

**NATIONAL SEMINAR
ON ANTI MONEY LAUNDERING
AND COUNTER TERRORISM
FINANCING 2014**

- *Non Profit Organisation (NPO)*

30 September 2014

Presentation Outline

- Overview of Labuan FSA
- FATF Requirements and Expectations
- Requirements for Labuan Foundation
- AML/CFT Requirements for NPO
- Conclusion

Overview of Labuan FSA



Regulatory Authority for Labuan IBFC

Prior 1996



BANK NEGARA MALAYSIA
CENTRAL BANK OF MALAYSIA



Suruhanjaya Sekuriti
Securities Commission
Malaysia



SURUHANJAYA SYARIKAT MALAYSIA
COMPANIES COMMISSION OF MALAYSIA

Since 1996



OBJECTIVES

- ❖ To promote and develop Labuan as an international centre for business and financial services
- ❖ To act as the central regulatory, supervisory and enforcement authority of the Labuan IBFC
- ❖ To develop national objectives, policies and priorities for the orderly development and administration of the Labuan IBFC

AML/CFT Framework in Labuan IBFC

- ✓ Bank Negara Malaysia – Competent Authority
- ✓ Labuan FSA is the enforcement agency under the AMLATFA to oversee activities conducted in Labuan IBFC and administrator of Labuan laws
- ✓ Authorized to access information from all Labuan reporting institutions
- ✓ Labuan FSA issued Guidelines on AML/CFT in line with FATF 40 Recommendations
 - Banking Sector
 - Insurance and Takaful Sector
 - Trust Company Sector
 - Capital Market and Other Business Sectors
- ✓ All reporting institutions are required to conduct due diligence on its customers
- ✓ All domestic law enforcement agencies must consult with LFSA's if conducting search/freezing of Labuan financial institution
- ✓ **AMLATFA overrides all secrecy provisions in Labuan laws**

FATF Requirements and Expectations



FINANCIAL ACTION TASK FORCE (FATF)



FATF - An inter-governmental body

Established : 1989

Members: 36, including 2 regional organisations

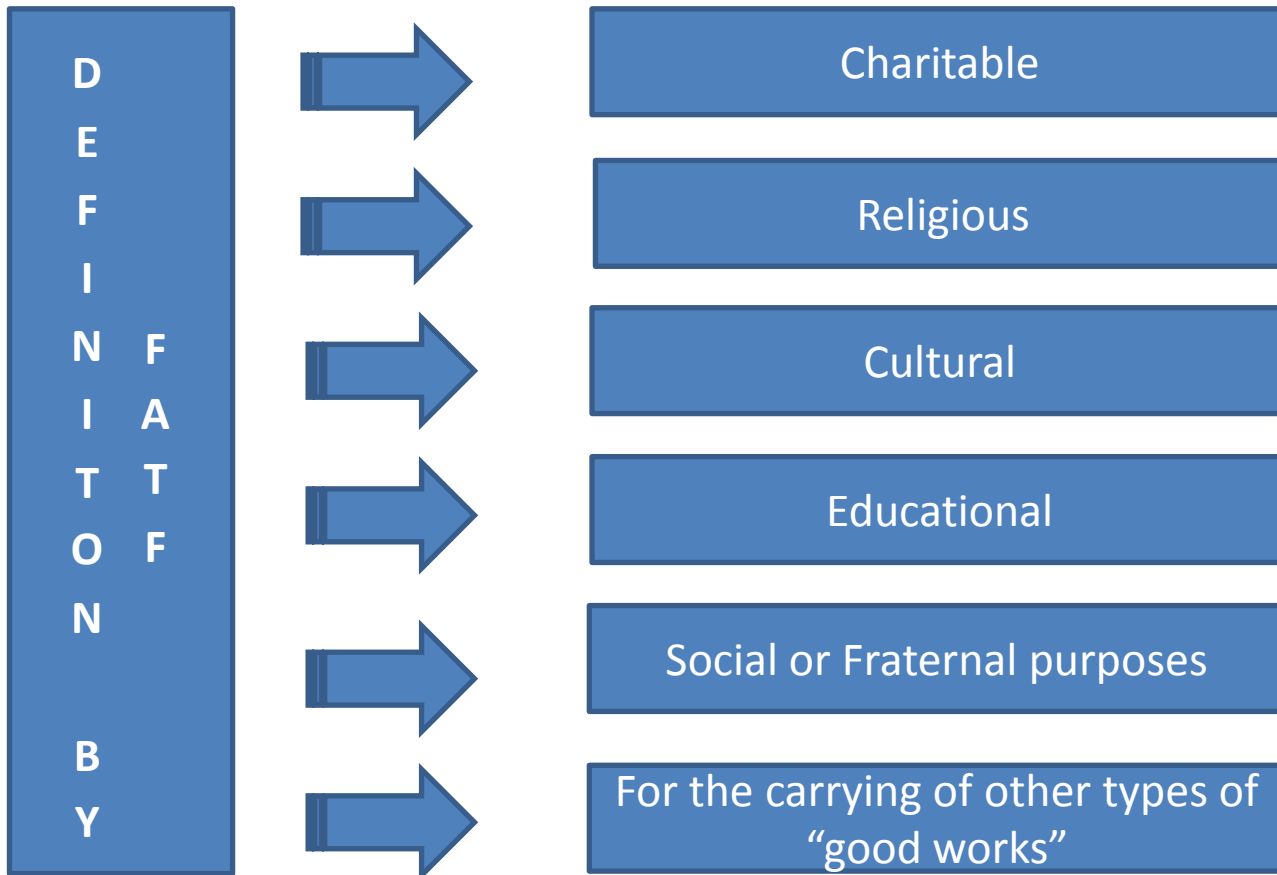
- ❑ The objectives - **to set standards and promote effective implementation** of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the **integrity of the international financial system.**
- ❑ A **“policy-making body”** which works to generate the necessary political will to bring about **national legislative and regulatory** reforms in these areas.
- ❑ Developed a series of **Recommendations** that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction.
- ❑ First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and **most recently in 2012** to ensure that they remain up to date and relevant, and they are intended to be of universal application.
- ❑ The **FATF monitors the progress** of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally.
- ❑ In collaboration with other international stakeholders, the FATF works to **identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.**

FATF's Recommendations

Recommendation	Action
Recommendation 1	Risk based approach to counter financing of terrorist (CFT)
Recommendation 5	Members should criminalise financing of terrorist acts including terrorist organisations and individual terrorists
Recommendation 6	Targeted financial sanctions in CFT – ensure that “ funds or other assets ” should not be made available “directly or indirectly ” to a supporter of terrorism under international or national sanctions lists
Recommendation 8	To prevent, detect and disrupt the abuse of NPO sector for terrorism financing purposes
Recommendation 24 and Recommendation 25	Transparency and beneficial ownership of legal persons and arrangements – adequate, accurate and timely information should be maintained on the beneficial ownership – can be obtained and accessed in a timely fashion by competent authorities

FATF: Definition on NPO

Refers to a **legal person** or **arrangement** or **organization** that primarily engages in ... raising or disbursing funds for purposes such as ...



FATF's Recommendation 8 - NPO Sector Vulnerabilities

Non-profit organisations are particularly vulnerable for financing of terrorism, and countries should ensure that they cannot be misused :

- 1 by terrorist organisations posing as legitimate entities
- 2 to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures
- 3 to conceal or obscure the clandestine diversion of funds intended for legitimate purposes to terrorist organisations

Categories of Risk by FATF

Diversion of funds

The diversion of funds was a significant method that focused on the substantial financial resources within the sector

Affiliation with a terrorist entity

NPOs or directing officials maintained an affiliation with a terrorist entity, either knowingly or unknowingly

Support to recruitment

Abuse to provide support to recruitment efforts by terrorist entities

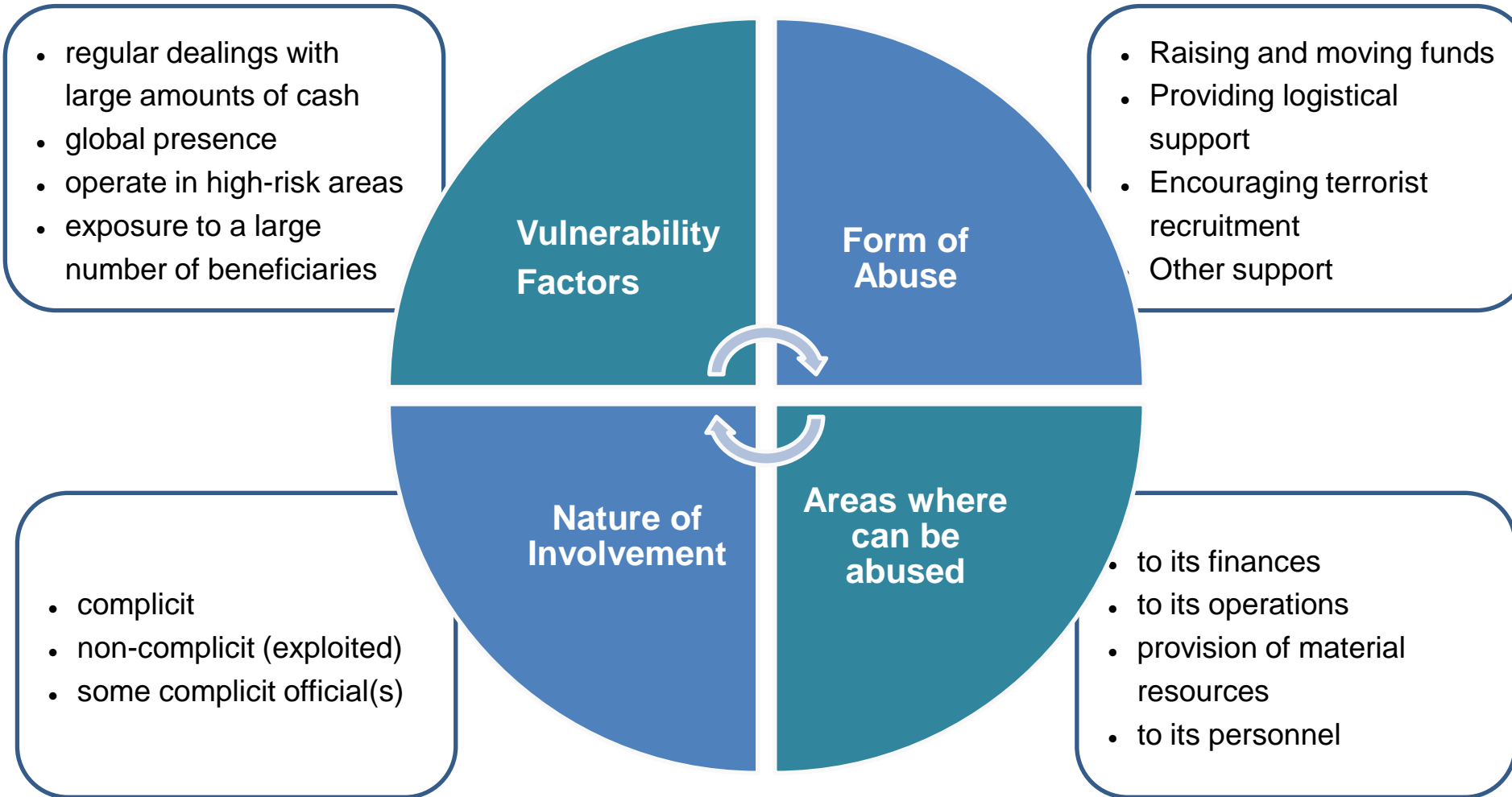
Abuse of programming

Targeted for abuse programming

False representation

Abuse NPO sector through false representation

NPO Sector Vulnerabilities



FATF Expectations on NPO

	Recommendation 8 - NPO
i)	Maintain information on : a) the purpose and objectives of the NPO's stated activities b) the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustee
ii)	Issue annual financial statements that provide detailed breakdowns of income and expenditures
iii)	Have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities
iv)	Be registered
v)	Follow a "know your beneficiaries and associated NPO's rule
vi)	Maintain record keeping (domestic and international transactions) and make the information in (i) and (ii) above, and make these available to competent authorities upon appropriate authority

Note : Associate NPOs includes foreign branches of international NPOs

Requirements for Labuan Foundation



Governance and Operation Requirements

Appointment and Duty of the Labuan Foundation Officer

- The officer of the Labuan foundation who is duly appointed by the founder shall be responsible for the administration of the Labuan foundation.

- The officer may also be the founder or beneficiary of the Labuan foundation provided that he is not a council member. Must not be disqualified pursuant to Section 37 of LFA.

Appointment and Duty of Council Member

- The founder may also appoint a council for the Labuan foundation provided that he is not an officer of the Labuan foundation:
 - to ensure compliance by the Labuan foundation and its officer with the charter of the foundation and provisions of the LFA

 - be responsible for general supervision of the management of the foundation by its officer

 - to attend meeting requirement if appointed

Governance and Operation Requirements

Duty of Labuan Foundation Secretary

- All submissions must be filed through the secretary of the Labuan foundation to ensure the validity, veracity and authenticity of all submissions to the authority.

Record Keeping

- The accounting records and other relevant records shall be kept at the registered office of the Labuan foundation or such other place in Labuan as the officers think fit and shall at all times be ready to inspection by the council members, supervisory person, officers, and the approved auditor, if appointed.

Fit and Proper Person

- To ensure founder, council member, officer and secretary remain as fit and proper throughout their appointment.

Anti Money – Laundering, Anti Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFA)

- Every Labuan foundation shall ensure compliance with the AMLATFA 2001

Governance and Operation Requirements

Special Requirements

- ❑ A Labuan charitable foundation that **solicits donation from the public** shall comply with :-
 - Appoint a council of at least three (3) fit and proper persons. The majority of the council members shall be independent of the founder
 - Appointment of a supervisory person for the foundation who is fit and proper in accordance to the Guidelines on Fit and Proper Person
 - Provide information memorandum or such other information document for the public i.e name of foundation, purpose and object of the foundation, list of its founder, council members, supervisory person, officer, secretary and etc.
 - Submit a proposed general operating plan, which include the management property in regard to the utilization and distribution of the property, the strategy of the foundation including its investments and other related information
 - Submit **annual audited accounts** to Labuan FSA within six (6) months after the close of each financial year of the foundation

AML/CFT Requirements for NPO



Requirements for NPO

- In compliance with the AMLATF Act 2001
- Be fit and proper person
- Ensure check and balance and no conflict of interest.
- Maintain information on the purpose, objectives of the NPO's and the identity of person(s) who own, control or direct their activities, including senior officers, board members and trustee
- Be transparent an issue annual financial statements that provide detailed breakdowns of income and expenditures
- Have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities
- Maintain record keeping (domestic and international transactions and make these available to competent authorities upon request

NPOs: Risk-Based Approach Application

Risk Management Functions

Identify, assess and understand the exposures to ML/TF risks and keep the assessment up-to-date and documented

- Nature, Scale and Complexity of the NPOs' activities and ML/TF risk profile.

Risk Assessment

Risk Control and Mitigation

Based on information – consider risk factors (e.g. beneficiary, country or geography, and others). Facilitate on-going monitoring

- Policies, controls and procedures to manage identified risk

Risk Profiling

NPOs: Due Diligence Process

Identification

- Identify
- Sight ID Document

When DD is required ?

- Establishing relationship – donors or recipient of funds.
Follow a “know your beneficiaries and associated NPO’s rule
- It has any suspicion of ML/TF, regardless of the amount
- It has any doubt about the veracity or adequacy of previously obtained information

On-Going Due Diligence

- Review and update risk profile
- Keep up-to-date documents,
- Data or information collected
- Shall commensurate with the level of ML/TF risks posed

High-Risk and Non-Cooperative Jurisdictions



FATF PUBLIC STATEMENTS – 27 June 2014

Jurisdictions subject to a FATF call on its members and other jurisdictions to apply **countermeasures** to protect the international financial system from the on-going and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdictions*.

Iran

Democratic People's of Republic of Korea (DPRK)

Jurisdictions **with strategic AML/CFT deficiencies** that have not made sufficient progress in addressing the deficiencies or have not committed to an action plan developed with the FATF to address the deficiencies. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction,

Algeria

Indonesia

Ecuador

Myanmar

Conclusion



Conclusion

NPO needs to move one step ahead beyond the COMPLIANCE with the AML/CFT requirements or any rules and regulations set by REGULATOR

Do it for the integrity purposes and benefit of the NPO itself

What is important for NPO is to ask and answer:

How well do NPO understand their vulnerabilities and comply with the measures to protect themselves from the threat of terrorist abuse?

THANK YOU

www.labuanfsa.gov.my

Disclaimer

The information contained herein is of a general nature and should not be regarded as offering a complete explanation of the business of Labuan IBFC or Labuan FSA.