



**Asia-Pacific
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Vulnerabilities of Specialists and Professional Intermediaries Exploited in Concealing Beneficial Ownership

Submitted by: Malaysia



**Capacity Building Workshop on Exposing the
Unseen Hands: Tackling Concealment of
Beneficial Ownership
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Capacity Building Workshop on Exposing the Unseen Hands: Tackling Concealment of Beneficial Ownership

Session 4:

Vulnerabilities of specialists and professional intermediaries exploited in concealing beneficial ownership

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BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA

Outline of Presentation



- 1) Overview of Malaysia's AML/CFT Framework
- 2) Roles of Professional Intermediaries in Malaysia's Context
- 3) National Risk Assessment 2017 – Sectoral Risk of Professional Intermediaries
- 4) Vulnerabilities of Professional Intermediaries
- 5) Malaysia's Overall Approach on Transparency of Beneficial Owners
- 6) Legal Requirements on Identification of Beneficial Owners
- 7) Supervisory & Monitoring Approach

Malaysia's AML/CFT Framework

Comprehensive framework to prevent and combat ML/TF activities



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Legal Framework

- Provision of laws in relation to both **preventive** and **combative** measures
- Enforced by multi-agencies
- Powers:
 - a) competent authority, i.e. BNM;
 - b) law enforcement agencies;
 - c) supervisory authorities
- Inclusion of:
 - a) reporting institutions; and
 - b) serious offences (predicate offences)

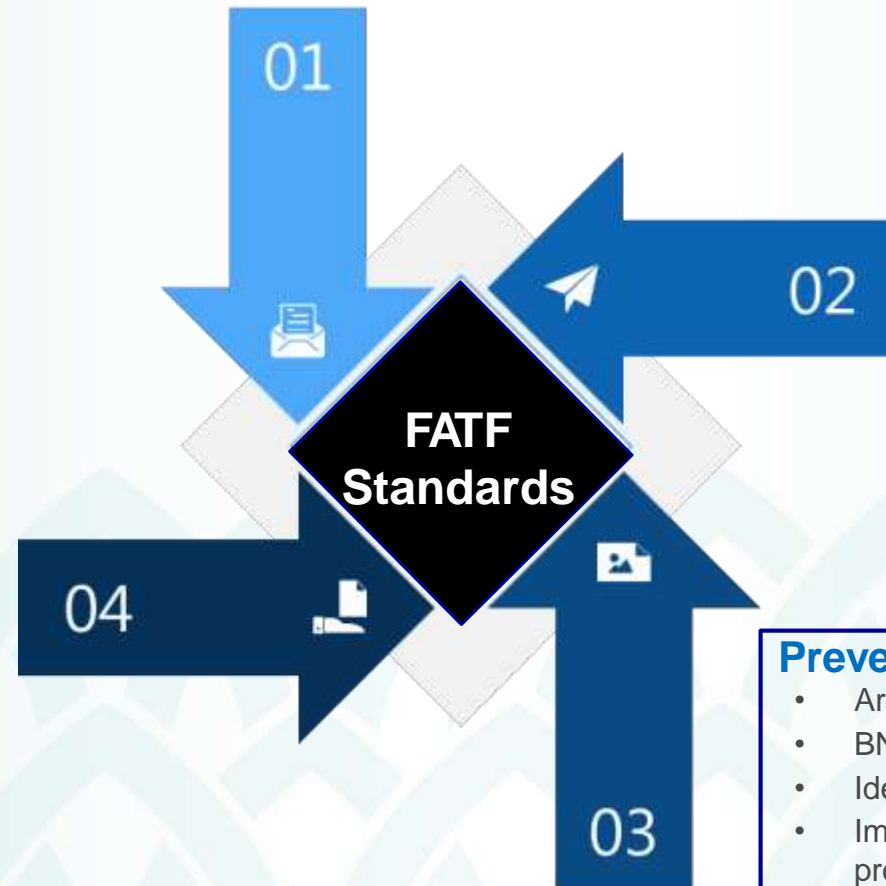
Domestic & International Cooperation

Domestic

- National Coordination Committee to Counter Money Laundering for integrated approach across 16 Ministries & Agencies
- DNFBP Working Groups for collaboration among licensing bodies, self regulated bodies, industry associations and RIs
- Identify & respond to emerging risks through National Risk Assessment

International

- MOUs and strategic partnership with foreign FIUs and counterparts
- Strong network with international/regional bodies
 - ✓ FATF, APG, Egmont Group of FIUs



FATF
Standards

01

02

03

04

Combative Measures: FIU & LEAs

- Adequate investigation & enforcement powers (incl. freezing, seizure and
- Fully-functional FIU in BNM
- AML/CFT Units set-up in key law enforcement agencies (LEAs)
- Structured training programs for financial investigators

Preventive Measures: Reporting Institutions

- Around 22,000 RIs
- BNM as competent authority (incl. power of supervision)
- Identification of institutional risks
- Implementation of effective AML/CFT compliance programme to detect and deter ML/TF activities
- Submit STRs and CTRs to FIED, BNM where relevant

National Risk Assessment (NRA) 2017: Sectoral Risk Assessment



Professional intermediaries are assessed as having “medium high” and “medium” net ML risk and TF risk, respectively

1 Assessment of ML and TF inherent risks and control measures by sectors of DNFBPs

Control Measures

| | | | | |
|------------|--|--|---|------|
| Weak | | <ul style="list-style-type: none"> Other Financial Services Providers* Jewelers (TF) | <ul style="list-style-type: none"> Jewelers (ML) | |
| Marginal | <ul style="list-style-type: none"> R Estate Agents (TF) Cosecs (TF) Trust Companies (TF) Labuan Trust Companies (TF) Lawyers (TF) Accountants (TF) | <ul style="list-style-type: none"> Non-Bank Financial Institutions* R Estate Agents (ML) Cosecs (ML) Trust Companies (ML) Labuan Trust Companies (ML) Lawyers (ML) Accountants (ML) | | |
| Acceptable | <ul style="list-style-type: none"> Gaming Outlets (TF) | <ul style="list-style-type: none"> Gaming Outlets (ML) | | |
| Strong | | <ul style="list-style-type: none"> Casino (TF) | <ul style="list-style-type: none"> Casino (ML) | |
| | Low | Medium | Medium High | High |

2 **Key Contributor**
Higher risk services offered / provided by the gatekeepers which are vulnerable to be abused/misused by the criminals to conceal beneficial ownership information

3 **Net Risk**

Inherent Risk



Vulnerabilities of Professional Intermediaries

Commonly associated with the practices and services offered by professional intermediaries to conceal beneficial owners



Common Practices & Services Offered

- 1 Establishing **legal persons, arrangements** and **shelf companies**
- 2 Providing **nominees** (including directorship and shareholding), **virtual office** and **mailbox services**
- 3 Facilitating transactions through **trust accounts** or **client accounts**, including purchasing or sale of **real property**
- 4 **Legal professional privilege** (LPP) and **client confidentiality**
- 5 Providing advice on **tax compliance**, as well as services to clients and intermediaries **domiciled internationally**
- 6 **Limited** AML/CFT obligations or **insufficient** awareness and compliance



corresponding vulnerabilities based on the practices and services offered....

- 1 Opacity of beneficial owners through layers of entities and shelf companies may lend legitimacy through corporate history and pre-established bank accounts
- 2 Disguising the true controllers and beneficial owners of a legal person, its assets, and its transactions
- 3 Distancing criminals from the source of illegal activities or funds through placement, layering and integration
- 4 Using LPP and client confidentiality to protect the disclosure of the identity of the beneficial owner of assets
- 5 Avoiding taxation obligations and deception and fraud perpetrated by criminal clients, complicit foreign professionals, or unwitting intermediaries
- 6 Lack of awareness and understanding lead to higher ML/TF risks

Source: <https://www.fatf-gafi.org/media/fatf/documents/reports/FATF-Egmont-Concealment-beneficial-ownership.pdf>

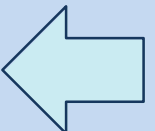
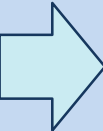
Addressing Vulnerabilities of Professional Intermediaries – Malaysia’s Overall Approach



Malaysian requirements on transparency of beneficial ownership (BO) are mainly based on the FATF Recommendation



FATF Rec 24: One or more ways to obtain and hold BO information

| 1 Company Registries | AND/OR | 2 Companies | AND/OR | 3 Existing Information Held... |
|---|--|---------------|--|---|
| <p>Obtain and hold up-to-date information on the beneficial ownership of the companies</p> | <p>a) Obtain and hold up-to-date information on the companies' beneficial ownership</p> | <p>AND/OR</p> | <p>a) FIs and/or DNFBPs: Rec 10 & 22 - AML/CFT requirements for CDD, EDD, ODD, record keeping and retention and reliance on third parties under the AMLA and relevant guidelines</p> | |
| | <p>b) Take reasonable measures to obtain and hold up-to-date information on the companies' beneficial ownership</p> | | <p>b) Other competent authorities c) Companies d) Stock Exchanges</p> | |
| <p>MALAYSIA's position</p>  | <p>1 Requirements on legal entities:</p> <p>a) To identify and verify their BO</p> <p>b) To keep the BO information accurate and up-to-date and can be accessed in a timely manner</p> <p>c) To notify the Registrar of the BO information including any changes thereof as well as providing access of the BO information</p> <div data-bbox="1174 822 1569 1125" style="border: 1px solid black; padding: 5px; margin: 10px auto; width: fit-content;"> <p>Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons</p> <p>Amendments to the Companies Act 2016</p> </div> | | <p>2 AML/CFT Requirements on Reporting Institutions:</p> <p>a) To identify and verify their BO</p> <p>b) To keep the BO information accurate and up-to-date</p> <p>3 Other Requirements</p> <p>a) Requirements by Bursa Malaysia on listed companies</p> <p>b) Information held by other authorities i.e. IRB for tax purposes</p> | <p>Anti-Money Laundering, Terrorism Financing and Proceeds of Unlawful Activities Act 2001</p> <p>AML/CFT Guidelines issued by the respective supervisory authorities e.g. BNM, SC & LFSA</p>  |

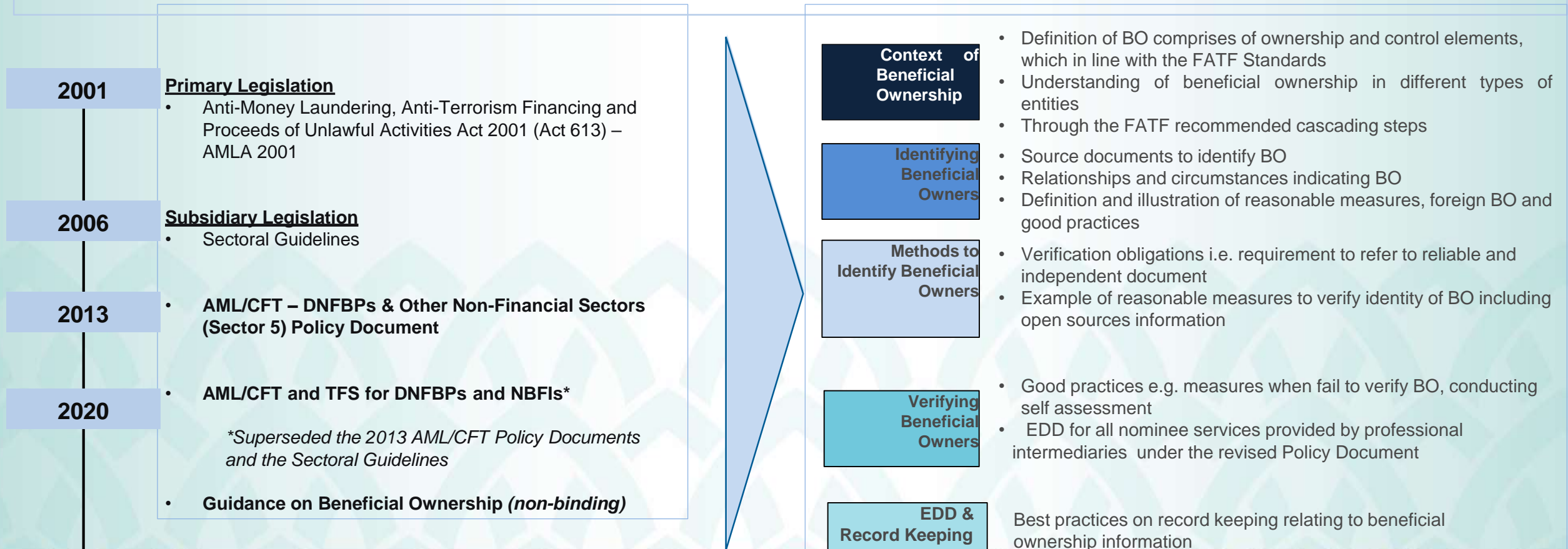
Regulatory and monitoring approaches

Addressing Vulnerabilities of Professional Intermediaries – Malaysian Regulatory Approach (through AML/CFT Regime)



Invocation of AML/CFT requirements on professional intermediaries i.e. lawyers, accountants, company secretaries and trust companies as the reporting institutions under the AMLA 2001 and regulatory instruments

Malaysian AML/CFT laws and regulations imposes the requirements on reporting institutions to identify and verify beneficial owner, through the AML/CFT Policy Document and complemented by the Guidance on Beneficial Ownership



Addressing Vulnerabilities of Professional Intermediaries – Malaysian Supervisory and Monitoring Approach

Supervisory approach to ensure compliance with AML/CFT requirements by reporting institutions



1 Financial Intelligence and Enforcement Department (FIED), Bank Negara Malaysia as the AML/CFT supervisor for DNFBPs and NBFIs

2 Compliance with AMLA & subsidiary legislations:
a) AMLA 2001
b) AML/CFT and TFS for DNFBPs and NBFIs

3 Effectiveness of control measures
a) Assessing compliance level of RIs
b) Assessing effectiveness of AML/CFT control measures put in place
c) Creating awareness among the reporting institutions of their reporting obligations
d) Assessing the adequacy of AML/CFT control measures put in place against ML/TF risks

4 Scope of Supervision



On-Site Examination

- a) Conduct examination on HRRIs to assess level of risk and assess compliance with AML/CFT/CPF requirements
- b) "Creating continuous supervisory presence within the sectors"



Off-Premise Examination

Conduct examination on HRRIs at BNM's premises or remotely to assess compliance with AML/CFT/CPF requirements

5 Role of Supervisors



Off-Site Supervision

- a) RIs provide relevant data for ML/TF risk assessment and compliance level
- b) RIs perform self-assessment on compliance with AML/CFT/CPF requirements (i.e. Data and Compliance Report)



Collaboration with LAs/SRBs

- a) Joint supervision with licensing authorities for companies secretaries and trust companies
- b) Designation of the licensing authority (LA) as AML/CFT supervisory authority
- c) Possibility of delegation of AML/CFT supervisory powers to selected self-regulatory bodies (SRBs)
- d) Train-the-trainer programme to train officers from LA & SRBs to conduct AML/CFT training independently



Awareness

- a) Awareness programme for higher risk sectors on AML/CFT/CPF requirements
- b) National AML/CFT Compliance Programme: Comply To Protect
- c) Industry-led awareness: Train-the-Trainers

Thank You

If you have any question regarding the contents of the presentation, please email to nirmala@bnm.gov.my and farhan@bnm.gov.my



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