken, as the case may be, for a period of at least six years from the date the account is closed or the business relationship, transaction or activity is completed or terminated. Any reporting institution which contravenes the retention of records requirements may be liable to a fine not exceeding MYR 3 million (EUR 0.6 million) or to imprisonment for a term of not exceeding five years or both.

249. Implementation of record-keeping requirements is supervised by BNM and the LFSA (in Labuan IBFC) together with obligations to identify beneficial owners described below.

Beneficial ownership information on account holders

250. Banks are required to identify and verify beneficial owners of account-holders pursuant to their CDD obligations under the AML regime. General AML rules ensuring the availability of beneficial ownership are well established and remained stable over the last three years. The rules apply equally in Malaysia and Labuan IBFC.

251. Section 16 of the AMLA provides for CDD obligations on reporting institutions at on-boarding stage/establishment of business relations. The provision requires the reporting institutions to verify the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person as well as other identifying information and such details must be included in a record.

11. Under section 13 of the AMLA, reporting institutions are required to keep records of all transactions involving domestic currency or any foreign currency exceeding such amount as the competent authority may specify , including (i) the identity and address of the person in whose name the transaction is conducted; (ii) the identity and address of the beneficiary or the person on whose behalf the transaction is conducted where applicable; (iii) the identity of the account holders affected by the transaction if any; (iv) the type of transaction involved; (v) the identity of the reporting institution where the transaction occurred; and (vi) the date, time and amount of the transaction.

252. Paragraph 13.2 of the AML/CFT Guidelines for Banking and Deposit Taking Institutions further stipulates CDD obligations which include: (i) identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information; (ii) verifying that any person purporting to act on behalf of the customer is so authorised, and identifying and verifying the identity of that person; (iii) identifying the beneficial owner and taking 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 (iv) understand and, where relevant, obtain information on, the purpose and intended nature of the business relationship. The AML/CFT Policy Guidelines (see Paragraph 13.4.7 of Sector 1 Policy Guideline) provide guidance to the reporting institutions to verify the identity of beneficial owners, which includes identification document of directors/ shareholders with equity interest of more than 25% or partners (certified true copy/duly notarised copies or the latest Form 24 and 49 as prescribed by the CCM or equivalent documents for Labuan companies or foreign incorporation or other similar documents from a foreign country).[12] There is an explicit obligation on the reporting institutions under the AML/CFT – Sector 1 (see Paragraph 13.4.5) for customers that are legal persons, to understand the nature of the customer's business, its ownership and control structure. If banks are not able to carry out proper CDD, they are prohibited to enter into a business relationship.

253. As described in section A.1.1, the definition of beneficial owner in the AML law mirrors the definition under the standard and requires identification of the individual who ultimately owns or controls a customer. This, in the case of companies, requires the application of cascading steps to identify any individuals with controlling ownership interest, control through other means or, if not successful in previous steps, the senior management of the companies. In case of trusts and similar arrangements, this includes the identification of the settlor, trustee(s), protector, beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including through the chain of control/ownership).

254. Reporting institutions are also required to conduct on-going due diligence commensurate with the risk profile of the client which requires the CDD information (including the beneficial ownership information) to

12. In addition, paragraphs 13.4.3 and 13.4.4 provide further guidance on how the information can be validated, which includes verification based on official identification documents (National Registration Identity Card or passport), biometric identification or 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.

be updated and relevant (paragraph 13.6 of the AML/CFT Guidelines for Banking and Deposit Taking Institutions). As discussed in A.1, the "risk based" approach may lead to the situation that not all beneficial ownership information of all account holders are sufficiently regularly reviewed and updated. Therefore Malaysia and Labuan should take measures to ensure that all the beneficial ownership information maintained by the banks is valid and up to date.

255. Besides the reporting institutions, enforcement actions can also be taken against the directors, officers and employees for any non-compliance of standards in the AML/CFT Guidelines (Paragraph 32 AML/CFT Guidelines for Banking and Deposit Taking Institutions). In the Labuan IBFC, any non-compliance with the obligation to keep bank information may lead to a penalty as follows: (i) in the case of a body, incorporated or unincorporated, to a fine not exceeding MYR 3 million (EUR 0.64 million) or (ii) in the case of an individual, to a fine not exceeding MYR 1 million (EUR 0.21 million), and in the case of a continuing offence, will in addition, be liable to a daily fine not exceeding MYR 5 000 (EUR 1 100) for each day the offence continues to be committed.

256. An outsourcing or agency relationship is regarded as synonymous with the reporting institution in relation to CDD obligations in which the outsourced entity applies the CDD measures on behalf of the delegating financial institution, in accordance with its procedures, and is subject to the delegating financial institution's control of the effective implementation (Paragraph 21 of the AML/CFT Guidelines for Banking and Deposit Taking Institutions). In Labuan IBFC, Labuan banks may also rely on third party CDD procedures previously conducted by a person introducing the customer ("introduced business" rule). Where banks rely on third parties, the ultimate responsibility and accountability of CDD measures remain with the bank and the bank is able to request for the underlying documents from third parties with the names of the beneficial owners they are given.

257. In conclusion, beneficial ownership information on account holders is required to be available in line with the standard. The definition of beneficial owner contains all three aspects of beneficial ownership as defined under the standard and these aspects do not represent alternative options. In specified circumstances, banks may rely on identification of beneficial owners performed by other persons. Nevertheless, these situations are limited and clearly defined. The beneficial ownership information is required to be updated and kept for at least six years following the end of the business relation. In cases of breach of these obligations, sanctions are applicable. Malaysia and Labuan are also recommended to ensure that all the beneficial ownership information maintained by the banks are valid and up to date.

Implementation of obligations to keep banking information in practice

258. Implementation of banks' obligations to keep transactional and beneficial ownership is supervised by the BNM in respect of banks in Malaysia and by LFSA in Labuan IBFC.

Implementation of obligations to keep information by banks in Malaysia

259. BNM is the central bank of Malaysia and financial regulatory authority, which administers banking statutes. The AML/CFT supervision of the financial sector is a longstanding responsibility of the BNM.

260. BNM has in place a comprehensive supervisory programme to ensure the implementation of the banks' obligations to keep banking information, including on-site examination, off-site monitoring and active industry engagement. On-site examination generally includes AML/CFT assessment on safety and soundness of FIs. In April 2018, a dedicated AML supervision unit was set up within the banking supervision sector of BNM to undertake a more structured review, focusing on higher risk or technical areas. During the current review period, the scope of the on-site examinations included: (i) adequacy of AML/CFT compliance programme; (ii) effectiveness of customer risk profiling system in identifying high-risk customers and politically exposed persons and requirements on on-going monitoring; (iii) compliance to CDD and ECDD requirements; (iv) compliance to beneficial ownership identification requirements; and (v) adequacy of record keeping procedures.

261. Each bank is normally subject to an annual on-site inspection. Statistics of on-site supervision conducted by the BNM on banking institutions during the current review period are illustrated as follows:

Institutions	2015	2016	2017
Commercial and Islamic banks (local and foreign)	43	54	41
Investment banks	11	10	3
Development Financial Institutions	6	12	15

262. The off-site monitoring generally includes review of submissions, self-assessment surveys/questionnaires and notification to or approval from BNM, e.g. launching new products or services. BNM also conducted nationwide AML/CFT awareness programmes and active industry engagements with industry associations or committees.

263. The enforcement powers of BNM under the AMLA include the administrative measures of (i) revoking or suspending the reporting

institutions' licences; (ii) directing or entering into agreement with any reporting institution to implement any action plan to ensure compliance; (iii) direction of compliance; (iv) civil measures including obtaining an order against any or all of the officers or employees of that reporting institution to enforce compliance; and (v) criminal measures including issuing compound offences (sections 21, 22, 66E, and 92 of the AMLA). During the current review period, BNM has issued 32 supervisory letters to the financial institutions including commercial and Islamic banks, investment banks, development financial institutions and overseas operations in 2015, 33 in 2016 and 47 in 2017. In 2016, two banks in Malaysia were investigated for failing to properly conduct CDD as required under section 16 of AMLA and the total amount of monetary penalties were MYR 3 595 000 (EUR 763 677). In 2018 (as of October 2018), ten banks were fined with the amount of MYR 5 243 750 (EUR 1 113 916) for failing to properly conduct the CDD. In 2016, one Malaysian bank was investigated to be failing to retain records as required under section 17 of the AMLA, and the amount of the related monetary penalty was MYR 900 000 (EUR 191 118). Since the AML/CFT Guidelines for Banking and Deposit-Taking Institutions were also issued pursuant to the FSA and IFSA and thus tantamount to legally binding "prudential standards", the enforcement powers such as power to take administrative enforcement actions including administrative penalty and civil actions can be triggered in the event of non-compliance by the relevant financial institutions.

Implementation of obligations to keep information by banks in Labuan IBFC

264. LFSA is the regulatory and supervisory as well as the licencing authority for Labuan banks and monitors compliance by the banks.

265. During the current review period from 2015 to 2017, LFSA had conducted three on-site inspections in 2015, four in 2016 and six in 2017, covering about 7% of banks annually. These inspections and the related supervisory monitoring activities are undertaken with a risk-based approach (refer to the guidelines on Risk Based Supervisory Framework), which focus on record keeping requirements, i.e. CDD documents, retention procedures and other information related to transactions. The Labuan FSA reported that Labuan banks have adequate procedures in place, in line with the related requirements. Eleven supervisory letters were issued to the banks in cases of deficiencies, followed with a close monitoring by Relationship Managers (RMs) of the LFSA and ultimately with the removal of the licence for one bank. Nevertheless, the frequency of inspections seems relatively low and should be further strengthened.

266. During the current review period, Malaysia received six EOI requests related to the Labuan IBFC, and as confirmed by LFSA, none of the requests were about banking information. Peers have not raised any concerns in this regards.

Part B: Access to information

267. Sections B.1 and B.2 evaluate whether competent authorities have the power to obtain and provide information that is the subject of a request under an EOI arrangement from any person within their territorial jurisdiction who is in possession or control of such information; and whether rights and safeguards are compatible with effective EOI.

B.1. Competent authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

268. Malaysia has broad access powers to obtain all types of relevant information including ownership, accounting and banking information from any person both for domestic tax purposes and in order to comply with obligations under Malaysia's EOI agreements. In the case of failure to provide the requested information, the tax administration has adequate powers to compel the production of information and the scope of information protected from disclosure is in line with the standard.

269. Until July 2013, the Malaysian authorities exercised their powers to call for bank information for exchange purposes only if the underlying treaty contained a provision akin to Article 26(5) of the OECD Model Tax Convention. In the review report of 2014, it was concluded that Malaysian law did not impose such a requirement and the Malaysian practice changed correspondingly. Malaysia was recommended to monitor the application of the new policy to ensure that bank information was exchanged in accordance with the international standard with all EOI partners. In the current review period, Malaysia exchanged banking information in all 93 cases where such information was requested. Further, Malaysia confirms that the new policy has been made known to Malaysia's treaty partners via a letter of "Policy Change to Allow for Exchange of Bank Information in the Absence

of Article 26(5) 2005 OECD Model Tax Convention" from the Ministry of Finance dated 30 January 2014, and that all treaty partners have received the letters. Malaysia has also published the notice and the letter on the official website of the Inland Revenue Board of Malaysia.

270. In the 2014 review report, it was commented that in a few instances there were communication difficulties between the IRBM and LFSA, which triggered delays in the access to the information. In the current review period, Malaysia confirms that the IRBM and LFSA have established better working relationship over the years and the communication difficulties have been resolved. Malaysia also reports that the whole communication system has been upgraded and enhanced when the new Case Management System is online since January 2019. Malaysia is recommended to monitor the operation of the new system and ensure that information concerning entities and arrangements in the Labuan IBFC is timely accessed.

271. The review report of 2014 recommended that Malaysia review the adequacy of its penalty regime to ensure that they are effective in providing deterrence against non-compliance. During the current review period, the penalty regime has been reviewed and penalties have been increased. Under the current ITA 1967, the failure to comply with a notice issued by the Malaysian tax authority is subject to a penalty ranging from MYR 200 and MYR 20 000 (EUR 42 to 4 249) and/or imprisonment not exceeding six months or to both. The penalties apply regardless of whether the information is sought for domestic or EOI purposes and apply in respect of any person in possession or control of the requested information (including banks).

272. During the period under review there was no case where the requested information was not obtained due to lack of access powers and none of the above mentioned sanctions were actually applied in practice to the related information holders. Accordingly, no peers reported concerns about the Malaysian competent authority's ability to access and obtain information for EOI purposes in line with the standard.

273. The new table of determinations and ratings is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR B.1.1. Ownership, identity and bank information and ToR B.1.2. accounting records

274. Malaysia's competent authority has broad access powers to obtain all types of relevant information including ownership, identity and accounting information and its powers cover information that is under a person's control even if it is not in a person's possession, including information held outside of Malaysia which is in the control of a person within Malaysia's territorial jurisdiction.

275. There has been no change in Malaysia's competent authority's powers to obtain all relevant information for EOI purposes since the 2014 review report, which is specified in section 81 of the ITA 1967, together with some secondary rules on EOI.

276. Malaysia's competent authority has broad power to obtain any relevant information from any person who holds the information without procedural requirements such as court approvals. Pursuant to section 3(3) of the Income Tax (Request for Information) Rules 2011 (the Rules) with specific regards to EOI requests, Malaysia's competent authority, upon receipt of an EOI request, may, by notice under section 81 of the ITA, require the person referred to in the request to provide the information as requested by the foreign competent authority within the time specified in the notice. The Rules also provide specific conditions and requirements for the competent authority to consider before making use of its information gathering powers, which, as concluded in the review report of 2014, are consistent with the international standard.

277. In relation to the Labuan IBFC, section 22 of the LBATA empowers the Director General of Inland Revenue (DGIR) to require any person to furnish any information including ownership, identity and accounting or particulars of a Labuan entity that may be required for EOI purposes by means of a notice in writing.

Access to bank information

278. Access to bank information in Malaysia is specifically dealt with in section 79 of the ITA 1967, according to which the DGIR has the powers to call for statements of bank accounts and other information from the bank account holders. In addition, section 81 combined with the Rules gives the DGIR the power to go directly to the bank to request information for EOI purposes where the Malaysian tax authorities have first requested the information from the taxpayer concerned and failed to obtain it (also see B2).

279. For Labuan IBFC, the DGIR has powers to directly request information from Labuan banks, financial institutions and any other persons in

accordance with section 22 of the LBATA, and these powers can also be exercised when a request is made under an EOI instrument.

280. Malaysia faced difficulties gathering banking information until July 2013 as it did not use its information gathering powers for answering requests based on DTC that did not contain a provision akin to Article 26(5) of the OECD Model Tax Convention. Malaysia's policy was that having such a provision would give more certainty of its powers to access information in the context of EOI. Since then, Malaysia has changed its policy on this matter and has been exchanging bank information with its treaty partners regardless of such a provision. In the review report of 2014, it was concluded that Malaysian law does not require a provision akin to Article 26(5) of the OECD Model Tax Convention in order to exchange bank information. This policy was new at the time of the 2014 report. Consequently, Malaysia was recommended to monitor its application to ensure that the bank information is exchanged in accordance with the international standard with all EOI partners. In the current review period, Malaysia confirms that the new policy has been made known to Malaysia's treaty partners via a letter of "Policy Change to Allow for Exchange of Bank Information in the Absence of Article 26(5) 2005 OECD Model Tax Convention" from the Ministry of Finance and Malaysia has confirmed that all treaty partners have received the letters. Malaysia has also published the notice and the letter on the official website of the Inland Revenue Board of Malaysia.

281. In the current review period, Malaysia exchanged banking information in all 93 cases where such information was requested regardless of whether the underlying treaties contain a provision equivalent to Article 26(5) of the Model DTC or not.

Access to information in practice

282. Malaysia confirms that the main sources of the information used by the competent authority in practice include:

- information already held with IRBM – all information contained in the IRBM database is accessible to the competent authority for EOI purposes
- information kept by other government agencies – typically the Companies Commission Malaysia and LFSA (for the case of Labuan)
- information kept by the entities themselves
- information kept by third party agencies – those agencies include banks and Labuan trust companies.

283. The same access powers are used regardless of the type of the requested information including legal ownership information, beneficial ownership information and accounting information. As confirmed by Malaysia, once a request is received by the competent authority, it is forwarded to the IRBM's Department of Compliance or Department of Investigation at headquarters. The Department of Compliance is responsible for standard audits whilst the Department of Investigation is involved when more exceptional measures are required such as surprise visit, search and seizure, or when handling criminal cases. During the current review period, all EOI requests were handled by the Department of Compliance. In relation to both departments, the director of the Department of Compliance sends the case to a tax audit manager at the branch office with oversight for the relevant taxpayer who in turn appoints a case officer (auditor or investigator) responsible to collect the information.

284. The same powers and procedures used for domestic purposes are also used for EOI. Similar to what has been stated in the review report of 2014, there are basically two procedures used for collection of information in Malaysia: (1) a desk audit, under which the auditor will issue a notice for production of information to the information holder; and (2) a field audit where the auditor will visit the taxpayer's office to collect the information. The auditor chooses the most appropriate procedure depending on the facts of the case. Desk audits are more common. Field audits are performed in cases where for instance the Malaysian authorities are asked to review account records and underlying documentation to identity whether certain transactions have effectively taken place.

285. The auditors are given 30 days to acquire the information requested. If the auditor cannot obtain the information within this timeframe, he/she must provide a status update. The auditor provides the required information to his/her manager, who checks it for completeness and in turn provides it to the headquarter of IRBM. The information is checked once again at the headquarter and a memorandum is prepared with the complete information to the EOI Unit. In the 2014 report, Malaysia reported that one of the challenges concerning the use of access powers was that auditors had no training or experience to deal with certain complex requests or requests concerning transfer pricing. It was recommended that Malaysia continue its efforts to sensitise and train auditors to gather information for EOI purposes. During the current review period, Malaysia confirms that the same challenge still existed, but this has been improved since the Case Management System (see C5 for more details) was online in January 2019, under which auditors work more systematically with higher awareness of EOI requirements. As these concerns remain to be fully addressed and continue to negatively impact timeliness of obtaining of the requested information, Malaysia should

continue in its efforts to streamline the process of obtaining information and ensure that access powers are effectively applied in all cases.

286. With regards to access to information in the Labuan IBFC, even though the Malaysian competent authority has direct powers to collect information from the Labuan IBFC, the Malaysia competent authority relies on the Labuan FSA to collect information concerning Labuan entities and arrangements. In the 2014 review report, it was concluded that in a few instances there were communication difficulties between the two authorities which triggered delays in the access to information. It was recommended to address this issue. During the current review period, Malaysia reported that the IRBM and LFSA have established greater working relationship over the years. The co-operation was further strengthened by bilateral meetings and seminars focused, among others, on co-operation for EOIR purposes. Over the reviewed period, Malaysia received six requests related to Labuan entities or arrangements and the information was provided in a timely manner in all cases. The recommendation is therefore considered addressed.

287. With regards to procedures to obtain bank information, Malaysia reports that in most cases, in view of the urgency of the request and the request by the requesting competent authority, the taxpayer is not approached for the information. The examination and gathering of the information is made directly from the bank or financial institution concerned. In practice, banks generally provide printed banking information. Some requests are in respect of a number of years, which affected the length of time taken by the banks to provide the information. For cases that involve less accounts and less number of years, banks can produce the printed banking information within 90 days. For requests covering a greater number of years or greater number of accounts and transactions, information is provided within 180 days. However, Malaysia reports that they have experienced a small number of cases where information can take a longer time to provide – up to a year or more, where requests involve many years of records, multiple accounts and/or heavily transacted accounts. The information might also be provided by way of boxes of printed information, where the bank account information could only be provided by hard copies and no electronic records are available.

288. During the period under review, there was no case where the requested information was not obtained due to lack of access powers. Accordingly, no peer reported concerns about Malaysian competent authority's ability to access and obtain information for EOI purposes.

ToR B.1.3. Use of information gathering measures absent domestic tax interest

289. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

290. As concluded in the review report of 2014, there is no domestic tax interest requirement in Malaysia (including the Labuan IBFC) to obtain and provide information to an EOI partner. The ITA gives tax authorities information gathering powers for the purposes of the application of the ITA which includes the exchange of information, therefore the competent authority can use the normal access powers available to the IRBM in order to obtain information requested by an EOI partner.

291. Malaysia's ability to provide information regardless of domestic tax interest was also confirmed during the period under review as the majority of the incoming EOI requests relate to information in which Malaysia has no domestic tax interest.

ToR B.1.4. Effective enforcement provisions to compel the production of information

292. Jurisdictions should have in place effective enforcement provisions to compel the production of information.

293. Refusal by a person to comply with a request from the Malaysia competent authority will result in liability for penalties under section 120 ITA 1967. In the case of Labuan companies, penalty for the non-compliance falls under section 22(2) LBATA 1990 whereby upon conviction they will be liable to a fine not exceeding MYR 1 million (EUR 0.21 million). In the 2014 report, it was concluded that in isolated cases during the period under review, the penalties provided under the relevant tax laws and commercial laws appeared to have been insufficient in providing an effective deterrence against non-compliance, so it was recommended that Malaysia review the adequacy of its penalties regime.

294. Since then, Malaysia increased the penalties. Under the current ITA 1967, the failure to comply with a notice issued by the Malaysian tax authority is subject to a penalty ranging from MYR 200 (EUR 42) and MYR 20 000 (EUR 4 249) and/or imprisonment not exceeding six months or to both. This represents an increase in the limit of applicable fine from MYR 2 000 (EUR 424) to the current limit of MYR 20 000 (EUR 4 249) which was provided in the previous rules under ITA. The above penalties apply regardless of whether the information is sought for domestic or EOI purposes and apply in respect of any person in possession or control of the requested information (including banks).

295. The IRBM can also carry out search and seizure under section 80 of the ITA, and the exercise of these powers does not need a court order. During the period under review, Malaysia has not issued search and seizure warrant for purposes of collection of information for EOI.

296. In the case of Labuan companies, section 22(2) of LABATA 1990 provides that non-compliance with the request of information for EOI purposes or to a request from a competent authority is an offence and upon conviction be liable to a fine not exceeding MYR 1 million (EUR 0.21 million).

297. In practice, there was no case during the period under review where a person refused or obstructed the provision of information requested for EOI purposes. In cases where the IRBM would have an indication that a person is refusing or obstructing exchange of information, sanctions and measures described above would be applied as was confirmed by the Malaysia authorities and also by application in practice (for domestic case practices) where an offence as such occurs. No concerns in respect of Malaysia's power to compel production of the requested information were reported by peers either. The recommendation issued in 2014 is considered as addressed.

ToR B.1.5. Secrecy provisions

298. Malaysia has a number of secrecy and confidentiality provisions in various pieces of legislation, primarily for the financial institutions. These provisions are lifted for exchange of information purposes.

Bank secrecy

299. While section 133 of the Financial Services Act 2013 (FSA 2013), section 145 of the Islamic Financial Services Act 2013 (IFSA 2013) and section 119(2) of the Development Financial Institutions Act 2002 (DFIA 2002) restrict financial institutions to disclose any information relating to the affairs or account of a customer to any person, there are provisions in these laws that permit the disclosure of customer information for legitimate purposes. Such disclosure is permitted under the related laws and regulations,[13] and cover the disclosure of customer information required by the IRBM (under section 81 ITA 1967) for the purpose of facilitating exchange of information pursuant to taxation arrangements or agreements having effect (under sections 132 or 132A ITA 1967 (i.e. TIEAs)).

13. Schedule 11 or section 134(1)(b) of FSA 2013, Schedule 11 or section 146(1)(b) of IFSA 2013, the Fourth Schedule of the DFIA 2002 and 120)(1)(b) of DFIA 2002.

300. In July 2018, the central bank of Malaysia has widened the permitted disclosure of customer information for the purposes of facilitating automatic exchange of information pursuant to the multilateral Convention on Mutual Administrative Assistance in Tax Matters under section 132B ITA 1967 via a letter issued to financial institutions pursuant to section 134(1)(b) FSA 2013, section 146(1)(b) IFSA 2013 and section 120(1)(b) DFIA 2002.

301. As concluded in the 2014 report, in the case of Labuan, Labuan legislation has embedded the statutory confidentiality provisions to ensure that all the financial institutions in Labuan protect the secrecy or confidentiality of information held by them. However, a request for information under section 22 of LBATA 1990 overrides secrecy provisions in Labuan laws and empowers the DGIR to call for any information or particulars as may be required for the purposes of the LBATA. This information includes accounting records, beneficial ownership, banking information, etc.

302. In practice, bank secrecy has never been a problem in accessing banking information for EOI purposes during the review period.

Legal professional privilege

303. In Malaysia, sections 126 and 127 of the Evidence Act 1950 provide the privilege to any communication of the client with interpreters and the clerks and servants of advocates. However, the Malaysia authorities confirmed that the privilege applies only to legal advice and communications between lawyers and their clients, and not to other activities undertaken by lawyers. In this sense, the authorities confirmed that the legal privilege is not so wide as to restrict access to information in cases where a lawyer acts, for instance, as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs outside a client-lawyer relationship. It was concluded in the 2014 review report that the privilege in Malaysia is in line with the international standard.

304. During the period under review, Malaysia did not receive any request for information that Malaysia would consider covered by legal privilege, nor cases where the authorities contacted directly a legal advisor for obtaining the requested information. In practice, it is not uncommon that the information is obtained from legal professionals when they are acting on behalf of their clients as their legal representatives, i.e. the information is requested from the client, who mandated the legal representative to act on its behalf. No issue in respect of application of professional legal privilege in Malaysia was reported by peers during the current review period.

B.2. Notification requirements, rights and safeguards

The rights and safeguards (e.g. notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

305. Rights and safeguards contained in Malaysia's law are compatible with effective exchange of information.

306. Notification to the taxpayers is not required for request of information for EOI purposes. In practice, during the current review period, Malaysia has collected banking information directly from the bank in all instances. Malaysia confirms that where information must be obtained from a third-party information holder, the notice under section 81 of ITA 1967 will be used, with no requirement to state the name of the requesting jurisdiction, but only a description of the requested information.

307. There are no appeal rights available that could prevent or delay exchange of information in Malaysia.

308. The Malaysia authorities have indicated that there are no other appeal rights available in Malaysia, including the Labuan IBFC that could prevent or delay exchange of information. During the period under review, Malaysia reports that there were no instances where persons appealed against access or exchange of information pursuant to an EOI agreement.

309. The peer input received indicates that rights and safeguards have not unduly prevented or delayed effective EOI.

310. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR B.2.1. Rights and safeguards should not unduly prevent or delay effective exchange of information

311. The rights and safeguards that apply to persons in the requested jurisdiction should be compatible with effective EOI.

312. The 2014 report concluded that rights and safeguards contained in Malaysia's law are compatible with effective EOI. There were no changes in the current review period since then.

Notification requirements

313. There is no change to the notification requirements in Malaysia since the last review in 2014. Malaysian law does not require notification of a taxpayer before or after information is provided to a requesting jurisdiction. In addition, where the Malaysian tax authorities must use their information gathering powers, there is no requirement that the taxpayer concerned be notified of the exercise of such a power. It is also confirmed by the Malaysia authorities that there are no notification requirements in regards to seeking information for exchange of information purposes in the Labuan IBFC.

314. As provided for by section 4(2) of the Income Tax (Request for Information) Rules 2011, the Malaysian tax authorities in principle cannot go to the bank directly, without having first requested the information from the taxpayer concerned (and failed to obtain it; see above Part B.1.1 on bank information). This is confirmed by section 13.2 of Management of Customer Information and Permitted Disclosures, the policy document issued by the BNM on 17 October 2017.

315. However, an exception to this requirement is provided by section 4(3) of the Rules (combined with section 7.1(2)(d) of the Guidelines (and previously by section 6.4 of the Central Bank Circular)). Accordingly, the Malaysian competent authority may, under certain circumstances, request information directly from a bank without having to request information from the account holder first. Section 7.1(2)(d) of the Guidelines does not exhaustively list the conditions or cases for its application, but expressly include the cases where (i) the request is of an urgent nature and (ii) prior notification to the accountholder would likely undermine the action of the foreign jurisdiction. Section 4(3) of the Circular, in turn, does not specifically list the conditions or cases for its application and was interpreted by the Malaysia authorities as giving discretionary powers to the IRBM to decide when prior communication to the accountholder could be waived and that could include urgent cases or cases where the notification might undermine the success of the foreign investigation.

316. In practice, during the period under review, Malaysia has collected banking information directly from the bank in all instances without going first to the taxpayers, and some of the treaty partners specifically requested to do so. In no instance, has Malaysia refused such requests or has tried to collect information from other sources (e.g. from the account holder).

317. The legal requirements and their application in Malaysia are in line with the international standards.

Appeal rights

318. As concluded in the 2014 report, the Malaysian authorities have indicated that there are no appeal rights available in Malaysia, including the Labuan IBFC, which could prevent or delay exchange of information. During the period under review, Malaysia reports that there were no instances where persons appealed against access or exchange of information pursuant to an EOI agreement, and there are no applicable post-exchange notification requirements or right to inspect files in Malaysia.

Part C: Exchanging information

319. Sections C.1 to C.5 evaluate the effectiveness of Malaysia's EOI in practice by reviewing its network of EOI mechanisms – whether these EOI mechanisms cover all its relevant partners, whether there were adequate provisions to ensure the confidentiality of information received, whether it respects the rights and safeguards of taxpayers and third parties and whether Malaysia could provide the information requested in an effective manner.

C.1. Exchange of information mechanisms

Exchange of information mechanisms should provide for effective exchange of information.

320. Malaysia committed to the internationally agreed standard for EOI in 2009, and has a broad network of EOI agreements in line with the standard. As of May 2019, Malaysia is a party to 74 DTCs and 1 TIEA (including 1 Protocol with New Zealand[14] and 2 new DTCs with Slovak Republic and Ukraine since the last review in 2014) providing for international exchange of information in tax matters. Malaysia signed the MAC on 25 August 2016, which was ratified on 3 January 2017 and entered into force on 1 May 2017 (i.e. it was not applicable during the major part of the current review period).

321. Since the last review, Malaysia has made efforts to bring in line with the international standard the agreements which exclude certain entities from their scope of the application for EOI purposes, e.g. persons carrying on offshore business activities under the Labuan Business Activity Tax Act 1990. Some treaties have excluded the Labuan entities from enjoying the treaty benefit, but they are still subjected to the EOI obligation, which has been agreed by Malaysia with its treaty partners via exchange of letters with Japan, Luxembourg, Netherlands and United Kingdom; protocols with

14. The Protocol with New Zealand was signed on 6 November 2012 and became in force on 12 January 2016.

Australia, Chile, Indonesia, Seychelles, South Africa, Spain and Sweden; and the unilateral decision made by Korea.

322. In the 2014 review report, Malaysia was recommended to publicise its new policy concerning exchange of bank information (i.e. that it will exchange bank information even under EOI agreements that do not contain a provision akin to Article 26(5) of the OECD Model Tax Convention) and ensure that all EOI partners were fully aware of the possibility of requesting bank information from Malaysia. In 2014, the new policy on exchange of bank information was published on the IRBM website, together with the official notification through letters made by Malaysia's Competent Authority to all Malaysia's DTC partners. Section 22A of LBATA 1990 also contains the provisions with regards to exchange of information including banking information.

323. In practice, Malaysia applies its EOI agreements in accordance with the standard. No issue was identified during the current period under review. Accordingly, no concerns were reported by peers either.

324. The new table of determination and rating is as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR C.1.1. Foreseeably relevant standard

325. Exchange of information mechanisms should allow for EOI on request where it is foreseeably relevant to the administration and enforcement of the domestic tax laws of the requesting jurisdiction.

326. Malaysia's network of DTCs generally follows the OECD Model Tax Convention. The agreements signed or revised after 2009 contain a specific reference to the exchange of information that is "foreseeably relevant" to the administration or enforcement of the tax laws of the Contracting States. Agreements signed before 2009 generally use the term "necessary" rather than "foreseeably relevant". The wording "as is necessary" is recognised in the commentary to Article 26 of the OECD Model Tax Convention to allow for the same scope of exchange as does the term "foreseeably relevant". The Malaysian authorities have confirmed that they follow this interpretation when applying DTCs for EOI purposes and this has never triggered any issue in practice.

327. As concluded in the 2014 review report, Malaysia's DTCs with Denmark, New Zealand, Norway and Pakistan provide for the exchange of information "which the authorities have at their disposal in the normal course of administration as is necessary for carrying out this Convention, in particular for the prevention of fraud, and for the administration of statutory provisions against legal avoidance concerning taxes covered by the Convention", which may suggest that exchange is limited to information already held with the tax authorities, i.e. it excludes information that the Malaysian tax authorities have not already held. Within the current review period, a new protocol signed with New Zealand entered into force which addressed this issue and meets the international standard. Malaysia reports that a new DTC which is expected to meet the international standard is under negotiation with Norway. There were no actions taken for the DTCs with Denmark and Pakistan, but the Malaysian tax authorities have confirmed that they will use their access powers to obtain information requested under the DTCs. In addition, the Multilateral Convention now covers these four partners.

328. In the 2014 review report, it was pointed out that the DTCs with Austria, Bangladesh, the Russian Federation and the United Arab Emirates limit the exchange of information to that necessary for carrying out the provisions of the convention, not allowing for exchange of information for the administration or enforcement of the domestic laws of the Contracting States, and as no obligations arise to exchange information for the implementation of domestic laws, these agreements were not consistent with the international standards. This issue has been addressed by Malaysia since it has become a party to the Multilateral Convention, and it agreed to the EOIR related policy with treaty partners in 2014. Whenever possible, Malaysia continues to renegotiate with its treaty partners to address this matter.

Application of the concept of foreseeable relevance in practice

329. In practice, when receiving an EOI request, an officer from the EOI team assesses the validity of the request against the EOI instrument and the Income Tax (Request for Information) Rules 2011. Malaysia interprets the term "foreseeably relevant" in accordance with the OECD Model Tax Convention and Commentaries. No change has been encountered in this respect since the first round review. During the current review period, no clarification has been requested by Malaysia in relation to the EOI requests received to assess their foreseeable relevance, and Malaysia has not declined an EOI request on the basis that it was not foreseeably relevant.

330. In Malaysia, all incoming requests have to include the background of the request and sufficient information to identify the taxpayer as well as the relevance of the information requested. Malaysia does not provide a template for the formulation of a request that describes the required information.

Group requests

331. The EOI agreements in Malaysia do not explicitly mention or exclude the possibility of group requests, but the Malaysian tax authorities have confirmed that as a jurisdiction committed to the international standard for EOI, Malaysia subscribes to the inclusion of possibility and criteria for making and responding to group request pursuant to Article 26 of the Model Tax Convention and its Commentaries.

332. Although during the period under review, Malaysia did not receive or send any group requests, there do not appear to be any legal or practical impediments for it to process such requests as was also confirmed by the Malaysian authorities.

ToR C.1.2. Provide for exchange of information in respect of all persons

Exchange of information mechanisms should provide for effective exchange of information and should provide for exchange of information in respect of all persons, e.g. not be restricted to persons who are resident in one of the contracting states for purposes of a treaty or a national of one of the contracting states.

333. As per the 2014 review report, the DTCs with Austria, Bangladesh, the Russian Federation and the UAE restrict the exchange of information to that necessary for carrying out the provisions of the convention, not allowing for exchange of information for the administration or enforcement of the domestic laws of the contracting states. Malaysia is continuing to renegotiate with its treaty partners to include Article 26(5) of the OECD Model Tax Convention in the currently enforced DTCs, and the issue has been addressed by Malaysia since it has become a party to Multilateral Convention with all these partners but Bangladesh.

334. Following the 2014 review, Malaysia has made efforts to bring the EOI agreements which completely exclude certain entities from the scope of the application for EOI purposes (e.g. persons carrying on offshore business activities under the Labuan Business Activity Tax Act 1990), to be in line with the international standard. Malaysia has agreed with its related treaty partners with regards to excluding Labuan entities from treaty benefits but not from obligations for EOI via exchange of letters with the United Kingdom, Netherlands, Luxembourg and Japan; protocols with Sweden, Indonesia, Australia, South Africa, Seychelles, Chile and Spain; and the unilateral decision of Korea. EOI can now also take place with these jurisdictions on the basis of the Multilateral Convention.

ToR C.1.3. Obligation to exchange all types of information

335. The standard provides that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

336. Malaysia's laws regarding access to banking information for EOI purposes were introduced in 2010. However, until July 2013 Malaysia's authorities took the view that the application of these laws required an explicit reference in the EOI agreement by means of the inclusion of a provision similar to Article 26(5) of the Model DTC, even though the laws on access to bank information did not actually require such an explicit provision. In the 2014 review report, Malaysia was recommended to publicise the change of policy, which it did (see section B.1 above). Letters were sent by Malaysia's Competent Authority to all Malaysia's DTC partners.

337. In addition, the Multilateral Convention entered into force in Malaysia after the current review period, which complements most treaties that do not yet contain the wording of Article 26(5).

338. During the period under review, there was no case where the requested information was not provided because it was held by a bank, another financial institution, a nominee or person acting in an agency or a fiduciary capacity or because it related to ownership interests in a person.

ToR C.1.4. Absence of domestic tax interest

339. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party. Such obligation is explicitly contained in the Model DTC Article 26(4) and the Model TIEA Article 5(2).

340. As discussed in the 2014 report, most of Malaysia's DTCs do not contain a similar provision. This does not in principle create restrictions on exchange of information, provided there is no domestic tax interest impediment to exchange information in the case of either contracting party. Malaysia interprets these treaties and its domestic laws in such a way that no domestic tax interest applies. However, a domestic tax interest requirement may exist in some of Malaysia' partner jurisdictions and in such cases, the absence of a specific provision requiring exchange of information unlimited by domestic tax interest will serve as a limitation on the exchange of information.

341. Based on the above, Malaysia was recommended to continue its renegotiation of DTCs, including to incorporate wording in line with Article 26(4)

of the Model DTC. This renegotiation programme is still on-going. However, Malaysia has become a party to the Multilateral Convention, which complements a number of these treaties. Malaysia also confirmed that Malaysia is able to provide such information where requested regardless of such restrictions applying in the partner jurisdiction.

342. During the current review period, there was one request where the requested information related to a person which was not a Malaysian taxpayer, and there was no domestic tax interest in obtaining the requested information. Malaysia confirms that the all of the incoming EOI requests relate to information in which Malaysia has no domestic tax interest (about both Malaysian taxpayers and non-Malaysian taxpayers). Malaysia responded to all valid requests for information in line with the international standard whether or not it has a domestic tax interest in obtaining the requested information, and no concerns in this respect were raised by peers within the review period.

ToR C.1.5. and C.1.6 Absence of dual criminality principles and Exchange information relating to both civil and criminal tax matters

343. The information exchange mechanisms concluded by Malaysia provide for the exchange of information for both civil and criminal matters, and none apply the principle of dual criminality to restrict exchange of information.

344. In practice, Malaysia does not require information from the requesting competent authority as to whether the requested information is sought for criminal tax purposes.

345. Peers have not raised any issues specifically related to requests pertaining to either civil or criminal tax matters. Malaysia confirmed that the same procedures apply in respect of EOI for both civil and criminal tax matters under all its EOI instruments. During the current review period, no EOI requests received were related to criminal matters.

ToR C.1.7. Provide information in specific form requested

346. There are no restrictions in Malaysia's EOI agreements that would prevent Malaysia from providing information in a specific form, as long as the form is consistent with its administrative practices.

347. In practice, peers have not made any particular request regarding the form in which the information should be exchanged.

ToR C.1.8. Signed agreements should be in force

348. Malaysia has information exchange agreements with 149 jurisdictions through 74 DTCs, 1 TIEA or the Multilateral Convention.

349. Due to Malaysia's dualist federal system, for an agreement to take effect, it is a requirement under the ITA 1967 that for any Order made in pursuant to section 132 (for DTC), section 132A (for TIEA) and section 132B (for Mutual Administrative Assistance Arrangement) shall be laid down before the Parliament. The Order will come to effect once it is gazetted. The completion of the gazette process will depend on the Parliamentary session which will take place twice a year and usually to be completed within a year.

350. Since the commitment to the international standard in 2009, the average time period between the signature and the entry into force of the new DTCs and protocols is one year. Since the first round review in 2014, Malaysia has signed a new Protocol with New Zealand in November 2012, which was put into force in January 2016. It also signed a DTC with the Slovak Republic in May 2015, which entered into force in March 2016. As of the cut-off date of the current review period, there are still 1 Protocol (Belgium),[15] 2 DTCs (Senegal and Ukraine)[16] and 1 renegotiated DTC (Poland)[17] which have not yet entered into force. The 1 Protocol and 2 DTCs have been ratified by Malaysia and are awaiting for ratification by the other signatory, and the 1 renegotiated DTC with Poland was not in force yet as there are some changes made to the Article and Protocol which require the DTC to be amended and go through the re-gazetting process in both jurisdictions.

351. Malaysia signed the MAC in August 2016, which was ratified in January 2017 and entered in to force in May 2017.

352. The following table summarises outcomes of the analysis under element C.1 in respect of Malaysia's bilateral EOI mechanisms (i.e. regardless of whether Malaysia can exchange information with the particular treaty partner also under a multilateral instrument):

15. DTC Protocol with Belgium was signed in December 2009, but still has not entered into force.
16. DTC with Senegal was signed in February 2010 and DTC with Ukraine was signed in August 2016, but both still have not entered into force.
17. The renegotiated new DTC was signed with Poland in July 2013, but still has not entered into force.

EOI mechanism

Total EOI relationships, **including** bilateral and multilateral or regional mechanisms	149
In force	149
In line with the standard	148
Not in line with the standard	1
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0
Among which – Bilateral mechanisms (DTCs/TIEAs) **not complemented** by multilateral or regional mechanisms	21
In force	21
In line with the standard	20
Not in line with the standard	1
Signed but not in force	0
In line with the standard	0
Not in line with the standard	0

ToR C.1.9. Be given effect through domestic law

353. Malaysia has in place domestic legislation necessary to comply with the terms of its EOI agreements. All of Malaysia's agreements which have been signed and ratified by both parties are in effect in Malaysia. According to sections 132, 132A and 132B of ITA 1967, arrangements including DTCs, TIEAs and Mutual Administrative Assistance Arrangement prevail over all domestic laws.

354. Effective implementation of EOI agreements in domestic law has been confirmed in practice during the period under review as there was no case encountered where Malaysia was not able to obtain and provide the requested information due to unclear or limited effect of an EOI agreement in its domestic law.

C.2. Exchange of information mechanisms with all relevant partners

> The jurisdiction's network of information exchange mechanisms should cover all relevant partners.

355. Malaysia has a large treaty network of 75 exchange of information instruments including 74 DTCs (increased from 73 DTCs in the last round of review) and 1 TIEA. Malaysia has also become a Party to the Multilateral Convention which came into force in Malaysia in May 2017.

356. The first round review did not identify any issue in respect of the scope of Malaysia's EOI network or its negotiation policy.

357. Following the commitment to adhere to the international standard, Malaysia has taken the approach to ensure that DTCs currently enforced meet the international standards. This includes the insertion of an article similar to Article 26(5) OECD Model Tax Convention in the DTC drafts. Malaysia has now in place a programme which includes renegotiating of existing DTCs to ensure that they are in line with the international standard and expansion of the already existing treaty network so that all relevant partners are covered. Negotiations or renegotiations of bilateral agreements are currently ongoing with some jurisdictions.

358. Malaysia's willingness to enter into EOI agreements without insisting on additional conditions was also confirmed by peers as no jurisdiction has indicated that Malaysia had refused to enter into or delayed negotiations of an EOI agreement.

359. As the standard ultimately requires that jurisdictions establish an EOI relationship up to the standard with all partners who are interested in entering into such relationship, Malaysia is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.

360. The table of determination and rating remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.3. Confidentiality

The jurisdiction's information exchange mechanisms should have adequate provisions to ensure the confidentiality of information received.

361. All of Malaysia's EOI agreements have confidentiality provisions in line with the standard. As concluded in the review report in 2014, there are also adequate confidentiality provisions protecting tax information in Malaysia's domestic tax laws. Any information received by the Malaysia Competent Authority can be disclosed in judicial proceedings involving the ITA or other tax laws or with the written authority of the Minister, legal or natural person or partnership to whose affairs it relates, however the information exchanged under EOI agreements are covered by the confidentiality provisions of the DTA, TIEA or Multilateral Convention, which are gazetted under sections 132, 132A and 132B of the ITA 1967 and supersede the domestic law. Information received in an EOI request would be shared for non-tax

purposes only if allowed under the relevant EOI instrument and with the prior approval of the providing partner.

362. Any unauthorised disclosure of the information exchanged will be treated as breach of confidentiality and relevant sanctions including criminal prosecutions may apply.

363. Malaysia has in place appropriate policies and procedures to ensure confidentiality of the information exchanged in practice. Accordingly, no case of breach of confidentiality has been encountered in the EOI context and no such case or concerns have been reported by peers either.

364. The table of determinations and ratings remains as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

ToR C.3.1. Information received: disclosure, use and safeguards

365. There are adequate confidentiality provisions protecting tax information contained in Malaysia's domestic laws which are supported by administrative and criminal sanctions applicable in the case of breach of the confidentiality obligations. All Malaysia's DTCs and exchange of information agreements contain provisions akin to Article 26(2) of the Model DTC aiming to keep all information received from treaty partners confidential. Information received by the Malaysia competent authorities under EOI agreements is not to be used for any purpose other than those provided for in the agreements.

366. By virtue of section 138(1) of the ITA 1967, any information received by the Director General of the Inland Revenue Board (DGIR) must be treated as confidential. Thus, any unauthorised disclosure of such information will give rise to a breach of confidentiality. In Labuan IBFC, section 20 of the LBATA 1990 also provides safeguard for confidentiality of information received and exchanged. Any official who contravenes the confidentiality provisions will be subject to criminal prosecutions under section 117 of the ITA 1967, which carries a fine of not exceeding MYR 4 000 (EUR 850) or imprisonment for a term not exceeding one year, or to both. The penalty also extends to unauthorised disclosure. In Labuan IBFC, section 20(2) of the LBATA 1990 provides upon conviction, a fine not exceeding RM1 million or imprisonment for a term not exceeding 2 years or both. The confidentiality provisions in Malaysia's exchange of information agreements and domestic law do not draw a distinction between information received in response to requests and information forming part of the requests themselves.

367. According to sections 138(2) and 138(3) of the ITA 1967, any information received by the DGIR can be disclosed in judicial proceedings involving the ITA or other tax law or with the written authority of the Minister, legal or natural person or partnership to whose affairs it relates. Information exchanged under EOI agreements are covered by the confidentiality provisions of the DTA, TIEA or Multilateral Convention, which are gazetted under sections 132, 132A and 132B of the ITA 1967 and supersede the domestic law. Information received in an EOI request would be so shared for non-tax purposes in application of sections 138(2) and 138(3) only if allowed under the underlying EOI instrument and law of the providing partner, with its approval.

Practical measures to ensure confidentiality of the received information

368. Malaysia has in place appropriate policies and procedures to ensure confidentiality of the exchanged information. Related confidentiality requirements apply to the hiring process, training provided to employees and the third party providers. In addition to the training, internal circulars and operational instructions are issued regularly by the Inspectorate and Integrity Department, ICT Department and Security Division as continuous reminders to the IRBM staff of the importance of protecting and ensuring security of data and information in the IRBM. Separate awareness programmes are also provided to contractors. In 2013, a certification programme whereby an external auditor is to be appointed to audit and monitor information security in the IRBM to the management of the IRBM was introduced. Subsequently the Standards and Industrial Research Institute of Malaysia (SIRIM) was appointed to conduct an audit on the operation of e-Filings, and the IRBM was awarded with the certification of ISMS ISO 27001:2013; testament to the fact that data security and confidentiality procedures are in place and functioning as they should be.

369. For officers directly involved in handling EOI, a more structured training programme on handling exchange of information is conducted by the International Affairs and Exchange of Information Division. This programme which also focuses on confidentiality and data safeguards requirements is conducted periodically at the IRBM headquarters for auditors and investigators from branches throughout the country.

370. Malaysia has the safeguard policies and procedures in place to the extent that information covered by confidentiality is maintained in paper or other physical form, to ensure that the appropriate access and use of this information is maintained. The IRBM's Security Policy and the IRBM's Security Manual are the main provisions in regulating this. Taxpayer information is classified as confidential and therefore must be treated as such

under the ITA 1967. All EOI related documents are stamped with the warning of "This information is furnished under the provision of the tax treaty and its use and disclosure are governed by the provisions of such treaty", so as to ensure the documents will be clearly marked and used for the specific purpose of the EOI and protected under the respective confidentiality provisions. The "Clear Desk Policy" and "Clear Screen Policy" are also implemented when leaving the work station and confidential and sensitive documents must be secured under lock and key.

371. When an employee/contractor leave IRBM including those working for EOI, all rights to access accorded while in service will be revoked with immediate effect by the Tax Operation Department and Security Division. The Director of the relevant Division/Department will be responsible in ensuring that all access privileges are revoked and all keys, IDs, and other physical items including computers and laptops are collected from the employee/contractor. All current and former employees of IRBM are held accountable in relation to all data processed, managed and controlled by them during the performance of their duties in IRBM and are subject to the provisions of the ITA 1967 and Official Secrets Act 1972. It is a statutory duty for contractors and former contractors to preserve classified information including the tax information received under EOI. This has been explicitly provided under the Act since the law is passed by the Parliament in 1967. As such, there is a legal certainty to bind the contractors and former contractors to preserve confidentiality.

372. Malaysia also has procedures to monitor confidentiality breaches, and policies and procedures to report breaches of confidentiality. There are also adequate follow-up procedures when a breach of confidentiality occurs, including reporting, administrative or criminal investigations.

373. During the reviewed period, no case of breach of confidentiality obligations in respect of the exchanged information has been encountered by the Malaysian authorities and no such case or concern in this respect has been indicated by peers either.

ToR C.3.2. Confidentiality of other information

374. The confidentiality rules and procedures described above apply equally to all requests for such information and all responses received from EOI partners, background documents to such requests, and any other documents reflecting such information, including communications between the requesting and requested jurisdictions and communications within the tax authorities of either jurisdiction.

C.4. Rights and safeguards of taxpayers and third parties

The information exchange mechanisms should respect the rights and safeguards of taxpayers and third parties.

ToR C.4.1. Exceptions to requirement to provide information

375. All of Malaysia's EOI agreements contain provisions on the rights and safeguards of taxpayers and third parties in line with the standard as specified in Article 26(3) of the Model DTC. This is the case also for EOI agreements concluded by Malaysia since the review in 2014. Under all the information exchange arrangements which Malaysia has signed, the parties concerned will not be required to supply information that would involve disclosure of an industrial or commercial secret, information that might be subject to attorney-client privilege or information the disclosure of which would be contrary to public policy (*ordre public*).

376. During the current review period, no issues in relation to the rights and safeguards of taxpayers and third parties have been encountered in practice, nor have they been raised by any of Malaysia's exchange of information partners.

377. The table of determination and rating therefore remains unchanged as follows:

Legal and Regulatory Framework
Determination: In place
Practical implementation of the standard
Rating: Compliant

C.5. Requesting and providing information in an effective manner

The jurisdiction should request and provide information under its network of agreements in an effective manner.

378. In order for EOI to be effective, jurisdictions should request and provide information under their network of EOI mechanisms in an effective manner. In particular:

- *Responding to requests*: Jurisdictions should be able to Response to requests within 90 days of receipt by providing the information requested or provide an update on the status of the request.

- *Organisational processes and resources*: Jurisdictions should have appropriate organisational processes and resources in place to ensure quality of requests and quality and timeliness of responses.
- *Restrictive conditions*: EOI assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions.

379. It was recommended in the 2014 review report that Malaysia should monitor the processing and management of EOI requests as practice develops, and improve them as necessary and Malaysia should monitor the implementation of the measures recently taken to ensure that answers to EOI requests are made in a timely manner. During the current review period, the average responding time for requests for information is 184 days and there were 2 cases where much longer time was needed as they were cases relating to several years of information. Among the 155 requests, 22% of them were answered within 90 days, compared to 38% in the 2014 review, and 37% of them were answered within 180 days, compared to 54% in the 2014 review. Malaysia reported that the decrease in the percentages in responding within 90 days and responding in 180 days within the current review period was mainly due to the complexity of the cases, some of which were complicated transfer pricing issues relating to data of several years. However, the proportion of cases answered within 1 year was increasing quite noticeably from 2015 to 2017, whilst the proportion of cases answered after one year was decreasing sharply from 2015 to 2017, considering the fact that the number of requests received by Malaysia increased gradually from 36 requests in 2015, to 50 requests in 2016 to 69 requests in 2017.

380. During the current review period, Malaysia had provided status updates to most of the EOI partners within 90 days, which was also confirmed by some of the peers, and the peers which have close EOI relationships are overall satisfied with Malaysia's answers to their EOI requests and in general positive feedback was given. However, some peers were reported receiving status updates in the current review period. Malaysia reported that there were only a few cases like this, which may be due to the lack of efficient internal communications, and in some instances Malaysia waited to gather all the information requested before providing a reply, i.e. no interim responses were provided when part of the information had already been gathered. Malaysia confirmed that has been improved since the online EOI Case Management System (CMS-EOI) was in place in January 2019, so to meet the international standard, including providing systematic status updates within 90 days for cases for which a substantive response cannot be provided in that time.

381. In the 2014 review report, Malaysia was recommended to monitor the co-ordination procedures between the competent authority and with other departments of the IRBM and other governmental agencies and establish priority guidelines for the regional tax office staff in relation to exchange

of information casework in order to respond to requests in a timely manner. Malaysia confirmed that following the 2014 review, actions have been taken to address this recommendation, including i) EOI Unit is working closely with Compliance Department and the various branches; ii) additional staff and training to EOI Unit Staff; iii) more training and awareness to tax auditors on the importance of EOIR; and iv) development of the Case Management System to manage EOIR cases.

382. Malaysia received 155 requests in the current review period with main requesting partners including Australia, Belgium, Denmark, India, Indonesia, Italy, Japan, Singapore and United Kingdom which is about 5 times the requests it sent out (34) during the current review period (which were mainly to its important trading partners including Australia, Hong Kong (China), Indonesia, Korea, Singapore and United Kingdom). Malaysia said that in future, it expects to be more active in making more EOI requests because of the increase of the awareness of the EOI work to the local tax auditors and also more efficient procedures to initiate the EOI requests.

383. The new table of recommendations and rating is as follows:

Legal and regulatory framework		
This element involves issues of practice. Accordingly, no determination on the legal and regulatory framework has been made.		
Practical implementation of the standard		
	Underlying Factor	**Recommendation**
Deficiencies identified in the implementation of EOIR in practice	The 2014 report stated that the EOI related responsibilities and working procedures have been introduced but were not assessed in practice. During the current review period, the responsibility and working procedures are in place but are not fully effectively implemented as some of the challenges for delays still exist. However, Malaysia's competent authority confirmed that the online EOI Case Management System (CMS-EOI) which has been in place since January 2019 has systematically improved the EOI requests management. The efficiency and functionality of the CMS-EOI cannot be assessed in the current review.	Malaysia is recommended to monitor the functionality of the CMS-EOI to ensure all EOI requests can be managed in a systematic and efficient manner.

Practical implementation of the standard		
	Underlying Factor	**Recommendation**
	Malaysia has not always provided status updates where a response could not be provided within 90 days.	Malaysia should ensure that status updates are always provided where a substantive response cannot be provided within 90 days.
Rating: Largely Compliant		

ToR C.5.1. Timelines of responses to requests for information

384. Over the current review period, Malaysia received 155 requests for information, including 6 requests for Labuan. The following table relates to the requests received during the current review period and gives an overview of response times taken by Malaysia to provide a final response to these requests together with a summary of other relevant factors impacting the effectiveness of Malaysia's exchange of information practice during the reviewed period.

		2015		2016		2017		Total	
		Num.	%	Num.	%	Num.	%	Num.	%
Total number of requests received [a]	[A+B+C+D+E+F]	36	100	50	100	69	100	155	100
Full response: ≤90 days [b]		2	6	23	46	8	12	33	22
≤180 days (cumulative)		8	22	29	58	21	30	58	37
≤1 year (cumulative)	[A]	18	50	31	62	66	95	115	74
>1 year	[B]	18	50	18	36	3	4	39	25
Declined for valid reasons	[C]	0	0	0	0	0	0	0	0
Status update provided within 90 days (for responses sent after 90 days)		– information not available –							
Requests withdrawn by requesting jurisdiction	[D]	0	0	0	0	0	0	0	0
Failure to obtain and provide information requested	[E]	0	0	0	0	0	0	0	0
Requests still pending at date of review	[F]	0	0	1	2	0	0	1	<1

Notes: a. Prior to 2016, requests were counted as per the number of request letters, i.e. an incoming request is counted as one even if it seeks information relating to multiple taxpayers, multiple years, seeks different types of information or requires that information be obtained from multiple sources. From 2016 onwards, each taxpayer mentioned in the request is treated as a separate request.

b. The time periods in this table are counted from the date of receipt of the request to the date on which the final and complete response was issued (i.e. including time taken by the requesting jurisdiction to response to a clarification).

385. Among the 155 requests, 22% were answered within 90 days, compared to 38% in the period 2010-12 review with great variations across years (e.g. 6% in 2015 and 48% in 2016), and 37% of them were answered within 180 days, compared to 54% in the period 2010-12. In spite of this, three quarters of received requests were responded to within one year from receipt, which is an improvement since the first round peer review, with a constant improvement during the review period. The percentage of responses sent in more than a year decreasing from 50% in 2015 to 4% in 2017. The drop in percentages in responding within 90 days and 180 days was largely due to the increase of the complexity of requests received as confirmed by Malaysia. Malaysia is also receiving 38% more requests every year.

386. Some of the practical difficulties in responding to EOI requests quickly as concluded in the review report of 2014 were still encountered by Malaysia's competent authority. Some relate to the facts of the requests and are not dependant on Malaysia's procedures and diligence, including: (1) some cases were complex involving several types of information covering several years, e.g. those cases in relation to transfer pricing issues, and the on-site tax audit takes time to complete for some complicated transfer pricing cases; (2) some of the EOI requests were incomplete, lacking the identification information (or the identification information is not correct), e.g. name of the company or individual given is incomplete, passport number not provided or old company name was given, which took time to be verified and re-confirm between the financial institutions and IRBM, and Malaysia failed to request clarification on a timely manner to make sure it could proceed with replying to such requests. In a few cases, Malaysia also collected data that were no longer covered by the retention period, which on occasion was lengthy.

387. Some other factors are related to the Malaysian context, for instance when some local branches did not have the incentive for collection of the information for EOI purposes as it was not considered in their performance reviews, so when IRBM sent the requests to the local branches, they were not treated as priorities, and some of the officials did not have good awareness of the EOI, which may have caused delays in responding. To address this issue, Malaysia has taken various initiatives including appointing a dedicated EOI officer in each of the IRBM branch in 2017 and provide training to them. Malaysia has also increased the resources in the EOI Unit by doubling the number of EOI officers in 2018. Trainings are provided internally and officials also participated in the OECD organised trainings. In February 2019 an intensive training to all the EOI officers from the IRBM branches was conducted with the co-operation of the New Zealand Inland Revenue Department (see also C.5.2 below).

388. To address the issue of co-ordination raised in the 2014 report, Malaysia adopted a tracking system to streamline the process of gathering information but it was not adapted to its structure. Subsequently it has developed a Case Management System (CMS-EOI) and as confirmed by Malaysia, after CMS-EOI was put in place in January 2019, some of the delays encountered in the current review period may be reduced. The CMS-EOI is an integrated system which allows the registration, allocation of cases and sending of information gathered from the branches to the EOI Unit. Malaysia confirms that the online system has cut down transmission time of documents, improved communication between the EOI Unit, the Compliance Department and the branches that are involved in gathering the requested information of the EOI cases, and put EOI cases in a similar priority with the domestic cases. The system also has inbuilt alerts system to alert timeliness for relevant processes. It also generates acknowledgement letters, status updates and response letters. The CMS-EOI improves monitoring of the EOIR cases. Overall, the system improves timeliness of responses to the EOIR cases.

389. No failure to provide the requested information is reported by Malaysia during the review period. For most of the cases, Malaysia provides partial replies once part of the relevant information becomes available. Malaysia has not declined to reply to any requests during the period under review.

390. Overall, Malaysia has received positive feedback from peers regarding EOI during the current review period. Only 2 out of 12 peers mentioned the issue of lack of status updates in some cases during the current review period (see below), and 1 peer observed that there is still one pending case by the cut-off day of the report due to miscommunication between Malaysia and the partner jurisdiction. Malaysia confirmed that it has been working with the partner jurisdiction to resolve it bilaterally.

391. To sum up, timelines of responses sometimes has remained a challenge to Malaysia and effective exchange of information in all cases was not ensured. This can be attributed to several factors outlined above, in sections C.5.2 and B.1.1, nevertheless further measures should be taken to speed up the provision of requested information.

392. In the review report of 2014, it was concluded that it was not Malaysia's practice to provide status updates where requests were not responded within 90 days, whilst effective from 1 July 2013 Malaysia reported that it had already had its policy and practice to systematically provide an update or status report to its EOI partners within 90 days when it was unable to provide a substantive response within that time. Although statistics have not been kept, status updates were provided in some cases, but it appears that this has not been systematic as peers have reported a lack of updates Moreover, the proportion of requests where status updates were provided is difficult to verify as Malaysia does not keep such statistics. Malaysia reported that this

may be due to the lack of communications between the information exchange team and the audit team or the local branches, but confirmed this has been improved since the online EOI Case Management System (CMS-EOI) was put into place in January 2019. As the issue concerning provision of status updates remains, Malaysia is recommended to address it.

ToR C.5.2. Organisational processes and resources

393. There is no substantive change in the organisational processes and resources of the EOIR practice since the 2014 review in Malaysia. There were light changes in relation to organisational process in sending of EOI requests to the branches, where previously it was made through writing of request letters and mailed to the branches. The work process has further been changed since 2016, whereby the sending of requests to the branches to collect information are made through sending of encrypted email, so as to ensure the request reaches the relevant branch faster and for the auditor to take early actions. Likewise the sending of information gathered by the auditors to the EOI Section are also made through encrypted emails.

394. The management and administration of all incoming and outgoing EOI requests are centralised at the Department of International Taxation of the Inland Revenue Board of Malaysia (IRBM). Details of the Competent Authority are available on the IRBM website and the OECD secured site for Global Forum competent authorities. The EOI Section is co-ordinated from within the International Affairs and Exchange of Information Division, Department of International Taxation of the IRBM. The EOI Section is headed by the Director of the International Affairs and Exchange of Information Division and assisted by the Deputy Director who is also the EOI Manager and has four additional EOI officers. This represents an increase of three EOI officers since the 2014 report. Apart from the EOI requests, the EOI team is also in charge of other types of EOI such as the Spontaneous EOI, Automatic Exchange of Financial Account Information in Tax Matters under the Common Reporting Standard (CRS) and Foreign Accounts Tax Compliance Act (FATCA). As of the end of the current review period, there are four EOI officers within the EOI Section and all officers of the EOI Section have minimum tertiary qualifications of bachelor degree and years of experience in tax administration. The EOI team is responsible for handling both EOI inbound and outbound requests. With increasing workload for the EOI Section, there is a plan to increase the number of dedicated officers doing EOI in the pipeline. During the review period, Malaysia has appointed one EOI officer in each of its 57 branches to facilitate and co-ordinate the gathering of information at the branch level and provide specific training tailored in handling EOI cases.

395. Since 2016, the EOI Section adopted the Global Forum EOI computerised database to record and track both inbound and outbound requests. The database contains the reference number of each case and the details of the requests, such as the name of the taxpayer, the requested information, the Requesting Competent Authority (RCA) and the date received. The database also includes information on the status of the request to enable tracking and monitoring the progress of each case by both EOI officer and the EOI Manager.

396. Malaysia accepts requests in English. If the request is not in English the requesting competent authority will be asked to translate the request. Malaysia also sends outgoing requests in English. Communication tools used for external communication with other Competent Authorities differ depending on the partner jurisdiction. Malaysia uses registered posts, emails or holds face-to-face meetings with the EOI partners for communication. Malaysia prefers electronic methods of communication.

Incoming requests

397. The steps in processing incoming requests remain the same as at the time of the 2014 review.

398. As reported by Malaysia, there is a specified policy regarding the procedure of handling the requests, i.e. Manual on Procedures for Handling Exchange of Information and Income Tax (Exchange of Information) Rules 2011. Upon receiving a request, the EOI officer will check the request whether: i) it fulfils the conditions set forth in the EOI provision of the applicable DTA or TIEA, ii) it is signed by RCA and includes the name and designation of the RCA and iii) it meets all criteria as stated in Income Tax (Exchange of Information) Rules 2011. Acknowledgement receipt of the request from RCA shall be issued to EOI Partner within 14 days from date of receipt. Once the request has been verified, the EOI officer must determine whether the request may be fulfilled by the tax authority or whether the information must be gathered from external sources such as other governmental authorities and banks. If the request is invalid or incomplete, the EOI officer shall notify the RCA in writing of any deficiencies or seek clarification or request additional information from the RCA within 30 days from the date of receipt of the request. During the current review period, Malaysia sought clarifications for three incoming requests in 2015, none in 2016 and one in 2017.

399. Where the information is already in the hands of the tax authorities, the request will be processed directly by the EOI Officer by checking the IRBM database to retrieve the requested information to be provided to RCA within 30 days. For information held with other government authorities, EOI

officers shall write to that governmental authority to obtain the information. The governmental authority is given 30 days to provide the information that shall be sent to RCA within 60 days. Where information is not received from the governmental authority within 30 days, EOI officer shall issue a reminder in the form of an official letter (via email) to the governmental authority and follow up with a phone call. Where the information is in the possession or control of the subject of the enquiry or a third party information holder, the EOI officer shall request the TCD (Tax Compliance Department) to obtain the said information. TCD is given 60 days to provide the information that shall be provided to RCA within 90 days. A memorandum will be issued by TCD to the Local Tax Office, describing the EOI case with a copy to the Director of the Department of International Taxation (DIT). The Local Tax Office is given 30 days to obtain the requested information as stated in the said memorandum. Where the taxpayers do not have an identification number for tax purposes (i.e. non-registered taxpayer), a memorandum will be sent to the Director of Intelligence and Profiling Department (IPD) to gather the requested information within 30 days. Where the information is not received from TCD or IPD within 60 days, the EOI officers shall contact TCD to remind and find out the reasons for delay. Any information collected as part of the information requested shall be sent to the RCA in the interim. For information in the possession or control of a bank, the EOI Officers shall write directly to the Bank to request the said information pursuant to section 81 ITA 1967 using a template letter which has already been agreed by the Central Bank. Banks are given 21 days to provide the information. The said information shall be provided to the RCA within 60 days.

400. After gathering the necessary information, the EOI officer will check the information obtained and ensure that the information received responses to the question asked. An interim or final reply will be prepared by the EOI officer and will be reviewed by the EOI Manager before presenting it to the Director of DIT for final review and approval.

401. In conclusion, Malaysia has an overall complete procedure in logging and tracking requests once they are received. However, in the practical implementation of those specified procedures, there were some cases where there were delays and some of the deadlines were not met, which may have caused delays as discussed above. Malaysia confirmed that since the CMS-EOI system has been online, all the above procedures will be implemented in a systematic and streamlined way. Delays or missing the deadlines at any stage may give rise to adverse consequences to the related officials.

Outgoing requests

402. The 2016 ToR also covers requirements to ensure the quality of requests made by the assessed jurisdiction.

403. Malaysia has in place an EOI programme for requesting relevant information for domestic tax purposes. During the period under review Malaysia made 34 outgoing requests for information, relating to EOI partners including Singapore, United Kingdom, Hong Kong (China), Indonesia, Australia and Korea. The number of requests is counted per the number of EOI request letters regardless of the number of taxpayers concerned.

Processing outgoing requests

404. Processing outgoing requests is based on the Manual on Procedures for Handling Exchange of Information and Income Tax (Exchange of Information) Rules 2011. Similar to inbound requests, the rules and procedures for outbound requests are governed by the Income Tax (Exchange of Information) Rules 2011. All outgoing EOI requests should be made using the EOI Request Form forwarded together with a required memo. The Auditor/Investigator shall forward the request through their Branch Director/Head of Department to the Director of DIT through email by encrypting the files attached to it or they can also send the hardcopy.

405. When sending an EOI request, the Auditor/Investigator shall ensure that all means available to obtain the information must first be exhausted. A request to an EOI Partner should only be contemplated if there is no reasonable means to obtain the information available within Malaysia. Typically, this includes attempts to obtain information in the EOI Partner country, for example by checking the internet or commercial databases to obtain publicly available information.

406. Once the EOI Officer is satisfied that a request is in order, the EOI Officer shall prepare the request letter and Outgoing Request Memorandum which will be reviewed by the EOI Manager before the signature of the Competent Authority is requested. The EOI Officer shall update the EOI database and immediately arrange the delivery of the request letter to the treaty partner's Competent Authority either by registered express mail service or via encrypted email.

407. All outgoing EOI requests are centralised at the EOI Unit, International Affairs and Exchange of Information Division. All requests received from local tax offices shall be forwarded to the Director of DIT for the necessary action of the EOI Team. The EOI unit is responsible for the implementation of the procedures for processing EOI according to the work manual.

Information to be included in outgoing requests

408. The content of an outgoing request should be as detailed as possible and contain all the relevant facts to assist the CA of the EOI Partner to deal with the request efficiently. The Malaysian Manual provides that the EOI officer must check the request and ensure that the request meets DTA/TIEA provisions and it must not be a "fishing expedition" (speculative requests for information that have no apparent nexus to an open inquiry or investigation). Where the request is incomplete or does not meet the criteria stated in the Manual on Procedures for Handling Exchange of Information, the EOI Officer is to contact the tax officer initiating the request to complete and to meet all the criteria given in the manual.

409. The outgoing request should as far as possible include the information as listed in the manual, which includes:

- statement confirming that all means available to obtain the information has been pursued except those that would give rise to disproportionate difficulties
- identity of the person(s) under examination or investigation
- identity of any foreign taxpayer(s) or entity(ies) relevant to the examination or investigation and, to the extent known, their relationship to the person(s) under examination or investigation: charts, diagrams or other documents illustrating the relationships between the persons involved
- if information requested involves a payment or transaction via an intermediary, the name, addresses and TIN (if known) of the intermediary, including, if known, the name and address of the bank branch as well as the bank account number when bank information is requested
- relevant background information including the tax purpose for which the information is sought, the origin of the enquiry, the reasons for the request and the grounds for believing that the information requested is held in the territory or the EOI Partner country or in the possession or control of a person within the jurisdiction of the EOI Partner country
- the information requested and why it is needed, and specify the information that may be pertinent (e.g. invoices, contracts)
- the tax periods under examination (day, month, year they begin and end), and the tax periods for which information is requested (if they differ from the years examined give the reasons why)

- the currency concerned whenever figures are mentioned
- the urgency of the reply, reasons for the urgency and, if applicable, indicate the date after which the information may no longer be useful
- whether there are reasons for avoiding notification of the taxpayer under examination or investigation (e.g. if notification may endanger the investigation)
- other relevant information.

410. The following table summarises the number of requests for clarifications received by Malaysia and the number of clarifications provided by Malaysia.

	2015	2016	2017	Total
Number of outgoing requests	9	14	11	34
Number of requests for clarifications received	1 (11%)	3 (21%)	1 (9%)	5 (15%)

411. As indicated in the table above, during the period under review Malaysia received requests for clarification in respect of 15% of outgoing requests. Request for clarification will be reviewed by the Director of International Affairs and EOI Division and will be responded by the EOI Unit within 14 days. Requests for clarification from Malaysia's EOI partners typically relate to additional identification of the person concerned as the EOI partner may encounter difficulties uniquely identifying the person. As confirmed by peers, outgoing requests from Malaysia generally met the elements of the standard.

ToR C.5.3. Unreasonable, disproportionate or unduly restrictive conditions for EOI

412. There are no factors or issues identified that could unreasonably, disproportionately or unduly restrict effective EOI in Malaysia.

Annex 1: List of in-text recommendations

The assessment team or the PRG may identify issues that have not had and are unlikely in the current circumstances to have more than a negligible impact on EOIR in practice. Nevertheless, there may be a concern that the circumstances may change and the relevance of the issue may increase. In these cases, a recommendation may be made; however, such recommendations should not be placed in the same box as more substantive recommendations. Rather, these recommendations can be mentioned in the text of the report. A list of such recommendations is presented below.

- Element A.1.1: care should be taken that positive developments over the last three years are followed up with adequate supervision and enforcement under the new Companies Act.
- Element A.1.1: Malaysia and Labuan should take measures to ensure that all the beneficial ownership information maintained by the reporting institutions is valid and up to date.
- ElementA.1.1: Malaysia is recommended to monitor the effective implementation of the obligations under the Companies Act 2016 to keep legal ownership information in practice. Element A.3.1: The frequency of banks inspections in Labuan IBFC seems relatively low and should be further strengthened.
- Element A.3.1: Malaysia and Labuan should take measures to ensure that all the beneficial ownership information maintained by the banks is valid and up to date.
- Element B.1.1: Malaysia should continue in its efforts to streamline the process of obtaining information for EOI purposes and ensure that access powers are effectively applied in all cases.
- Element C.2: Malaysia is recommended to continue to conclude EOI agreements with any new relevant partner who would so require.

Annex 2: List of Malaysia's EOI mechanisms

Bilateral international agreements for the exchange of information

	EOI partners	Type of arrangement	Date signed	Date in force
1	Albania	DTA	24-01-1994	21-08-1995
2	Argentina	DTA	03-10-1997	09-02-2001
3	Australia	DTA	20-08-1980	1981
		Protocol	24-02-2010	08-08-2011
4	Austria	DTA	20-09-1989	20-09-1990
5	Bahrain	DTA	14-06-1999	31-07-2000
		Protocol	14-10-2010	20-02-2012
6	Bangladesh	DTA	19-04-1983	1984
7	Belgium	DTA	24-10-1973	1977
		Protocol	18-12-2009	Not yet in force
8	Bermuda	TIEA	23 April 2012	28-12-2012
9	Bosnia and Herzegovina	DTA	21-06-2007	30-07-2012
10	Brunei	DTA	05-08-2009	17-06-2010
11	Canada	DTA	16-10-1976	18-12-1980
12	Chile	DTA	03-09-2004	25-08-2008
		Protocol	03-09-2004	25-08-2008
13	China	DTA	23-11-1985	14-09-1986
14	Croatia	DTA	18-02-2002	15-07-2004
15	Czech Republic	DTA	08-03-1996	31-03-1997
16	Denmark	DTA	04-12-1970	04-06-1971
17	Egypt	DTA	14-04-1997	09-07-2002
18	Fiji	DTA	19-12-1995	30-07-1997
19	Finland	DTA	28-03-1984	23-02-1986
20	France	DTA	24-04-1975	23-07-1976
		Protocol	12-11-2009	01-12-2010

	EOI partners	Type of arrangement	Date signed	Date in force
21	Germany	DTA	08-04-1977	11-02-1979
		New DTA	23-02-2010	21-12-2010
22	Hong Kong (China)	DTA	25-04-2012	28-12-2012
23	Hungary	DTA	22-05-1989	26-10-1992
24	India	DTA	09-05-2012	28-12-2012
25	Indonesia	DTA	12-09-1991	11-08-1992
		Protocol	20-10-2011	01-09-2010
26	Iran	DTA	11-11-1992	15-04-2005
27	Ireland	DTA	28-11-1998	10-09-1999
		Protocol	16-12-2009	15-02-2011
28	Italy	DTA	28-01-1984	18-04-1986
29	Japan	DTA	19-02-1999	31-12-1999
		Protocol	10-02-2010	01-12-2010
30	Jordan	DTA	02-10-1994	29-05-2000
31	Kazakhstan	DTA	26-06-2006	20-05-2010
32	Korea	DTA	20-04-1982	13-12-1982
33	Kuwait	DTA	05-02-2003	29-05-2007
		Protocol	25-01-2010	06-08-2013
34	Kyrgyzstan	DTA	17-11-2000	26-12-2006
35	Lao PDR	DTA	03-06-2010	23-02-2011
36	Lebanon	DTA	20-01-2003	10-11-2004
37	Luxembourg	DTA	21-11-2002	29-12-2004
		Notes of Exchange	21-11-2002	29-12-2004
38	Malta	DTA	03-10-1995	01-09-2000
39	Mauritius	DTA	23-08-1992	19-08-1993
40	Mongolia	DTA	27-07-1995	07-11-1996
41	Morocco	DTA	02-07-2001	29-12-2006
42	Myanmar	DTA	09-03-1998	21-07-2008
43	Namibia	DTA	28-07-1998	13-12-2004
44	Netherlands	DTA	07-03-1988	02-02-1989
		Notes of Exchanges	04-12-1996	04-12-1996
		Protocol	04-12-2009	19-10-2010

	EOI partners	Type of arrangement	Date signed	Date in force
45	New Zealand	DTA	19-03-1976	02-09-1976
		Protocol	06-11-2012	12-01-2016
46	Norway	DTA	23-12-1970	09-09-1971
47	Pakistan	DTA	29-05-1982	09-11-1982
48	Papua New Guinea	DTA	20-05-1993	11-06-1999
49	Philippines	DTA	27-04-1982	27-07-1984
50	Poland	DTA	16-09-1977	15-12-1978
		New DTA	08-07-2013	Not yet in force
51	Qatar	DTA	03-07-2008	28-01-2009
		Protocol	16-02-2011	18-09-2012
52	Romania	DTA	26-11-1982	07-04-1984
53	Russia	DTA	31-07-1987	04-07-1988
54	San Marino	DTA	19-11-2009	28-12-2010
55	Saudi Arabia	DTA	31-01-2006	01-07-2007
56	Senegal	DTA	17-02-2010	Not yet in force
57	Seychelles	DTA	03-12-2003	10-07-2006
		Protocol	22-12-2009	25-05-2010
58	Singapore	DTA	05-10-2004	13-02-2006
59	Slovak Republic	DTA	25-05-2015	05-01-2017
60	South Africa	DTA	26-07-2005	06-07-2006
		Protocol	05-04-2011	06-03-2012
61	Spain	DTA	24-05-2006	28-12-2007
		Protocol	24-05-2006	28-12-2007
62	Sri Lanka	DTA	16-09-1997	13-08-1998
63	Sudan	DTA	07-10-1993	18-12-2002
64	Sweden	DTA	12-03-2002	28-01-2005
		Notes of Exchange	20-06-2003	20-06-2003
65	Syria	DTA	26-02-2007	31-08-2007
66	Thailand	DTA	29-03-1982	02-02-1983
67	Turkey	DTA	27-09-1994	28-01-1997
		Protocol	17-02-2010	21-04-2010
68	Turkmenistan	DTA	19-11-2008	06-10-2009
69	Ukraine	DTA	04-08-2016	Not yet in force

	EOI partners	Type of arrangement	Date signed	Date in force
70	United Arab Emirates	DTA	28-11-1995	18-09-1996
71	United Kingdom	DTA	10-12-1996	18-05-1998
		Notes of Exchange	10-12-1996	10-12-1996
		Protocol	22-09-2009	28-12-2010
72	Uzbekistan	DTA	06-10-1997	10-08-1999
73	Venezuela	DTA	28-08-2006	08-01-2008
74	Vietnam	DTA	07-09-1995	13-08-1996
75	Zimbabwe	DTA	28-04-1994	08-08-1996

Convention on Mutual Administrative Assistance in Tax Matters (amended)

The Convention on Mutual Administrative Assistance in Tax Matters was developed jointly by the OECD and the Council of Europe in 1988 and amended in 2010 (the amended Convention).[18] The Convention is the most comprehensive multilateral instrument available for all forms of tax co-operation to tackle tax evasion and avoidance, a top priority for all jurisdictions.

The 1988 Convention was amended to Response to the call of the G20 at its April 2009 London Summit to align it to the international standard on exchange of information on request and to open it to all countries, in particular to ensure that developing countries could benefit from the new more transparent environment. The amended Convention was opened for signature on 1 June 2011.

Malaysia signed the amended Convention on 25 August 2016 and deposited the instrument of ratification on 3 January 2017. The Convention entered into force in respect of Malaysia on 1 May 2017.

As of April 2019, the Multilateral Convention is in force in respect of the following jurisdictions: Albania, Andorra, Anguilla (extension by the United Kingdom), Antigua and Barbuda, Argentina, Aruba (extension by the Netherlands), Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda (extension by the United Kingdom), Brazil, British Virgin Islands (extension by the United Kingdom), Bulgaria,

18. The amendments to the 1988 Convention were embodied into two separate instruments achieving the same purpose: the amended Convention which integrates the amendments into a consolidated text, and the Protocol amending the 1988 Convention which sets out the amendments separately.

Cameroon, Canada, Cayman Islands (extension by the United Kingdom), Chile, China (People's Republic of), Colombia, Cook Islands, Costa Rica, Croatia, Curaçao (extension by the Netherlands), Cyprus,[19] Czech Republic, Denmark, Estonia, Faroe Islands (extension by Denmark), Finland, France, Georgia, Germany, Ghana, Gibraltar (extension by the United Kingdom), Greece, Greenland (extension by Denmark), Grenada, Guatemala, Guernsey (extension by the United Kingdom), Hong Kong (China) (extension by China), Hungary, Iceland, India, Indonesia, Ireland, Isle of Man (extension by the United Kingdom), Israel, Italy, Jamaica, Japan, Jersey (extension by the United Kingdom), Kazakhstan, Korea, Kuwait, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Macau (China) (extension by China), Malaysia, Malta, Marshall Islands, Mauritius, Mexico, Moldova, Monaco, Montserrat (extension by the United Kingdom), Nauru, Netherlands, New Zealand, Nigeria, Niue, Norway, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Russia, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Senegal, Seychelles, Singapore, Sint Maarten (extension by the Netherlands), Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Turks and Caicos Islands (extension by the United Kingdom), Uganda, Ukraine, United Arab Emirates, United Kingdom, Uruguay and Vanuatu.

In addition, the Multilateral Convention was signed by the following jurisdictions, where it is not yet in force: Armenia, Brunei Darussalam (entry into force on 1 July 2019), Burkina Faso, Dominica (entry into force on 1 August 2019), Dominican Republic, Ecuador, El Salvador (entry into force on 1 June 2019), Gabon, Jamaica, Kenya, Liberia, Mauritania, Morocco (entry into force on 1 September 2019), North Macedonia, Paraguay, Philippines, United States (the original 1988 Convention is in force since 1 April 1995, the amending Protocol was signed on 27 April 2010).

19. Note by Turkey: The information in this document with reference to "Cyprus" relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the "Cyprus issue".

Note by all the European Union Member States of the OECD and the European Union: The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

Annex 3: Methodology for the review

The reviews are conducted in accordance with the 2016 Methodology for peer reviews and non-member reviews, as approved by the Global Forum in October 2015 and the 2016-21 Schedule of Reviews.

The evaluation was based on information available to the assessment team including the exchange of information arrangements signed, laws and regulations in force or effective as at 2 May 2019, Malaysia's EOIR practice in respect of EOI requests made and received during the three year period from 1 January 2015 until 31 December 2017, Malaysia's responses to the EOIR questionnaire, information supplied by partner jurisdictions, as well as information provided by Malaysia during the on-site visit that took place from 8 to 12 October 2018 in Malaysia.

List of laws, regulations and other material received

General laws

Federal Constitution

Civil Law Act 1956

Criminal Procedure Code

Commercial legislation

Companies Act 1965

Labuan Companies Act 1990

Labuan Limited Partnerships and Limited Liability Partnerships Act 2010

Labuan Business Activity Tax Act 1990

Partnership Act 1961

Registration of Businesses Act 1956

Trust Companies Act 1949

Trustees (Incorporation) Act 1952

Trustees Act 1949

Labuan Companies Regulations 1990

Labuan Foundations Regulations 2010

Labuan Limited Partnerships and Limited Liability Partnerships 2010

Labuan Trusts Regulations 2010

Limited Liability Partnerships Act 2012

Labuan FSA's Directive on Accounts and Record Keeping

Tax legislation

Income Tax Act 1967

Anti-money laundering legislation

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Banking and Deposit-Taking Institutions (Sector 1)

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Insurance and Takaful (Sector 2)

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Money Services Business (Sector 3)

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Electronic Money and Non-Bank Affiliated Charge and Credit Card (Sector 4)

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Designated Non-Financial Businesses and Professions (DNFBPs) and Other Non-Financial Sectors (Sector 5)

Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Digital Currencies (Sector 6)

Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Banking Sector

Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Insurance and Takaful Sectors

Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Trust Company Sector

Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) – Capital Market and Other Business Sectors

Guidelines on Prevention of Money Laundering and Terrorism Financing For Capital Market Intermediaries

Financial legislation

Business Trust Guidelines
Central Bank of Malaysia Act 2009
Malaysian Deposit Insurance Act 2011
Capital Markets and Services Act 2007
Development Financial Institutions Act 2002
Guidelines on Unit Trust Funds
Labuan Financial Services and Securities Act 2010
Labuan Islamic Financial Services and Securities Act 2010
Labuan Foundations Act 2010
Labuan Trusts Act 1996
Labuan Financial Services Authority Act 1996
Promotion of Investments Act 1986
Securities Commission Malaysia Act 1993
Securities Industry (Central Depositories) Act 1991
Securities Industry (Central Depositories) (Amendment) Act 1996
Securities Industry (Central Depositories) (Amendment) Act 1998
Securities Industry (Central Depositories) (Amendment) Act 2000
Securities Industry (Central Depositories) (Amendment) Act 2003
Financial Services Act 2013 (FSA)
Islamic Financial Services Act 2013 (IFSA)

Other legislation

Evidence Act 1950
Exchange Control Act 1953

Authorities interviewed during on-site visit

Ministry of Finance (MOF)
Inland Revenue Board of Malaysia (IRBM)
Bank Negara Malaysia (BNM), the central bank of Malaysia

Securities Commission Malaysia (SC)
Labuan Financial Services Authority (LFSA)
Institute of Malaysia Chartered Accountants (ISCA)
Malaysian Association of Company Secretaries (MACS)
Representative from the trust industry of Labuan

Current and Previous review(s)

This report provides the outcomes of the third peer review of Malaysia's implementation of the EOIR standard conducted by the Global Forum. Malaysia previously underwent EOIR peer reviews in 2011 and 2013 conducted according to the ToR approved by the Global Forum in February 2010 (2010 ToR) and the Methodology used in the first round of reviews. The 2011 review evaluated Malaysia's legal and regulatory framework as at August 2011. The 2013 review evaluated Malaysia's legal and regulatory framework as at February 2014 as well as its implementation in practice.

Information on each of Malaysia's reviews is listed in the table below.

Review	Assessment team	Period under Review	Legal Framework as of	Date of adoption by Global Forum
Round 1 Phase 1	Jacqueline Baumgartner, Senior Legal Policy Adviser, Cayman Islands and Ms Petra Koerfgen, Federal Central Tax office, Germany; with Ms Renata Teixeira and Ms Ting Yang from the Global Forum Secretariat.	n.a.	August 2011	October 2011
Round 1 Phase 2	Ms Jacqueline Jefferson-Ziemniak, Senior Legal Policy Adviser, the Cayman Islands' Ministry for Financial Services; Mr Bernd Person, Tax Analyst, the German Federal Tax Administration; and Ms Renata Teixeira from the Global Forum Secretariat.	1 January 2010 to 31 December 2012	February 2014	July 2014
Round 2	Mr Tony Chanter, United Kingdom Competent Authority; Mr Joseph Caruana, Analyst at the Office of the Commissioner for Revenue of Malta; Mr Radovan Zidek and Mr Colin Yan from the Global Forum Secretariat.	1 January 2015 to 31 December 2017	May 2019	July 2019

Annex 4: Malaysia's response to the review report[20]

Malaysia wishes to accord its sincere appreciation to the Assessment Team for their professionalism, continuous and laborious efforts in producing Malaysia's Peer Review Report. Malaysia also wishes to extend its gratitude to the Global Forum Secretariat, the Peer Review Group and its other exchange of information (EOI) partners for their invaluable input and contribution to its evaluation.

Malaysia shares the conclusions of the review report, which have positively reflected the significant improvement undertaken since the First Round of Review. This demonstrates the progress made and Malaysia has been assessed to have achieved a high level of compliance with the internationally agreed tax standards, especially in the area of EOI and transparency. At the same time, the Government of Malaysia acknowledges the recommendations put forward in the report and confirm its readiness to address the concerns appropriately, with the aim to further improve its EOI framework in practice. These include developing comprehensive beneficial ownership (BO) reporting framework to strengthen the BO requirement of the relevant entities as well as ensuring the effectiveness of the Case Management System-EOI to further refine the EOI on request practices.

Malaysia has a longstanding commitment to the EOI through its extensive bilateral tax treaty and tax information exchange agreement network, and is committed to maintaining a broad EOI network with all interested and appropriate partners in accordance with the best practices for the effective implementation of the international standards.

20. This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

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GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report on the Exchange of Information on Request MALAYSIA 2019 (Second Round)

The Global Forum on Transparency and Exchange of Information for Tax Purposes is a multilateral framework for tax transparency and information sharing, within which over 150 jurisdictions participate on an equal footing.

The Global Forum monitors and peer reviews the implementation of international standard of exchange of information on request (EOIR) and automatic exchange of information. The EOIR provides for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. All Global Forum members have agreed to have their implementation of the EOIR standard be assessed by peer review. In addition, non-members that are relevant to the Global Forum's work are also subject to review. The legal and regulatory framework of each jurisdiction is assessed as is the implementation of the EOIR framework in practice. The final result is a rating for each of the essential elements and an overall rating.

The first round of reviews was conducted from 2010 to 2016. The Global Forum has agreed that all members and relevant non-members should be subject to a second round of review starting in 2016, to ensure continued compliance with and implementation of the EOIR standard. Whereas the first round of reviews was generally conducted as separate reviews for Phase 1 (review of the legal framework) and Phase 2 (review of EOIR in practice), the EOIR reviews commencing in 2016 combine both Phase 1 and Phase 2 aspects into one review. Final review reports are published and reviewed jurisdictions are expected to follow up on any recommendations made. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

This report contains the 2019 Peer Review Report on the Exchange of Information on Request of Malaysia.

Consult this publication on line at ***https://doi.org/10.1787/d422824d-en***.

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