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**Executive summary**

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## II. Executive summary

### Malaysia

#### 1. Introduction: overview of the legal and institutional framework of Malaysia in the context of implementation of the United Nations Convention against Corruption

Malaysia signed the Convention on 9 December 2003 and ratified it on 24 September 2008. The Convention entered into force for Malaysia on 24 October 2008.

The implementation by Malaysia of chapters III and IV of the Convention was reviewed in the fourth year of the first review cycle, and the executive summary of that review was published on 30 May 2013 ([CAC/COSP/IRG/I/3/1/Add.1](#)).

The legal system in Malaysia is based on a set of written and unwritten laws. Among the written laws are the Federal Constitution together with the Constitutions of the 13 states, legislation enacted by the Parliament and State Assemblies, and subsidiary legislation. The unwritten laws comprise the principles of English common law adapted to local circumstances, case law and local customary law.

Malaysian courts follow the doctrine of transformation in applying international treaties, i.e., they have to be transformed into domestic law by means of an act of Parliament.

The national legal framework against corruption includes, principally, the Malaysian Anti-Corruption Commission (MACC) Act 2009 (Act No. 694); the Anti-Money-Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA); and related government regulations, orders, circulars and instructions. Malaysia is party to a number of international agreements on crime control, crime prevention and international cooperation, and also applies the Convention directly for international cooperation.

Malaysian enforcement authorities cooperate through different mechanisms and networks, including the Financial Action Task Force (FATF), Asia-Pacific Group on Money-Laundering, the International Criminal Police Organization (INTERPOL), the Association of Southeast Asian Nations Chiefs of Police and the Egmont Group of Financial Intelligence Units.

Institutions involved in preventing and countering corruption include: MACC, Prime Minister's Department (PMO), Royal Malaysian Police (RMP), National Audit Department, Accountant General's Department, Financial Intelligence Unit (FIU), Bank Negara Malaysia (BNM), Companies Commission Malaysia (CCM), Securities Commission Malaysia (SC), Labuan Financial Services Authority (LFSA), Ministry of Finance, Public Service Commission, Public Service Department, Enforcement Agency Integrity Commission, Public Complaints Bureau in PMO (PCB), as well as Institute of Integrity Malaysia (INTEGRITI) and Malaysian Anti-Corruption Academy. The Attorney General's Chambers plays a key role in the field of international cooperation and asset recovery. A national coordination committee to counter money-laundering has also been established.

#### 2. Chapter II: preventive measures

##### 2.1. Observations on the implementation of the articles under review

*Preventive anti-corruption policies and practices; preventive anti-corruption body or bodies (arts. 5 and 6)*

Malaysia's anti-corruption policies are contained in the country's penal, civil and administrative laws, rules and regulations that safeguard public law and order, and that uphold integrity, transparency and accountability of government and the private sector. Those policies are incorporated in various policy documents, such as

government service circulars, government guidelines, letters, and related documents, as well as the country's development agenda (five-year plans).

Overarching those anti-corruption initiatives, Malaysia has a national integrity plan (NIP), which is spearheaded by INTEGRITI in collaboration with other government and private-sector actors, as well as a government transformation plan (GTP), which features anti-corruption as one of the seven National Key Results Areas.

The prevention of corruption is one of the functions of MACC, under sections 7 (c) to (e) of MACC Act 2009, to ensure efficiency and accountability of government administrative practices, systems and procedures. In addition, a number of administrative measures are in place to uphold integrity in both the public and private sectors. The MACC Act 2009 further promotes the participation of society.

Monitoring and evaluation of anti-corruption measures of MACC is conducted by three independent oversight committees and two panels of MACC, and through administrative orders of the Prime Minister.

Evaluation of the effectiveness of strategies and programmes to enhance integrity is also conducted under NIP and GTP. Several policies under GTP have been revised to reflect the outcomes and evaluation of monitoring, and several MACC policies have also been focused to make them more targeted and effective.

Coordination of the implementation of anti-corruption policies for GTP is ensured by the Performance Management and Delivery Unit (PEMANDU) in PMO, which oversees the implementation of the 21 initiatives under GTP, while the coordinating agency for the implementation of NIP is INTEGRITI. With respect to MACC, coordination and monitoring is carried out by the Prevention and Education divisions and by independent oversight committees. MACC also monitors 887 integrity units, which are set up within ministries, departments and government agencies. Those integrity units are tasked with six core functions listed in Service Circular No. 6 of 2013. With respect to overall coordination, the Minister for Governance and Integrity calls monthly coordination/governance meetings, and coordination is effected by administrative orders of the Prime Minister.

In terms of the budget, each year the government allocates a budget to MACC, INTEGRITI, PEMANDU and the National Key Results Areas to implement anti-corruption programmes and activities.

Several surveys and a risk assessment of areas or sectors vulnerable to corruption have also been conducted.

There is no systematic approach to the review and evaluation of legal instruments, which is carried out on an ad hoc basis by each governmental agency, with some directives provided by the Cabinet or Prime Minister. Civil society is indirectly involved, through its membership on the MACC oversight committees.

MACC is the principal institution in Malaysia tasked with corruption prevention. Pursuant to section 7(f) and (g) of the MACC Act, the Commission is mandated to educate public authorities, public officials and the public about corruption, to foster public support for anti-corruption initiatives, and to increase knowledge about corruption prevention.

There are legal safeguards for the independence of MACC, and oversight is exercised by five independent committees who report annually to Parliament. A draft legal amendment would enshrine the procedure for the appointment and removal of the MACC Chief Commissioner in the Constitution.

*Public sector; codes of conduct for public officials; measures relating to the judiciary and prosecution services (arts. 7, 8 and 11)*

Malaysia has adopted comprehensive measures and procedures governing the recruitment, hiring, retention, promotion, retirement and discipline of civil servants, principally in the Services Commission Act and relevant government regulations,

orders, circulars and instructions. Additional measures for the selection to public positions deemed vulnerable to corruption apply to certain categories of officials, such as RMP, MACC and other law enforcement agencies. Rules for rotation are in place under Service Circular No. 3 of 2004 entitled, “Guidelines on Transfer of Public Officials”. There is currently no explicit regulation for appealing against decisions in the selection or recruitment into the public service.

Several codes of conduct for public entities have been adopted. Those include the principal code for all Government officers (Public Officers (Conduct and Discipline) Regulations 1993 P.U.(A) 395 (CD-R)) and a separate code applicable to statutory bodies. Codes of conduct have also been adopted by individual ministries and agencies, as well as parliamentarians (MPs) and the judiciary. The standards are reviewed and evaluated regularly and have been amended several times. The Public Service Department handles all civil service matters, including disciplinary proceedings, reviewing current regulations and conducting studies on civil service performance.

Malaysia has established legal measures and an administrative framework to regulate conflicts of interest in the public sector, principally in CD-R and related service circulars. Regulations on gifts and entertainment have been adopted. Apart from asset disclosures (see art. 52), there is currently no requirement for public officials to disclose potential conflicts of interest, with the exception of members of the Tender Board during the procurement process.

For elected public officials, conflicts of interest are regulated upon their election to office (arts. 48 (1) (c), 56 (5), Federal Constitution). However, there is no requirement for candidates to disclose their assets. Pursuant to the code of ethics for MPs, officers of the ruling political party must declare their assets biennially within the party.

Political party financing is not currently regulated in Malaysia, although several steps have been taken in that direction. Under the Election Offences Act, candidates must file statements of election expenses, which are available for public inspection (sects. 23 and 24).

A common reporting system is in place for members of the public and public officers alike. In addition, integrity units established in all government agencies are responsible for detection, verification and complaints management (Service Circular No. 6 of 2013).

The selection procedure for judges under the Judicial Appointments Commission (Selection of Judges of the Superior Courts) Regulations 2009, as well as the Judges’ Code of Ethics 2009 and the Judges’ Ethics Committee established under the Judges’ Ethics Committee Act 2010 (Act No. 703), among other measures, appear to provide a comprehensive framework to strengthen integrity and prevent opportunities for corruption among members of the judiciary. A training programme for judges, with dedicated resources allocated by the Judicial Appointments Commission for a judicial academy, is also in place.

Additional measures exist for judges of subordinate courts, including a judicial rotation system (for magistrates, registrars and lower court officers). Training for subordinate court judges is provided by the Judicial and Legal Training Institute (ILKAP).

Measures against conflict of interest, impartiality and bias of judges, and for the enhancement of transparency in the judicial process, include accessibility of court judgments and rules on the transfer of cases and recusal of judges (see, for example, Rules of Court 2012, Order 42; sects. 417 and 439, Criminal Procedure Code; *Residence Hotel and Resorts Sdn Bhd v. Seri Pacific Corp Sdn Bhd* [2014] 10 MLJ 413).

All officers in the legal and prosecutorial services (including those in MACC) are public officers and therefore subject to CD-RCD-R and related service circulars, which provide for declarations of assets. In addition, laws, regulations and directives

governing the conduct of prosecutors and of prosecutions have been adopted (subregulation 4 (2), CD-RCD-R; Guidelines for Prosecutors). Specialized training of prosecutors and procedures on case management are in place. The appointment, function, removal and powers of the Attorney General are regulated (art. 145, Federal Constitution).

*Public procurement and management of public finances (art. 9)*

Public procurement is regulated by the Financial Procedure Act 1957 (Revised 1972) (Act No. 61) and the related Treasury Instructions, which stipulate that the procurement of works, supplies and services above the value of RM 500,000 must be done through a tender process. All contractors participating in local tenders must be registered with the Government. International tenders are invited if there are no locally produced supplies or services available. The registration procedure takes 14 days as per the working charter for tenders, and the registration system is linked with CCM. Exemption from registration may be applied in cases of emergency or if specific expertise required is not otherwise available. Furthermore, line ministries are not confined to any single list of registered bidders, as separate registration is conducted for each procurement in question.

All tenders are advertised in the MyPROCUREMENT portal of the Ministry of Finance, and agencies may also advertise in local newspapers. Information on the selection and award procedure (i.e., lowest acceptable bid) is also published in Treasury Circulars.

A failed bidder may complain to a procuring agency, which may cancel a tender if it finds irregularities, or to PCB or MACC. In addition, the Ministry of Finance monitors adherence to procurement rules, and may set up special task forces to investigate complaints. Audits are also important review mechanisms. All procuring agencies have internal audit units that regularly examine weaknesses in and possible breaches of procurement rules. The Auditor General conducts external audits and may order corrective actions. Steps are under way to establish a domestic review procedure, whereby bidders can complain about tender results, registration or the response of procuring agencies.

Several preventive measures have been adopted to enhance integrity in public procurement, including an integrity pact in government procurement. Besides the CD-R, special provisions under Treasury Instruction No. 167 hold controlling officers and procurement personnel accountable for losses incurred, while Treasury Instruction No. 193 provides for regulation on self-declaration of interest for members of the Tender Board. Training for procurement officers is undertaken by the National Institute of Public Administration.

Malaysia promotes transparency and accountability in the management of public finances. The procedure for the preparation of the budget is given in Treasury Instruction Nos. 29-51. Timely reporting on revenue and expenditure by Federal Government agencies is governed by Act No. 61.

Audit units in federal ministries/departments monitor the effectiveness of internal controls. The National Audit Department has developed a rating system to measure controls, and an accountability index was also developed. The reports of the Auditor General are published and presented annually to Parliament. Malaysia undertakes follow-up action to address the findings of the Auditor General's reports; the Auditor General's Dashboard appears to be an effective tool in that regard.

*Public reporting; participation of society (arts. 10 and 13)*

The Government of Malaysia provides platforms for the public to obtain information on the organizations and functions of the public administration through initiatives, such as the open data portal of Malaysia and specialized platforms, such as the Special Taskforce to Facilitate Business (PEMUDAH) "Idea Bank". Malaysia has taken steps towards e-services delivery as a means of simplifying and improving administrative

procedures, led by the Administrative Modernization and Management Planning Unit in PMO.

PCB deals with citizen complaints against the civil service, including negative decisions of public institutions to provide information, and works to counter administrative inefficiency and streamline the delivery of public services. An application for judicial review may also be lodged against an adverse government decision, under Order No. 53 of the Rules of Court 2012 (2 July 2012 P.U. (A)).

Malaysia has adopted several measures to enhance the delivery of government services. Those include the use of key performance indicators and their associated benchmarks by all government agencies, the Malaysian Public Service Commitment 2008, the 2009 GTP, PEMUDAH and the use of client charters.

Nonetheless, it was reported by some counterparts that the application of national secrecy laws such as the Official Secrets Act 1972 limits access to classified information of government agencies.

Apart from two States, Malaysia has no specific legislation regarding access to information. Plans are under way to adopt a federal Freedom of Information Law.

Malaysia promotes public participation in decision-making through the institutionalisation of open-door policies and regular communication between the government and civil society, including consultations on anti-corruption legislation and the effectiveness of MACC. Civil service improvements to stamp out corruption are undertaken together with the private sector and the public is consulted in the preparation of the budget.

MACC has undertaken a series of public information activities and public education programmes that contribute to non-tolerance of corruption. The anonymity of reports to MACC, informers and information are legally protected. The Government of Malaysia further plans to review the Whistle-blower Protection Act 2010 to enhance its effectiveness.

#### *Private sector (art. 12)*

Apart from criminal standards, CCM, SC and LFSA are the main statutory bodies that regulate private sector affairs in Malaysia, including the enforcement of relevant legislation, standards and procedures to prevent corruption. Furthermore, the Malaysia Code on Corporate Governance (MCCG) promotes sound business practices, and listed companies are required to explain in their annual reports how they have complied with MCCG.

The applicable laws and regulations define accounting and auditing standards in the private sector, including the requirement for internal auditing controls. The relevant supervisory institutions are: Malaysian Institute of Accountants, Malaysian Institute of Certified Public Accountants, Malaysian Accounting Standards Board and Financial Reporting Foundation. Criminal penalties are provided for under the Accountant Act 1967.

Malaysia also promotes cooperation between law enforcement agencies and the private sector, including through the Malaysian Corporate Integrity Pledge and the Integrity Pact in Government Procurement.

A regulation prohibiting former public officials from being employed in the private sector after their resignation or retirement was under development at the time of review.

The Government of Malaysia considers bribery a criminal act and does not permit bribes to be deducted from taxes (sect. 39, Income Tax Act 1967 (Act No. 53)). However, there is no specific provision disallowing tax deductibility of bribes in the Income Tax Act 1967 (Act No. 53).

*Measures to prevent money-laundering (art. 14)*

Financial institutions and designated non-financial businesses and professions are subject to comprehensive domestic regulatory and supervisory regimes administered by the three main supervisory authorities, BNM, SC and LFSA. Those regulators have issued almost identical enforceable guidelines pursuant to AMLATFAPUAA. Those rules, in particular the AML/CFT (Reporting Obligations) Regulations 2007, require customer and beneficial-owner identification (customer due diligence (CDD)) on individuals, legal persons, legal arrangements and politically exposed persons, record-keeping and the prompt reporting of suspicious transactions.

Provisions in AMLATFAPUAA require reporting institutions to institute compliance programmes and carry out employee training. The main supervisors have carried out outreach and awareness programmes for reporting institutions and issued various guidance, technical notes and circulars.

Systems are in place to detect and monitor the cross-border movement of cash and negotiable instruments (principally, PART IVA, AMLATFAPUAA).

The 2015 mutual evaluation by FATF and the Asia-Pacific Group on Money-Laundering concluded that Malaysia had a strong legal and regulatory framework for preventive measures. Inter-agency coordination and policy frameworks, BNM's supervision and FIU are its key strengths. Steps have been taken to address the outstanding recommendations, under the coordination of NCC.

**2.2. Successes and good practices**

- The measures to enhance integrity in government agencies and government-linked companies, which make it mandatory for those entities to set up integrity units that have been categorized according to their levels of corruption risk; the annual reports of the MACC panels and committees; and the surveys of public perception are examples of good practices (art. 5 (2))
- The international and regional cooperation efforts of institutions of Malaysia (art. 5 (4))
- The work of different oversight panels and committees that continuously scrutinize the operations of MACC (art. 6 (2))
- Malaysia has assessed and identified risk areas vulnerable to corruption, also within MACC, and has taken measures to mitigate those risks, including through specific staff training and rotation systems (art. 7 (1))
- The use of key performance indicators in all government agencies and their associated benchmarks; the Corporate Directors Leadership and Integrity Course is also noted as a positive measure to strengthen integrity in government-linked companies, among a range of other integrity training programmes offered by institutions (art. 8 (1))
- The Integrity Pact in Government Procurement and the electronic MyPROCUREMENT system of Malaysia (art. 9 (1))

**2.3. Challenges in implementation**

It is recommended that Malaysia:

- Consider enhancing coordination of national and departmental anti-corruption policies (for example, GTP, NIP, MACC laws and policies) — both with regard to their implementation and monitoring, as well as development and revision, to more systematically draw on lessons learned and enhance information exchange (art. 5 (2))
- Consider adopting a more systematic approach to the periodic evaluation and revision of anti-corruption legal instruments, including through consultations with relevant stakeholders (art. 5 (3))

- Continue efforts to establish a Constitutional tenure for the Chief Commissioner of MACC and encourage further attention and appropriate action to advance the matter (art. 6 (2))
- Consider specifying in the relevant regulations the right of appeal of appointment and promotion decisions (art. 7 (1))
- Continue steps toward adopting rules on the financing of political parties and consider adopting requirements for elected officials, prior or upon entry to elected office, to file asset declarations and demonstrate compliance with tax obligations, past and present (art. 7, paras. 2 and 3)
- Consider adopting, in addition to existing asset declaration requirements, systems and procedures for public officials to declare potential conflicts of interest, which would also help further the detection, enforcement and administrative sanctioning, where appropriate, of conflict-of-interest violations (art. 7 (4))
- Consider establishing a mechanism for line ministries to report to the relevant public service authorities on the process of verification of asset declarations of public officials within their departments (arts. 8 (5) and 52 (5))
- Continue efforts to establish a procurement complaints mechanism for aggrieved parties, and encourage the Ministry of Finance more generally to have an overview of the procurement processes followed by line ministries (art. 9 (1)). Malaysia could also consider strengthening the risk-management system in the area of public financial management (art. 9 (2))
- Strengthen procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of its public administration and consider in that context the adoption of access to information legislation at the federal level, bearing in mind the adequate protection of privacy and personal data, including a review of the procedures for the application of national secrecy laws (art. 10)
- Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12 (4))
- Continue efforts to address the remaining issues of the FATF evaluation (arts. 14 and 52)

### **3. Chapter V: asset recovery**

#### **3.1. Observations on the implementation of the articles under review**

*General provision; special cooperation; bilateral and multilateral agreements and arrangements (arts. 51, 56 and 59)*

Malaysia has a strong legal and regulatory framework for asset recovery, and demonstrates effective inter-agency coordination leading to international cooperation on asset recovery. It has bilateral treaties or agreements with a number of countries to facilitate the enforcement of recovery, forfeiture or confiscation orders and may provide mutual legal assistance (MLA) to countries with which it has no treaties or agreements, pursuant to the special direction of a minister (sect. 18, Mutual Assistance in Criminal Matters Act No. 621 (MACMA)). Malaysian procedure requires that any of the above-mentioned orders are to be dated after the issuance of that special direction. However, it is noted that orders received from foreign countries are usually already dated, which implies that in practice the said foreign country will have to issue a new order dated after the date of the special direction.

Malaysia has received several requests on the basis of the Convention in relation to non-treaty partners and has not made any outgoing requests on the basis of the Convention because all outgoing requests thus far have been made to treaty partners.

Malaysia has never refused any MLA requests to date when said requests have met all the requirements under MACMA.

*Prevention and detection of transfers of proceeds of crime; financial intelligence unit (arts. 52 and 58)*

Financial institutions and designated non-financial businesses and professions are subject to CDD requirements under AMLATFAPUAA, supplemented by BNM Guidelines on CDD (including beneficial owner identification), Sectoral Guidelines on Politically Exposed Persons (definition and CDD), Guidelines on ML/CFT Prevention for Capital Market Intermediaries, and LFSA Guidelines.

Violations of the Guidelines attract criminal or administrative sanctions (sect. 86, AMLATFAPUAA) by BNM, SC or a relevant authority.

The Guidelines contain important provisions relating to CDD requirements for legal persons and legal arrangements, a risk-based approach in conducting CDD and enhanced CDD measures. A records-retention period of at least six (6) years under section 17 of the AMLATFAPUAA and the Guidelines (seven (7) years under the SC Guidelines) applies.

A system of sharing financial intelligence with other States is in place (sect. 10, AMLATFAPUAA). As a matter of practice, the law enforcement authorities of Malaysia regularly transmit information relating to criminal matters informally to their foreign counterparts.

The conduct of regulated business such as banking must not be done without a licence (sect. 8, FSA), and is tantamount to a criminal offence. Supervisory examinations ensure that authorized institutions maintain a physical presence and carry on an authorized business (sect. 146, FSA). Guidelines and regulations under AMLATFAPUAA prohibit reporting institutions from establishing relationships with “shell banks” (for example, BNM Guidelines for Banking and Deposit-Taking Institutions).

All public officials are required to make written declarations of properties owned by them, a spouse or child, or held on their behalf (Regulation 10, CD-R; Service Circular No. 3 of 2002 (Ownership and Declaration of Property by Public Officers)). Declarations are made electronically and disciplinary penalties for non-declaration are provided for (para. 29, Service Circular No. 3). Declarations are verified at individual department levels only, in regard to non-compliance or, on a case-by-case basis, as to their contents. All declarations are considered confidential (para. 28, Service Circular No. 3). Judges and magistrates are also required to declare their assets (para. 9, Judges’ Code of Ethics 2009; CD-R).

The asset disclosure requirements apply equally to foreign properties and financial interests.

*Measures for direct recovery of property; mechanisms for recovery of property through international cooperation in confiscation; international cooperation for purposes of confiscation (arts. 53, 54 and 55)*

In Malaysia, elaborate provisions exist for the enforcement of judgments of foreign courts of countries with which Malaysia has reciprocal judgment arrangements. In the absence of a legal provision that explicitly permits a foreign State to initiate civil proceedings in courts in Malaysia, the general provisions of civil litigation under English common law are applied.

There are measures in place to enable victims of crime to be compensated (sect. 426, Criminal Procedure Code). However, the law does not specify recovery mechanisms for foreign States to establish title or ownership of property, or be awarded compensation or damages for injuries, through domestic proceedings.

Requests for enforcement of foreign forfeiture orders are regulated under sections 31 and 32 of MACMA, read in conjunction with Part III Division 4 of MACMA

Regulations 2003. Those regulations allow for the enforcement of an MLA request that is supported by an enforceable, authenticated copy of a foreign forfeiture order. Statistics on the recognition of foreign forfeiture orders were provided.

Money-laundering and corruption offences may be locally prosecuted, and result in the confiscation of property of foreign origin. Section 55 of AMLTFAPUAA and section 40 of MACC Act 2009 make no distinction between property of local origin and foreign origin that may be the subject of a forfeiture order.

Malaysia recognizes non-conviction-based forfeiture (sect. 41, MACC Act 2009; sect. 56, AMLATFAPUAA) and provided statistics on implementation.

There are sufficient provisions under MACMA for the restraint, identification, tracing and freezing of property located in Malaysia that may be the subject of a foreign forfeiture order (sects. 31 (1) (b) and 35 to 37; MACMA Regulation 23 (1) (c) (ii)).

There is no central asset management office in Malaysia. Each law enforcement agency handles the management and preservation of seized assets in accordance with its asset management guidelines. NCC is considering procedures to streamline the process of asset management, including establishing a central asset management office.

Section 19 of MACMA spells out the manner in which requests may be made and the contents of the request, as well as any procedure requested for Malaysia to follow in fulfilling the request. Consultations with requesting States are held and, if no response is received from requesting States, it is the practice of Malaysia not to refuse but to provisionally close cases, so they may be reactivated once additional information is subsequently received from requesting States.

The spontaneous transmission of information is not precluded (section 4, MACMA). As a matter of practice, the law enforcement authorities of Malaysia, especially FIU, RMP and MACC, regularly transmit information relating to criminal matters. AMLTFAPUAA provides for sharing information with foreign counterparts, including for predicate offences (sects. 10, 29 (3), AMLATFPUAA).

#### *Return and disposal of assets (art. 57)*

Measures to dispose of or restore property forfeited to its legitimate owners are contained in Regulation 28, MACMA Regulations 2003. Regulations 28 and 31 provide the legal basis enabling the Government of Malaysia to return confiscated assets to other States and regulate the associated costs. MACMA Regulations further provide for the payment of amounts due under a foreign forfeiture order.

There is no explicit provision that property shall be returned to the requesting State where the relevant offence is embezzlement of public funds or the laundering of embezzled public funds, nor do all treaties provide for that principle.

MACMA provides for the protection of the interests of bona fide third parties, including a legitimate owner or legal person (domestic/foreign). Notice of forfeiture proceedings is given (sect. 41 MACC Act; sect. 61 AMLTFAPUAA; Regulation 31 of MACMA Regulations 2003).

Section 18 of MACMA permits Malaysia to conclude agreements or arrangements on a case-by-case basis for the final disposal of confiscated property.

### **3.2. Successes and good practices**

- The BNM Standard Operating Procedures on Receipt, Analysis and Dissemination of Financial Intelligence with foreign States (art. 52)
- Section 34 of MACMA provides that a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order is in force and is not subject to appeal shall be received in evidence before a court without further proof (art. 54)

- The flexibility of section 19 MACMA, which allows Malaysia to fulfil any request in the manner the requesting State wishes and to the fullest, within legal limits; moreover, detailed guidance and model request forms facilitate the provision of assistance (art. 55 (3))
- Continuous consultation between the requesting and the requested State is a good practice; Malaysia does not in practice refuse requests but closes the cases provisionally until additional information or evidence from requesting States is received (art. 55 (7) and (8))
- Malaysia has enforced the provisions of MACMA resulting in proceeds of property being returned to bona fide third parties (art. 57 (2))

### **3.3. Challenges in implementation**

It is recommended that Malaysia:

- Consider whether a more streamlined procedure to providing assistance to countries with which Malaysia has no treaties or agreements — instead of the current process whereby the Minister issues a special direction — would facilitate cooperation on asset recovery; Malaysia is encouraged to develop an asset recovery guide to clarify procedural requirements for requesting countries (art. 51)
- Specify in the law recovery mechanisms for injured parties to establish title or ownership of property, or be awarded compensation or damages for injuries, through domestic proceedings (art. 53 (a) and (b))
- Strengthen mechanisms for the preservation of property pending confiscation, including through the establishment of a central asset management office, and consider adopting comprehensive asset management guidelines (art. 54 (2) (c))
- Adopt measures providing for the return of proceeds to requesting States in cases of embezzlement of public funds or the laundering of embezzled public funds, including by reviewing relevant treaties (art. 57 (3))