

UNCAC Review Recommendations: Malaysia

No.	UNCAC Article	Recommendation(s) from the Executive Summary of the UNCAC Review Report	Addressed (Y/N)	Where is this addressed? Please provide details e.g. by legislation, policy (include specifics). Who is responsible (i.e. which agency)? Was technical assistance provided? If so, by whom?
UNCAC Chapter II. Preventive measures				
1.	<p><i>5. Preventive anti-corruption policies and practices</i></p> <p><i>1. Each State Party shall, in accordance with the fundamental principles of its legal system, develop and implement or maintain effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability.</i></p> <p><i>2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.</i></p> <p><i>3. Each State Party shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption.</i></p> <p><i>4. States Parties shall, as appropriate and in accordance with the fundamental principles of their legal system, collaborate with each other and with relevant international and regional organizations in promoting and developing the measures referred to in this article. That collaboration may include participation in international programmes and projects aimed at the prevention of corruption.</i></p>		Y	<p>Malaysia introduced The National Anti-Corruption Plan 2019-2023 (NACP) in 2019. This integrated anti-corruption plan, is the first of its kind in the country, aligns with Article 5 of UNCAC. The development of NACP was guided by the “National Anti-Corruption Strategies: A Practical Guide for Development and Implementation” by UNODC and received support from the relevant stakeholders.</p> <p>The NACP comprises six Priority Areas that are vulnerable to corruption. These six Priority Areas are Political Governance, Public Sector Administration, Public Procurement, Corporate Governance, Law Enforcement, and Legal and Judicial. From this six Priority Areas, the Plan further outlines the following 6 Strategies: Strengthening Political Integrity and Accountability, Strengthening the Effectiveness of Public Service Delivery, increasing the Efficiency and Transparency in Public Procurement, Enhancing the Credibility of Legal and Judicial System, Institutionalizing Credibility of Law Enforcement Agencies, and Inculcating Good Governance in Corporate Entity.</p> <p>The strategies within this plan stem from a series of deliberations and consultations involving public and private sectors, the business and media communities, NGOs, anti-corruption experts and academicians. These discussions incorporate recommendations from G20 countries, as well as insights from the 1st</p>

			<p>and 2nd Cycles of the Review of Implementation of the UNCAC. To ensure the successful of implementation of this plan, various actors have been identified to execute the purpose initiatives and coordinate activities at the ministerial levels.</p> <p>This year marks the final year of NACP's journey, thus progress has been made towards the implementation of the NACP. Of the 115 NACP initiatives initially set, a total of 29 initiatives were implemented in 2019, involving policy, institutional and legislative reforms. A mid-term review of the NACP was then conducted in 2021. As part of this review, the remaining 86 of the 115 initiatives were assessed and decided upon with some initiatives were put on hold, new additional initiatives and some were even combined.</p> <p>As a result, the Mid-Term Review Report of the National Anti-Corruption Plan (NACP) 2019-2023, released on 19 May 2021, adopted a total of 82 initiatives to be implemented in the remaining period until the end of 2023 by all 27 lead agencies. During the same year, a total of 8 NACP initiatives were completed in the output phase, bringing the total number of initiatives completed in the output phase by 31 December 2021 to 37 initiatives, including 29 initiatives in 2019 and 8 initiatives in 2021.</p> <p>Year 2022 further saw the completion of 25 initiatives. Making the full total of completed initiatives to date to 62 initiatives. At the same time, related agencies are taking steps to ensure continuity of efforts to strengthen governance, integrity and anti-corruption in public sector.</p> <p>The existing NACP will be continued after the end of the 2023 with a new national strategy known as National Anti-Corruption Strategies (NACS).</p>
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		B. 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, para. 3).		
2.	<p>6. Preventive anti-corruption body or bodies</p> <p>...</p> <p>2. Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.</p> <p>...</p>	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, para. 2).	Y	The NACP encompasses a range of reforms, among which is the creation of a Parliamentary Select Committee tasked with overseeing the MACC. Moreover, the NACP seeks to bolster the authority of the MACC through various means, including its control over the appointment of the Chief Commissioner, managing the budget, establishing an oversight committee, instituting a service commission, and managing workforce dynamics. In line with these objectives, ongoing initiatives such as internal engagements to establish MACC Service Commission and the appointment of the Chief Commissioner.
3.	<p>7. Public sector</p> <p>1. Each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, endeavour to adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials:</p> <p>(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;</p> <p>(b) That include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;</p> <p>(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;</p> <p>(d) That promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions. Such programmes may make reference to codes or standards of conduct in applicable areas.</p> <p>2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention</p>	<p>A. Consider specifying in the relevant regulations the right of appeal of appointment and promotion decisions (art. 7, para. 1).</p> <p>B. 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).</p>	Y	<p>Reforms outlined in the NACP include new legislation governing political funding and the introduction of an offense related to lobbying. Efforts are underway, such as engagement with stakeholders.</p> <p>Reformation has been completed to establish a proper asset declaration system for Members of the Administration.</p> <p>Improvements have been made to the policy concerning the acceptance of gifts, entertainment, and payments by Members of the Administration.</p> <p>A Code of Ethics has been introduced via Parliamentary Standing Orders for Members of</p>

	<p><i>and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.</i></p> <p><i>3. Each State Party shall also consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.</i></p> <p><i>4. Each State Party shall, in accordance with the fundamental principles of its domestic law, endeavour to adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.</i></p>			<p>Parliament (both Ruling and Non-Ruling Parties) to adhere to.</p>
4.	<p><i>8. Codes of conduct for public officials</i></p> <p>...</p> <p><i>5. Each State Party shall endeavour, where appropriate and in accordance with the fundamental principles of its domestic law, to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials.</i></p> <p>...</p>	<p>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, para. 5 and 52, para. 5).</p>	Y	<p>The existing asset declaration and related Service Circulars already address the requirement for public officials to declare potential conflicts of interest. For instance, public officials are required to declare any business interests, outside activities, shares, or gifts that may give rise to a conflict of interest.</p>
5.	<p><i>9. Public procurement and management of public finances</i></p> <p><i>1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia:</i></p> <p><i>(a) The public distribution of information relating to procurement procedures and contracts, including information on invitations to tender and relevant or pertinent information on the award of contracts, allowing potential tenderers sufficient time to prepare and submit their tenders;</i></p> <p><i>(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;</i></p> <p><i>(c) The use of objective and predetermined criteria for public procurement decisions, in order to facilitate the subsequent verification of the correct application of the rules or procedures;</i></p>	<p>A. 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, para. 1).</p>	Y	<p>Malaysia has established guidelines regarding Domestic Review Procedure (DRP) under Treasury Circular PK 2.1 – Paragraph 11.2 for covered procurement under FTA to address complaints from aggrieved suppliers.</p> <p>Complaints/Objections for the Government Procurement Subjected under FTA are as below:</p> <ol style="list-style-type: none"> 1. Domestic Review Procedure (DRP) 2. Review Body Ministry/Agency level 3. Review Authority 4. Complaints/Objections 5. Interim Measures

	<p>(d) An effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed;</p> <p>(e) Where appropriate, measures to regulate matters regarding personnel responsible for procurement, such as declaration of interest in particular public procurements, screening procedures and training requirements.</p> <p>2. Each State Party shall, in accordance with the fundamental principles of its legal system, take appropriate measures to promote transparency and accountability in the management of public finances. Such measures shall encompass, inter alia:</p> <p>(a) Procedures for the adoption of the national budget;</p> <p>(b) Timely reporting on revenue and expenditure;</p> <p>(c) A system of accounting and auditing standards and related oversight;</p> <p>(d) Effective and efficient systems of risk management and internal control; and</p> <p>(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.</p> <p>...</p>	<p>B. Malaysia could also consider strengthening the risk-management system in the area of public financial management (art. 9, para. 2).</p>	<p>Y</p>	<p>As outlined in Strategic 2 of the NACP, which focuses on strengthening the effectiveness of Public Service Delivery, the public sector is obligated to develop an Organisational Anti-Corruption Plan (OACP) to enhance governance. In this context, the Ministry of Finance has established the OACP for the period 2021-2025. The objectives of this plan are to strengthen the Ministry's governance by identifying issues and risks, conducting risk assessments, implementing preventive measures, monitoring progress, and evaluating outcomes.</p> <p>For instance, one initiative under the OACP involves the development and mandatory use of the Electronic Government Procurement Application (eGPA) in public procurement. This is aimed at improving effectiveness and governance in the procurement process. Additionally, job rotation and integrity vetting measures are being implemented for officers categorized as holding high-risk positions or sensitive roles."</p>
<p>6.</p>	<p>10. Public reporting</p> <p>Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate. Such measures may include, inter alia:</p> <p>(a) Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;</p> <p>(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and</p> <p>(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.</p>	<p>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).</p>	<p>Y</p>	<p>In line with the priority area of political governance under NACP, an initiative to introduce new legislation on Freedom of Information is inserted under strategic objective 1.2.8. Efforts are in progress as this initiative is led by the Ministry of Communications and Multimedia in collaboration with the Minister in the Prime Minister's Department (Legal and Institutional Reforms)</p>

<p>7.</p>	<p>12. Private sector</p> <p>...</p> <p>4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.</p>	<p>Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12, para. 4).</p>	<p>Y</p>	<p>The Malaysian government considers bribery a criminal act and does not permit bribes to be deducted from taxes. Tax deductibility of expenses is governed by Section 39 of the Income Tax Act (ITA), 1967 (Act 53). Expenses incurred in furtherance of corrupt conduct would not have passed the tax deductibility test under Section 39(1) paragraphs (a) and (b) of the ITA 1967. As a general rule under section 39(1) of the Income Tax Act 1967, an expense that is wholly and exclusively incurred in the production of gross income is allowable as a deduction against gross income when computing one's taxable income. An expense incurred of a private nature that has nothing to do with the production of income is not tax deductible. The issue of whether an expense is wholly and exclusively incurred to produce income is a question of fact to be determined on a case by case basis.</p> <p>Observation also made to other countries such as Brunei Darussalam, Singapore, New Zealand where their laws do not adopt explicit provision disallowing the tax deductibility of expenses that constitute bribes and there is no similar observation of reviewers were made to their position. In addition, Malaysia is in the opinion that the opinion of reviewers on "explicit provision disallowing the tax deductibility of expenses that constitute bribes" is beyond the requirement under this provision.</p>
<p>8.</p>	<p>14. Measures to prevent money-laundering</p> <p>1. Each State Party shall</p> <p>(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;</p> <p>(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under</p>	<p>Continue efforts to address the remaining issues of the FATF evaluation (arts. 14 and 52).</p>	<p>Y</p>	<p>Reference is made to Malaysia's 3rd Enhanced Follow up Report (FUR) of FATF in 2019, the conclusion as follows:</p> <p><i>Malaysia has made progress in addressing the technical compliance deficiencies identified in its MER and has been re-rated on four Recommendations. Only two Recommendations remain PC. Malaysia has addressed the deficiencies identified under R.7 including the revised requirement of R.7 and its Interpretive Note, and has been re-rated as Compliant with R.7. Equally, Malaysia has addressed the minor deficiencies identified</i></p>

	<p>domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national center for the allocation, analysis and dissemination of information regarding potential money-laundering.</p> <p>2. State Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.</p> <p>3. State Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:</p> <p>(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;</p> <p>(b) To maintain such information throughout the payment chain; and</p> <p>(c) To apply enhanced scrutiny to transfer of funds that do not contain complete information on the originator.</p> <p>...</p>			<p>under R.5, R.32 and R.34 to be re-rated as Compliant on all three. Malaysia remains largely compliant with the revised R.8 and maintains a compliant rating with the revised R.18 and R.21. Malaysia will remain in enhanced follow-up on the basis that it had a moderate level of effectiveness for 7 of the 11 effectiveness outcomes (FATF Procedures, para.79(a)(iii)). According to the enhanced follow-up process, Malaysia will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.</p>
<p>UNCAC Chapter III. Criminalization and law enforcement</p>				
<p>9.</p>	<p>17. <i>Embezzlement, misappropriation or other diversion of property by a public official</i></p> <p><i>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.</i></p>	<p>Monitor the implementation of UNCAC article 17 and the implementation of MACCA provisions in such cases. Malaysia may wish to integrate a consolidated offence on embezzlement, misappropriation or other diversion of property by public officials into MACCA. The same recommendation applies to embezzlement in the private sector.</p> <p><i>[NB: has links to art. 22]</i></p>	<p>Y</p>	<p>As pointed out by the reviewers on page 54 of the country review report, they acknowledged this explanation and came to the conclusion that, in its entirety, the various sections of the Penal Code and MACCA would implement the provision.</p> <p>Similar observations were made under Article 22, where the reviewing experts expressed satisfaction with the explanation and case examples provided by Malaysia. They are of the opinion that Malaysia has fully implemented the provision.</p> <p>The recommendation goes beyond the requirements of this Article.</p>
<p>10.</p>	<p>18: <i>Trading in Influence</i></p> <p><i>Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</i></p>	<p>Consider criminalizing trading in influence distinctly to provide for greater legal certainty in cases of real and supposed influence.</p>	<p>Y</p>	<p>The reviewers observed that Malaysia has considered criminalizing trading in influence</p>

	<p>(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;</p> <p>(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.</p>			
11.	<p>20: Illicit enrichment</p> <p>Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.</p>	Consider eliminating the requirement for a prior investigation before an illicit enrichment case can be pursued.		
12.	<p>25: Obstruction of Justice</p> <p>Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:</p> <p>(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;</p> <p>(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.</p>	A. More fully address all elements on obstruction of justice in a consolidated offence.	Y	<p>Reference is made to page 108 of Country Review Report of Malaysia where the legislation, namely section 48 (h) of MACCA and section 2 and 5 of the Abduction and Criminal Intimidation of Witnesses Act 1947, covering obstruction of justice under this Article is fragmented.</p> <p>Malaysia wishes to refer to Legislative Guide for the implementation of the UNCAC under this Article does not specify the element of consolidation of offence shall be included.</p>
		<p>B. Add obstruction of justice to the predicate offences for money-laundering and consider including illicit enrichment.</p> <p>[NB: has links to arts. 14 and 20]</p>	Y	<p>Reference is made to page 110 of the Country Review Report of Malaysia, where the reviewing experts note that Malaysia has implemented the provision under review.</p>

<p>13.</p>	<p><i>26: Liability of Legal Persons</i></p> <p>1. <i>Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.</i></p> <p>2. <i>Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.</i></p> <p>3. <i>Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.</i></p> <p>4. <i>Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.</i></p>	<p>Challenges exist regarding the establishment of mens rea for legal persons, and the reviewers welcome the possible introduction of new offences involving legal persons. Moreover, higher fines for corporations and specific civil and administrative sanctions might be useful to maximize deterrence.</p>	<p>Y</p>	<p>The Malaysian Anti-Corruption Commission Act 2009 (MACCA) was amended to introduce a corporate liability provision for bribery and corruption under Section 17A of the MACCA, which came into effect on June 1, 2020.</p> <p>The MACC can now directly impose corporate liability on commercial organizations, including public and private limited companies, whose employees or associated persons are involved in corrupt practices and dishonest commercial misconduct.</p> <p>If a commercial organization is found guilty under Section 17A, the penalty under Section 17A(2) is a fine of not less than 10 times the value of the bribe or RM 1 million, whichever is higher, or imprisonment for up to 20 years, or both. However, commercial organizations can defend themselves if they can demonstrate that the organization has implemented 'Adequate Procedures' in its operations.</p> <p>Currently, two commercial organizations are charged under this provision.</p>
<p>14.</p>	<p><i>31: Freezing, Seizure and Confiscation</i></p> <p>1. <i>Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</i></p> <p>(a) <i>Proceeds of crime derived from offences established in accordance with this Convention or property the value of which responds to that of such proceeds;</i></p> <p>(b) <i>Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.</i></p> <p>2. <i>Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.</i></p> <p>3. <i>Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.</i></p> <p>4. <i>If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.</i></p>	<p>A. Make transformed or converted property liable to confiscation.</p>	<p>Y</p>	<p>Section 55 of Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLA) covers forfeiture of property upon prosecution for an offence:</p> <p>(1) <i>Subject to section 61, in any prosecution for an offence under subsection 4(1) or a terrorism financing offence, the court shall make an order for the forfeiture of any property which is proved to be—</i></p> <p>(a) <i>the subject-matter or evidence relating to the commission of such offence;</i></p> <p>(b) <i>terrorist property;</i></p> <p>(c) <i>the proceeds of an unlawful activity; or</i></p> <p>(d) <i>the instrumentalities of an offence,</i></p> <p>Section 3 of the same Act provides the interpretation of the proceeds of an unlawful activity:</p>

<p>5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p>6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.</p> <p>...</p>			<p>“proceeds of an unlawful activity” means any property, or any economic advantage or economic gain from such property, within or outside Malaysia—</p> <p>(a) which is wholly or partly—</p> <p>(i) derived or obtained, directly or indirectly, by any person from any unlawful activity;</p> <p>(ii) derived or obtained from a disposal or other dealings with the property referred to in subparagraph (i); or</p> <p>(iii) acquired using the property derived or obtained by any person through any disposal or other dealings referred to in subparagraph (i) or (ii);</p> <p>The above interpretation covers transformed or converted property liable to confiscation under section 55 of the AMLA.</p>
	<p>B. Enable confiscation and forfeiture of instrumentalities destined for use in corruption offences.</p>	<p>Y</p>	<p>Section 55 of Anti-Money Laundering, Anti-Terrorism Financing And Proceeds Of Unlawful Activities Act 2001 (AMLA) covers forfeiture of property upon prosecution for an offence:</p> <p>(1) Subject to section 61, in any prosecution for an offence under subsection 4(1) or a terrorism financing offence, the court shall make an order for the forfeiture of any property which is proved to be—</p> <p>(a) the subject-matter or evidence relating to the commission of such offence;</p> <p>(b) terrorist property;</p> <p>(c) the proceeds of an unlawful activity; or</p> <p>(d) the instrumentalities of an offence,</p> <p>Section 3 of the same Act provides the interpretation of the instrumentalities of an offence” means—</p> <p>(a) any thing which is used in, or in connection with, the commission of any unlawful activity;</p> <p>or</p> <p>(b) any property which is wholly or partly used in, or in connection with, the commission of any unlawful activity,</p>

				<p>Section 3 of the same Act provides the interpretation of the “unlawful activity” means— <i>(a) any activity which constitutes any serious offence or any foreign serious offence; or</i> <i>(b) any activity which is of such a nature, or occurs in such circumstances, that it results in or leads to the commission of any serious offence or any foreign serious offence,</i></p> <p>Section 3 of the same Act provides the interpretation of the “serious offence” means— <i>(a) any of the offences specified in the Second Schedule;</i> <i>(b) an attempt to commit any of those offences</i></p> <p>Offences under MACCA is listed under Second Schedule of AMLA, hence Malaysia has enable confiscation and forfeiture of instrumentalities destined for use in corruption offences.</p>
		<p>C. While section 37 of MACCA could be used for freezing in the majority of corruption cases, the reviewing experts recommend specifying the legislation in this regard.</p>	<p>Y</p>	<p>Section 31 of MACCA provides the power of search and seizure. It is essential to specify the provisions regarding the seizure of movable property under Section 33 and the additional provisions related to the seizure of movable property under Section 34 of the same Act.</p> <p>Furthermore, Section 37 of MACCA grants the authority to issue an order not to part with or deal in movable property held in a bank, and Section 38 deals with the seizure of immovable property. These sections cover both the seizure of immovable and movable property as provided by these respective sections.</p> <p>While the aforementioned sections are applicable to offenses under MACCA, it's worth noting that the power of seizure and freezing can be used in all corruption cases.</p>
<p>15.</p>	<p>35. <i>Compensation for damage</i></p> <p><i>Each State Party shall take measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.</i></p>	<p>Malaysia should introduce provisions in line with article 35 of UNCAC.</p>		

16.	<p><i>36. Specialized Authority</i></p> <p><i>Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.</i></p>	<p>MACCA does not address the replacement or dismissal of the Chief Commissioner of MACCA, which could pose a risk to independence. This gap is reportedly being addressed through a Constitutional amendment.</p>	Y	<p>The reforms outlined in the NACP include the establishment of a Parliamentary Select Committee to oversee MACC and empowering the MACC in terms of the appointment of the Chief Commissioner, budget, oversight committee, establishment of a service commission, and manpower. Efforts are currently in progress, including internal engagements aimed at establishing the MACC Service Commission and making the appointment of the Chief Commissioner.</p>
<p>UNCAC Chapter IV. International cooperation</p>				
17.	<p><i>44. Extradition</i></p> <p><i>1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.</i></p> <p><i>2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.</i></p> <p><i>3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.</i></p> <p><i>4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.</i></p> <p><i>5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.</i></p> <p><i>6. A State Party that makes extradition conditional on the existence of a treaty shall:</i></p> <p><i>(a) At the time of deposit of its instrument of ratification, acceptance or</i></p>	<p>A. Malaysia is encouraged to make the requisite notification to the United Nations as to whether it would accept UNCAC as a legal basis for extradition.</p>		
		<p>B. Noting that Malaysia has previously extradited its nationals, Malaysia should ensure that future treaties address the obligation to expeditiously submit cases for prosecution and that this is followed in practice.</p>		
		<p>C. Malaysia is encouraged to comprehensively review its existing treaties to ensure that they meet all UNCAC requirements. The reviewers welcome Malaysia's indications that future extradition treaties are tailored to be consistent with UNCAC provisions.</p>		

approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, *inter alia*, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.

13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.

14. Any person regarding whom proceedings are being carried out in

	<p>connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.</p> <p>15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.</p> <p>16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.</p> <p>17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.</p> <p>18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.</p>			
18.	<p>46. Mutual legal assistance</p> <p>1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.</p> <p>...</p> <p>8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.</p> <p>9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1; (b) State Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature of matters for which the cooperation or assistance sought is available under other provisions of this Convention; (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.</p> <p>10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:</p>	<p>A. Malaysia may wish to monitor as much as possible the application of bank secrecy measures to ensure that also in future cases bank secrecy requirements do not delay the provision of MLA.</p>		
		<p>B. Malaysia is encouraged to embrace the rendering of non-coercive assistance, taking into account its flexible application of the dual criminality principle.</p>		
		<p>C. There has been no experience in the transfer of prisoners for providing testimony or assistance, and Malaysia should ensure that the requirements of the Convention are adhered to in future cases.</p>		
		<p>D. Malaysia is encouraged to make the requisite notifications to the United Nations as to its central authority and acceptable language for MLA.</p>		

<p>(a) <i>The person freely gives his or her informed consent;</i> (b) <i>The competent authorities of both State Parties agree, subject to such conditions as those State Parties may deem appropriate.</i> 11. <i>For the purposes of paragraph 10 of this article:</i> (a) <i>The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;</i> (b) <i>The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;</i> (c) <i>The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;</i> (d) <i>The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.</i> ... 13. <i>Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory...</i> 14. <i>Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity...</i> 21. <i>Mutual legal assistance may be refused:</i> ...<i>(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;</i> <i>(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.</i> 22. <i>States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.</i> 23. <i>Reasons shall be given for any refusal of mutual legal assistance.</i> 24. <i>The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the</i></p>	<p>E. Malaysia should consider specifying in its model request form that requests for MLA are acceptable in English.</p>		
	<p>F. Malaysia should ensure that the undertaking it requires from requesting States that a request does not have as its primary purpose the assessment or collection of tax is not interpreted in a manner contrary to the Convention.</p>		
	<p>G. Malaysia may consider reviewing the MACMA to enable its authorities to postpone rather than refuse assistance that could prejudice a criminal matter in Malaysia, noting that the Act is interpreted and applied this way in practice.</p>		
	<p>H. Malaysia is encouraged to review the MACMA and treaties to ensure that consultations with requesting States are held before refusing or postponing assistance.</p>		

	<p>request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.</p> <p>25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.</p> <p>26. Before refusing a request...the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.</p>			
UNCAC Chapter V. Asset recovery				
19.	<p>51. General provision</p> <p><i>The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.</i></p>	<p>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).</p>		
20.	<p>53. Measures for direct recovery of property</p> <p><i>Each State Party shall, in accordance with its domestic law:</i></p> <p><i>(a) Take such measures as may be necessary to permit another State Party to initiate civil action in its courts to establish title to or ownership of property acquired through the commission of an offence established in accordance with this Convention;</i></p> <p><i>(b) Take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another State Party that has been harmed by such offences;</i></p> <p>...</p>	<p>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, paras. a and b).</p>		
21.	<p>54. Mechanisms for recovery of property through international cooperation in confiscation</p> <p>...</p>	<p>Strengthen mechanisms for the preservation of property pending confiscation, including through the establishment of a central asset management office, and consider adopting</p>		

	<p>2. Each State Party, in order to provide mutual legal assistance upon a request made pursuant to paragraph 2 of article 55 of this Convention, shall, in accordance with its domestic law:</p> <p>...</p> <p>(c) Consider taking additional measures to permit its competent authorities to preserve property for confiscation, such as on the basis of a foreign arrest or criminal charge related to the acquisition of such property.</p>	<p>comprehensive asset management guidelines (art. 54, para. 2(c)).</p>		
<p>22.</p>	<p>57. Return and disposal of assets</p> <p>1. Property confiscated by a State Party pursuant to article 31 or 55 of this Convention shall be disposed of, including by return to its prior legitimate owners, pursuant to paragraph 3 of this article, by that State Party in accordance with the provisions of this Convention and its domestic law.</p> <p>2. Each State Party shall adopt such legislative and other measures, in accordance with the fundamental principles of its domestic law, as may be necessary to enable its competent authorities to return confiscated property, when acting on the request made by another State Party, in accordance with this Convention, taking into account the rights of bona fide third parties.</p> <p>3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:</p> <p>(a) In the case of embezzlement of public funds or of laundering of embezzled public funds as referred to in articles 17 and 23 of this Convention, when confiscation was executed in accordance with article 55 and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party;</p> <p>(b) In the case of proceeds of any other offence covered by this Convention, when the confiscation was executed in accordance with article 55 of this Convention and on the basis of a final judgement in the requesting State Party, a requirement that can be waived by the requested State Party, return the confiscated property to the requesting State Party, when the requesting State Party reasonably establishes its prior ownership of such confiscated property to the requested State Party or when the requested State Party recognizes damage to the requesting State Party as a basis for returning the confiscated property;</p> <p>(c) In all other cases, give priority consideration to returning confiscated property to the requesting State Party, returning such property to its prior legitimate owners or compensating the victims of the crime.</p> <p>...</p>	<p>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, para. 3).</p>		



For details on Malaysia's UNCAC reviews, please refer to:

<https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fmys.html>

Or contact UNODC:

Annika Wythes, Regional Anti-Corruption Adviser – Southeast Asia and the Pacific: annika.wythes@un.org