MALAYSIA’S GOVERNMENT PROCUREMENT REGIME

1. INTRODUCTION
The prime objective of the Malaysian Government procurement is to support Government programmes by obtaining value for money through acquisition of works, supplies and services. To meet this objective close attention is given to price factors as well as nonprice factors such as whole life cost, quality, quantity, timeliness, maintenance and warranty. The benefits or value from procurement should commensurate with the costs involved and that the best procurement is well and thoroughly evaluated, reasoned and justified. In this context, the Malaysian Government procurement is based on the following policies, principles, objectives and procedures.

2. GENERAL PROCUREMENT POLICIES, PRINCIPLES AND OBJECTIVES

2.1 GOVERNMENT PROCUREMENT POLICIES
The Malaysian Government Procurement Policies, in general, provide support for the full achievement of the objectives and aspirations of the National Development Policy and Vision 2020 i.e. towards a developed nation status. The principal policies are as follows:-

a) To stimulate the growth of local industries through the maximum utilisation of local materials and resources;

b) To encourage and support the evolvement of Bumiputera (indigenous) entrepreneurs in line with the nation's aspirations to create Bumiputera Commercial and Industrial Community;

c) To increase and enhance the capabilities of local institutions and industries via transfer of technology and expertise;

d) To stimulate and promote service oriented local industries such as freight and insurance; and

e) To accelerate economic growth whereby Government procurement is used as a tool to achieve socio-economic and development objectives.
2.2 PROCUREMENT PRINCIPLES
In general Government procurement is essentially based on the following principles:

a) Public Accountability - Procurement should obviously reflect public accountability entrusted with the Government.
b) Transparency - All procurement regulations, conditions, procedures and processes need to be clear and transparent to facilitate better understanding among suppliers and contractors.
c) Value For Money - Government procurement should yield the best returns for every Malaysian Ringgit spent in terms of quality, quantity, timeliness, price and source.
d) Open And Fair Competition - Processes involving Government procurement should offer fair and equitable opportunities to all those participating or competing in any procurement.
e) Fair Dealing - All acceptable bids will be processed fairly based on current rules, policies and procedures.

2.3 PROCUREMENT OBJECTIVES
Government procurement comprises the following objectives in general:

a) To ensure continuous supply of materials and services to meet the Government needs from the best and reliable sources;
b) To ensure efficient, effective and ethical procurement practices to enable the Government to achieve best value for money without compromising on quality, delivery and other price and non-price factors;
c) To stimulate and encourage the growth and development of local industries through the optimal usage of local resources and materials;
d) To expand and invigorate the local industrial sector by means of transfer of technology and expertise to suit the nation's needs; and
e) To promote alternative and multiple sourcing through supplier/vendor development according to the aspirations and vision of the Government.

3. PROCUREMENT ENTITIES

3.1 MALAYSIAN GOVERNMENT ADMINISTRATION AND MACHINERY
The Malaysian Public Sector and also the Malaysian Government Administration and machinery mainly consist of the following entities:

a) The Federal Government
The Federal Government is, in fact, the Central Government with 25 Federal Ministries headed by their respective Ministers and administrative heads, the Secretary-Generals.
b) The State Governments
There are 13 State Governments within Malaysia implementing state functions along with Federal Departments. The State Governments generate their own revenues and incur their own expenditures even though the Federal Government undertakes projects at the state level agreed upon in the Concurrent List and Federal List in the Constitution of Malaysia.

c) Local Authorities
The Local Authorities constitute the City Councils, Municipalities and District Councils that operate with revenue derived from sources within their jurisdiction and boundaries namely assessment, licensing etc. They also receive financial grants from the Federal Government and respective State Governments. These Local Authorities enjoy financial autonomy although they adhere to the general Government procurement procedures.

d) Statutory Bodies
Statutory bodies are set up under Statute Acts both by the Federal and State Governments. These bodies are normally set up for specific purposes and although they are autonomous, they are also generally governed by Government procurement procedures.

4. LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT

4.1 FINANCIAL AUTHORITY
The Federal Government financial authority is vested with the Minister of Finance and the Secretary-General of the Ministry of Finance with directions from the Minister. In the case of State Governments, the financial authority is vested with the respective Chief Ministers, and the respective State Financial Officers with directions from the respective Chief Ministers. The financial authority in Local Authorities and Statutory Bodies is vested with the respective Chairpersons and the Councils or the Board of Directors.

4.2 FINANCIAL PROCEDURE ACT 1957 (Revised 1972)
The Financial Procedure Act 1957 (Revised 1972), provides for the control and management of the public finances of Malaysia and outlines financial and accounting procedures. It includes procedures for the collection, custody and payment of the public monies of Malaysia and of the States, and also the purchase, custody and disposal of public property and related matters.

4.3 TREASURY INSTRUCTIONS
The Treasury Instructions (TI) detail out financial and accounting procedures and encompass the regulations that need to be adhered to in the management of Government funds including procurement.
4.4 GOVERNMENT CONTRACT ACT 1949
The Government Contract Act 1949 empowers the respective Ministers in the respective ministries to enter into contracts and also empowers the respective ministers to delegate powers to Government Officers to enter into contracts on behalf of the Government.

4.5 TREASURY CIRCULAR LETTERS
Treasury Circulars are issued from time to time to inform, clarify, implement, improve and amend certain policies, rules and procedures whenever required by the Government and financial authorities.

4.6 FEDERAL CENTRAL CONTRACT CIRCULARS
Federal Central Contract Circulars are issued to inform the users on the availability of common user items which are centrally purchased. The Central Contract Circulars normally contain details such as items, name of suppliers, areas of supply and time of delivery. Apart from procurement principles and objectives, most often the Central Contracts objectives are to promote local products and develop vendors.

5. CATEGORIES OF GOVERNMENT PROCUREMENT

5.1 For purposes of procurement, the Malaysian Government procurement has been categorized as follows:
   a) Works
      Works contracts include construction and engineering activities involving infrastructure and structures such as buildings, airports, roads/highways, dams, drainage etc. It is also inclusive of mechanical and electrical aspects of works.
   b) Supplies
      Supplies include the supply of raw, intermediate or finished goods and products for any activity of users. Also included are construction materials, food products, uniforms, vehicles, equipment, spare parts, furniture etc.
   c) Services
      Services include engagement of manpower, expertise and consultants in the areas of feasibility studies, research, designing, surveying, management etc. Other services such as repairs, maintenance and cleaning services are minor activities under this category.
6. TYPES AND MODES OF PROCUREMENT

6.1 DIRECT PURCHASE

a) This procedure allows procurement of supplies and services up to the value of MYR 50,000 directly through the issue of a Government Order to any known suppliers of goods or services consistently supplying goods at acceptable quality and reasonable price. The requirement of registration is exempted.

b) Procurement of works up to the value of RM20,000 may be done through the issue of a Works Indent to a contractor who is registered with the Contractors Services Centre (PKK) and Construction Industry Development Board (CIDB) Malaysia.

6.2 QUOTATION

a) Procurement of supplies and services above the value of RM50,000 and up to MYR 500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All suppliers wishing to take part in quotations must be registered with the Government.

b) Procurement of works above the value of MYR 20,000 and up to MYR 500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All contractors wishing to take part in quotations must be registered with the PKK and CIDB.

6.3 TENDERS

Procurement of works, supplies and services above the value of MYR 500,000 must be done through tender processes. All contractors intending to participate in local tenders must be registered with the Government. International tenders will be invited for supplies and services if there are no locally produced supplies or services available. For specific works, if local contractors do not have the expertise and capability, tenders may be called on a joint venture basis between local and foreign contractors to encourage the transfer of technology. International tenders for works may only be called when local contractors do not have the expertise and capability, and a joint venture is not possible.

7. TENDER PROCUREMENT PROCESS

7.1 SPECIFICATIONS

Ministries and Departments are required to initially prepare tender specifications. For this purpose, a technical committee needs to be formed. Specifications should be as detail as possible to give the bidders a clear idea of what is required or expected. The specifications drawn are functional or performance based although technically
detailed specifications are sometimes used. Compliance to acceptable international standards or their equivalent may also be included in the specifications. However, tailored specifications to suit any brand or country are strictly forbidden. The system provides for an objection from potential bidders, a period of 14 days from the date of issue of tender documents on any tailored specifications for local tender and 28 days for international tender.

7.2 TENDER DOCUMENTS
Tender documents are prepared and distributed at a cost, the minimum being MYR 50. The contents of the tender documents include general and specific terms and conditions, specifications, a copy of agreement, price schedule, delivery period, objection period and the scope of works expected.

7.3 ADVERTISEMENT
All tenders are advertised in at least one local daily in the Malay language. International tenders must be advertised in at least two local dailies i.e one in the Malay language and one in the English language. Procurement opportunities can also be accessed through the procuring agencies’ websites, MyPROCUREMENT portal (http://myprocurement.treasury.gov.my) and MyGovernment portal (www.malaysia.gov.my). Bidders are given a submission period of not less than 21 days for local tenders. For international tenders the submission period may not be less than 56 days.

7.4 SALE OF TENDER DOCUMENTS
Sale of tender documents may commence from the date of publication of advertisement in the dailies. Only contractors fulfilling the local registration requirement may purchase tender documents for local tenders. In the case of international tender, supplies and services contractors are exempted from the local registration requirement. However, works contracts require foreign contractors to register with the CIDB. The requirement to register with CIDB is mandatory for all contractors dealing with the construction industry in Malaysia under an Act of Parliament.

7.5 TENDER DEPOSITS
Local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to furnish a tender deposit ranging from MYR 60,000 for bids below MYR5 million, to MYR 1 million for bids exceeding MYR30 million for supplies and services. For works contracts, bidders are required to furnish tender deposits ranging from MYR 60,000 for contracts below MYR 10 million, to MYR1 million for contracts exceeding MYR100 million.
7.6 CLOSING AND OPENING OF TENDERS
The tender advertisement stipulates the precise date and time of closing and the address to which all tenders must be sent. The tenders may be sent by post or dropped into boxes specially made available for this purpose. Tender proposals by bidders should include the technical and financial proposals prepared separately in two copies and sealed in separate envelopes to facilitate scheduling and independent evaluation. A Tender Opening Committee comprising of senior government officers will open and schedule all the tenders and prepare a schedule of prices quoted. All tenders will be accorded a serial number and the name of bidders will be omitted to enable fair, just and independent evaluation of tenders by the Technical and Financial Evaluation committees.

7.7 EVALUATION OF TENDERS
Evaluation committees will evaluate all tenders based on the criteria set in the tender document. Evaluation is normally done by two separate committees i.e. Technical Evaluation Committee and Financial Evaluation Committee. The evaluation of both committees will result in the ranking of tenders received and the tender secretariat will apply the pre-determined weightage for the final evaluation of all tenders. This tender evaluation report will then be submitted to the Procurement Boards of Ministries/Departments (Agency Procurement Boards) for consideration and decision.

7.8 SELECTION OF SUCCESSFUL BIDDER
The Agency Procurement Boards will consider and select the successful bidder. Selection of tenders will be based on the general procurement principles, pre-determined criteria and final evaluation. All tenders are to be considered by the Agency Procurement Boards. However in cases where the tender value is above MYR 100 million for works and MYR 50 million for supplies and services, the tenders would then be sent with recommendation of the Agency Procurement Boards to the Ministry of Finance for final decision. Information of successful bidder will be displayed in the procuring agencies' websites and MyPROCUREMENT portal.

8. REGISTRATION REQUIREMENT OF CONTRACTORS

8.1 All individuals, companies or corporate bodies intending to participate in Government procurement i.e. to do business with the Government are required to undergo a registration process. This includes all contractors of works, supplies and services. Registration authorities are as below:
8.2 The registration requirement is to ensure that companies/contractors are bona fide, truly committed in the relevant business fields and possesses the capability to carry out works or supply and provide the services. For works, construction and electrical contractors are registered separately. There are six (6) classes of registration for construction and four (4) classes for electrical contractors under the PKK registration.

8.3 This registration requirement enables the government to take disciplinary action and impose penalties on contractors who do not perform according to contract. Penalties imposed according to seriousness of deviations, range from warning, suspension of registration for a maximum period of 5 years and to blacklisting of Companies/Board of Directors of the contracting parties from conducting further businesses with any Government Ministry, Department or Agency. This applies to contractors/suppliers with consistent or serious deviations from the contract conditions where enforcement of the contract conditions alone would not resolve the seriousness or complications as the case might be.

8.4 Exemption from registration is allowed under certain circumstances but where exemption is granted contractors need to furnish tender deposits.

9. CENTRAL PURCHASE OF SUPPLIES THROUGH FEDERAL CENTRAL CONTRACTS/PANEL CONTRACTS

The Government Procurement Division, Ministry of Finance establishes and facilitates procurement of common user items through Federal Central Contracts/Panel Contracts. These contracts are made through open local tenders and sometimes through negotiated tenders. When a Federal Central Contract/Panel Contract has been made for a particular item, all ministries and departments whether Federal or State are required to purchase from these contracts. Items under the central contracts/panel contracts range from foodstuff, office furniture and vehicle spare parts.

10. AGENCY PROCUREMENT BOARDS

10.1 All tenders i.e. procurement of supplies, services and works above the value of MYR 500,000 must be considered and decided by Agency Procurement Boards. The Minister of Finance appoints all Federal Government Procurement Boards and the Chief Ministers of the respective states appoints the State Government Procurement Boards. The chairperson is usually a Head of Department or a Controlling Officer who under the Financial Procedure Act 1957 is empowered to manage the annual allocation given to a particular Ministry or Department.
10.2 Currently two (2) Agency Procurement Boards have been established in all federal ministries i.e. Agency Procurement Board ‘A’ and Agency Procurement Board ‘B’. The Agency Procurement Board ‘A’ is empowered to decide on tenders up to MYR 50 million for supplies and services, and up to MYR 100 million for works. The representative from the Ministry of Finance is the permanent member of the Agency Procurement Board ‘A’ and his presence is mandatory to validate the decision of the Board. This requirement is mainly to ensure that all procurement principles, policies, rules and regulations and procedures are strictly adhered to. The Agency Procurement Board ‘B’ is empowered to decide on all tenders below MYR 20 million without the presence of a representative from the Ministry of Finance.

10.3 Tenders above the values of RM50 million for supplies and services and MYR M100 million for works for Government Ministries/Departments and tenders above MYR100 million for statutory bodies must be forwarded to the Ministry of Finance for final decision. Any decisions of the Agency Procurement Boards which are not unanimous must also be forwarded to the Ministry of Finance for final decision.

11. LETTER OF INTENT
A Letter of Intent will be issued to the successful bidder, if necessary. The Letter of Intent may consist of additional terms and conditions, mostly safeguards and important for the successful implementation of the contract. The Letter of Intent is not legally binding. The final decision on acceptance of the tender depends upon the successful negotiation and/or acceptance of additional terms and conditions.

12. LETTER OF ACCEPTANCE
A Letter of Acceptance is directly issued to the successful bidder if his bid is accepted in total. The successful bidder is then required to attest and return the Letter of Acceptance to the Government. If negotiations are necessary where the Letter of Intent so requires, then upon completion of negotiations, the Letter of Acceptance is issued to the successful bidder and it must be returned to the Government for the formalisation of contract. The Letter of Acceptance forms a part of the contract documents and is legally binding.

13. FORMAL CONTRACT
Formal contracts are drawn upon the receipt of the Letter of Acceptance from the successful bidder. Bidders are required to forward Performance Bonds based on stipulated rates according to the value of a contract. Performance Bonds must be obtained from locally incorporated banks, insurance companies and financial institutions that are licensed to operate in Malaysia. The current rates are as follows:

a) For Supplies and Services contract
   i) 2.5 percent of contract value for contracts exceeding MYR 200,000 and less than MYR 500,000; and
   ii) 5.0 percent for contracts exceeding MYR 500,000.
b) For Works contract
   i) 5.0 percent of the contract value exceeding MYR 200,000.

14. GOVERNMENT TRANSFORMATION PROGRAMME ON PROCUREMENT

The Government Transformation Programme (GTP) was established in 2010 based on the concern of the people about several key issues afflicting the nation. One of the key issues was fighting corruption. In the efforts to combating this despicable crime, the National Key Result Areas (NKRA) Fighting Corruption has formed to oversee the transformation. One of the focus areas of NKRA Fighting Corruption was government procurement where various initiatives were developed as follows:

a) Integrity Pact (IP) – On December 16, 2010, the Ministry of Finance issued a guideline on the implementation of the Integrity Pact in all government contracts covering supplies, works and services. All involved parties, including administrative and approval officers, bidders and board/committee members of government procurements, are required to sign the Integrity Pact and to pledge to not to engage in any activities or transactions leading to corruption and bribery during the implementation period of the projects.

The Integrity Pact (IP) is a tool developed in the 1990s by Transparency International to help the government, businesses and civil society to prevent corruption in public contracts. It consists of a process that includes an agreement between Government department and bidders for a public sector contract.

The introduction of the Integrity Pact further ensures that public contracting is free from corruption such as:-

- Prevent bribery by parties involved
- Report acts of corruption
- Ensure that 'unnecessary costs' are not incurred on the Government

If this undertaking is breached, pre-agreed sanctions, including blacklisting, can be enforced.

The Government department or agency also signs an undertaking not to demand or accept bribes and guaranteeing access to information and the publication of the award decision. An arbitration process is built into the Integrity Pact to strengthen the enforcement of its provisions. Civil society groups are roped in to monitor the contracting process as has been done in several countries who have introduced the Integrity Pact that has successfully reduced public expenditure.
The Integrity Pact also provide elements that the bidder must:

- Receive an official invitation to submit a tender
- Pledge not to be participate in any act of corruption
- Establish a Code of Conduct to eradicate corruption
- Adhere to the contract which includes an anti-corruption clause.

A) **MYPROCUREMENT & MYPARTNERSHIP** - Disclosure of government contract procurements

Enhancement in the level of transparency and accountability in government and private procurement brought to the development of the MyProcurement and MyPartnership information web portals.

**MyProcurement** is the information hub on government procurements. Located at its web address http://myprocurement.treasury.gov.my/, the site was launched on April 1, 2010 and contains information pertaining to tenders, such as tender pricing, advertisement dates, contract value and tender holders.

The MyProcurement portal is one of the major successes of NKRA - Fighting Corruption initiatives under GTP 1.0. The portal can be accessed directly by the public and serves as a one-stop site that will provide an umbrella view of all government e-procurement practices. It also helped increase transparency of Government procurement practices thus raising confidence in the Government tender process. The portal provides pertinent information such as advertised and awarded tenders and dates, values of contracts and winners of tenders. The list of procurement through direct negotiation will also be disclosed to the public. Through this enhancement, it is expected that public perception towards government procurement process will be significantly improved.

On the other hand, the **MyPartnership** portal, functioning under the Public Private Partnership Unit (UKAS), was launched on September 25, 2010 as a reference centre containing information on privatisation and procurement procedures.

B) **PRESENTATION OF AUDITOR GENERAL’S REPORT** – Enables disclosure fraud in procurement timely

The GTP 2.0 also witnessed the transformation in Auditor General’s reporting process. This initiative enables disclosure of fraud in government procurement to be reported more speedily to relevant authorities.

Through this initiative, Auditor General’s Report will be presented every time the Parliament meets, which is three times a year. Prior to this, the report is only presented once a year.
AUDITOR GENERAL’S ONLINE DASHBOARD
One of the NKRA - Fighting Corruption is the Auditor General’s Online Dashboard. It was launched on May 30, 2013 by the Chief Secretary to the Government. The dashboard allows the public access to the status of follow-up action on the issues raised from the 2011 audit report onwards.

b) PARAMETER FOR SUPPORT LETTERS
Support Letters no longer has a place in attempting to influence the decision making process pertaining to Government approvals and applications. There is a clear guidelines in the circular issued by Malaysian Administrative Modernization and Management Planning Unit (MAMPU) that explains support letters are not to be accepted as approvals or supersede existing processes within government agencies in issuance of licenses, procurement, privatisation, fast tracking of approvals etc. This circular was issued on 2 April 2010 and circulated to all government departments/agencies throughout the country. With that, all approvals will be based on merits, fulfilled requirements, also subject to current procedures and regulations.

c) SPECIAL CABINET COMMITTEE ON GOVERNMENT MANAGEMENT INTEGRITY (JKKMKPK)
The Special Cabinet Committee on Government Management (JKKMPK) was established on 30th November 1988 due to raising concerns on the level of corruption in the Government sector.

On 2nd April 1997, the functions and roles of the JKKMPK were strengthened and the Committee was subsequently renamed the Special Cabinet Committee on Integrity of Government Management (JKKMKPK). The Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) and the MACC were appointed as Joint Secretariat of the Committee.

The Committee aims to establish a Government administration and public service that is efficient, disciplined and imbued with the highest integrity by enhancing noble values. The Committee also focuses on efforts to overcome problems and weaknesses particularly in the Government financial management, public administration, handling of disciplinary cases, corruption, abuse of power and malpractices as prohibited by the regulation, law and religion.

All heads of departments were required to allocate sufficient budget to roll out comprehensive internal proactive programmes aimed to curb corruption and instil noble values. The programmes emphasise on creating a public delivery system of high integrity and in ensuring transparent, fast, effective, efficient and timely delivery.
Public Accounts Committee (PAC)
The Public Accounts Committee, appointed when a new Parliament session commences, examines the Auditor-General’s report which has to be submitted to the Yang di-Pertuan Agong who then shall cause it to be laid before the House of Representatives, the Dewan Rakyat.

The report relates to the accounts of the federation and the States which have been audited by the Auditor-General. The PAC will identify areas in the report which warrants for explanations. The Chairman of the PAC may request relevant agencies or ministries to respond to queries of non-conformity raised in the Auditor-General’s report.

The PAC has an important role in initiating action on concerns expressed in the Auditor-General’s report. Its task is to ensure that inefficiencies, as stated in the AG’s report, at federal and state level departments and agencies are examined and investigated to ensure that such inefficiencies are not repeated year after year.

Members of the PAC comprise of a former Minister and the President of the Backbenchers Club as its Chairman and a member of the Opposition as the Deputy Chairman. Other members include three opposition MPs to form a comprehensive committee. The PAC must ensure financial accountability of Government agencies and departments.

Malaysian Anti-Corruption Commission Efforts:

The MACC which is empowered under Section 7 (c), (d) and (e) as its preventive functions has also implemented the following initiatives to curb corruption in public procurement:

a) Corporate Integrity Pledge Mechanism – Pledge to uphold integrity in their organisations processes, procedures and policies

The CIP is a document for corporations in Malaysia that engages companies to commit in upholding the Principles of Anti-Corruption. The CIP is a collaborative effort between the IIM and the MACC to engage corporate organisations to officially pledge to uphold integrity in their organisations processes, procedures and policies.

By signing the pledge, a company is making a unilateral declaration that it will not commit corrupt practices, will work towards creating a business environment that is free from corruption and will uphold the Anti-Corruption Principles for Corporations in Malaysia in the conduct of its business and in its interactions with its business partners and the Government.
CIP participants will pledge to:
• Promote the principle of transparency, integrity and corporate governance;
• Include anti-corruption elements to strengthen its internal procedures;
• Adhere to the anti-corruption law;
• Eradicate all forms of corruption; and
• Support the anti-corruption initiatives by MACC and the government.

b) INTEGRITY UNIT – Ensure compliance towards good governance

The Integrity Units are set up in every federal or state level public agency act as focal points in regard to integrity management issues of their respective agencies. This initiative to establish integrity units aims to curb criminal wrongdoings, as well as behaviour and ethics violations among civil servants besides strengthening good governance through internal control especially in the aspect of integrity.

Each Integrity Unit is responsible for executing the following six core functions:
• **Governance** - To ensure the implementation of good governance.
• **Strengthening integrity** - To ensure the culturalization, institutionalization and implementation of integrity in an organisation.
• **Detection and verification** - To detect and verify complaints regarding criminal wrongdoings, as well as behaviour and ethics violations; and
• To report criminal wrongdoings to relevant authorities.
• **Complaint Management** - Receive and take necessary actions on all complaints and information obtained relating to criminal wrongdoings, as well as behaviour and ethics violations.
• **Compliance** - To ensure compliance with laws and regulations in force.
• **Disciplinary** - To act as secretariat for the Disciplinary Board.

SECONDMENT OF MACC OFFICERS IN EXTERNAL AGENCIES

To perform the functions of Integrity Units, a total of 20 posts for upper middle management MACC officers are allocated for high risk agencies, while a total of 42 posts of lower-middle management MACC officers are allocated for medium risk agencies, both public and private agencies (GLCs). The existence of the MACC officers is to ensure the effectiveness of Integrity Units in monitoring the respective agencies.

c) MONITORING MEGA GOVERNMENT PROJECTS

The MACC monitors and provides advisory services on suitable practices, systems and work processes to public bodies that are implementing mega projects. Through the monitoring and advisory services, MACC provides information and guidance on ways and
means to circumvent avenues and opportunities for corruption from the stages of planning to implementation and until the completion of the project.

A mega project is defined as a project with the following characteristics:
- Projects that involve a cost of RM500 million and above; and/or
- Projects that are of public interest that has an impact on the community, environment and its financial resources.

4% to 5% of information received by the MACC had involved corruption offences in the implementation of government development projects. Though the cases are a few, nevertheless, it is significant enough to create an impact on the confidence and perception of the public on the administration of government funds.

Delays, abandonment, increase in costs and leakages are among the effects of corruption on the implementation of mega projects in Malaysia. Projects such as the MATRADE Building project, the Kuching Prison in Sarawak, the collapse of the Terengganu State Stadium, the cracks in the Kuala Lumpur Middle Ring Road 2 (MRR 2) project and uncontrolled expenditures of the Port Klang Free Zone (PKFZ) project in Selangor are some example.

The monitoring activity was conducted with the setting up of a Committee on the Integrity of the Implementation of Mega Government Projects. The committee serves as a ‘check and balance’ mechanism to ensure the level of integrity of all parties involved in the implementation of such large-scale government projects in order to prevent the occurrence of bribery, abuse of power and misappropriation; apart from leakages and wastage of public funds.

Subsequent to this, three working committees were formed as follows:
- The Committee on Land Acquisition – responsible to monitor the process of land acquisition and to identify the risks in the possibility of a manipulation in the compensation value of the land;
- The Integrity Pact (IP) Committee – responsible to verify the IP prepared by the project owner/Project Delivery Partner (PDP)/contractor; and
- The Communication and Education Committee – responsible to implement communication and education programmes for the participants involved in the implementation of mega projects in order to reinforce the aspect of integrity among them.

Currently, the Mass Rapid Transit (MRT) project in the Klang Valley, involving the construction of a railway network connecting the city with six areas which will benefit six million users, is being monitored. The MRT Project is estimated at RM36 billion and will
be implemented in stages beginning mid-2011 and which will connect Serdang, Cheras, Kepong, Damansara, Subang Jaya and Puchong. The MRT project is one of five main programs of the Greater KL project that encompasses the capital city as well as satellite towns surrounding it. Gamuda Berhad and MMC Corporation Bhd (Gamuda-MMC) were selected as the joint consortium to implement the project.
COMPILATION OF PREVENTION –RELATED INFORMATION

INFORMATION BY MALAYSIA ON EXPERIENCES OF IMPLEMENTATING ARTICLE 9 (2) OF CHAPTER II UNCAC

Management of Public Finances

a) Procedures for the adoption of the national budget:

The provisions for the adoption of the national budget are stipulated under Articles 99, 100, 101, 102, 103 and 104 of Federal Constitution and Section 15 of the Financial Procedure Act 1957 (Act 61).

The procedure for preparation of the budget is given in Treasury Instruction No.29-51. Based on TI 29-51 the preparation of estimated revenue and expenditure from the Federal and States is the responsibility of the Secretary General to the Treasury and State Financial Officer respectively.

At the Federal level budget is prepared by the Budget Review Officers of the Budget Management Division (BMD) of the Treasury. The BMD is headed by a Budget Director and assisted by two Deputy Directors and six assistant directors.

The objectives of BMD are:

• to examine and analyse agencies plans and programmes
• to allocated financial resources for the implementation of such plans and programmes in the most effective and efficient manner
• to conform to the national objectives through the preparation of annual approval by Parliament.

Controlling officer who is the chief of the accounting officers of each government agencies are responsible to examine budget of all government agencies under their control, to consolidate the budget for all agencies to ensure that budget allocations are spent efficiently and effectively.

Process:

Once the agency received the circular from the Treasury, they will instruct various departments under them to prepare the budget input. The Budget Implementation Committee of the agency will then prepare the budget based on the input provided by their departments. The budget proposal will then be submitted to the Treasury and
relevant Ministry. The Budget Management Division of the Treasury will examine and approve the budget. The budget will then be presented to Parliament for approval. After it has been approved by both houses of Parliament and consented to by the Yang di-Pertuan Agong allocation warrant will be sent to the relevant Ministry and agency.

b) Timely reporting on revenue and expenditure;

Section 16 of the Financial Procedure Act 1957 (ACT61) requires that the annual financial statements be prepared as soon as practicable after the end of every financial year for the purpose of audit, but no date is mentioned in this law for the submission of accounts. Section 9 (2) of the Audit Act, however, covers this omission and states that, if any such statement is not received within a period of seven months after the close of the financial year, the Auditor General shall submit a report to His Majesty the King who shall cause the report to be laid in parliament. No such report has yet been made as the accounts are received well within the statutory period of submission.

The term “financial year” under Sec.3 of Act 61 means a period of twelve months ending on the 31st day of December in any year.

c) System of accounting and auditing standards and related oversights

Currently the Malaysia government does not have a common accounting standard with regards public financial management. The accounting standards vary with different levels and functions of the public services as below:

1. Federal/State Government- International Public Sector Accounting Standard (IPSAS), Government Accounting Standard or Piawaian Perakaunan Kerajaan (PPK)

2. Local Government/Statutory Bodies- International Financing Reporting Standard (IFRS) as practiced by the Securities Commission and the Central Bank of Malaysia (Bank Negara); Private Entity Reporting Standard (PERS), Malaysian Accounting Standards Board (MASB), Standard Accounting System for Government Agencies (SAGA) implemented through Development Administration Circular (PKPA) No. 11 of 2011
d) Accounting Systems of Malaysian Government-Agency Level

The Malaysian government has adopted and developed various accounting systems in ensuring effectiveness and accountability in accounting and reporting for the public sector organizations. Among the accounting systems used are accrual accounting, Micro Accounting System (MAS) and Standard Accounting System for Government Agencies (SAGA).

In addition, initiatives such as Branch Accounting System (BAS), Payroll System (PAY) and Computerised Micro Accounting System (CMAS) have been taken by the government to integrate information technology in its accounting practice.

e) Effective and effective system of risk management and internal control

Effective systems of risk management and international control of the National Budget expenditure on development projects/programmes have been put in place by the National Action Council (NAC) chaired by the Prime Minister assisted by the National Action Working Committee (NAWC) chaired by the Chief Secretary of Government at the national level. At the State level the State Development Council is chaired by the Menteris Besar or Chief Ministers and at the District Level, the District Officers chairs the the District Development Committee.

However the sole responsibility in the monitoring and evaluation of the various plans and policies are handled by the Implementation Coordination Unit (ICU) based in the Prime Minister's office. Throughout the years the ICU has developed various monitoring mechanisms to meet various plan requirements.

The Malaysian government has since its First Malaysia Plan (1955-1960) embraced 4 different types of monitoring systems:

• The Red Book system- used on the First Malaysia Plan, an idea that was largely on Army Briefing techniques which set out accomplishments against objectives and targets using charts and maps.
• In the 1970, there was a shift in the monitoring emphasis, the focus was on programmes as opposed to projects. The Government developed the Project Monitoring System I to facilitate this process. Under this system project managers generated several reports to cater to the needs of several central agencies.
• However, in 1981 a more accurate reporting system was initiated in order to speed up the implementation of development project. A system known as SETIA was introduced to monitor the implementation of development projects, specifically financial performance. SETIA is an acronym for (S) System, (E) Economic Planning
Unit, (T) Treasury, (I) Implementation Coordination Unit, (A) Accountant General’s Department. The system employed computer-based technology and integrated implementation information into the database. The SETIA’s standardized reporting system and enabled project managers and line agencies to ensure maximum utilization of information. The line ministries and state development offices also had the option to view and use the information for management and decision-making purposes. Ministries and State Development Officers could retrieve information by classifications, such as by state, allocation, department, district or election constituency, project types and projects. In addition, the SETIA database also enabled ministries and state development offices to capture information on projects for which implementation had not started, projects with problems and projects suffering from cost and time overruns. The SETIA data system allowed use of its outputs both by the Central Agency as well as at line ministries and allowed use of its outputs both by the Central Agency as well as at line ministries and agencies. The database contained: (a) information on development projects approved by the Economic Planning Unit (EPU); (b) annual allocations approved by the Treasury; (c) progress in project implementation in financial, as reported by implementing agencies; and (d) information on development expenditures as recorded in the accounting system of the Accountant-General’s Department.

- In 1996, the monitoring efficiency was further improved with the development of SIAP (Integrated Scheduling Application System). Both SETIA and SIAP systems integrated the monitoring efficiency with SETIA looking at financial performance and SIAP monitoring physical development projects. With the introduction of SIAP, the implementation of these two systems enabled officers and project managers to control development projects and overcome shortfalls in expenditure while ensuring to schedule timely implementation of projects. With the implementation of the SETIA-SIAP Integrated Information System, the Implementation Coordination Unit (ICU) is able to monitor the progress of development projects to the sub-project level. More than 30,000 projects were monitored during the Seventh Malaysia Plan period in this manner.

- In Eighth Malaysia Plan period (2001-2005) the government used the Project Monitoring System II, a project that was developed as one the six pilot projects under the Electronic Government flagship application. The scope of the Project Monitoring System II (PMS II) covers application, data and communication. The Programme Monitoring System is capable of effectively monitoring and controlling the flow of budgets allocations.
One can conclude that the monitoring system is designed:

i. to identify and address failures, problems and delays in the implementation of the various development activities;

ii. to measure the physical and monetary performance against the achievement of the objectives and benchmarks.

iii. to ensure that activities are implemented on schedule and within the stipulated cost.

iv. to inform/coordinate the activities of the various ministries and state government including controlling budget allocation.

v. A critical element in the monitoring system is that the monitoring process is within the confines of the civil service and one that is outside the scrutiny of civil society and parliamentary framework.

vi. On March 6, 2005 the Government of Malaysia (GOM) has directed all ministries and agencies at both federal and state levels to implement evaluation of outcome for the GOM's program/project. Pursuing this directive the ICU of the Prime Minister's Department has compiled and produced Guidelines in Conducting Program Evaluation vide Federal Government Circular No.3/2005.

f) Corrective action in the case of failure to comply

Measures to promote transparency and accountability in the management of public finances are as follows:

i. Appointment of the Auditor General under The Federal Constitution :-

   Article 105- provides for the appointment of the Auditor General

   Article 106- provides for the powers and duties of the Auditor General

   Article 107- provides for reports of the Auditor General to be laid before the House of Representative.

ii. Establishment of Internal Audit Unit (IAU) under Treasury Circular No.2 of 1979 entitled "Implementation of Internal Auditing in Federal Government Agencies"

   The IAU in the Ministry or Department is responsible for the following:
• Determining whether the agency's financial operations are properly managed and ensuring that all policies, laws and regulations that are mandatory are followed;
• Reviewing and evaluating systematically the agency's operations in terms of their adequacy, efficiency, effectiveness and economy;
• Making recommendations on how to improve the agency's operations in areas that require improvement or corrective measures;
• Submitting independent, objective and timely reports to the head of agency regarding the agency's operations so as to enable an assessment of the agency's current position on related matters and to ascertain whether plans are implemented according to schedule, objectives are met, public funds are properly utilized and whether resources are allocated efficiently;
• where necessary, providing information to the central authority to enable it to evaluate and improve general policies on financial management, procedures and systems, as well as the nature and scope of the internal audit.

iii. Establishment of Public Accounts Committee (PAC) under Standing Order 77 of the House of Representatives:

A. There shall be a Committee to be known as the Public Accounts Committee appointed at the beginning of every Parliament, for the examination of-

a. the accounts of the Federation and the appropriation of the sums granted by Parliament to meet the public expenditure;
b. such accounts of public authorities and other bodies administering public funds as may be laid before the House;
c. reports of the Auditor-General laid before the House in accordance with Article 107 of the Constitution;
d. such other matters as the Committee may think fit, or which may be referred to the Committee by the House.

B. The Committee shall consist of a Chairman and Vice-Chairman to be appointed by the House, and not less than six and not more than twelve members to be nominated by the Committee of Selection, as soon as may be after the beginning of each Parliament.
C. In the absence of the Chairman or Vicechairman due to illness or for any other reason whatsoever the Committee shall elect any one member to act as a Chairman to preside over the Committee’s meeting.

D. No member may be appointed or nominated to or act as Chairman or member of the Public Accounts Committee while he is a Minister.

E. The Committee shall have power to send for persons, papers and records, and to report from time to time.
1. Malaysia does not have a Federal freedom of Information legislation except for two of its 13 States, namely, the State Government of Selangor and that of Pulau Pinang which have recently (in 2010 and 2011) passed their respective "freedom of information" enactments.


Under Act 88 the term "official secrets" means any document in the Schedule and any information and material relating thereto and includes any other official document, information and material as may be classified as "Top Secret", "Secret", "Confidential" or "Restricted" as the case may be, by a Minister, the Menteri Besar or Chief Minister of a State or such public officer under Section 2B.

Official Secrets according to the Schedule of the OSA 1972 include as follows:

1) Cabinet documents, records of decisions and deliberations including those of Cabinet committees;

2) State Executive Council documents, records of decisions and deliberations including those of State Executive Council committees;

3) Documents concerning national security, defence and international relations.

Pursuant to section 2 of the OSA 1972, “document” includes, in addition to a document in writing and part of a document -

(a) any map, plan, model, graph or drawing;

(b) any photograph;

(c) any disc, tape, sound track or other device in which sound or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom; and

(d) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (as aforesaid) of being reproduced therefrom;
Top Secret - refers to official documents; official information and official materials which, if disclosed without approval, will cause grave damage to Malaysia.

Secret - refers to official documents; official information and official materials which, if disclosed without approval, will jeopardize national security, greatly detrimental to the interest and sovereignty of Malaysia or accord considerable benefit to a foreign power.

Confidential - refers to official documents; official information and official materials which, if disclosed without approval, though not detrimental to the national security but will be damaging to the interest and sovereignty of Malaysia or Government activities or an individual; or will cause disrepute and trouble to the administration; or will benefit a foreign power.

Restricted - refers to official documents; official information and official materials other than those classified as Top Secret, Secret and Confidential, but which should be accorded a level of protective security.

Access to Official Documents, Information and material (Part 1):-

Subject to the regulations 18 and 19 under the Public Officers (Conduct and Discipline) Regulations 1993 mentioned below, classified Government information under Section 2B of Act 88 can be made available to members of the public after it has been declassified under Section 2C:-

2C. Declassification of official secret by a Minister or a public officer

A Minister or public officer charged with any responsibility in respect of any Ministry, department or any public service or the Menteri Besar or the Chief Minister of a State or the principal officer in charge of the administrative affairs of a State may, at any time, declassify any document specified in the Schedule or any official document, information or material as may have been classified and upon such declassification, the said document, information or material shall cease to be official secret.

Regulations 18 and 19 of the Public Officers (Conduct and Discipline) Regulations 1993

• Regulation No.18- Publication of books, etc

An officer shall not publish or write any books, article or other work which is based on classified official information.

• Regulation No.19- Making public statement

(1) An officer shall not, orally or in writing or in any other manner-

(a) make any public statement that is detrimental to any policy, programme or decision of the Government on any issue;
(b) make any public statement which may embarrass or bring disrepute to the
Government;

(c) make any comments on any weaknesses of any policy, programme or decision of
the Government; or

(d) circulate such statement or comments, whether made by him or any other
person.

(2) An officer shall not, either orally or in writing or in any other manner-

(a) make any comments on the advantages of any policy programme or decision of
the Government;

(b) give any factual information relating to the exercise of the functions of the
Government;

(c) give any explanation in respect of any incident or report which involves the
Government; or

(d) disseminate any such comment, information or explanation whether made by him
or any other person,

UNLESS the prior written permission ,either generally or specifically, has been
obtained from the Minister.

(3) Subregulation (2) shall not apply to any comment, information or explanation made,
given or disseminate where the contents of the comment, information or explanation had
been approved by the Minister.

(4) For the purpose of this regulation, "public statement" includes any statement or comment
made to the press or to the public or in the course of any public lecture or speech or in any
broadcast or publication, regardless of the means.

Access to Official Documents, Information and Materials (Part II)

ELECTRONIC GOVERNMENT ACTIVITIES ACT 2007 (Act680)

Information with regards organization and functioning of public administration are made
available with the implementation of electronic government in the public administration.
The vision of Electronic Government is a vision for government, businesses and citizenry
working together for the benefit of Malaysia and all of its citizens. The vision focuses on
effectively and efficiently delivering services from the government to the people of Malaysia,
enabling the government to become more responsive to the needs of its citizens.
Information on organization and function of the Malaysian public administration can be accessed through:

- Government portals and websites
- Direct interaction with government departments (information counters, help desks etc)
- Public communication utilities (toll-free lines, telephone)
- SMS/mobile services (traffic offence summons)
- Print media (brochures, annual reports)
- Libraries
- Community education/relational programmes (dialogs, roadshows etc)


The Malaysia Government Portals and Websites Assessment (MGPWA) were first conducted in 2005 by E-Government. Among the objectives were to analyze the performance of more than 900 Government portals and websites.

It was during the 19th Implementation Council Meeting (ICM) Decision on 7 December 2006 that MDeC was mandated to undertake an audit on all of the Government Agencies websites and advise YAB Chairman exactly where they are in their websites and propose ways to enhance and upgrade the websites. Hence, MGPWA has become an annual project that has contributed to tremendous improvement of our Government portals and websites. The number of portals and websites assessed has been growing from 903 to 1,145 in 2010.

The total portals and websites assessed in MGPWA 2011 have increased to 1,155.

New Developments of E-Government

- Malaysia Information Data Centre (MysIDC)
  The Malaysia Informative Data Centre (MysIDC) at mysidc.statistics.gov.my is a one stop information gateway of social and economic data for Malaysia. MysIDC contains data from the Department of Statistics Malaysia as well as other government agencies. The data presented in MysIDC include National Accounts, Balance of Payments and Investment, External Trade, Indexes, Industrial Production by Sector, Monetary and Banking, Labour Market, Population, Income and Expenditures Household, Agriculture, Environment, Education and Others Social Indicators.

- Malaysian Government Open Data Official Portal
  The Malaysian Government Open Data Official Portal (data.gov.my) which was developed in 2013/14 by MAMPU (Malaysian Administrative Modernization and Management Planning Unit) within the Prime Minister’s Department in collaboration with the Ministry of
The Malaysian open data initiative currently provides over 100 datasets from 11 different ministries.

**Simplifying Procedures**

Measures taken by the Malaysian Public Administration in respect of simplifying administrative procedures to facilitate access to its competent decision-making authorities are as follows:

1. Institutionalizing the quality services in all 27 ministries, over 720 Government agencies and 144 local authorities in the 14 states including the Federal Territory under its current ONE SERVICE, ONE DELIVERY, NO WRONG DOOR concept.

One Service, One Delivery, No Wrong Door slogan reflects the Government’s aspiration to present the “One Government, Many Agencies” identity to enable customers to easily access public services. One Service, One Delivery, No Wrong Door aims to ensure:

- Government agencies are viewed as an integrated entity, well-coordinated, well-informed and customer-friendly.
- Customer can deal with Government agencies in a fast, simple and transparent manner using various service channels.
- Customer satisfaction through speedy action by Government personnel and agencies.

2. The setting up of PEMUDAH

On 7th February 2007, the Special Taskforce to Facilitate Business or PEMUDAH (taken from the taskforce’s Malay name ‘Pasukan Petugas Khas Pemudahcara Perniagaan’) was established. Reporting directly to the Prime Minister, the team comprises 23 highly respected individuals from both the private and public sectors. It is co-chaired by the Chief Secretary to the Government of Malaysia and the Immediate Past President of the Federation of Malaysian Manufacturers. Terms of Reference:

- To review the status of the public services delivery system in terms of processes, procedures, legislation and human resource and to propose new policies for improvements;
- To benchmark best practices to improve the ease of doing business;
- To enhance collaboration among public and private sector agencies to improve Malaysia’s competitiveness;
To monitor the implementation of policies, strategies and procedure that would improve the efficiency and effectiveness of the public and private sector delivery system; and

To take appropriate action to address issues in line with the National philosophy of “1Malaysia, People First, Performance Now”.

3. Clients’ Day Programme

Chief Secretaries of Ministries, Heads of Federal Departments, CEOs of Statutory Bodies, State Secretaries and Senior Management of Local Authorities is implemented through the Public Administration Development Circular No 1 of 2008 (PEKELILING KEMAJUAN PENTADBIRAN AWAM BILANGAN 1 TAHUN 2008, in the National Language). The said guideline requires all departments/agencies of Ministries, Federal and State Governments, Statutory Bodies and Local Authorities to implement and adapt “Meeting with Customer Day Programme “from one day a month to be a everyday practice.

4. Malaysian E-Government Services (MyEG)

MyEG Services Berhad is a concessionaire for the Malaysian E-Government MSC Flagship Application. Its role as a Service Provider for the E-Services component essentially provides the electronic link between the Government and citizens/businesses.

Through its portal, it offers the Malaysian public a single point of contact between the Government and the people it serves. The MyEg portal enables Malaysians to dynamically interact with numerous agencies within the Federal, State and the Local Government machinery providing services ranging from information searches to licence applications including driver licensing tests, bankruptcy searches, renewal of driving licenses, summons and utility bill payments and other services.

These transactions are done through its website www.myeg.com.my, or via its network of 56 e-service centers nationwide. The service centers, operated and manned by MyEG, are primarily aimed at administering the on-line driving license theory tests.

MyEG provides G2C services on behalf of government agencies such as Jabatan Pengangkutan Jalan (JPJ – the Road Transport Department), Jabatan Insolvensi Malaysia (JIM – Insolvency Department), Dewan Bandaraya Kuala Lumpur (DBKL - Kuala Lumpur City Hall), Polis DiRaja Malaysia (PDRM – Police) and utilities such as Tenaga Nasional and Telekom Malaysia.
COMPILATION OF PREVENTION –RELATED INFORMATION

INFORMATION BY MALAYSIA ON EXPERIENCES OF IMPLEMENTATING ARTICLE 14 OF CHAPTER II
UNCAC

PREVENTION OF MONEY-LAUNDERING

Legal Framework

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA)\(^1\) is the primary statute governing the AML/CFT regime in Malaysia. The Act was gazetted as law on 5 July 2001 and came into force on 15 January 2002.

The AMLA provides for the offence of money laundering and terrorism financing and the measures to be undertaken for the prevention of money laundering and terrorism financing offence.

The AMLA provides wide-ranging investigation powers including powers for law enforcement agencies and Public Prosecutor to freeze and seize properties that are involved or suspected to be involved in money laundering or terrorism financing offences, and the power of the court to forfeit properties derived from the proceeds of serious crimes.

The enforcement of the AMLA is undertaken by various ministries/agencies based on the predicate offences under their respective purview which is listed under the Second Schedule of the AMLA. As at November 2014, there are 356 offences under 42 pieces of legislation are listed under the Second Schedule of the AMLA.

The Central Bank of Malaysia or Bank Negara Malaysia is only empowered to investigate money laundering cases relating to laws administered by Bank Negara Malaysia, namely:

- Financial Services Act 2013
- Islamic Financial Services Act 2013
- Money Services Business Act 2011
- Development Financial Institutions Act 2002 (Act 618)

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act613) covers the following of reporting institutions, financial as well as designated non-financial businesses and professions (DNFBPs) as provided under its "First Schedule":

<table>
<thead>
<tr>
<th>FIRST SCHEDULE</th>
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<tbody>
<tr>
<td>[Section 3, definition of “reporting institution”]</td>
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<tr>
<td>PART I</td>
</tr>
<tr>
<td>1. Activities carried out by—</td>
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<tr>
<td>(a) a licensed bank;</td>
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<tr>
<td>(b) a licensed investment bank;</td>
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<tr>
<td>(c) a licensed insurer carrying on life business;</td>
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<tr>
<td>(d) an approved financial adviser in relation to life business;</td>
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</tbody>
</table>

\(^1\) The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 replaces the Anti-Money Laundering and Anti-Terrorism Financing Act 2001(AMLATFA)
an approved insurance broker in relation to life business;

(f) an approved issuer of designated payment instrument; and

(g) an approved money-broker,
as defined or provided in the Financial Services Act 2013 [Act 758].

2. Activities carried out by—
(a) a licensed Islamic bank;
(b) a licensed international Islamic bank;
(c) a licensed takaful operator carrying on family takaful business;
(d) a licensed international takaful operator carrying on family takaful business;
(e) an approved Islamic financial adviser in relation to family takaful business;
(f) an approved takaful broker in relation to family takaful business; and

(g) an approved issuer of designated Islamic payment instrument,
as defined or provided in the Islamic Financial Services Act 2013 [Act 759].

3. Activities carried out by a prescribed institution as defined in the Development Financial
Institutions Act 2002 [Act 618].

4. Activities of—
(a) dealing in securities;
(b) dealing in derivatives; or
(c) fund management,
carried out by a holder of a licence under the Capital Markets and Services Act 2007 [Act 671].

5. Activities carried out by a licensee as defined in the Money Services Business Act 2011 [Act
731].

6. Activities carried out by the Lembaga Tabung Haji established under the Tabung Haji Act
1995 [Act 535].

7. Activities carried out by a licensee relating to postal financial services as defined in the Postal
Services Act 2012 [Act 741].

8. Activities carried out by a common gaming house as defined in the Common Gaming Houses
Act 1953 [Act 289].

9. Activities carried out by a member as defined in the Accountants Act 1967 [Act 94].

10. Activities carried out by an advocate and solicitor as defined in the Legal Profession Act 1976
[Act 166].

11. Activities carried out by a person admitted as an advocate pursuant to the Advocate
Ordinance Sabah 1953 [Sabah Cap. 2].

12. Activities carried out by a person admitted as an advocate pursuant to the Advocate
Ordinance Sarawak 1953 [Sarawak Cap 110].

13. Activities carried out by a person prescribed by the Minister or licensed by the Registrar of
Companies to act as a secretary of a company pursuant to section 139A of the Companies Act 1965
[Act 125].

14. Activities carried out by a licensee as defined in the Pool Betting Act 1967 [Act 384].

15. Activities carried out by a totalizator agency as defined in the Racing (Totalizator Board) Act
1961 [Act 494].

16. Activities carried out by a racing club as defined in the Racing Club (Public Sweepstakes) Act
1965 [Act 404].

17. Activities carried out by a notary public as defined in the Notaries Public Act 1959 [Act 115].

18. Activities carried out by a trust company as defined in the Trust Companies Act 1949 [Act
100].

19. Activities carried out by the Corporation as defined in the Public Trust Corporation Act 1995
[Act 532].

20. Activities carried out by a moneylender as defined in the Moneylenders Act 1951 [Act 400].

21. Activities relating to building credit business, development finance business, factoring
business or leasing business carried out by companies incorporated pursuant to the Companies Act
1965 and businesses as defined and registered under the Registration of Businesses Act 1956 [Act
22. Activities carried out by a licensee as defined in the Pawnbrokers Act 1972 [Act 81].
23. Activities relating to an estate agency practice carried out by a registered estate agent as defined in the Valuers, Appraisers and Estate Agents Act 1981 [Act 242].
24. Activities of dealing in precious metals or precious stones carried out by companies incorporated pursuant to the Companies Act 1965 and businesses as defined and registered under the Registration of Businesses Act 1956.

PART II
Activities carried out by a Labuan financial institution as defined in the Labuan Financial Services Authority Act 1996 [Act 545].

Anti-Money Laundering regime of Malaysia:
Domestic regulatory and supervisory regime to banks etc to deter and detect all forms of money laundering in Malaysia includes the following measures:

A. The Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007, reproduced below:

<table>
<thead>
<tr>
<th>Part I</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>PRELIMINARY</strong></td>
</tr>
<tr>
<td>1. Citation.</td>
</tr>
<tr>
<td>These regulations may be cited as the Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007.</td>
</tr>
</tbody>
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<tr>
<th>Part II</th>
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<tbody>
<tr>
<td><strong>REPORT BY REPORTING INSTITUTIONS</strong></td>
</tr>
<tr>
<td>2. Invocation of paragraph 14(b).</td>
</tr>
<tr>
<td>This part shall apply upon invocation of provision of paragraph 14(b) of the Act in respect of a reporting institution.</td>
</tr>
<tr>
<td>A reporting institution shall promptly report to the competent authority any attempt transaction or transaction where the identity of the persons involved, the transaction itself or any other circumstances concerning that transaction gives any officer or employee of the reporting institution reason to suspect that the transaction involves proceeds of an unlawful activity regardless of the amount of the transaction.</td>
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<tr>
<th>Part III</th>
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<tr>
<td><strong>IDENTIFICATION OF ACCOUNT HOLDERS</strong></td>
</tr>
<tr>
<td>4. Invocation of section 16</td>
</tr>
<tr>
<td>This part shall apply upon invocation of provision of section 16 of the Act in respect of a reporting institution.</td>
</tr>
</tbody>
</table>
5. Customer due diligence (CDD)
(1) A reporting institution shall conduct customer due diligence measures on its account holders, including when-
(a) there is a suspicion of money laundering: or
(b) it has doubt about the veracity or adequacy of information on the identity of the account holder which it has obtained previously.
(2) The reporting institution shall verify, by reliable means or from any independent source of document, data or information-
(a) that any person who is purporting to act on behalf of the account holder is so authorized and the authority of that person:
(b) a beneficial owner on whose behalf an account is opened or a transaction is conducted and the identity of that person
(3) The reporting institution shall conduct ongoing due diligence on all its business relationship with any account holder.

Part IV
RETENTION OF RECORDS

6. Invocation of section 17.
This part shall apply upon invocation of provision of section 17 of the Act in respect of a reporting institution.

7. Maintenance of records.
(1) A reporting institution shall ensure that any records under Part IV of the Act including account holder identification records are maintained and any information relating to such records are made available on a timely basis when required by the competent authority.
(2) Any person who contravenes subregulation (1) commits an offences and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both, and, in the case of a continuing offences, to a further fine not exceeding one thousand ringgit for each day during which the offences continues after conviction.

B. Cash Treshold Report (CTR).
CTR refers to cash transactions exceeding MYR 50,000 (or any other amount advised) involving physical currencies (domestic or foreign currency) and bearer negotiable instruments such as travellers’ cheques but excludes bank drafts, cheques, electronic transfers or fixed deposit rollovers or renewals. These include transactions involving withdrawal of cash from accounts or exchange of bearer negotiable instruments for cash.

The requirements for CTRs are applicable to single or multiple cash transactions within the same amount specified in a day. Where there are deposit and withdrawal transactions, the amount must be aggregated. For example, a deposit of MYR 40,000 and a withdrawal MYR 20,000 must be aggregated to the amount of MYR 60,000 and hence, must be reported if it exceeds the amount specified.

Section 4A of the AMLA set out the offence of structuring transactions so as to avoid reporting CTR. A structuring involves splitting transactions into separate amounts under MYR 50,000 per day to avoid CTR transaction reporting requirements under the AMLA.
To date, CTR reporting obligations are imposed on banking institutions and the licensed casino only.

C. Declaration of cash or negotiable bearer instruments under Sections 28 B and 28C Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 :-

28B. Persons leaving or entering Malaysia with cash or bearer negotiable instruments

(1) Any person leaving or entering Malaysia with an amount in cash, bearer negotiable instruments or both exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority.

(2) For the purposes of this section, a person leaves or enters Malaysia with cash or bearer negotiable instruments if the person brings the cash or bearer negotiable instruments with him in his accompanying baggage or on any conveyance or otherwise.

(3) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

28C. Movement of cash or bearer negotiable instruments by post, etc.

(1) Any person who moves into or out of Malaysia through the postal, courier or freight forwarding services, or by any other means, any cash, bearer negotiable instruments or both exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding five years or to both.

The Anti-Money Laundering and Anti-Terrorism Financing (Cash and Negotiable Bearer Instruments Declaration ) Order 2009

In exercise of the power conferred by subsection 23(1)² of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001, the competent authority makes the following order:

1. Citation and commencement.

(1) These order may be cited as the Anti-Money Laundering and Anti-Terrorism Financing (Cash and Negotiable Bearer Instruments Declaration ) Order 2009.

(2) This order comes into operation on 1 January 2010

2. Declaration.

A person leaving or entering Malaysia with an amount in cash, negotiable bearer instruments or both, exceeding an amount equivalent to ten thousand United States dollars (USD 10,000) shall declare such amount to the competent authority in the Form Costoms No. 22 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977

² This section of the law has been amended as Section 28 (1) under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613).
D. Declaration about receipts of cash or bearer negotiable instruments from outside Malaysia under Section 28E of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001.

(1) Any person who receives cash or bearer negotiable instruments or both which is moved to the person from outside Malaysia exceeding the value as prescribed by the competent authority by order published in the Gazette, shall declare such amount to the competent authority and provide such other information as may be required by the competent authority.

(2) A declaration under subsection (1) shall be made within five business days from the day of the receipt of the cash or bearer negotiable instruments or both.

(3) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding five million ringgit or to imprisonment for a term not exceeding five years or to both.

E. Compliance Programme under Section 19 of Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

(1) A reporting institution shall adopt, develop and implement internal programmes, policies, procedures and controls to guard against and detect any offence under this Act.

(2) The programmes in subsection (1) shall include—

(a) the establishment of procedures to ensure high standards of integrity of its employees and a system to evaluate the personal, employment and financial history of these employees;

(b) on-going employee training programmes, such as “know-your-customer” programmes, and instructing employees with regard to the responsibilities specified in sections 13, 14, 14A, 15, 16 and 17; and

(c) an independent audit function to check compliance with such programmes.

(3) A reporting institution shall implement compliance programmes under subsection (1) on its branches and subsidiaries in and outside Malaysia.

(4) A reporting institution shall also designate compliance officers at management level in each branch and subsidiary who will be in charge of the application of the internal programmes and procedures, including proper maintenance of records and reporting of suspicious transactions.

(5) A reporting institution shall develop audit functions to evaluate such policies, procedures and controls to test compliance with the measures taken by the reporting institution to comply with the provisions of this Act and the effectiveness of such measures.

F. Beneficial Ownership Disclosure under the Securities Industry (Central Depositories) Act 1991

Under the Securities Industry (Central Depositories) Act 1991 (Act453) the term “beneficial owner”, in relation to deposited securities, mean the ultimate owner of the deposited securities who is the person who is entitled to all rights, benefits, powers and privileges and is subject to all liabilities, duties and obligations in respect of, or arising from, the deposited securities, and does not include a nominee of any description;

Section 4 of SICDA 1991- Application for approval to establish and maintain a central depository

4. (1) Any company incorporated under the Companies Act 1965 which proposes to establish and maintain a central depository shall apply to the Minister in writing for approval.

(2) An application made under subsection (1) shall be accompanied with the following:
(a) a copy of the memorandum and articles of association, duly verified by a statutory declaration made by a director of the applicant;

(b) a copy of the latest audited balance sheet, profit and loss account (together with any note thereon) and the reports, if any, of the auditors and the directors of the applicant;

(c) a statement on the following: (i) the name, place and date of incorporation of the applicant; (ii) the registered office and place or proposed place of business of the applicant; (iii) the names and addresses of the directors of the applicant and its related corporations, and of the substantial shareholders within the meaning of section 69D of the Companies Act 1965, of the applicant and its related corporations; and (iv) the name of the stock exchange, if any, in respect of which the central depository will be established and maintained;

(d) operational information on the system to be established and maintained by the central depository;

(e) a copy of the rules that will apply to the central depository;

(f) the proposed fees and charges which will be imposed by the applicant in respect of the facilities and services to be provided by the central depository, including fees and charges for— (i) the establishment and maintenance of securities accounts; (ii) the deposit and withdrawal of securities; (iii) the issuance of statements of accounts under section 26; (iv) the effecting of entries in securities accounts in respect of transactions under section 31; (v) the issuance of records of depositors under section 34; (vi) the effecting of entries in securities accounts pursuant to any charges or pledges of deposited securities under section 40; and

(g) such other information or documents as may be required by the Minister or the Commission for the purposes of determining the application and the suitability of the applicant to establish and maintain a central depository. (2A) An application for approval under subsection (1) shall be sent to the Commission, whereupon the Commission shall submit such application, together with its recommendation to the Minister.

(3) At any time after receiving an application the Minister or the Commission may, by written notice, require the applicant to provide additional information or documents.

Financial Intelligence and Law Enforcement Agencies

The Financial Intelligence Unit (FIU) is established within the Financial Intelligence and Enforcement Department in Bank Negara Malaysia to manage and provide comprehensive analysis on the financial intelligence received relating to money laundering and terrorism financing. The financial intelligence received may come from various sources such as STRs and CTRs received from the reporting institutions, local law enforcement agencies and foreign FIUs.

The financial intelligence information will be disseminated to the respective law enforcement agencies for further action.

The law enforcement agencies have the power to enforce the law under Part V of the AMLA for any offence that is committed or has reason to suspect the commission of an offence under their respective purview. To assist investigation, the enforcement agency may also request for financial intelligence from the FIU.

Domestic Cooperation

The implementation of AML/CFT regime is coordinated by the NCC, a body established in 2000 to coordinate, implement and monitor the development of the national AML/CFT initiatives.
There are two levels of coordination:

1. NCC Working Group
   Operational level where it involves coordination at the working level to address operational issues pertaining to the implementation and effectiveness of initiatives approved by the NCC High Level. At the operational level, sub-committees and task forces are established to discuss specific issues that require participation of various members.

2. NCC High Level
   Formulates policy, provide advisory role and set out the strategic direction of the NCC. This level comprises of the Heads or Deputies of the member Ministries or agencies.

Members of the NCC

Comprised of 16 Ministries and government agencies from supervisory/regulatory authorities, law enforcement agencies and policy-making ministries. Bank Negara Malaysia is the Secretariat for the NCC. Members of the NCC are:

- Attorney General’s Chambers;
- Bank Negara Malaysia;
- Companies Commission of Malaysia;
- Immigration Department of Malaysia;
- Inland Revenue Board of Malaysia;
- Labuan Financial Services Authority;
- Malaysian Anti-Corruption Commission;
- Ministry of Domestic Trade, Co-operatives and Consumerism;
- Ministry of Finance;
- Ministry of Foreign Affairs;
- Ministry of Home Affairs;
- Ministry of International Trade and Industry;
- Registrar of Societies;
- Royal Malaysia Police;
- Royal Malaysian Customs Department; and
- Securities Commission Malaysia.

International Cooperation

At the international level, Malaysia participates in various regional and international initiatives in its global fight against money laundering and terrorism financing.

Malaysia’s membership in the Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units provides Malaysia with a platform to cooperate in various AML/CFT issues including in the areas of training and sharing of information.

1. **Asia/Pacific Group on Money Laundering (APG)**

APG is an autonomous and collaborative international organisation formed in 1997 in Bangkok, Thailand. Members of the APG comprise of 41 countries and a number of international and regional observers such as the Financial Action Task Force (FATF), International Monetary Fund (IMF), World
Malaysia has been a member of the APG since 31 May 2000 and supports many initiatives undertaken by the APG such as the following:

- co-chair of the APG, together with Australia from 2000 – 2002;
- co-chair of the Regional Review Group under the FATF International Cooperation Review Group (ICRG) which is mandated to review member countries’ AML/CFT measures identified by the ICRG from 2008 – 2010;
- co-chair of the Implementation Issues Working Group (IIWG) which is mandated to provide strategic support to members in the implementation of the FATF Recommendations from 2006 – 2010; and
- a current member of the APG Donor & Provider Group (DAP) which is mandated to provide technical assistance and advisory services in the region on a range of issues associated with AML/CFT.

2. **Egmont Group of Financial Intelligence Units**

Malaysia was admitted as a member of the Egmont Group in July 2003. Malaysia was also elected as the Asia Chair in the Egmont Committee for two terms (2006/2008 and 2008/2010).

The membership in the Egmont Group provides platform for Malaysia to share and to request financial intelligence with other Egmont Group members through a secured network.


As a member of the APG, Malaysia is subjected to periodic assessments or mutual evaluation on compliance with the FATF Standards on AML/CFT. Malaysia was assessed in 2001 and 2007 respectively, and currently scheduled to undertake the third mutual evaluation in the fourth quarter of 2014. The NCC spearheads Malaysia’s preparation for the assessment.

Based on the Mutual Evaluation Reports (MER) of 40 countries that were published as at July 2007, Malaysia was one out of only three countries that were rated "Largely Compliant" against the FATF Recommendation on customer due diligence, while no country has been assessed to be fully compliant. Overall, Malaysia obtained nine "Compliant", 24 "Largely Compliant", 15 "Partially Compliant" and one "Non-Compliant" ratings against the FATF 40+9 Recommendations.

4. **Association of Southeast Asian Nations (ASEAN)**

Malaysia is an ASEAN member since its establishment on 8 August 1967. One of the fundamental principles of the ASEAN is to strengthen the foundation for a prosperous and peaceful community of Southeast Asian Nations. In line with this principle, recognizing the detrimental effects of transnational crime, the ASEAN member countries have established a framework to strengthen and coordinate ASEAN collaboration in combating transnational crime:

- ASEAN Ministerial Meeting on Transnational Crime (AMMTC)
• The policy-making body for ASEAN cooperation in combating transnational crime.
• Senior Officials Meeting on Transnational Crime (SOMTC)
• Implement policies and plans adopted by the AMMTC.
• There are eight areas of transnational crime under the purview of SOMTC which are arms smuggling, cybercrime, illicit drug trafficking, international economic crime, money laundering, sea piracy, terrorism and trafficking in persons. Malaysia is the lead shepherd for money laundering and sea piracy initiatives.
• Ministry of Home Affairs is the coordinating agency for Malaysia’s representation to SOMTC.