



UNODC

United Nations Office on Drugs and Crime

Country Review Report of Malaysia

Review by Timor-Leste and Swaziland of the implementation by
Malaysia of articles 5-14 and 51-59 of the United Nations
Convention against Corruption for the review cycle 2016-2021

I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

II. Process

5. The following review of the implementation by Malaysia of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Malaysia, and supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Timor-Leste, Swaziland and Malaysia, by means of telephone conferences and e-mail exchanges and involving Mr. Rui Pereira do Santos, Mr. Augusto da Costa Castro, Mr. Benjamin Vila Nova dos Santos and Mr. Flaviano Moniz Leão from Timor Leste, Mr. Bryan Daniel Magagula from Swaziland and Mr. Chuah Chang Man, Mr. Mohamad Tarmize bin Abdul Manaf, Ms. Hong Chin Chin and Mr. Mugilen Maniam from Malaysia. The members of the secretariat were Ms. Brigitte Strobel-Shaw and Ms. Tanja Santucci.
6. A country visit, agreed to by Malaysia, was conducted in Kuala Lumpur from 4 to 6 July 2017.

III. Executive summary

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

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

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

The legal system in Malaysia is based on a set of written and unwritten laws. Among the written laws are the Federal Constitution together with

the Constitutions of the thirteen states, legislation enacted by the Parliament and State Assemblies, and subsidiary legislation. The unwritten laws are comprised of the principles of English common law adapted to local circumstances, case law and local customary law.

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

The national legal framework against corruption includes principally, the Malaysian Anti-Corruption Commission (MACC) Act 2009 (Act 694), the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA), and related government regulations, orders, circulars and instructions. Malaysia is party to a number of international agreements on crime control, crime prevention and international cooperation and also applies the Convention directly for international cooperation.

Malaysian enforcement authorities cooperate through different mechanisms and networks, including the Financial Action Task Force (FATF), Asia-Pacific Group on Money-Laundering (APG), INTERPOL, ASEANAPOL and the Egmont Group of Financial Intelligence Units.

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

2. Chapter II: preventive measures

2.1. Observations on the implementation of the articles under review

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

Malaysia's anti-corruption policies are contained in the country's penal, civil and administrative laws, rules and regulations that safeguard public law and order; and that uphold integrity, transparency and accountability of government and the private sector. These policies are incorporated in various policy documents, such as government service circulars, government guidelines, letters, and related documents, as well as the country's development agenda (5-year plans).

Overarching these anti-corruption initiatives, Malaysia has a National Integrity Plan (NIP) which is spearheaded by INTEGRITI in collaboration with other government and private sector actors, as well as a Government Transformation Plan (GTP), which features anti-corruption as one of seven National Key Results Areas (NKRA).

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

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

Evaluation of the effectiveness of strategies and programmes to enhance integrity is also conducted under the NIP and the GTP.

Several policies under the GTP have been revised to reflect the outcomes and evaluation of monitoring, and several MACC policies have also been focused to make them more targeted and effective.

Coordination of the implementation of anti-corruption policies for the GTP is ensured by the Performance Management & Delivery Unit (PEMANDU) in PMO, which oversees the implementation of the 21 initiatives under the GTP, while the coordinating agency for the implementation of NIP is INTEGRITI. With respect to MACC, coordination and monitoring is carried out by the Prevention and Education Divisions and by independent oversight committees. MACC also monitors 887 Integrity Units (IUs) which are set up within Ministries/Departments/Government Agencies and the IUs are tasked with 6 core functions listed in Service Circular No. 6 of 2013. With respect to overall coordination, the Minister for Governance and Integrity calls monthly coordination/governance meetings and coordination also takes place through Prime Minister's administrative orders.

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

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

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

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

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

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

Malaysia has adopted comprehensive measures and procedures governing the recruitment, hiring, retention, promotion, retirement and discipline of

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

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

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

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

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

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

The selection procedure for judges under the Judicial Appointments Commission (JAC) (Selection of Judges of the Superior Courts) Regulations 2009, as well as the Judges' Code of Ethics 2009 and the Judges' Ethics Committee established under the Judges' Ethics Committee Act 2010 (Act 703), among other measures, appear to provide a comprehensive framework to strengthen integrity and prevent opportunities for corruption among members of the judiciary. A training programme for judges, with dedicated resources allocated by JAC for a Judicial Academy, is also in place.

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

Measures against conflict of interest, impartiality and bias of judges and to enhance transparency in the judicial process include accessibility of court judgements and rules on the transfer of cases and recusal of judges

(see, e.g., Rules of Court 2012- Order 42; sections 417, 439 Criminal Procedure Code; Residence Hotel and Resorts Sdn Bhd v. Seri Pacific Corp Sdn Bhd [2014] 10 MLJ 413).

All officers in the Legal and Prosecutorial services (including those in MACC) are public officers and therefore subject to C&D-R and related service circulars, which provide for declarations of assets. In addition, laws, regulations and directives governing the conduct of prosecutors and the conduct of prosecutions have been adopted (sub-regulation 4(2), C&D-R; Guidelines for Prosecutors). Specialized training of prosecutors and procedures on case management are in place. The appointment, function, removal and powers of the Attorney General are regulated (art. 145, Federal Constitution).

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

Public procurement is regulated by the Financial Procedure Act 1957 (Revised 1972) (Act 61) and related Treasury Instructions, which stipulate that procurement of works, supplies and services above the value of RM500,000 must be done through a tender process. All contractors participating in local tenders must be registered with the Government. International tenders are invited if there are no locally produced supplies or services available. The registration procedure takes 14 days as per the working charter for tenders, and the registration system is linked with CCM. Exemption from registration may be applied in cases of emergency or if specific expertise required is not otherwise available. Furthermore, line ministries are not confined to any single list of registered bidders, as separate registration is conducted for each procurement in question.

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

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

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

Malaysia promotes transparency and accountability in the management of public finances. The procedure for the preparation of the budget is given in Treasury Instruction Nos. 29-51. Timely reporting on revenue and expenditure by Federal Government agencies is governed by Act 61.

Audit Units in Federal Ministries/Departments monitor the effectiveness of internal controls. The National Audit Department has developed a

rating system to measure controls, and an Accountability Index was also developed. The reports of the Auditor General are published and presented annually to Parliament. Malaysia undertakes follow-up action to address the findings of the Auditor General's reports; the Auditor General's Dashboard appears to be an effective tool in this regard.

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

The Government of Malaysia provides platforms for the public to obtain information on the organizations and functions of the public administration through initiatives, such as Malaysia's Open Data Portal and specialized platforms, such as the Special Taskforce to Facilitate Business (PEMUDAH) "Idea Bank". Malaysia has taken steps towards e-services delivery as a means to simplify and improve administrative procedures, led by the Administrative Modernization and Management Planning Unit (MAMPU) in PMO.

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

Malaysia has adopted several measures to enhance government service delivery. These include the use of Key Performance Indications (KPIs) and their associated benchmarks by all government agencies, the Malaysian Public Service Commitment 2008, the 2009 GTP, PEMUDAH, and the use of Client Charters.

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

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

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

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

Private sector (art. 12)

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

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

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

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

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

Measures to prevent money-laundering (art. 14)

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

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

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

The 2015 FATF/APG mutual evaluation concluded that Malaysia has a strong legal and regulatory framework for preventive measures. Interagency coordination and policy frameworks, BNM's supervision and the FIU are its key strengths. Steps have been taken to address the outstanding recommendations, under the coordination of the NCC.

2.2. Successes and good practices

- The measures to enhance integrity in government agencies and government linked companies, which make it mandatory for these entities to set up Integrity Units that have been categorized according to their levels of corruption risk; the annual reports of the MACC panels and committees; and the surveys of public perception, are examples of good practices (art. 5(2)).*
- The international and regional cooperation efforts of Malaysian institutions (art. 5(4)).*

- *The work of different oversight panels and committees that continuously scrutinize the operations of the MACC (art. 6(2)).*
- *Malaysia has assessed and identified risk areas vulnerable to corruption, also within the MACC, and has taken measures to mitigate these risks, including through specific staff training and rotation systems (art. 7(1)).*
- *The use of KPIs in all government agencies and their associated benchmarks; the Corporate Directors Leadership and Integrity Course is also noted as a positive measure to strengthen integrity in government linked companies, among a range of other integrity training programmes offered by institutions (art. 8(1)).*
- *The Integrity Pact in Government Procurement and Malaysia's electronic MyPROCUREMENT system (art. 9(1)).*

2.3. Challenges in implementation

It is recommended that Malaysia:

- *Consider enhancing coordination of national and departmental anti-corruption policies (e.g., GTP, NIP, MACC laws and policies) – both with regard to their implementation and monitoring, as well as development and revision, to more systematically draw on lessons learned and enhance information exchange (art. 5(2)).*
- *Consider adopting a more systematic approach to the periodic evaluation and revision of anti-corruption legal instruments, including through consultations with relevant stakeholders (art. 5(3)).*
- *Continue efforts to establish a Constitutional tenure for the Chief Commissioner of the MACC and encourage further attention and appropriate action to advance the matter (art. 6(2)).*
- *Consider specifying in the relevant regulations the right of appeal of appointment and promotion decisions (art. 7(1)).*
- *Continue steps towards adopting rules on political party financing and consider adopting requirements for elected officials, prior or upon entry to elected office, to file asset declarations and demonstrate compliance with tax obligations, past and present (art. 7, paras. 2 and 3).*
- *Consider adopting, in addition to existing asset declaration requirements, systems and procedures for public officials to declare potential conflicts of interest, which would also help further the detection, enforcement and administrative sanctioning, where appropriate, of conflict of interest violations (art. 7(4)).*
- *Consider establishing a mechanism for line ministries to report to the relevant public service authorities on the process of verification of asset declarations of public officials within their departments (arts. 8(5) and 52(5)).*
- *Continue efforts to establish a procurement complaints mechanism for aggrieved parties, and encourage MOF more generally to have an overview of the procurement processes followed by line ministries (art. 9(1)). Malaysia could also consider strengthening the risk-management system in the area of public financial management (art. 9(2)).*
- *Strengthen procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of its public administration and consider in this context the adoption of access to information legislation at the federal level, bearing in mind the adequate protection of privacy and*

personal data, including a review of the procedures for the application of national secrecy laws (art. 10).

- Adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes (art. 12(4)).*
- Continue efforts to address the remaining issues of the FATF evaluation (arts. 14, 52).*

3. Chapter V: asset recovery

3.1. Observations on the implementation of the articles under review

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

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

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

Malaysia has never refused any MLA requests to-date for requests which have met all the requirements under MACMA.

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

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

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

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

A system of sharing financial intelligence with other States is in place (section 10, AMLATFAPUAA). As a matter of practice, Malaysian law

enforcement authorities regularly transmit information relating to criminal matters informally to their foreign counterparts.

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

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

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

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

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

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

Requests for enforcement of foreign forfeiture orders are regulated under sections 31 and 32 of MACMA, read in conjunction with Part III Division 4 of MACMA Regulations 2003 (MACMR). These allow for the enforcement of an MLA request that is supported by an enforceable, authenticated copy of a foreign forfeiture order. Statistics on the recognition of foreign forfeiture orders were provided.

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

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

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

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

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

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

Return and disposal of assets (art. 57)

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

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

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

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

3.2. Successes and good practices

- The BNM Standard Operating Procedures on Receipt, Analysis and Dissemination of Financial Intelligence with foreign States (art. 52).*
- Section 34 of MACMA provides that a certificate issued by an appropriate foreign authority stating that a foreign forfeiture order is in force and is not subject to appeal shall be received in evidence before a court without further proof (art. 54).*
- The flexibility of section 19 MACMA, which allows Malaysia to fulfil any request in the manner the requesting State wishes and to the fullest, within legal limits; moreover, detailed guidance and model request forms facilitate the provision of assistance (art. 55(3)).*
- Continuous consultation between the requesting and the requested State is a good practice; Malaysia does not in practice refuse requests but closes the cases provisionally until additional*

information or evidence from requesting States is received (art. 55(7)(8)).

- *Malaysia has enforced the provisions of MACMA resulting in proceeds of property being returned to bona-fide third parties (art. 57(2)).*

3.3. Challenges in implementation

It is recommended that Malaysia:

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

IV. Implementation of the Convention

A. Ratification of the Convention

The Convention was signed by Malaysia on 9 December 2003 (C.N.1420.2003.TREATIES-32). It was subsequently ratified on 24 September 2008 (C.N.679.2008.TREATIES-29). The Convention entered into force for Malaysia on 24 October 2008. Malaysia made the following reservation at the time of ratification.

“(a) Pursuant to Article 66, paragraph 3 of the Convention, the Government of Malaysia declares that it does not consider itself bound by Article 66, paragraph 2 of the Convention; and (b) The Government of Malaysia reserves the right specifically to agree in a particular case to follow the arbitration procedure set forth in Article 66, paragraph 2 of the Convention or any other procedure for arbitration.”

Implementation of international conventions in Malaysia’s legal system

The Federal Constitution of Malaysia does not contain any provision which says that

international law shall be deemed part of the law of the land, or that treaties shall be the laws of Malaysia. Nevertheless, certain provisions of the Constitution deal with “treaty making capacity” in Malaysia.

According to Article 74 (1) of the Federal Constitution, “Parliament may make laws with respect to any of the matters enumerated in the ‘Federal List’ or the ‘Concurrent List’. The ‘Federal List’ in the Ninth schedule includes: “1. External Affairs, including- (a) Treaties, agreements and conventions with other countries and all matters which bring the Federation into relations with other countries; (b) Implementation of treaties, agreements and conventions with other countries;...”

From the wording of Article 74, read with the ‘Federal List’, it means that the Federal Parliament has the exclusive power to make laws relating to external affairs (including treaties, agreements and conventions) and it has the power to implement international treaties and make them operative domestically. In respect of the power of the Executive, Article 39 provides that: “The executive authority of the Federation shall be vested in the Yang di-Pertuan Agong (King) and exercisable ... by him or by the Cabinet or any Minister authorised by the Cabinet.”

Again under Article 80 (1) the executive authority of the Federation extends to all matters with respect to which Parliament may make laws. By virtue of the ‘Federal List’, matters with respect to which Parliament may make laws include “external affairs”, which in turn include “treaties, agreements and conventions with other countries”. Therefore, in Malaysia the treaty-making power is vested in the executive authority of the Federation or the Federal Government.

Although the treaty-making power lies with the Executive, the power to give legal effect domestically to treaties rests in Parliament. To be operative, a treaty, agreement or convention therefore needs legislation by Parliament.

The practice of courts in Malaysia in applying international treaties is based on the doctrine of transformation. In other words Malaysian courts apply international treaties, i.e. they have to be transformed into domestic law by means of an act of Parliament. Thus, even though the Government (Executive) has ratified a treaty and it binds Malaysia under International Law, it has no effect domestically unless the Legislature passes a law to give legal effect to that treaty.

B. Legal system of Malaysia

Malaysia is a constitutional monarchy based on the British Westminster model, a legacy of British colonialism. At the federal level there is a bicameral legislature. The House of Representative (Lower House) called the Dewan Rakyat is composed of 194 members elected every five years in a first-past-the-post election from single-member constituencies delineated on the basis of population. The Senate (Upper House) called the Dewan Negara consists of 70 members of which 26 are indirectly elected by the states, the other 44 are appointed by the King (Yang di-Pertuan Agong). The appointed senators represent the federal territories, sectoral groups and minorities. Executive power lies with the Prime Minister and the Cabinet. Each of the 13 States has its own legislature. The Malaysian Parliament is defined by Article 44 of the Federal Constitution as consisting of the Yang di-Pertuan Agong (King), the Dewan Negara (Senate) and the Dewan Rakyat (House of Representative). The House of Representative is where a Bill customarily originates. Once approved, it will be tabled in the Senate for another debate. The Bill, upon approval, will then be presented to the King for his consent before it is gazetted to make it a law as stated in the Government Gazette.

The Monarchy

The Yang di-Pertuan Agong (King) is a constitutional head. Under Article 40 (1) of the Malaysian Federal Constitution he acts on ministerial advice except as otherwise provided. He reigns, but does not govern. As Head of State, he is the formal head of each of the three branches of government: the legislature, the executive and the judiciary. He is a component of Parliament and may not refuse assent to Bills passed by the two Houses of Parliament. As Head of the executive, he appoints the Prime Minister and members of the cabinet. As Head of the judiciary, he appoints the Chief Justice of the Federal Courts, the President of the Court of Appeal, the Chief Judge of each of the two High Courts, and all judges of the superior courts. Each component state in the federation has its own Head of State (either a Ruler or a Yang di-Pertua Negeri), an elected unicameral legislative assembly and an executive council headed by a Chief Minister called the Menteri Besar or Ketua Menteri. Like the Yang di-Pertuan Agong (King), each Ruler and Yang di-Pertua Negeri is the constitutional Head of State and acts on the advice of the State Executive Council.

The Malaysian Constitution is a written constitution. It is modelled along the lines of the Indian Constitution which in turn is based on basic principles of British Government and Constitutional Convention. The Malaysian Constitution is described as being based upon the Westminster Model. Article 4(1) of the Federal Constitution declares “This constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall to the extent of the inconsistency be void.” The doctrine which underlies the Federal Constitution is the doctrine of constitutional supremacy, as opposed to parliamentary supremacy.

Institutions of Government

The Yang di-Pertuan Agong (King)

The Constitution provides for a “Supreme Head of the Federation” to be called the Yang di-Pertuan Agong. The Yang di-Pertuan Agong (King) holds office for a period of five years, and is elected at the Conference of Rulers from amongst 9 Malay Rulers of States. Although it is provided that the executive authority of the Federation shall be vested in the Yang di-Pertuan Agong in the exercise of his functions under the Constitution or Federal laws, the Yang di-

Pertuan Agong is to act in accordance with the advice of Cabinet. Most of the functions and duties of the Yang di-Pertuan Agong are ceremonial in nature. (See also paragraph 26)

The Executive

Executive power is vested in the Cabinet of Ministers which is appointed by the Yang di-Pertuan Agong (King) to advise him. The Yang di-Pertuan Agong first appoints as Prime Minister to preside over the Cabinet, a member of the House of Representatives (the Dewan Rakyat), who in his judgment is likely to command the confidence of the majority of the members of that House. On the advice of the Prime Minister, the Yang di-Pertuan Agong then appoints other Ministers from among the members of either House of Parliament. The Cabinet is collectively responsible to Parliament.

The Legislature

In Malaysia, the power to enact laws is vested in Parliament at the federal level and the State Legislative Assembly at the state level. The Parliament consists of two ‘Houses’ that is, the Dewan

Negara or Senate which is the Upper House, and the Dewan Rakyat, or House of Representatives, the Lower House. The Senate is composed of both elected as well as appointed members. The House of Representatives is made up of elected members.

Parliament's law-making function is its most important. Article 160 of the Federal Constitution defines 'law', and within this definition is included written law, the common law in so far as it is in operation in the Federation or any part thereof, and any custom or usage having the force of law in the Federation or any part thereof. The major source of the law is written law or legislation. Although it is essentially the prerogative of Parliament, the power to make laws can be delegated to other bodies by power conferred upon them by Parliament in a parent statute, and legislation made in this manner is known as delegated or subsidiary legislation.

As Malaysia has a written Constitution which is the supreme law of the Federation, Parliament and the State Legislative Assembly are not supreme. They can enact laws only within the limits and in the manner prescribed by the Federal and State Constitutions.

Laws enacted by Parliament are called Acts, but those enacted by the federal legislature between 1 April 1946 and 10 September 1959 are called Ordinances. Laws enacted by the State Legislature are referred to as Enactments, except in Sarawak where they are known as Ordinances. Laws promulgated by the Yang di-Pertuan Agong (King) during an emergency proclaimed under Article 150 of the Federal Constitution are also called Ordinances.

There are four types of Acts:

1. Principal Act;
2. Amendment Act, which makes changes to a Principal Act;
3. Revised Act, which results from changes made by the Commissioner of Law Revision under powers conferred upon him in the Revision of Laws Act 1968; and
4. Consolidated Act, which brings together in a simple Act two or more Acts on a specific subject-matter which had been passed over a period of time.

The Yang di-Pertuan Agong (King) is an integral part of Parliament and his assent is required for all laws except in circumstances when the Royal Assent is deemed to have been given after the expiry of the specified time. The Yang di-Pertuan Agong's role as a constitutional monarch does not permit him to be an active participant in parliamentary proceedings. He attends on ceremonial occasions such as the opening of parliamentary sessions and delivers the Royal Address to a joint sitting of both chambers outlining government policies. His other parliamentary duties include summoning, proroguing and dissolving Parliament. In discharging these duties he acts on the advice of the Prime Minister except that on advice of dissolution he may act on his own discretion.

The Judiciary

Article 121 of the Constitution states that there "shall be two courts of co-ordinate jurisdictions and status", and such inferior courts as may be provided by Federal Law. Article 121 further provides that the courts referred to shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah Courts.

The jurisdiction and powers of courts under the Malaysian hierarchy of courts are contained principally in the Court of Judicature Act 1964 for the superior courts (that is the Federal Court, the Court of Appeal and two High Courts of coordinate jurisdiction - one for West, the other for East Malaysia) and in the Subordinate Courts Act 1948 for the subordinate courts (Sessions,

Magistrates' and Penghulu Courts).

As the administration of justice is a federal matter, these courts are federal courts vested with civil and criminal jurisdiction, and enforce both federal and state laws (the latter, though, applies only to the state concerned). Conversely, because Islamic law, Malay and native customary laws are state matters, the Syariah Courts (other than those in the federal territories) and the Native Courts in Sabah and Sarawak are state courts.

In regard to the separation of powers, in Malaysia, for instance, the Judiciary may declare as void an executive act or an Act of Parliament if either violates the Constitution. The Executive on the other hand is fettered because in theory, it is controlled by Parliament to which it is answerable. Hence, the system of separating governmental powers together with inter-branch checking can effectively prevent the concentration of power in one party. The separation of power as practiced in Malaysia is closer to the British rather than the American model in that the executive-legislative power is not separated. The fusion of legislative and executive functions is inherent in the Westminster's style of parliamentary government. The Yang di-Pertuan Agong (King), who is the ceremonial executive is an integral part of Parliament. The Cabinet, appointed by the King on the advice of the Prime Minister and in whose hands the real authority rest, consists of ministers who are required by the Constitution to be members of either House of Parliament. Here, the Executive arm of the Government is an integral part of the Legislature. Malaysia practices parliamentary democracy based on the British Westminster model.

Being a country with a common law tradition, laws are constantly developed through cases decided by judges in courts and hence the term "case law" or "judge-made law". They are contained in judicial precedents which are reported in various series of law reports e.g. the Malaysian Law Journal. These reports are primary documentary sources. They are crucial tools of trade for lawyers, judges and academicians. Notwithstanding this, an important source of law in Malaysia is the written law. Given that Malaysia is a Federation which comprises 13 States, its written law comprises both Federal and State Laws. Malaysia's written laws consist of the following:

- The Federal Constitution, which is the supreme law of the land and together with the constitutions of the 13 States comprising the Federation.
- Legislation enacted by Parliament and the State Assemblies under powers conferred on them by their respective constitutions and subsidiary or delegated legislations made by persons or bodies under powers conferred on them by Acts of Parliament or Enactments of State Assemblies.

With regards to the legislative power of the Federation and the States, Article 74(1) provides that Parliament may make laws with respect to any of the matters enumerated under the Federal List or the Concurrent List in the 9th Schedule. Article 74(2) provides that the legislature of a State may make laws with respect to any of the matters enumerated in the State List or in Concurrent List in the 9th Schedule.

The Federation has power and control over subject matters which can be considered essential and vital to the nation as a whole, and these are enumerated in the Federal List and they include matters such as external affairs, defence, internal security, civil and criminal law and procedure and administration of justice, citizenship, finance, trade commerce and industrial, shipping, communications and transport, education, medicine and health, labour and social security.

Matters which are included in the State List include Islamic law and personal and family law of persons professing religion of Islam; Malay custom; the constitution, organization and procedure of Syariah courts; land including land tenure; agriculture and forest; local government; libraries, museums, ancient and historical monuments and records and archaeological sites and remains.

Matters within the Concurrent List include social welfare, scholarships, protection of the wild animal and birds, town and country planning, public health, drainage and irrigation, culture and

sports and housing.

Islamic law is also a major source of Malaysian law but it is applicable only to Muslims regardless of race. It is administered by a separate system of state Syariah courts. There is no relevance in regard to anti-corruption measures, as only family and related matters are covered by its jurisdiction.

English law has been received in Malaysia either expressly or by implication. It is express for example, when received by virtue by section 3(1) of the Civil Law Act 1956 where the court is required to apply “in West Malaysia or any part thereof...the Common Law of England and rules of equity as administered in England on 7th April 1956”. On the other hand, it is implied when the court interprets an instruction to decide case according to “justice and right” as implying authority to receive appropriate English law.

The Federal Constitution is the supreme law of the Federation. It is the fundamental law of the land, a kind of ‘higher law’ which is used as a yardstick with which to measure the validity of other laws. Any law inconsistent with the Federal Constitution may be challenged in court.

In the case of *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112-113 it was pointed out that the doctrine of supremacy of Parliament does not apply in Malaysia, as a written constitution is in place. The power of Parliament and of State Legislatures in Malaysia is limited by the Constitution and they cannot make any law they please.

The legislature is not the only organ which is subject to the Federal Constitution. The executive and the judiciary are, too. In short all institutions created by the Federal Constitution derive their powers from it are subject to its provisions. The supremacy of the Federal Constitution is set out in articles 4(1) and 162 (6) and section 73 of the Malaysia Act 1963. Article 4 (1) states: “This Constitution is the supreme law of the Federation and any law passed after Merdeka Day (independence day) which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.”

The Malaysian Legal System

The legal system in Malaysia is based on a set of written and unwritten laws. Among the written laws are the Federal Constitution together with the Constitutions of the thirteen states, Legislation enacted by the Parliament and State Assemblies, and delegated or subsidiary legislation made by bodies under the powers conferred on them by Acts of Parliament or State Assemblies. The unwritten laws are comprised of the principles of English common law adapted to local circumstances, case law and local customary law. Muslim law, which is limited to family and inheritance matters, is applicable only to the Muslim population and its administered by a separate system of courts.

The Federal Constitution provides for the exercise of powers by the Legislature, Judiciary and Executive. By virtue of Act 121 (1) of the Federal Constitution, Judicial power in the Federation is vested on two High Courts, namely, the High Court in Malaya and the High Court in Sabah and Sarawak, and in the inferior court. The Federal Court with its principal registry in Putrajaya is the highest court in Malaysia. The Chief Judge of the Federal Court heads the Malaysian judiciary and he exercises direct supervision over all courts. The President who heads the Court of Appeal and the two Chief Judges who head the High Courts in Malaya and in Sabah and Sarawak also sit in the Federal Court and are responsible to the Chief Judge. Judges are appointed by the King on the advice of the Prime Minister.

Assessments of measures to combat corruption and mechanisms to review the implementation of such measures

The Malaysian mechanism to assess and review its measures in combating corruption is being implemented through the setting up of the three (3) independent oversight committees and two (2) panels to monitor and scrutinize the overall activities of the Malaysian Anti-Corruption Commission by way provisions of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) and administrative orders of the Prime Minister, respectively.

The members of these 5 oversight bodies comprise of former government officials, politicians from the ruling and non-ruling parties, professional from the business and corporate sectors, academicians, lawyers and distinguished members of the public. They act as a check and balance mechanism to ensure the independency and transparency of the Commission and also assist in enhancing the efficiency and effectiveness of the Commission's operational, preventive and disciplinary matters.

The assessment and reviews of these committees are reported yearly to the Parliament.

Background information regarding the preparation of Malaysia's responses to the self-assessment checklist

In early 2016, the Malaysian Anti-Corruption Commission (MACC), as focal point, set up an internal Working Committee to begin working on the Self-Assessment Checklist (SACL) which had been developed by the Implementation Review Group for Chapters II and V of the Convention. The Working Committee was tasked to gather information on domestic legislation and to conduct research on examples of implementation from relevant stakeholders in accordance with the UNCAC requirements.

In April 2016, the MACC focal point, headed by the MACC Deputy Chief Commissioner (Prevention), initiated the process by setting up a National Level Task Force, which comprises of various governmental and non-governmental stakeholders to render their expertise and technical assistance by giving inputs within their respective purviews to Malaysia's responses to the UNCAC Self-Assessment Checklist.

In July 2016, UNODC officially informed the Government of Malaysia that Malaysia will be undergoing a review in the first year of the second review cycle for Chapter II (Prevention) and Chapter V (Asset Recovery) of UNCAC. The reviewing States are Timor-Leste and Swaziland.

The approach adopted by Malaysia in preparing responses to the SACL consisted of the following stages:

- Stage 1. The responses for Chapters II and V were simultaneously drafted by the MACC Working Committee. This includes securing of statistics, reports and relevant documents which are to be attached to the SACL;
- Stage 2. The draft responses were sent to the various governmental and non-governmental stakeholders for their comments and inputs;
- Stage 3. The comments and inputs of the governmental and non-governmental stakeholders were incorporated into the draft SACL to produce a comprehensive draft of the two Chapters by the Working Committee.
- Stage 4. The comprehensive draft was sent to the Attorney General's Chamber for their comments (if any) and to ensure that sensitivity of information disclosed are not compromised in accordance with Malaysian domestic laws and regulations; and
- Stage 5. After obtaining the approval of the AGC, the final comprehensive draft was transposed into the electronic OMNIBUS software and submitted to the Secretariat of UNODC.

Practices considered by Malaysia to be good practices in the implementation of chapters II and V of the Convention.

Chapter II Good Practices

A. HAVING A COMPREHENSIVE NATIONAL PLAN ON UPHOLDING INTEGRITY AND MAKING FIGHTING CORRUPTION AS ONE OF ITS NATIONAL KEY RESULT AREAS UNDER THE GOVERNMENT TRANSFORMATION PROGRAMMES.

These policy statements provide clear direction and road maps for implementers and stakeholders towards achieving the objective of the Government's Vision to build a society which is imbued with high moral and universal values in tandem with making Malaysia a developed nation by 2020.

1. NATIONAL INTEGRITY PLAN (NIP)

The NIP was introduced in 2004 emphasizing the promotion of a values-based society with a serious effort to make integrity and honesty as a way of life. The NIP aims to promote an accountable and corrupt-free society. This is complemented by its objective of establishing a fully moral and ethical society whose citizens are strong in religious and spiritual values and imbued with the highest ethical standards.

One of its five priority targets is to effectively reduce corruption, malpractice and abuse of power.

2. NATIONAL KEY RESULTS AREAS (NKRA) - ANTI CORRUPTION

The Government Transformation Programme (GTP) was introduced in 2010. The GTP is an ambitious, broad based initiative aimed at addressing key areas of concern to the people while supporting Malaysia's transformation into a developed and high-income nation by year 2020 as outlined in Vision 2020.

The GTP identified seven National Key Results Areas (NKRA) to evaluate the people's demands on the Government and the most pressing issues were selected to develop the NKRA's.

Fighting Corruption is one of the key areas aimed to improve the perception of corruption in Malaysia. The need to regain the people's confidence in the government's regulatory agencies and services.

The NKRA - Fighting Corruption brought many significant changes to the government services delivery system and contributed towards reducing opportunities for corruption.

B. STRENGTHENING AND ENHANCING GOVERNANCE IN THE PUBLIC AND PRIVATE SECTORS THROUGH INSTITUTIONAL ARRANGEMENTS AND PROGRAMMES AS FOLLOWS:

1. INTEGRITY AND GOVERNANCE COMMITTEE (JITU)

The establishment of the Integrity and Governance Committee (JITU) is a testimony to the government's commitment in strengthening the integrity of the government administrative system based on the principles of comprehensiveness, systematic, integrated and sustainability.

JITU was started as Integrity Management Committee (JKP) in 1998 and then it was changed to Committee on Integrity Governance (JKTU) in 2009.

Transformation initiatives affected change in the public service delivery that is more transparent, accountable, cost-effective and integrity-based. A decision at the Cabinet meeting on 14 March 2014 led to the establishment of the Integrity and Governance Committee (JITU) to strengthen the integrity management system of the Malaysian government administration.

2. CERTIFIED INTEGRITY OFFICER PROGRAMME (CeIO)

The implementation of this programme was approved by the Prime Minister during the Series 65 No.1 Year 2010 of the Special Cabinet Committee on Government Management (JKKMPK) which was held on 30 March 2010.

Officers from the public and private sector will be appointed Certified Integrity Officer (CeIO) upon completion of the CeIO Programme in Malaysia Anti-Corruption Academy (MACA). These officers shall then be recommended to head the Integrity Unit of their respective department/agency.

The Certified Integrity Officer (CeIO) Programme offered by MACA has been gaining acceptance as reflected in the growing requests from government organizations and the private sector.

3. INTEGRITY UNIT

Under this initiative, the central government has made it imperative for the establishment of Integrity Unit in all public bodies at the federal and state level. The directive was in-effect from 1 August 2013 via the Service Circular No. 6 of 2013.

The establishment of Integrity Unit is a proactive measure by the government to curb issues concerning integrity among civil servants. It is also a major effort by the government towards strengthening the integrity institutionalization and corruption prevention in the public administration system.

The Integrity Unit is conceived through the adoption of National Blue Ocean Strategy, combines officers from MACC and public bodies in managing the integrity agenda in a more focused, organized, efficient, appropriate and relevant in producing optimum outcome.

As a result, public bodies will now directly shoulder the corruption prevention responsibility within their organization via the setting up of Integrity Unit. Since the effort to fight corruption and increase integrity is not the exclusive responsibility of MACC, every government servants are accountable to abide law, policies and procedures in force by government.

4. CORPORATE INTEGRITY PLEDGE

The Corporate Integrity Pledge or CIP is a document that enables companies/ organizations to commit towards upholding anti-corruption principles. Signatories to the CIP pledge and promise against engaging in any form of corruption and to initiate ongoing anti-corruption efforts.

The CIP outlines principles to be adopted by corporate organizations in demonstrating their commitment towards creating a business environment that is fair, transparent and free from corruption. The principles serve as guidelines in determining the focus and needs to be emphasised by companies/organizations in contributing towards anti-corruption efforts in the country.

The implementation of the CIP is an initiative of the National Key Result Area (NKRA) Fighting Corruption under the Government Transformation Programme. The CIP is also an essential link in the reformation of the public sector and continuous enhancement in the private sector in order to spur the country's progress towards a developed nation.

5. INTEGRITY PACT

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 anticorruption clause.

On 28 February 2009, the Ministry of Finance has issued Special Circular to instruct all parties involved in government contracts not to commit any corrupt practices in any government procurement. All agencies are required to include a corruption offence clause in government contract documents, at all levels of the process including document preparation, tender invitation/quotation/e-Bidding. The treasury circular Treasury (TCL) No. 10/2010 dated 16 December 2010 issued by the MOF provides guidelines for the implementation of the Integrity Pact in government procurements. The Prime Minister agreed that the IP be implemented on one mega project of the Tenth Malaysia Plan as a pioneer project.

MOF further extended the implementation of IP to all government procurements which included the following areas:

- Implementation of IPs for government officers involved in government procurements;
- Implementation of IPs for Committee members involved in procurement;
- Implementation of IPs for Board members/Committees for procurements;
- Implementation of IPs for bidders; and
- Implementation of IPs for appointment of consultants.

The MACC and the Auditor-General will oversee the Integrity Pacts (IP) used for the mega development projects to ensure proper governance practice.

C. ANTI-CORRUPTION EDUCATION FOR YOUNG IMPRESSIONABLE MINDS

1. INCORPORATION OF ELEMENTS OF CORRUPTION PREVENTION IN PRIMARY SCHOOL TEXTBOOKS

The initiative is a long-term effort to instil values of integrity and corruption prevention among school students. It follows the government's realisation that efforts in providing education in corruption prevention will be more effective if corruption prevention elements are included in the education system.

These textbooks are:

1. Islamic Education (Malay language)
2. Moral Education (Malay language)
3. Moral Education (Tamil language)
4. Moral Education (Chinese language)

The elements, in the form of moral values and introduction to anti-corruption, aim to instil the feeling of detesting all forms of corruption.

2. ESTABLISHMENT OF CORRUPTION PREVENTION SECRETARIAT (SPR) IN INSTITUTES OF HIGHER LEARNING.

Students at Public Institutes of Higher Learning (IPTA) are among the main target group in need of exposure to corruption prevention. The reason being that they are ‘professionals in-the-making’ who will steer the nation’s leadership in the future. As such, outreach to this group is being carried out by the MACC through the Corruption Prevention Secretariat (SPR) at Public Institutes of Higher Learning (IPTA), Teacher Education Institutes (IPG) and MARA Education Institutions (IPMa).

Chapter V Good Practices

1. The National Coordination Committee to Counter Money Laundering (NCC) is the central committee coordinating the AML/CFT regime in Malaysia. The members of the Committee are represented by various Law Enforcement Agencies and Ministries. Under NCC, policy frameworks and strategic planning to strengthen the regime are formulated via sub-working groups. This includes improvement on ML/TF risk assessment, capacity building, data collections, and enforcement effectiveness.
2. Bank Negara Malaysia (BNM) has established Standard Operating Procedures (SoP) on Receipt, Analysis and Dissemination of Financial Intelligence. The SoP states that to ensure that confidential information received are protected and safeguarded, response must be channelled through Egmont Secure Web (for sharing with Egmont members) or registered mail (for sharing with non-Egmont members where the FIU has a MoU with).
3. As a matter of practice, Malaysian law enforcement authorities, in particular the FIU, the police and the MACC, indicated that they regularly transmit information informally relating to criminal matters to their counterparts in other countries. Examples of information sharing platforms through which this is done include inter-agency memoranda of understanding (MoUs), INTERPOL, ASEANAPOL and the Egmont Group of Financial Intelligence Units.

Please describe (cite and summarize) the measures/steps, if any, your country needs to take, together with the related time frame, to ensure full compliance with the chapters of the Convention that are under review, and specifically indicate to which articles of the Convention such measures would relate.

Malaysia has not fully complied with the requirements of Article 7 paragraph 3 under review. However, Malaysia has in this regard undertaken the following steps to ensure full compliance:

- (a) Establishing the National Consultative Committee on Political Funding (NCCPF) on 14 August 2015 towards realising the Prime Minister’s aspiration to see improvements in the Malaysian democratic system. The Committee was given 12 months to find ways to constructively resolve issues relating to political financing that have built up over decades. The Committee has completed its tasks within the stipulated time frame. In this period, the Committee had had 11 meetings, 19 roundtable discussions, meetings and engagement

sessions with various stakeholders and experts. The Committee utilised the Sarawak state election and two by-elections 2015/16 to conduct field studies to study the element of integrity in political financing during election campaign. These gave a clear view to the Committee on the operational aspects of elections in Malaysia.

- (b) The Malaysian Institute of Integrity (INTEGRITI), which acts as the reference centre and secretariat to the NCCPF, organized a two-day international conference on integrity in political financing in May 2016, and the outcome of the conference provided a good country comparison on political financing. The Committee had consulted and engaged a wide cross section of stakeholders, including Malaysian political parties, international experts, and civil societies. The Committee had also received written submissions from various parties on the subject matter.
- (c) The NCCPF is also recommending the introduction of a new statute to be named **Political Donations and Expenditure Act (PDEA)**, which the Committee proposed to comprise all aspects on political donations and its administration; their expenditures; state funding of political activities and regulating the relationship between politics and business. According to Minister in the Prime Minister's office and former President of Transparency International Malaysia, Datuk Paul Low, the recommendations will be presented to the Malaysian cabinet, and may take up to the 15th General Election to fully come into force. Malaysia's 14th General Election is due by 2018.

C. Implementation of selected articles

II. Preventive measures

Article 5. Preventive anti-corruption policies and practices

Paragraph 1 of article 5

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Anti-Corruption Policy of Malaysia

The Malaysian Government's stance has been, from the beginning of its nationhood, to address corruption, abuse of powers and/or malpractices and their various threats to the nation. This policy is being translated in its various penal, civil and administrative rules, regulations and laws that safeguard public law and order, as well as uphold integrity, transparency and accountability of government and the private sector.

The anti-corruption policy of Malaysia has over the years since her independence (1957) been developed and incorporated into her 5-Year Plans (Malaysia Year Plans) from 1966 till present (11th Year Plan); government service circulars, letters, and related documents which represent various mechanisms and initiatives with the coordination of various institutions and consultation with stakeholders.

These policy documents bear testimony to Malaysia's multi-pronged approach to tackle the menace of corruption in the country. Broadly speaking the multi-pronged approach may be categorized under the following:

1. Legal; and
2. Administrative.

Under the legal approach, Malaysia has not only criminalized acts of corruption by having in place penal laws under the Penal Code and the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) but has also included the prevention of corruption, per se, as part and parcel of the functions of the Malaysian Anti-Corruption Commission (MACC). The prevention of corruption functions of the MACC are provided specifically under Sections 7 (c) to (e) of the MACC Act 2009 to ensure efficiency and accountability of government administrative practices, systems and procedures.

Under its administrative approaches, Malaysia has implemented a number of administrative measures to uphold integrity in both the public and private sectors as follows:

- (a) Integrity management in the public sector to tackle corruption at all levels of the Federal, State and District Governments;
- (b) Integrity management in the private sector to tackle corruption at the private-public sector interface, corporations and government-linked companies; and
- (c) Public delivery system to improve public service delivery through reduction of bureaucratic red-tape, public officers' discipline and government transformation programmes.

Overarching these anti-corruption initiatives, Malaysia has its own National Integrity Plan (NIP) which is spearheaded by the Institute of Integrity Malaysia (INTEGRITI) in collaboration with other government and private sector players with the objective to build a resilient Malaysian society that is of high integrity. A summary of the Malaysian anti-corruption policy mechanism /initiatives and coordinating structures is as per the table below:

Malaysian Anti-Corruption Policy Initiatives and Coordination Structures

Policy	Implementation Mechanism	Coordination structures/ Protocol/Procedures
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Prevention of Corruption	The provisions of the Malaysian Anti-Corruption Act 2009 (Act 694), Section 7(c)-(g)	The prevention of corruption functions of the MACC are mainly tasked upon and coordinated by three Divisions: (a) Prevention Division of MACC; (b) Community Education Division of MACC; and (c) Anti-Corruption and Ethic Centre (ACE) outfit of MACC. In order to ensure effectiveness of implementation of the prevention policy, the activities of these Divisions are subject to external scrutiny by an independent Corruption Prevention and Consultancy Panel (CPCP) set up by an Administrative Order. The CPCP in turn submits its recommendations to the Anti-Corruption Advisory Board which in turn submits its report to the Parliamentary Special Committee on ways and means to combat corruption.
Integrity Management (Public Sector) 2008	Prime Minister's Directive No.1/2014: Strengthening the Governance of the Malaysian Government Administration System Movement: The Establishment of Integrity and Governance Committee	The implementation of Prime Minister's Directive No.1/2014 is carried out through Management Integrity & Governance Committees (JITU) of Ministries, Federal and State Government. Annual report by JITUs are submitted to Bahagian Integriti dan Tadbir Urus (BITU) (Integrity and Governance Division of the Prime Minister's Department)
	Service Circular 6 of 2013- Establishment of Integrity Units in High-risk Federal Government Ministries/ Departments/ Agencies and Government-linked companies (GLCs)	MACC Agency Integrity Management Division (BPIA) Quarterly/Annual report of Integrity Units to MACC Top Management.
Integrity Management (Private Sector) 2011	<ol style="list-style-type: none"> 1. Corporate Integrity Pledge (CIP) by corporations under the Corporate Integrity System Malaysia Portal 2. Integrity Pact (IP) agreements with the Ministry of Finance/ State Financial Authorities 3. Compliance with Malaysian Code of Corporate Governance (MCCG) 2012 issued by the Malaysian Securities Commission (SC) 	<ol style="list-style-type: none"> 1. A Corporate Integrity System™ Malaysia (CISM) framework was initiated. To ensure the effectiveness of the CISM, stakeholders from various regulatory and economic bodies have formed a roundtable on corporate integrity to embed ethical values in the corporate culture of the nation. 2. The members of CISM are MACC, Malaysian Institute of Integrity (INTEGRITI), TI-Malaysia, Pemandu, [NKRA], Bursa Malaysia (Bursa), Securities Commission (SC), and Companies Commission Malaysia (CCM).

Public Service Delivery: (i) Clean, Efficient and Trustworthy Government (1982)	1. Disciplinary proceedings enforced under the Public Officers (Conduct & Discipline) Regulations 1993 2. Government Services Circulars, Guidelines	1. Disciplinary Authorities of Federal and State Government Departments/Agencies. 2. Enforcement Agencies Integrity Commission (EAIC) 3. Public Complaints Bureau
Public Service Delivery (ii) One Service, One Delivery, No wrong Door (2007)	Regulations, Service Circulars, Letters of Service Circulars and Guidelines of the Government of Malaysia;	Coordination by Chief Secretary of the Government in consultation and collaboration with stakeholders: 1. Malaysia Administrative Modernization and Management Planning Unit (MAMPU) within the Prime Minister's Department; 2. PEMUDAH (Special Task Force to Facilitate Business); Monitoring and evaluating by MAMPU.
Public Service Delivery: (iii) Public-Private Partnership (2006)	Monitoring and evaluating of Public-Private Partnership (PPP) procurement and projects	Coordination is carried out by UKAS (Unit Kerjasama Awam Swasta-Public Private Partnership Unit)
National Integrity in all sectors of society (family, religious institutions, politics, corporate sector, and civil society)	National Integrity Plan	1. Coordination by Malaysian Institute of Integrity (INTEGRITI) and relevant Government Agencies/ private, religious institutions 2. Annual reports of INTEGRITI activities
Government Transformation Programme-National Key Result Areas: Fighting Corruption	Government Transformation Programme (GTP) 2010-2020	1. NKRA Fighting Corruption Coordination Division and relevant Government Agencies 2. Monitoring and evaluation by PEMANDU and NKRA Coordination Division under Minister in charge of Governance and Integrity, Prime Minister's Department

Requirements to evaluate such policies in terms of their effectiveness:

- Provisions of the MACC Act 2009 as follows:
 - a. Under section 11(2) of the MACC Act 2009, an Annual Report of the MACC shall be tabled to the **Special Committee on Corruption (SCC)** whose members are required under section 14 of the Act to examine the annual report of the MACC and seek clarifications and explanations on the annual report and the comments of the Anti-Corruption Advisory Board (ACAB) provided for under section 13 (5) of the Act.
 - b. The **Anti-Corruption Advisory Board (ACAB)** is given the following functions under section 13 (5) of the MACC Act 2009, which include:
 - i. To receive, scrutinize and endorse proposals from the Commission towards the efficient and effective running of the MACC;
 - ii. To scrutinize and endorse resource needs of the MACC to ensure its effectiveness; and
 - iii. To scrutinize the annual report of the MACC before its submission to the Special

Committee on Corruption.

- c. Under section 14(5) of the MACC Act 2009, the Special Committee shall make a SCC report on the discharge of its functions to the Prime Minister who shall lay a copy of that SCC report before each House of Parliament.
-
- National Integrity Plan (NIP) Evaluation- Section I, Part 5, para 2-4
 - a. Para 2 - The two methods in assessing the effectiveness of strategies and programmes to enhance integrity:
 - b. Para 3 - First Method- will be based on views of stakeholders. It involves three ways:
 - i. Para 3.1 - Reports by various stakeholders presented at the Convention on Integrity held periodically at regional and national levels. The views of representatives from all sectors were referred to during the preparation of the NIP and will be collated during the convention;
 - ii. Para 3.2 - Feedback from questionnaires administered to participants in the convention; and
 - iii. Para 3.3 - Survey on ethics and integrity undertaken periodically using random samples drawn from all sectors in various parts of the country.
 - c. Para 4 - Second Method - Quantitative evaluation to assess the achievements. The enhancement of integrity in various sectors will be measured statically and benchmarked based on selected criteria.

 - Government Transformation Plan (GTP) NKRA Evaluation- Chapter 13, Ensuring Performance Now, pp. 231-232
 - a. Para 13.1.2 - Several mechanisms have been established to ensure that NKRA is effective in managing delivery. A consensus based approach was undertaken in 2009 to identify key areas to address, as well as key targets to achieve and monitor on a yearly basis. This also included involvement and feedback from the public (rakyat) gathered during public consultation. A new reporting mechanism was developed, which signalled a new way of doing things, as well as Malaysia's seriousness in allocating resources, managing performance and promoting accountability for results as follows:
 - a) Flash Reports to Cabinet and on-demand status reports;
 - b) PM-led, cross-ministerial Delivery Task Force (DTF)
 - c) PM-Minister Reviews, based on stock takes and Delivery Reports;
 - d) Performance Assessment; and
 - e) Annual Report

Monitoring and evaluation of the implementation of anti-corruption policies by MACC:

Monitoring and evaluation of the implementation of the anti-corruption policies are within the purview of one of the oversight committees of MACC, namely the Anti-Corruption Advisory Board (ACAB), as laid out in Section 13(5)(b) of the MACC Act 2009. These committees may provide advice to the MACC on policies and strategies of the MACC in its efforts to eradicate corruption. As the oversight committees represent the public, the evaluation of anti-corruption policies are jointly carried out by the MACC and the committees in recommending the most effective strategies. Examples of some of the policies being recommended are:

- i. **Tackling the Issue of Abuse of "Political Funding"**

The misuse of political contributions is a major problem that leads to the serious implications of corruption and should be dealt with immediately and decisively. The practice of a politician who uses his position to obtain contracts to acquire 10 to 15 percent of the costs of

the contracts for his political party or for himself, should be prohibited. For this purpose, an amendment should be made to the Societies Act 1966 (Act 335) and the MACC is pursuing the matter.

- ii. Increased Focus on Procurement**
Procurement that involves a large expenditure opens up a great opportunity for corruption and must be closely monitored. The ACAB suggested that special focus specifically on this area be given by the MACC.
- iii. Making Investigations Follow-Up on the Findings of the Auditor General on Major Projects**
The ACAB proposes that the MACC investigates reports by the Auditor General's pertaining to major projects which may have the potential of malpractices.
- iv. Increase Efforts to Update the Law, Process and Procedure**
The MACC is urged to increase efforts to update the laws, processes and administrative procedures to further reduce opportunities for corruption, especially those related to public interests such as minor contracts, services and tenders.
- v. Establish an Anti-Corruption Service Commission**
The ACAB recommended to the Government the need for the establishment of Anti-Corruption Service Commission which will be responsible for the appointment, confirmation and promotion of the MACC staff. The establishment of this Commission will allow the MACC to manage its workforce more efficiently and thus increase its reliability and credibility.
- vi. Expansion of Integrity Vetting**
The integrity of a public official or an individual is one of the key factors that should be taken into account in consideration for official recognition. This is to ensure that the public official or the individual selected for an award is never involved in any form of corruption, abuse of power or malpractices. For this purpose, the MACC through the Anti-Corruption Agency (ACA) was given the administrative power to perform integrity vetting in accordance with General Circular (Confidential) No. 1 of 1985 entitled Integrity Vetting. Thus, the ACAB is of view that the Government should ensure that the potential candidate for the post of Chief Executive Chairman of Government Linked Companies (GLCs) and Government Owned Companies (GOC) is first presented to the MACC for the purpose of integrity vetting. Through this integrity vetting, only the candidate who is of high calibre and clean from corrupt practices, abuse of power or malpractices will be considered.
- vii. Law Amendments**
The ACAB recommended to the Government to amend section 23 of the Malaysian Anti-Corruption Commission Act 2009. The section is found to potentially provide loopholes and opportunities for the abuse of power, in particular, in the area of awarding contracts, tenders, land acquisition and other matters, by a member of the administration to his/her immediate family members. The Malaysian Anti-Corruption Commission Act 2009 has been in force for four (4) years. The prosecution division of the MACC has identified a number of provisions within the Act which should be amended to ensure success in the prosecution of corruption cases in court. The ACAB hopes that action will be taken by the relevant parties to achieve this objective.
- viii. Integrity Screening Process**
The ACAB proposed to the Government that the names of candidates who are nominated for key positions such as the Chief Executive Officer (CEO) of Government-Linked Companies (GLC) and Government-Owned Companies (GOC) should be submitted to the MACC to undergo the process of integrity screening. Apart from ensuring that the candidate concerned has a clean character and service record, is a person of integrity and is free from the crime of corruption, the policy will be in tandem with the screening process which public servants have to undergo at various other levels.
- ix. Misconduct of Public Servants**

The ACAB viewed seriously the loopholes and weaknesses in the management of funds as outlined in the Auditor General's Report 2013. In respect of this, the ACAB recommended the need to establish a specific law on the misconduct of public servants (Public Misconduct) who disregard regulations and public interest. The ACAB urges that immediate action is taken to implement this proposal.

x. Corporate Liability Offences

The ACAB finds that one of the weaknesses in current laws is the absence of a special provision on corporate liability. Such a provision is necessary to ensure that companies are not exempt from being charged and sentenced when an act of corruption is committed by its staff or agents. Without the provision on corporate liability, only particular individuals in the company can be charged and sentenced while the company that reaps the benefits escapes from the law. With the special provision on corporate liability, private companies will be more careful in ensuring that their business entity and staff are not involved in the crime of corruption to face the risk of being charged and sentenced.

xi. Disciplinary Action For Corruption Related Offences

The ACAB is mindful of the issue of the reluctance/ delay in taking disciplinary action by the Disciplinary Board of the Ministry or Government Department concerned, as well as the punishment meted out to a public servant which is not commensurate with the corruption offence. It is imperative that the Disciplinary Board views seriously the losses and negative effects arising from corrupt activities. The ACAB is aware that the MACC cannot force any Ministry or Government Department to take disciplinary action based only on the MACC's report. The Ministry or Government Department has to investigate the case and take the necessary action. The ACAB also recommended that the punishment accorded to a public servant found guilty of a disciplinary charge is commensurate with the offence committed in order to establish the element of deterrence.

xii. Use of Video Recording

The ACAB recommends that the MACC install video-recording facilities in all MACC offices, which can effectively dispel any accusation of abuse, force, threat and intimidation during the investigation process. The ACAB would like to urge that a VIR recording containing statements/explanations given by the party under investigation or a witness should rightly be used as evidence in court.

Apart from the above, the monitoring and evaluation of anti-corruption policies will be carried out by the individual sponsor or initiator, at Ministerial and Departmental levels of the initiatives which arise out from these policies.

Budget

Every year, the government allocates sufficient budget to MACC, INTEGRITI, BITU (PEMANDU) and NKRA to implement anti-corruption programme and activities as follows:

Year	MACC (MYR)	BITU/ GTP-NKRA (MYR)	INTEGRITI (MYR)
2013	258,348,000.00	9,500,000.00 (GTP only) BITU not established yet	14,400,213.00
2014	291,987,000.00	10,000,000.00	10,564,200.00
2015	294,300,000.00	4,000,000.00	9,452,462.00

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Examples of Implementation include as follows:

A. Legislation/Regulations/Government Circulars/Policies

1. Malaysian Anti-Corruption Commission Act 2009 [Act 694]
2. National Integrity Plan
3. Prime Minister's Directive No.1 of 2014
4. Anti-Corruption Principles for Corporations in Malaysia (2011)
5. Guidelines on Integrity Pact Implementation in Government Procurement

B. Reports

1. Annual Reports of MACC 2010-2015
2. Annual Reports of INTIGRITI 2013-2015
3. GTP-NKRA Annual Report 2012-2014
4. Evaluation by International Review Panel (IRP) of MACC (2014) (see MACC Annual Report 2014, p.61) as follows:-

“IRP is to evaluate the effectiveness of initiatives which undertaken by the MACC. The IRP comprised of three experts namely, Senior Programme Coordinator at IACA and international expert, Prof. Robert Alan Doig; former Solicitor General of Hong Kong and former Commissioner of ICAC Hong Kong, Bertrand de Speville; and former Deputy Commissioner of ICAC Hong Kong, Daniel Li Ming Chak”

C. Surveys

Domestic Evaluation of anti-corruption policy includes as follows:

1. Survey on Public Perception on the Effectiveness of MACC
2. Malaysia Corruption Barometer by TI 2014
3. Klynveld Peat Marwick Goerdeler (KPMG) Survey on Bribery 2013
4. IPIN - National Integrity Perception Index (annual) carried out by IIM (see INTEGRITI annual 2015 page 85)
5. Merdeka Centre Survey - Perception towards Corruption 2014 Peninsular Malaysia Voter Survey, 26 November - 05 December 2014

Risk Assessment of Areas or Sectors susceptible to Corruption

Malaysia PUBLIC SERVICE INTEGRITY ASSESSMENT (MyIA)

The MACC initiated the MyIA as an effort to strengthen and promote integrity and to enhance the public service delivery system as a whole. The annual assessment aims to establish integrity benchmarks as well as to evaluate the level of integrity within and outside public service agencies.

The findings are vital in assisting agencies in developing programmes and activities towards upgrading integrity among civil servants with the focus on creating an efficient and effective public service in Malaysia. Moreover, the findings can be utilised by Integrity Officers in

agencies to coordinate the functions of the Integrity Unit as stipulated in Service Circular No. 6 of 2013.

Findings of the study:

The MyIA assessment was centred on 20 government ministries/agencies that dealt directly with the public and involved touch point programmes. Over the eight months (April until November 2014) assessment period, there were two categories of respondents, namely, 5,803 and 478 internal and external respondents respectively. The internal respondents comprise of officers and staff from government ministries/agencies, while external respondents were clients and vendors of government ministries/agencies. List of government ministries and agencies involved in the MyIA in 2014 as follows:

1. Prime Minister's Department
2. Ministry of Home Affairs
3. Royal Malaysian Police
4. Immigration Department of Malaysia
5. Ministry of Finance
6. Malaysian Royal Customs Department
7. Ministry of Transportation
8. Road Transport Department
9. Ministry of Health
10. Ministry of Education
11. National Anti-Drug Agency
12. Ministry of Defence
13. Ministry of Works
14. Public Works Department
15. Ministry of Natural Resources and Environment
16. Forestry Department Peninsular Malaysia
17. Ministry of Agriculture and Agro-Based Industry
18. Department of Agriculture
19. Federal Land Development Authority (FELDA)
20. Ministry of Domestic Trade, Co-operatives and Consumerism

Overall, the study showed a 'Good' level of integrity in public services in Malaysia, with a score of 73% in the Comprehensive Integrity Index. Furthermore, several recommendations were put forward based on the findings, such as:

- a. Government ministries/agencies need to upgrade the efforts in all components, especially internal integrity to improve the Comprehensive Integrity Index score;
- b. Intensive intervention measures by heads of departments to raise the level of integrity in the respective ministries/agencies; and
- c. Implementation of the study to be extended to public agencies nationwide with the aim of assessing the level of integrity of the Malaysian public services.

(b) Observations on the implementation of the article

Malaysia's anti-corruption policies are contained in the country's penal, civil and administrative laws, rules and regulations that safeguard public law and order, and that uphold integrity, transparency and accountability of government and the private sector. These policies have been incorporated into various policy documents, such as government service circulars, government guidelines, letters, and related documents which represent mechanisms and initiatives to combat corruption in coordination with different institutions and stakeholders. The anti-corruption policies are also reflected in the country's development agenda (5-year plans).

Overarching these anti-corruption initiatives, Malaysia has a National Integrity Plan (NIP) which is spearheaded by the Institute of Integrity Malaysia (INTEGRITI) in collaboration with other government and private sector actors, as well as a Government Transformation Plan (GTP), with the NKRA - Fighting Corruption – as one of seven National Key Results Areas (NKRA).

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

Monitoring and evaluation of anti-corruption measures of the MACC is conducted by three (3) independent oversight committees and two (2) panels which monitor and scrutinize the overall activities of the MACC, and through administrative orders of the Prime Minister. The assessments and reviews of the oversight committees are reported yearly to the Parliament. Evaluation of the effectiveness of strategies and programmes to enhance integrity is also conducted under the National Integrity Plan (NIP) as well as under the National Key Results Areas (NKRAs) of the Government Transformation Plan (GTP).

In terms of revisions of the policies, it was explained that several policies under the GTP have been revised to reflect the outcomes and evaluation of monitoring (for example, GTP 2.0, the second stage programme for 2013-2015), and several MACC policies have also been focused to make them more targeted and effective.

With respect to coordination in the implementation of anti-corruption policies it was explained that, for the GTP coordination is ensured by the Performance Management & Delivery Unit (PEMANDU) under the Prime Minister's Department, which oversees the implementation of the 21 initiatives under the GTP. PEMANDU works with the implementing agencies for each initiative, such as MACC and the Auditor General's Office. The coordinating agency for the NIP is INTEGRITI, which monitors, coordinates and evaluates activities and implementation of the NIP. With respect to MACC, coordination and monitoring is carried out by the MACC Prevention and Education Divisions under the supervision of the Deputy Chief Commissioner (Prevention) and by the Commission's independent oversight committees, which liaise with the Prime Minister's Office and other implementing agencies. Their assessment and reviews are made to the Prime Minister and tabled in Parliament. MACC also monitors 887 Integrity Units (IUs) which are set up within Ministries/Departments/Government Agencies and the IUs are tasked with 6 core functions listed in Service Circular No. 6 of 2013. With respect to overall coordination of anti-corruption policies, it was explained that the Minister for Governance and Integrity calls monthly coordination/governance meetings, which MACC and other agencies, such as the Auditor General's Office, INTEGRITI and PEMANDU of the Prime Minister's Office attend. Moreover, coordination takes place through administrative orders of the Prime Minister, such **Service Circular No. 6 of 2013 (Enhancing Integrity in Government Agencies and Government Linked Companies)** which calls for the establishment of Integrity Units (IUs) in government (see below), as well as Prime Minister's directives for government departments to revise their regulations and procedures.

In terms of budget, each year the government allocates a budget to MACC, INTEGRITI, BITU (PEMANDU) and NKRA to implement anti-corruption programmes and activities.

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

In light of the information presented, Malaysia may wish to consider enhancing coordination of national and departmental anti-corruption policies (e.g., Government Transformation Programme, National Integrity Plan, MACC laws and policies) – both with regard to their implementation and monitoring, as well as in the development and revision of these policies, to more systematically draw on lessons learned and to enhance information exchange among departments.

Paragraph 2 of article 5

2. Each State Party shall endeavour to establish and promote effective practices aimed at the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Effective Preventive practices:

The Government of Malaysia's preventive practices are as follows:

A. Empowering the MACC to conduct inspection and consultation on weaknesses of government practices, systems and work procedures:

The MACC's Inspection and Consultation Division is empowered under sub-sections 7 (c), (d) and (e) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) to:

- Section 7 (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;
- Section 7 (d) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;
- Section 7 (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption.

The stages of inspection and consultation involved are as follows:

1. Inspection Stage:

The Inspection and Consultancy Division (ICD) will open Inspection and Consultation Papers (Kertas Pemeriksaan & Perundingan or KPP) to initiate action of inspection. This stage involves conducting inspection of weaknesses of government systems and procedures, abuse of position and other forms of malpractices or governance issues:

- (i) uncovered through information received directly by MACC officers;
- (ii) public complaints or information;
- (iii) media reports and exposé; and
- (iv) open investigation.

Task-Force Based Inspection is conducted, pursuant to Chief Commissioner's Standing Order No. 1 of 2005. Currently, inspection processes by ICD are being conducted on a task-force basis where officers of ICD form a task force to be assisted by a Consultant (external) to conduct inspection of weaknesses in government practices, systems and procedures which are of national and public interest in the following areas:

- i. Procurement
- ii. Enforcement
- iii. Physical Development/Construction
- iv. Land Administration
- v. Issuance of Licences/Permits

2. Consultation Stage:

Recommendations for remedial actions are carried out through a process of consultation with the government departments concerned. The agreed-upon recommendations or advisory letter for remedial action will then be issued to the department Head concerned.

3. Monitoring Stage:

The agreed-upon remedial actions between the MACC and the Government Department will then be monitored by the ICD on a regular basis to ensure compliance with the recommendations:

- i. 6 months after advisory service rendered
- ii. 1 (one) year after advisory service rendered
- iii. 3 years after advisory service rendered
- iv. 5 years after advisory service rendered

Advisory and Technical Assistance Role of ICD

a. Additionally the ICD also provides advisory services to other public bodies and members of the public (without the opening of KPP) on integrity issues raised in the following areas:

- Procurement · Enforcement
- Physical Development/Construction
- Land Administration
- Issuance of Licences/Permits
- Administration

b. A Gift Information Centre is set up under the ICD to advise and provide clarification to

members of the public on issues of corruption related to gift giving and gift taking via telephone and SMS (60196000103 or 60196000104); email (hadiah@sprm.gov.my) and Internet (www.sprm.gov.my).

B. Developing Corruption Risk Management Tool by ICD:

Apart from conducting inspection and consultation, the ICD is also responsible for providing technical assistance to other stakeholders to apply Corruption Risk Management (CRM) methodology in their own departments or organizations.

The CRM, which was developed from the original (Accountability and Integrity Management System-Sistem Pengurusan Akauntabiliti dan Integriti or SPAI) approach implemented by ICD, applies both corruption risk assessment and risk management to reduce or totally eradicate corruption of major public body activities. The CRM methodology is being disseminated through ICD Training of Trainers (TOT) programme for the public sector. The objective of the CRM is to assist TOT participants to draw up action plans (Corruption Risk Management Plans) to tackle problems of corruption and integrity of their individual departments.

C. Giving Advisory Services to members of the public by the Anti-Corruption and Ethics (ACE) Center:

The preventive functions of the MACC provided for under Section 7(c), (d), and (e), and its education functions under Section 7 (f) of the Act, which are currently carried out by the MACC Community Education and MACC Inspection and Consultation Divisions, have been amalgamated under the newly established MACC Anti-Corruption & Ethics Centre (or MACC-ACE) to spearhead MACC corruption prevention and educational efforts mainly to the private sector industries. MACC-ACE will serve as a platform and “one-stop” resource centre for these industries to exchange and share information, made accessible from its MACC ACE portal, on domestic and international anti-corruption best practices, governance and ethics for specific industries.

D. Implementing Government Transformation Programme -National Key Result Area: Fighting Corruption initiatives:

The NKRA Fighting Corruption initiatives were developed by the Prime Minister's Office in 2009 to spearhead the Government Transformation Programme (GTP) in enhancing anti-corruption efforts in three key corruption areas namely, regulatory & enforcement agencies, government procurement and grand corruption which includes political corruption. In 2012 this Unit was placed under the MACC for the purpose of administration and coordination of anti-corruption efforts mentioned.

- a. Under the area of regulatory and enforcement agencies the objectives are (a) to regain public confidence in Malaysia's enforcement agencies and (b) to enhance competitiveness of Malaysia as a place to do business.
- b. Under the area of government procurement it seeks to (a) reduce leakage in the funds allocated for national development and operations; and (b) to enhance fairness in the award of contracts.
- c. In the area of grand corruption, the focus will be (a) to prevent the abuse of power and public resources by politicians and senior civil servants and (c) to enhance the delivery of justice against corruption

E. Enhancing Government Administration on Integrity & Governance

The setting up of Committees on Integrity and Governance or JKP (Jawatankuasa Keutuhan

Pengurusan- Committee on Management Integrity) was first initiated by the Prime Minister's Directive No. 1 of 1998 to take a proactive approach in tackling corruption in government agencies.

The objectives of such integrity committees are:

“To create a Government administration and a Public Service that is efficient, disciplined and having the highest integrity by enhancing the practice of noble values besides making efforts at solving problems and weaknesses especially in financial management, public administration, handling of disciplinary cases, corruption, abuse of power and malpractices that are contrary to regulations, laws and religion.”

Under this Directive it was required that all the Heads of States (Menteri Besar), Chief Ministers, Chief Secretaries of Ministries, Heads of Services, Secretaries of States, and Heads of Departments and government agencies at the national, state and district levels are required to set up their own Committees of Management Integrity (CMI). The 1998 Directive was subsequently replaced by Prime Minister's Directive No1/2009. The Committee set up was renamed JKTU or Jawatankuasa Tadbir Urus (Committee on Governance).

In 2014, a new Directive No. 1 of 2014 titled “The Movement on Strengthening the Governance of the Malaysian Government Administration System: The Establishment of Integrity and Governance Committee” (“Gerakan Pemantapan Keutuhan Sistem Pengurusan Pentadbiran Kerajaan Malaysia: Penubuhan Jawatankuasa Integriti dan Tabir Urus” in the National Language) was issued by the Prime Minister to replace the Directive No.1 of 2009.

Under the 2014 Directive, the Committee on Governance (JKTU) established under the 2009 Directive was renamed the Committee on Integrity and Governance, dubbed as “JITU” (the acronym for the words “Jawatankuasa Integriti dan Tadbir Urus”).

The changes in the nomenclature from the original JKP (1998) to JKTU (2009) and to the current JITU (2014) brought about new set of objectives and terms of reference as well as reporting systems for such integrity committees after reviewing the existing mechanisms under which they operated for a more efficient and effective management and coordination of these committees.

Objectives of JITU:-

- a. To create a Government administration and civil service that is highly efficient, disciplined and with integrity through the inculcation of good values and ethics;
- b. To plan and implement preventative and remedial measures to overcome problems and weaknesses specifically in financial management, public administration and the handling of disciplinary matters, corruption, abuse of powers and malpractices prohibited by laws, regulations and religion; and
- c. To identify and resolve current issues that impact across all agencies in a proactive manner through engagements, collaboration and quick response.

The terms of reference of JITU:-

Basically, JITU is a mechanism that translates into action the Government's commitment in upholding ideals under the slogan of “1 Malaysia: People First, Performance Now” to address and resolve issues which concern the integrity and governance of the Public administration. Hence, the new terms of reference of JITU are as follows:-

1. Policy and Legislation:

To identify, assess and recommend amendments and / or suggestions for improvement to any policy, laws and regulations of the ministries, departments and agencies with a view to enhance

internal controls against opportunities of corruption and overcome management problems, red tape, corruption, abuse of power and weaknesses of the service delivery system

2. Service Delivery System and Procedure:

To simplify, streamline, and transform the systems and procedures of service delivery to address inefficient measures, overlapping and repetitive processes and procedures in line with the concept of value for money and simultaneously tighten avenues and opportunities for corruption.

3. Detection, Punitive and Remedial Action:

To detect any form of violation of the law by employees associated with regulations, systems and procedures or code of ethics and to take preventive and corrective actions as soon as possible against the parties involved under the provisions of law or regulation. Punitive and preventive measures can also, where appropriate, include collaboration with or reporting to law enforcement agencies regarding any form of criminal offense or misconduct by employees as well as to follow up on the recommendations of the law enforcement agencies.

4. Inculcation of Noble Values and Code of Ethics:

Conducting the promotion, implementation and appreciation of inculcation of noble values and code of ethics for developing civil servants with high resilience, ethics and integrity. The inculcation and adoption of noble values and code of ethics should be integrated into the implementation of policies, legislation, regulations and procedures of the service delivery system to curb any negative form of conduct by employees. Awards and recognition for employees who exhibit noble values can be considered as one of the initiatives to cultivate the practice of noble values and code of ethics.

5. Customer Service Management:

To disseminate information and initiatives in a transparent manner with regard to the policies, decisions, actions and disseminate the achievements and the services provided by the Government to the people through various forums and communication medium. This action is part of efforts to promote the role and responsibilities of government and educate the public about the shared responsibility.

6. Collaboration with Relevant Stakeholders:

To establish a solid network of cooperation professionally with stakeholders in order to define, develop, recommend and implement improvements of policies, programmes and activities under the scope of governance and integrity. Engagements with stakeholders for consensus enables public agencies to obtain a broad perspective concerning proposed solutions that are more accurate towards the effective development and implementation of policies, programmes, activities and decision-making; and ensures the provision and delivery of services to the people leading to the formation of a win-win situation between the Government with stakeholders for the people.

Reporting system of JITU

a. Every issue raised must be addressed with preventive measures

b. Frequency of Meetings: 3 times per year

c. Reports from the Ministries and the State Governments must reach the Secretariat at least 2

weeks before the National Level JITU Meeting - January, May and September

Coordination and Reporting system of JITU

Activities of JITU are being coordinated by the Minister in charge of Integrity and Governance of the Prime Minister's Department. He is assisted by the Joint-Secretariat of JITU which comprises the MACC (JITU Division) and PMO (Prime Minister's Office).

In 2015, JITU reports directly to the Prime Minister's Department's newly formed Division known as "BITU" (Bahagian Integriti dan Tadbir Urus) or Integrity & Governance Division. BITU essentially functions as the Special Cabinet Committee on Government Management Integrity (SCCGMI) headed by the Prime Minister.

F. Enhancing Integrity in Government Agencies and Government Linked Companies- Service Circular No. 6 of 2013

This service circular, which came into force on 1 August 2013, is a directive from the Director General of Public Services, which makes it mandatory for all government agencies (inclusive of Government-Linked Companies) under the Federal Services Commissions, Ministers, State, District, Statutory Bodies and Local Government to set up Integrity Units (IUs) which have been categorized by the MACC according to their levels of corruption risk. The functions of the IU are coordinated by the Public Sector Integrity Management Division (BPIA) of the MACC.

The Integrity Unit is to be headed by a Certified Integrity Officer (CeIO) who has undergone a CeIO certification programme organized and administered by the Corporate Integrity Development Center (CIDC) of the Malaysia Anti-Corruption Academy (MACA). The 6 core functions of IU are:

1. Governance - To ensure governance in administration
2. Strengthening Integrity – To strengthen cultural sensitivity, institutionalization and implementation of integrity
3. Detection and Verification - To detect and verify complaints of misconduct, criminal activities and transgression of organizational ethics, as well as to ensure that appropriate action is taken to address them and to report criminal activities to the appropriate enforcement authorities
4. Complaints Management - To receive and take action on all complaints/information of crime, misconduct as well as ethical transgression
5. Monitoring - To ensure compliance with laws and regulations which are currently enforced
6. Disciplinary - To act as Secretariat of Disciplinary Committees.

G. Implementing PEMANDU initiatives

The "Performance Management & Delivery Unit" is established on 16 September 2009 under the Prime Minister's Department. Its main role is to oversee the implementation, assess the progress, facilitate as well as support the delivery and drive the progress of the Government Transformation Programme and the Economic Transformation Programme.

H. Implementing PEMUDAH (the Special Task Force to Facilitate Business) initiatives

The said Task Force dubbed "PEMUDAH" (taken from the Malay name 'Pasukan Petugas Khas Pemudahcara Perniagaan') is set up on 7 February 2007 to address bureaucracy in business-

government dealings by improving the way government regulates business. Its Terms of Reference provide:

1. to review the status of the public services delivery system in terms of process, procedures, legislation and human resources towards improvements;
2. to benchmark best practices to improve the ease of doing business;
3. to enhance collaboration among public and private sector agencies to improve Malaysia's competitiveness;
4. to monitor the implementation of policies, strategies and procedures that would improve the efficiency and effectiveness of the public and private sector delivery system;
5. to take appropriate action to address issues the National philosophy of "1 Malaysia, People First, Performance Now".

I. Further measures to promote integrity, transparency and accountability in the private sector include:

(i) Executing Corporate Integrity Pledge

Executing Corporate Integrity Pledge by corporations to uphold Anti-Corruption Principles for corporation in Malaysia as follows:

1. committing to promoting values of integrity, transparency and good governance
2. strengthening internal systems that support corruption prevention
3. complying with laws, policies and procedures relating to fighting corruption
4. fighting any form of corrupt practices
5. supporting corruption prevention initiatives by the MACC.

(ii) Enforcing Integrity Pacts

Integrity Pacts in Government Procurement vide The Ministry of Finance Treasury Instruction Letter dated 1 April 2010. The main objectives for the implementation of IPs are as follows:

1. to avoid bidders from offering or giving of bribes;
2. To require bidders to report any bribery/ act of corruption to the authorities; and
3. To ensure the Government does not incur "unnecessary costs" in carrying out Government Procurement.

J. Empowering the MACC to carry out Education and Community Relations activities

The MACC's Community Education Division is tasked to carry out the functions provided for under Section 7 (f) and (g) of the MACC Act as follows:

(a) educate the public against corruption; and

(b) to enlist and foster public support against corruption. These efforts are carried out through the giving of live talk shows, dialogues, lectures, seminars, debates, and workshops on anti-corruption. Also included here are:

1. Publications of flyers, magazine, pamphlets, posters with anti-corruption messages etc.
2. TV production based on success stories of cases investigated
3. TV/Radio public service announcements (PSA) or messages on the dangers of corruption
4. Community relation (including sports/quiz) or outreach programmes for schools and villages
5. Exhibitions at MACC public events

K. Other Institutional Efforts

i. Training on knowledge, skills and capacity building on management of anti-corruption efforts: Malaysia Anti-Corruption Academy (MACA)

The Academy is set up as the anti-corruption capacity and capability training center for officers of the MACC as well as other Government departments and agencies and Government-linked companies. Among the training programmes offered in the area of prevention of corruption by MACA is the Certification of Integrity Officers (CeIO) programme to equip them with the necessary knowledge and skills required in line with the establishment of Integrity Units at high-risk public and private sectors.

ii. Formulation and Implementation of the National Integrity Plan: Malaysian Institute of Integrity (INTEGRITI)

Malaysian Prime Minister, Dato' Seri Abdullah Haji Ahmad Badwi has on April 23, 2004, unveiled his master plan to make integrity the cornerstone of his administration. The previous drive of modernization and industrialization has delivered tremendous growth and wealth to the nation and has transformed Malaysia from a mainly agrarian economy into the dynamic economy that it is now. However, the national economic transformation has left significant imprints of the country's social fabric; pertinent among these are the erosion of the value system. Environmental degradation, irresponsible civic behavior and corruption were widespread. The materialistic mentality has underscored various facets of the Malaysian life.

Realising that change is urgently needed, the Malaysian premier has formulated the National Integrity Plan. It is a strategic plan to provide direction for all sectors to participate towards enhancing ethical values and integrity. It is also the objective of the Plan to improve awareness, commitment and participation of the citizen towards enhancing integrity. The scope of the plan is holistic and wide-encompassing. For the first 5 years, the plan outlined 5 objectives to be achieved namely:

1. To continuously and effectively combat and reduce incidence of corruption, malpractices and abuse of power;
2. To enhance efficiency in the delivery system of the civil service and to reduce unnecessary bureaucracy;
3. To improve corporate governance and business ethics;
4. To strengthen the family institution; and
5. To improve the quality of life and the well-being of the society.

To ensure the complete implementation of the Plan, the Prime Minister also announced the formation of the Malaysian Integrity Institute. The institute is an independent agency tasked with the role of monitoring and coordinating the implementation of the Plan. Primary functions of the Institute include:

- i. To undertake research and conduct training and education pertaining to community and institutional integrity;
- ii. Develop a database on ethics and integrity;
- iii. Formulating policies to enhance ethics and integrity as well as advising the government on programmes to enhance integrity; and
- iv. To continuously monitor and ensure the implementation of the Plan

Baseline reports at the beginning and end of the period of the national anti-corruption strategy. The baseline report for the National Key Results Area (NKRA)-Fighting Corruption Programme is the NKRA Corruption Lab Report 2009 which was conducted upon the support of the Prime Minister and the PEMANDU team. This report has been developed by the NKRA Corruption lab members in order to give effect to the expressed commitment of the government to fight corruption in the civil service and within broader society.

The core effort came from the NKRA lab members which involved all key stakeholders consisting of officers from various ministries and agencies within the government of Malaysia as well as the involvement external experts, namely,

1. the Senior Vice President in APCO World wide's Washington, D.C., who is the former U.S. Deputy Assistant Secretary of State for international law enforcement; and
2. Transparency International Malaysia representatives

The lab was conducted over six weeks, with participation from over 30 civil servants representing various ministries, government agencies and institutions. The lab was divided into three phases:

Phase 1: Diagnostic and Target Setting

- a. Set aspirations which were measurable, outcome-based and internationally benchmarked;
- b. Brainstormed on issues and focused improvement efforts on the 3 most important areas (sub NKRA's);
- c. Set relevant and transparent KPI measures and targets to define what success means;
- d. Conducted root cause analysis and developed list of high level initiatives and targets;
- e. Identified stakeholders and level of support required.

Phase 2: Detailed Initiative Design & Stakeholder Engagement

- a. Conducted fact-finding interviews with relevant experts and benchmarking studies to detail out action items and resolve bottlenecks for each initiative;
- b. Refined and finalised initiatives and targets based on feedback received and added new initiatives as necessary;
- c. Revised list of initiatives to ensure overall National Key Performance Indication (NKPI) targets are aligned;
- d. Prioritised initiatives based on ease of implementation and impact;
- e. Identified and focused on bold ideas (Big Wins) to demonstrate seriousness.

Phase 3: Detailed Delivery Plan

- a. Prepared and conducted Open Lab for senior civil servants;
- b. Developed and finalised detailed delivery plan for each initiative
- c. Finalised reporting format and data entry into SPPII;
- d. Engaged stakeholders to syndicate initiatives and obtain buy-in;
- e. Obtained final signoff and approval from PM, Lead Minister, Director General of Legal

Affairs Division - Bahagian Hal Ehwal Undang-Undang (BHEUU) and other stakeholders.

During these six weeks, the lab members have undertaken extensive consultation exercises, meeting close to a hundred people representing different ministries, government agencies and institutions, NGOs and private sector participants. Additionally, discussions were held with stakeholders for their views on corruption and how it might be tackled, as well as feedback on initiatives. The response has been overwhelming and lab members are grateful to all stakeholders involved for their unfaltering support and contribution.

NKRA Corruption Lab Outcomes and Recommendations

The lab members have collectively agreed on three key aspirations:

- a. Reduce corruption through increased enforcement and compliance;
- b. Enhance transparency to improve the Transparency International Corruption Perception Index (CPI) score over time; and
- c. Improve public perception on the integrity of government and civil service.

Three key areas (sub NKRA) have been identified to be the focus of improvement efforts. We believe these areas are of most concern to the Rakyat and where corruption is most likely to occur.

- a. Grand Corruption - refers not so much to the amount of money involved as to the level at which it takes place: grand corruption involves the top levels of the public sphere; where policies and rules are formulated. Usually (but not always) synonymous to political corruption.
- b. Government Procurement - covers all procurement within government from projects or works related activities to procurement of supplies and services. Focus will be on the top 5 highest spending ministries (self-accounting ministries): Ministry of Defence (MoD), Ministry of Education (MoE), Ministry of Health (MoH), Ministry of Home Affairs (KDN) and Ministry of Works (KKR).
- c. Regulatory and Enforcement Agencies - includes agencies that are involved in issuance of licenses and law enforcement officers. Focus will be on Road Transport Department (JPJ), Royal Malaysian Police (RMP), Royal Malaysian Customs (JKDM), Immigration Department (Imigresen) and the local councils.

In order to measure the progress and reduction of corruption levels in the country, clear KPIs need to be set. This information can then be used for benchmarking purposes, and will be a key component for Malaysia's move towards being a corrupt free country. However, corruption is difficult to measure as it relies on mostly on qualitative data and is not easy to measure directly.

Sub NKRA	National KPI	Base (2008)	Target (2012)	Source
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Public Perception	1.1 Transparency Composite Index - CPI Scores - Global Corruption Barometer score - Customized local survey score	<ul style="list-style-type: none"> • 5.1 • 28% • tbc 	<ul style="list-style-type: none"> • 5.5 • 55% • tbc 	<ul style="list-style-type: none"> • Transparency International, TNS
Grand Corruption	2.1 Customised local survey score (political corruption)	<ul style="list-style-type: none"> • tbc 	<ul style="list-style-type: none"> • tbc 	<ul style="list-style-type: none"> • TNS
Government Procurement	3.1 Number of audit findings on procurement mal-administration against total procurement audit samples	<ul style="list-style-type: none"> • tbc 	<ul style="list-style-type: none"> • tbc 	<ul style="list-style-type: none"> • Auditor General
Regulatory and Enforcement Agencies	<p>4.1 No. of cases charged vs. no. of arrests for drugs trafficking and possession under Dangerous Drugs Act</p> <p>4.2 No. of summons is sued for traffic offenses vs. hours of operation</p> <p>4.3 Number of cases charged vs. no. of arrests and detention under Immigration Law</p> <p>4.4 Tax recovered from under-declared goods and services (in RM value)</p>	<ul style="list-style-type: none"> • 75% (2009) • n/a • 36% • RM 18 mil (2009) 	<ul style="list-style-type: none"> • 90% • 80% • 80% • RM 23 mil 	<ul style="list-style-type: none"> • RMP • RMP (Traffic Division) and JPJ • Immigration and RMP • JKDM
Broader Framework	<p>5.1 % Number of trials completed within 1 year</p> <p>5.2 Number of people in the database of convicted offenders</p>	<ul style="list-style-type: none"> • 8.49% • 0 	<ul style="list-style-type: none"> • 50% • 252 	<ul style="list-style-type: none"> • Attorney's General Chambers

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Reports on the implementation of the national anti-corruption strategy and/or action plan:

- Annual Reports of INTEGRITI (2013-2015) (Attached)
- GTP- NKRA Report (Attached)
- MACC Annual Reports 2013-2015 (Attached)

Surveys of the effectiveness of practices aimed at the prevention of corruption

- a. Survey on Public Perception on the Effectiveness of MACC (quarterly)
- b. Malaysia Corruption Barometer by TI
- c. KPMG's Survey on Bribery
- d. IPIN - National Integrity Perception Index (annual) carried out by IIM
- e. Merdeka Centre Survey - Perception towards Corruption 2014 Peninsular Malaysia Voter Survey, 26th November - 05th December 2014

Monitoring and evaluation reports as well as audit reports discussing effectiveness of the corruption prevention practices employed.

- a. Annual Reports of INTEGRITI (2013-2015) (Attached)
- b. GTP- NKRA Report (Attached)
- c. Annual Report of Special Committee on Corruption
- d. Comments of Anti-Corruption Advisory Board
- e. Annual Report of Consultation and Prevention of Corruption Panel
- f. Rose Shamsiah Samsudin & Nafsiah Mohamed (2009). The Magnitude of Public Accounts Committee's work in Reviewing and Reporting on State Government's Financial Statements, Malaysian Accounting Review, Vol. 8 No.2, 1-15, 2009, Malaysian Accountancy and Education Foundation. Available at <http://ari.uitm.edu.my/main/images/MAR/vol08-2/chap1.pdf>.

(b) Observations on the implementation of the article

The Government of Malaysia's preventive practices include the following:

- A. Empowering the MACC to conduct inspection and consultation on weaknesses of government practices, systems and work procedures
- B. Developing Corruption Risk Management Tool by MACC's Inspection and Consultancy Division (ICD)
- C. Giving Advisory Services to members of the public by the Anti-Corruption and Ethics (ACE) Center
- D. Implementing the Government Transformation Programme -National Key Result Area: Fighting Corruption initiatives.
- E. Enhancing Government Administration on Integrity & Governance by setting up of Committees on Integrity and Governance (JITU)
- F. Enhancing Integrity in Government Agencies and Government Linked Companies- Service Circular No. 6 of 2013
- G. Implementing the initiatives of the "Performance Management & Delivery Unit" under the Prime Minister's Department (PEMANDU)
- H. Implementing the Special Task Force to Facilitate Business (PEMUDAH) initiatives
- I. Further measures to promote integrity, transparency and accountability in the private sector
- J. Empowering the MACC to carry out education and community relations activities
- K. Other Institutional Efforts: i. Training on knowledge, skills and capacity building on management of anti-corruption efforts: Malaysia Anti-Corruption Academy (MACA); and ii. Formulation and Implementation of the National Integrity Plan: Malaysian Institute of Integrity (INTEGRITI).

A number of reports, surveys and studies on the effectiveness of these practices have been conducted.

(c) Successes and good practices

The measures to enhance integrity in government agencies and government linked companies, which make it mandatory for these entities to set up Integrity Units (IUs) that have been categorized by the MACC according to their levels of corruption risk (as per Service Circular No. 6 of 2013). As of 31 December 2015, 887 Integrity Unit have been established nationwide.

The reviewers are of the view that the annual reports of the MACC panels and committees and the surveys of public perception are further examples of good practices.

Paragraph 3 of article 5

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A. Structures/Institutions in charge of evaluation of legal instruments to prevent and fight corruption:

There is no permanent and fixed structure to evaluate and review the corruption laws in Malaysia. Nonetheless, it will be done in ad hoc basis upon request or when there is a need.

B. Structures/ Institutions in charge of evaluation of administrative measures to prevent and fight corruption

(i) PM-Led Delivery Task Force (DTF) for NKRA Fighting Corruption

A DTF has been set up for each NKRA (inclusive of Corruption NKRA or Cor NKRA) to sign off on delivery plans, monitor progress and refine implementation strategies as required. Each DTF has met once every six week since July 2009. The members of DTF comprise of lead ministers and lead ministries and/or agencies are accountable for end-to-end delivery of each NKRA.

Reviews and assessment of NKRA by the Prime Minister (PM) is based on stock takes and delivery reports every six months. The delivery report summarizes the progress of all National Key Performance Indices (NKPIs) and Ministerial Key Performance Indices (MKPIs) over the previous half-year and contains action plans for the next half-year to resolve key road blocks to achieving targets. The report ranks the NKPIs according to likelihood of delivery. The progress report and ranking will then be used by the PM as the basis for his dialogues with the relevant ministers in the stock taking meetings.

(ii) Evaluation of Preventive Measures of the MACC

This is being carried out by the Corruption Prevention and Consultancy Panel, Anti-Corruption Advisory Board, and Special Committee on Corruption as follows:

(a) The role of the Corruption Prevention and Consultancy Panel established by administrative order of the Prime Minister:

1. To scrutinise and recommend to the Commission on priority areas of practise, system and work procedure in public and private sectors that prone for corruption;
2. To scrutinise and enhance reports prepared by the Commission on recommendation to plug corruption loopholes in public and private sectors;
3. To form and formulate best practices in main areas from time to time;
4. To advise the Commission on dissemination of anti-corruption messages through the community relation programmes and to obtain the public support on anti-corruption drive;
5. To scrutinise the anti-corruption programmes carried out by the Commission and to recommend ways to enhance them;
6. To monitor from time to time the attitude and perception of the public on corruption and the efforts taken by the Commission ;
7. To assist the Commission as Key Communicator in obtaining support from the public, mass medias and other sectors towards the anti-corruption programmes carried out by the Commission.;
8. To scrutinise, analyse and recommend to the Anti-Corruption Advisory Board on the ways to enhance the effectiveness of corruption prevention programmes; and
9. To present annual report on the progress of the corruption prevention programmes carried out by the Commission to the Prime Minister.

(b) The role of the Anti-Corruption Advisory Board (ACAB)

Established under Section 13 of the MACC Act 2009 [Act 694], members of the ACAB are appointed by the Yang di-Pertuan Agong (King) among individuals whom have rendered distinguished public service or have achieved distinction in their profession. The Chief Commissioner of MACC shall be appointed as an ex-officio member of the ACAB. The roles of the ACAB as follows:

1. To advise the Commission on any aspect of corruption problem in Malaysia;
2. To advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;
3. To receive, scrutinise and endorse proposals from the Commission towards the efficient and effective running of the Commission;
4. To scrutinise and endorse resource needs of the Commission to ensure its effectiveness;
5. To scrutinise the annual report of the Commission before its submission to the Special Committee on Corruption; and
6. To submit its comments to the SCC as to the exercise by the Commission of its functions under the Act

(c) The role of the Special Committee on Corruption (SCC)

Established under Section 14 of the MACC Act 2009 [Act 694], the members of the SCC are appointed by the Yang di-Pertuan Agong (King), who shall be drawn from the members of the Senate and the House of Representatives (none of whom shall be a member of the Administration). The role of the SCC as follows:

1. To advise the Prime Minister on any aspect of the corruption problem in Malaysia;
2. To examine the annual report of the Commission
3. To examine the comments of the ACAB as to the exercise by the Commission of its functions under this Act; and
4. To seek clarifications and explanations on the annual report of the Commission and the comments of ACAB

(d) The role of the Special Cabinet Committee on Government Management Integrity (JKKMKPK)

The Special Cabinet Committee on Government Management (JKKMPK) was established on 30 November 1988 due to rising concerns on the level of corruption in the Government sector.

On 2 April 1997, the functions and roles of the JKKMKPK 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.

(iii) The role of the Public Accounts Committee (PAC)

In Malaysia, PACs are established by both federal and state governments.

At the federal level, the PAC is established as a committee under Parliament. While at the state level, the PAC is established by the state's legislative assembly (SLA). Since more than 80 percent of public revenue is collected by the federal government, the emphasis on accountability should be applied more on the federal government relative to other levels of government.

Members of the Federal 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 Members of Parliament (MPs) to form a comprehensive committee. The PAC must ensure financial accountability of Government agencies and departments.

Members of the State PAC are appointed by the Selection Committee of the SLA as provided under the "Standing Order of the Rules and Regulations of the SLA Meeting". In line with that Standing Order, the PAC members are appointed as soon as each term of SLA sessions commences. The committee needs to have a chairman and vice-chairman appointed by the SLA, and also not more than three but not less than two other members.

The Public Accounts Committee at the Federal level, appointed when a new Parliament session

commences, and the PAC State Level who are appointed under the Standing Order of the Rules and Regulations of the State Legislative Assembly, examines the Auditor-General's report which has to be submitted to the Yang di-Pertuan Agong (King) or the Ruler or Yang di Pertuan Negeri who then shall cause it to be laid before the House of Representatives, the Dewan Rakyat or State Legislative Assembly respectively according to the provision of Article 107 of the Federal Constitution as below:

Article 107, Federal Constitution - Reports of Auditor General

(1) The Auditor General shall submit his reports to the Yang di-Pertuan Agong (King), who shall cause them to be laid before the House of Representatives.

(2) A copy of any such report relating to the accounts of a State, or to the accounts of any public authority exercising powers conferred by State law, shall be submitted to the Ruler or Yang di-Pertua Negeri of that State, who shall cause it to be laid before the Legislative Assembly

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-Generals 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.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please see the examples under article 5(2) of the Convention.

(b) Observations on the implementation of the article

While a number of structures and institutions are in place for the evaluation of administrative measures to prevent and fight corruption, the review and evaluation of relevant legal instruments is carried out on an ad hoc basis.

It was clarified during the country visit that there is no systematic approach to revising legal instruments to combat corruption and that revisions of laws are spearheaded by each governmental agency, with some directions being given by the Cabinet or at times Prime Minister's directives.

The main legal instruments to combat corruption, namely the MACC Act 2009, are modified or amended as needed, based on weaknesses identified by the MACC's Operations Department or Legal and Prosecution Division, for example when the provisions are applied, lacuna in the law pointed out by the courts or to meet certain requirements such as those under this Convention. Civil society is indirectly involved in this process, through its membership on the MACC oversight committees.

In light of the information provided, Malaysia could consider adopting a more systematic approach to the periodic evaluation and revision of legal instruments to prevent and fight corruption, including through consultations with relevant stakeholders.

Paragraph 4 of article 5

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A. MACC's International/Regional Collaboration

Malaysia, through its MACC and relevant law enforcement agencies, collaborates with the following international and regional organizations in efforts to prevent corruption:

- a. International Association of Anti-Corruption Authorities (IAACA): Member
- b. International Anti-Corruption Academy (IACA): Board of Governors/Advisory
- c. Asia Pacific Economic Cooperation, Anti-Corruption & Transparency Working Group (APEC-ACTWG): Member
- d. South-East Asia Parties Against Corruption (SEA-PAC): Member
- e. INTERPOL-IGEC (International Group of Experts against Corruption): Member
- f. OECD Working Group on Bribery - Observer status
- g. UNDP - Training provider/venue
- h. International Bar Association (IBA) - Training provider/venue
- i. Asia-Pacific Group on Money Laundering (APG) - Member
- j. Transparency International Malaysia (TI-M) - Partners in capacity building
- k. Economic Crime Agencies Network (ECAN) - Member

In addition, the Malaysian Anti-Corruption Commission (MACC) has also initiated and concluded Memoranda of Understanding in the areas of information exchange as well as corruption prevention capability and capacity building with the following anti-corruption agencies which among others:

- a. Anti-Corruption Bureau (ACB) Brunei
- b. Corrupt Practices Investigation Bureau (CPIB) Singapore
- c. Independent Commission Against Corruption (ICAC) Hong Kong
- d. National Anti-Corruption Commission (NACC) Thailand

- e. Administrative Control Authority (ACA) Egypt
- f. Government Inspectorate of Vietnam (GIV)
- g. Corruption Eradication Commission Indonesia
- h. The Anti-Corruption Commission of Timor-Leste
- i. The Anti-Corruption Commission of Maldives
- j. The Federal Bureau of Anti-Corruption (BAK) Austria
- k. Anti-Corruption Commission (ACC) Bhutan
- l. Anti-Corruption Directorate with Prosecutor General (ACD) Azerbaijan

Follow-up on joint recommendations arising out of seminars convening regional anti-corruption institutions.

The SEA-PAC as an entity within ASEAN Community:

The idea for SEA-PAC to be associated with ASEAN was mooted and agreed by all parties within the SEA-PAC arrangement at the 10th South East Asian Parties against Corruption Meeting in 2015. The aim of this proposal was to enhance good governance under the ASEAN Charter. The proposal is currently under consideration for approval of the Secretariat of ASEAN.

B. Malaysian Institute of Integrity (INTEGRITI) International/Regional Cooperation and Collaboration

- i. The INTEGRITI-Integrity Action Collaboration.

The INTEGRITI, in 2015, collaborated with Integrity Action, a London-based civil society organization has resulted in several partnerships, notably,

- (i) a training module for the Integrity Leadership Course used by Integrity Action globally was handed over to be adapted and adopted by INTEGRITI; and
- (ii) Project Fix Rate: A Key Metric for Transparency and Accountability which involves communities in an effort to establish check and balances for any particular activity. INTEGRITI is currently implementing pioneer project with 3 local authorities in Malaysia, which if proven successful, will be implemented throughout the country.

- ii. The ASEAN Integrity Dialogue 2015

This dialogue focused on efforts in raising the level of integrity through institutions of higher learning or universities in the respective ASEAN member countries. Experiences shared by participants of ASEAN member countries during the dialogue are very important to Malaysia to continue to be respected as the key player within the region that emphasises efforts in promoting integrity among its people.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Information on international and regional cooperation/participation/panel discussions/declarations:

The following programmes and initiatives with anti-corruption focus have been carried out by Malaysia in collaboration with international or regional organizations :

1. Malaysia is a member of the IACCA and hosted the Sixth Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities (IAACA), which was held in Kuala Lumpur, Malaysia, from 4 to 7 October 2012, resulting in the Kuala Lumpur Declaration (attached).
2. Presentation and sharing of experiences at:
 - a. APEC Anti-corruption and Transparency (ACT) Working Group,
 - b. UNCAC Open-ended Intergovernmental Working Group on Prevention,
 - c. OECD Working Group on Bribery.
3. The Kuala Lumpur Statement on Anti-Corruption Strategies, Kuala Lumpur 21-23 October 2013.

On 21-22 October 2013, high level representatives of anti-corruption authorities as well as national planning authorities from the South, East and Southeast Asia and anticorruption experts from around the world gathered in Kuala Lumpur at the invitation of the United Nations Office on Drugs and Crime (UNODC) and the United Nations Development Programme (UNDP), in partnership with the Government of Malaysia, to discuss a set of Guidelines for Anti-Corruption Strategies, that could instruct the process of developing, designing and implementing sustainable anti-corruption strategies;

4. Malaysia's participation in The Jakarta Statement on Principles for Anti-Corruption Agencies, Jakarta 26-27 November 2012;
5. Working together with Transparency International Berlin and TI-M, the Government of Malaysia hosted the 16th IACC Conference from 2-4 September 2015 in Putrajaya culminated with the Putrajaya Declaration: Zero Tolerance for Impunity by nearly 1,200 people from 130 countries who gathered in Putrajaya, Malaysia to discuss one of the world's biggest challenges: how impunity enables the spread of corruption. Delegates came together to find the most effective strategies to stop impunity and hold to account those who benefit from the abuse of power, secret deals and briber;
6. The Malaysian Anti-Corruption Commission (MACC) Chief Commissioner has been appointed to the International Anti-Corruption Academy (IACA) board of governors for a six-year term (2013-2018): In this respect, the MACA is also a venue for one of the 7 modules (Corruption, Enforcement, and the Public Sector) of the IACA Master in Corruption Studies (MACS);
7. International courses on strategic management of anti-corruption efforts under the Malaysia Technical Cooperation Programme (Annually 2 courses are being offered for participants from anti-corruption and law enforcement agencies from Asia and the Pacific Region as well as those from Central Asia, Africa and India;
8. Anti-Corruption Capacity and Institutional Building for OPEC member States - sponsored by UNDP in collaboration with Malaysia Anti-Corruption Academy (2011-2012); and
9. Training in Enterprise Risk Management (2015). Several countries that include Botswana, Taiwan, Tanzania, Papua New Guinea and the Egyptian Anti-Corruption Agency as well as local participants from Telekom Malaysia, CCM and ALAM had had their ERM Workshop in MACA in 2015.

(b) Observations on the implementation of the article

Malaysia, through its MACC, MACA, Malaysian Institute of Integrity (INTEGRITI) and

relevant law enforcement agencies, collaborates with a number of international and regional organizations in efforts to prevent corruption. These institutions are regularly engaged in international and regional cooperation and participate in various fora, conferences, panel discussions and meetings.

(c) Successes and good practices

The international and regional cooperation efforts of Malaysian institutions are positively noted.

Article 6. Preventive anti-corruption body or bodies

Paragraph 1 of article 6

1. Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as:

(a) Implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies;

(b) Increasing and disseminating knowledge about the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Description of Bodies/Institutional Structures/Focal Points Mandated To Implement, Coordinate and Evaluate Anti-Corruption Polices

(A) Coordinating Body/Focal Point for Prevention of Corruption under the Malaysian Anti-Corruption Commission Act 2009 [Act 694]

The MACC is an independent anti-corruption body set up under the Malaysian Anti-Corruption Commission Act 2009 (Act 694), which mandates the Commission:

- (a) To promote the integrity and accountability of public and private sector administration;
- (b) To educate public authorities, public officials and members of the public about corruption and its detrimental effects on public and private sector administration and on the community.

The preventive functions of the MACC are provided for under the following sub-paragraphs of Section 7 of the Act 694:

- (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems

or procedures as, in the opinion of the Chief Commissioner, may be conducive to corruption.

(d) to instruct, advise and assist any person, on that person's request, on ways in which corruption may be eliminated by such person.

(e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption.

(f) to educate the public on corruption, and

(g) to enlist and foster public support for anti-corruption initiatives.

Coordination of Prevention Activities

The coordination of prevention and education activities of the MACC is carried out by the MACC itself under the direct supervision of the Deputy Chief Commissioner (Prevention).

The MACC Prevention and Education Divisions consist of the following sub-divisions and units:

- (a) Consultancy and Inspection Division;
- (b) Community Education Division;
- (c) Public Sector Governance Division
- (d) Agency Integrity Management Division;
- (e) State MACC Consultancy and Inspection Units; and
- (f) State MACC Community Education Units

Monitoring of Prevention Activities by Independent Oversight Bodies

The programmes and activities of prevention are reported to and scrutinized by the Consultation and Corruption Prevention Panel which in turn makes its comments and recommendations on the effectiveness of the MACC preventive activities to the MACC Advisory Board. This Board subsequently submits its recommendations to the Special Committee on Corruption, which then submits its comments and recommendations to the Prime Minister.

(B) Coordinating Body/Focal Point for the National Integrity Plan

The Malaysian Institute of Integrity (INTEGRITI) is set up as a coordinating agency for the implementation of the National Integrity Plan (NIP). The NIP is geared towards building a resilient nation which practices the values of integrity and ethics. The INTEGRITI was the brainchild of the 5th Prime Minister of Malaysia declared on 5 November 2003. It was established as a company limited by guarantee under the Companies Act 1965 on 4 March 2004.

The INTEGRITI operates with the philosophy of promoting integrity as a way of life among Malaysians through the dissemination of information and making policy proposals for practices of ethical principles in all sectors of society, including, political organizations, non-governmental organizations, family institutions and individuals.

Monitoring of Activities

INTEGRITI is headed by members of the Board of Directors, who both lead and oversee the Institute. The Board is also responsible for the overall governance of the Institute and is the main body that charts and ensures the direction and policies of the Institute in order to achieve success in its strategic goals.

As of 2015, the Board of Directors has 10 members. These members are appointed by the Prime

Minister, of whom five are ex-officio members appointed based on their designation in public service. They are:

- a. Chief Secretary to the Government (Chair),
- b. Attorney General,
- c. Auditor General,
- d. Chief Commissioner of MACC, and
- e. President of INTEGRITI

Five other members are appointed on individual basis from the private sector, academia, non-governmental organizations and regulatory bodies.

The specific objectives of INTEGRITI:

In order to help Malaysia become a nation of high integrity that is resilient and embraces universal good values, INTEGRITI focuses on four key outputs:

- a. to become an institution that coordinates, monitors and evaluates the implementation of the National Integrity Pan;
- b. to become an institution that mobilizes all levels and sectors of society and the country in a focused manner towards achieving the Five Integrity Targets of:
 - (i) Effectively reducing corruption, malpractices and abuse of power;
 - (ii) Improving efficiency in the Public Service delivery system and overcoming bureaucratic red tape;
 - (iii) Enhancing corporate governance and business ethics;
 - (iv) Strengthening family institutions; and
 - (v) improving the quality of life and people's well-being;
- c. to become an institution that is the premier think-tank on matters pertaining to enhancing the nation's integrity; and
- d. to become an institution that is the focal point of reference on integrity that is strategically networked and internationally recognized.

The day-to-day functions and activities of the INTEGRITI are carried out by the President who is assisted by a Deputy President. The Institute is comprised of the following divisions, which are established in accordance with the components or institutions involved in the movement to enhance integrity outlined in the NIP:

1. Public Sector
2. Socio-Cultural Sector (education, health, sports and recreation, media, arts, literature and heritage)
3. Private Sector
4. Political Sector

Beginning in 2015, the four above-mentioned sectors were replaced by four new centres as follows:

1. Centre for Communication, International and Special Programmes;
2. Centre for Programme Development and Implementation;
3. Centre for Coordination, Monitoring and Management Services; and

4. Centre for Knowledge and Consultation on Integrity.

The evaluation of NIP progress and achievements is carried out by the INTEGRITI itself.

(C) Coordinating Body/ Focal Points of the NKRA Fighting Corruption Programme

The coordinating body for the NKRA Fighting Corruption Initiatives under the Government Transformation Programmes (GTP 1.0, GTP 2.0 and the forthcoming GTP 3.0) is within the purview of the Performance Management & Delivery Unit (PEMANDU).

The PEMANDU was formally established on the 16 September, 2009 and is a unit under the Prime Minister's Department. PEMANDU's main role and objective is to oversee the implementation, assess the progress, facilitate, support the delivery, and drive the progress of the Government Transformation Programme (GTP) and the Economic Transformation Programme (ETP).

Coordinating of Anti-Corruption Policies/Measures

PEMANDU's coordinating function is tasked in the National Key Results Areas (NKRA) Corruption Monitoring and Coordination Division. This unit was set up by the Prime Minister's department to spearhead the GTP in enhancing anti-corruption efforts in three key corruption areas namely, Regulatory & Enforcement Agencies, Government Procurement and Grand Corruption. Initiatives of the Minister and the agencies under the Prime Minister's department and Chief Secretary above are to be implemented by the relevant government enforcement or regulatory agencies, as well as those in charge of government procurement.

The agencies responsible for implementing anti-corruption policies/measures under NKRA in Malaysia comprise of the following:

1. Malaysian Anti-Corruption Commission (MACC)
2. Attorney General's Chambers (AGC)
3. Public Services Department (PSD)
4. Royal Malaysian Customs Department (RMCD)
5. Royal Malaysia Police (RMP)
6. Registrar of Societies (ROS)
7. Malaysian Institute of Integrity (INTEGRITI)
8. Road Transport Department (RTD)
9. Election Commission (EC)
10. Ministry of Finance (MOF)
11. MAMPU (Malaysian Administrative Modernization and Management Planning Unit)
12. Ministry of Education (MoE)

The Government Transformation Programme is carried out in three horizons or phases:

1. The GTP 1.0 (2010-2012) NKRA – Fighting Corruption Initiatives and Relevant Agencies are as below:

No.	Initiatives	Project(s)	Relevant Agencies
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1	Stiffer punishment for givers and receivers of bribes	Amending the General Orders for Discipline of Civil Servants	1. MACC 2. Public Service Department-Services
2	Creating a database of corruption offenders that can be assessed	Corruption offenders database	MACC
3	Completing prosecution cases within a year	1. Additional corruption courts 2. Public Prosecutor's 3. Directive to complete cases within a year 4. Trial Act	Office of the Chief Registrar of the Federal Court of Malaysia
4	Whistleblower Protection Act	Creating Whistleblower Protection Act Framework (guideline SOP etc)	1. Legal Affairs Division, Prime Minister's Department (BHEUU) 2. MACC 3. RMP 4. Customs 5. Immigration
5	Political Funding	Amendments to regulations to encourage societies to have greater accountability for party funding	1. MACC 2. Registrar of Society 3. INTEGRITI 4. Election Commission 5. Ministry of Finance (MOF)
6	Publishing awards of government contracts, including relevant details such as the amount of the contract and information about the winning bidder	1. Design and development of a website 2. Circular to direct all Ministries to channel all procurement details to MoF 3. Implementation in all Ministries	1. MOF 2. MAMPU 3. Relevant Ministries
7	Circular to civil servants to guide them on how to handle support letters	Draft a circular directive letter and ensure compliance	1. MACC 2. MAMPU 3. RTD 4. MOF

8	Establishing Compliance Units in all regulatory and enforcement agencies	Establish Compliance Units	1. PSD 2. MACC 3. RMP 4. RMCD 5. IMMIGRATION 6. RTD
9	Integrity Pacts For Government Procurement	To implement integrity pacts whereby both parties to a government contract commit not to engage in corruption	1. MOF 2. EPU 3. All relevant Ministries/Agencies

2. Under the GTP 2.0 (2013-2015) NKRA - Fighting Corruption NKRA, the focus areas are the same as the focus areas under GTP 1.0 with a new focus area in Education (anti-corruption) and Public Support.

The initiatives under GTP 2.0 (2013-2015) and Relevant Agencies are as follows:

No.	Focus Area	Initiative(s)	Relevant Agencies
1	Enforcement Agency	1. Special committee on corruption 2. Executive review committee in MACC 3. Project Management Office on Prevention 4. Monitor compliance unit activities 5. Monitor 'Name & Shame' database 6. Corporate Integrity System Malaysia 7. Streamline oversight committees	MACC
2	Grand corruption	1. complete prosecution of corruption cases within one year 2. improve political financing governance framework 3. insertion of corporate liability provision into the Malaysian Anti-Corruption Act 2009	AGC, MACC

3	Government Procurement	<ol style="list-style-type: none"> 1. Fast-track access to Auditor-General's Performance Audit report 2. Action committee on AG report 3. Auditor General's online dashboard 4. Putrajaya inquisition 5. Implementation of comprehensive Integrity Pact for Private-Public Partnership (PPP) projects 6. Upgrade My Procurement and integration with other procurement portals 7. Guidelines for middlemen/lobbyist 	Auditor General, Ministry of Finance, MACC
4	Education and Public Support	<ol style="list-style-type: none"> 1. Setting up of Corruption Prevention Secretariat in Institutes of Teacher Education 2. Training for Members of Parliament 3. Incorporate anti-corruption element in textbooks in primary and secondary schools 	MACC, Ministry of Education (MoE)

3. GTP 3.0 (2015-2020)

Will leverage on the achievements of GTP1.0 and GTP 3.0

(D) COORDINATING BODY/FOCAL POINTS FOR PUBLIC SECTOR INTEGRITY MANAGEMENT

Coordination of Government Integrity Management as well as Public Sector Integrity Management is carried out by a Special Cabinet Committee on Government Management Integrity (JKKMKPK) and Integrity & Governance Committees (JITU).

JKKMKPK Functions

The Special Cabinet Committee on Government Management (JKKMKPK) was established on 30 November 1988 due to rising concerns on the level of corruption in the Government.

On 2 April 1997, the functions and roles of the JKKMKPK 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.

JITU Functions

JITU is a mechanism that translates into action the Government's commitment in upholding ideals under the slogan of "1 Malaysia: People First, Performance Now" to address and resolve issues which concern the integrity and governance of the Public administration.

The objectives of JITU are as follows:

- a. To create a Government administration and civil service that is highly efficient, disciplined and with integrity through the inculcation of good values and ethics;
- b. To plan and implement preventative and remedial measures to overcome problems and weaknesses specifically in financial management, public administration and the handling of disciplinary matters, corruption, abuse of powers and malpractices prohibited by laws, regulations and religion; and
- c. To identify and resolve current issues that impact across all agencies in a proactive manner through engagements, collaboration and quick response.

The terms of reference of JITU include:

1. Policy and Legislation
2. Service Delivery System and Procedure
3. Detection, Punitive and Remedial Action
4. Inculcation of Values and Code of Ethics
5. Customer Service Management
6. Collaboration with Relevant Stakeholders

Reporting system of JITU:

- a. Every issue raised must be addressed with preventive measures
- b. Frequency of Meetings: 3 times per year
- c. Reports from the Ministries and the State Governments must reach the Secretariat at least 2 weeks before the National Level JITU Meeting - January, May and September

Coordination and Reporting system of JITU:

Activities of JITU are coordinated by the Minister in charge of Integrity and Governance of the Prime Minister's Department. He is assisted by the Joint-Secretariat of JITU, which comprises the MACC (JITU Division) and PMO (Prime Minister's Office). Furthermore, since 2015 JITU reports directly to the Prime Minister's Department's newly formed Division known as "BITU" (Bahagian Integriti dan Tadbir Urus) or Integrity & Governance Division. BITU essentially functions as the Special Cabinet Committee on Government Management Integrity (JKKMKPK) headed by the Prime Minister.

Description of Structure or Structures To Deal Effectively With Grievances and Complaints From Citizens

(A) The Malaysian Anti-Corruption Commission (MACC)

The MACC is empowered to receive and investigate complaints from the Malaysian public as stated under the sub-section 7 (a) & (b) of the Act 694 :

(a) to receive and consider any report of the Commission of an offence under this Act and investigate such report as the Chief Commissioner or the officers consider practicable.

(b) to detect and investigate:

(i) any suspected offence under this Act;

(ii) any suspected attempt to commit any offence under this Act; and (iii) any suspected conspiracy to commit any offence under this Act.

Section 29 of Act 694 empowers the MACC to receive and investigate complaints (reports) made by members of the public on corruption and related offences:-

Section 29 - Power to investigate reports and enquire into information

(1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission and if made oral, it shall be reduced into writing and read over to the person making the report; and every report, whether in writing or reduced into writing, shall be signed by the person making the report

(2) Every report, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour on which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under subsection (1) or information otherwise received by him, he shall cause an investigation to be carried out and for such purpose may exercise all the powers of investigation provided for under this Act and the Criminal Procedure Code.

(4) A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of and above the rank of Commissioner.

(5) A copy, which is certified by an officer of the Commission of or above the rank of Superintendent, of an entry under subsection (2) of a report under subsection (1) shall be admissible as evidence of the content of the original and of the time, place and manner in which the report was recorded.

The MACC Act 2009 also makes it a legal obligation for members of the public and public officials to lodge complaints in accordance to the provisions of Section 25 of the Act as follows:
Section 25 - Duty to report bribery transactions

(1) Any person to whom any gratification is given, promised, or offered, in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or police officer.

(2) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Any person from whom any gratification has been solicited or obtained, or an attempt has been made to obtain such gratification, in contravention of any provision of this Act shall at the earliest opportunity thereafter report such soliciting or obtaining of, or attempt to obtain, the gratification together with the full and true description and if known, the name of the person who

solicited, or obtained, or attempted to obtain, the gratification from him to the nearest officer of the Commission or police officer.

(4) Any person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(B) The Royal Malaysia Police (RMP)

The RMP is empowered to receive and investigate information from members of the public under the provisions of Part V Chapter XIII of the Criminal Procedure Code (Act 593) as follows:

Section 107 - Information of Offences

(1) Every information relating to the commission of an offence, if given orally to an officer in charge of a police station, shall be reduced in writing by him or under his direction and be read over to the informant.

(2) Every such information shall be entered in a book to be kept by that officer, who shall append to such entry the date and hour on which that information was given, and whether given in writing or reduced into writing as aforesaid shall be signed by the person giving it.

(3)...

(4) A police officer shall be duty bound to receive any information in relation to any offence committed anywhere in Malaysia.

(C) The Public Complaints Bureau (Prime Minister's Department)

Public Complaints Bureau (PCB) was set up in 1971 to deal with complaints made by citizens against the civil service. It started off as a unit in the General Planning Division in the Prime Minister's Department and later became a separate department in the Prime Minister's Department with its own director general in 1992.

PCB is different from the classical Ombudsman system practiced by most countries. An Ombudsman is normally appointed by and acts on behalf of Parliament with powers to investigate complaints against the administration, makes recommendations concerning those complaints and tries to have its recommendations adopted by the administration. Such a system has not been implemented in Malaysia. In its place, PCB has been established and is managed by public officials under the Prime Minister's Department.

The PCB is purely an administrative arrangement and it has continued to perform its role effectively by drawing its authority mainly from the various Administrative Development Circulars (ADC) and Administrative Development Circular Letters issued by the Chief Secretary to the Malaysian Government from time to time.

Public complaints are complaints made by the public on their dissatisfaction towards any administrative action (include those made by Government agencies that have been privatised or institutions that have a monopoly and those that provide public amenities) that are considered as unjust, not in accordance with the existing laws and regulations, abuse of power, maladministration and other similar acts by Government agencies.

Types of complaints handled by PCB

1. Delays/No Action
2. Lack of Public amenities
3. Unfair Action
4. Inadequacies of Policy Implementation and Law
5. Abuse of Power
6. Misconduct of Public Servants
7. Failure to adhere to set procedures

(D) Enforcement Agency Integrity Commission (EAIC)

Enforcement Agency Integrity Commission (EAIC) is a Federal Statutory Body established by an Act of Parliament, under Section 3 of Enforcement Agency Integrity Commission Act 2009 [Act 700] which was enforced on 1 April 2011.

The establishment of the Commission is in line with the Government's aim to inculcate and enhance integrity among enforcement officers and law enforcement agencies thus strengthening public confidence in them. Although the main government department which is responsible for the implementation of anti-corruption policies was Malaysian Anti-Corruption Commission (MACC), the EAIC was designed to monitor the enforcement officers' integrity as a whole.

Since the Act came into force, the EAIC has begun to carry out its functions as provided in section 4 of Act 700. The main function of this Commission is to receive complaints of misconduct from the public against enforcement officers or law enforcement agencies in general and investigate and hold a hearing on the complaints received. This way the enforcement activities are constantly monitored and in the event of misconduct, appropriate actions will be recommended.

The functions of the EAIC as provided under Section 4 of the Act 700 are:

(1) The functions of the Commission are as follows:

- a) To receive complaints of misconduct from the public against an enforcement officer or against an enforcement agency in general and to investigate into and conduct hearings on such complaints;
- b) To formulate and put in place mechanisms for the detection, investigation and prevention of misconduct by an enforcement officer;
- c) To protect the interest of the public by preventing and dealing with misconduct of an enforcement officer;
- d) To provide for the auditing and monitoring of particular aspects of the operations and procedures of an enforcement agency;
- e) To promote awareness of, enhancement of, and education in relation to, integrity within an enforcement agency and to reduce misconduct amongst enforcement officers;
- f) To assist the Government in formulating legislation, or to recommend administrative measures to the Government or an enforcement agency, in the promotion of integrity and the abolishment of misconduct amongst enforcement officers;
- g) To study and verify any infringement of enforcement procedures and to make any necessary

recommendations relating thereto; and

h) To make site visits to the premises of an enforcement agency, including visiting police stations and lockups in accordance with the procedures under any written law, and make any necessary recommendations relating thereto.

(2) The Commission shall have power to do all things expedient or reasonably necessary for, or incidental to, the performance of its functions.

In order to facilitate the execution of its objectives under section 4(f) of Act 700 that is to assist the Government in formulating legislation or to recommend administrative measures to the Government or an enforcement agency in the promotion of integrity and the abolishment of misconduct amongst enforcement officers, EAIC also engages with other bodies such as MACC in the process of improving the performance of enforcement agencies, especially in the aspects of integrity which would require high and constant commitment from the respective leaders.

By virtue of Section 21 of the Act, EAIC may collaborate with other agencies including the MACC in doing its investigation when there is a need to do so. Section 21 of the Act 700 provides for EAIC cooperation with other investigating and law enforcement agencies as follows:

(1) In performing its investigative functions, the Commission may work in cooperation with any other investigation and law enforcement agencies and any State or Federal government departments or other persons as the Commission deems appropriate.

(2) In performing its other relevant functions, the Commission may work in cooperation with educational institutions and such other persons as the Commission deems appropriate.

(3) The Commission may consult with and disseminate intelligence and information to any other investigation and law enforcement agencies and such other persons, including any task force, as the Commission deems appropriate.

(4) If the Commission disseminates intelligence or information to any agency or person under this section on the understanding that the intelligence or information is confidential, the agency or person is subject to the secrecy provisions in relation to the intelligence or information.

Under section 22 of Act 700, the Commission has general powers in dealing with complaints as follows:

(i) the Commission shall have power to investigate any complaints of misconduct it receives from a member of the public or that are refer to it by any person;

(ii) the Commission shall have power to refer any complaints of misconduct it receives or that are referred to it under subsection (1) of a disciplinary nature to the appropriate Disciplinary Authority; and

(iii) the Commission shall have power to refer any complaints of misconduct it receives or that are referred to it under subsection (1) of a criminal nature to the Public Prosecutor.

As an independent body, EAIC receives complaints of misconduct from the public against an enforcement officer or against an enforcement agency as provided under section 4 of Act 700. According to section 23 of the Act, any person may make or refer a complaint of misconduct against an enforcement agency or an enforcement officer to the Commission.

A complaint shall be made in writing and it shall not be rejected unless the complaint becomes impossible or impracticable to be assessed without the particulars or details as stated under subsection 23(2) of the Act.

The details of the complaint must include the particulars of the complainant, the particulars of the enforcement officer, the misconduct complained of including the date and where the misconduct occurred, the particulars of the person affected by the act of the enforcement officer, the particulars of any other person who was involved in the act complained and any other details including photographs and documents that the complainant deems appropriate to include in the complaint. Nevertheless, subsection 1(3) of the Act 700 shall apply to complaints made or referred to the Commission in respect of misconduct occurring on or after the commencement of this act on 1st April 2011.

The scope of misconduct was provided under section 24 of the Act:

(1) The Commission may receive, or be referred, complaints on the following:

- a) act or inaction by an enforcement officer which is contrary to any written law;
- b) any act or inaction of an enforcement officer which, in the opinion of the Commission, is unreasonable, unjust, oppressive or improperly discriminatory;
- c) any act or inaction of an enforcement officer which is, in the opinion of the Commission, committed on improper motives, irrelevant grounds or irrelevant consideration;
- d) any act or inaction of an enforcement officer which is based on a mistake of law or fact; e) any act or inaction of an enforcement officer of which grounds should have been given but were not given;
- f) the failure of an enforcement officer to follow rules and procedures laid down by law or by the appropriate authority; and
- g) the commission of any criminal offence by an enforcement officer.

(2) The misconduct of an enforcement officer may be investigated by the Commission notwithstanding that:

- a) the act or inaction also involves persons who are not enforcement officers; or
- b) the act or inaction occurs while the enforcement officer was not on official duty.

When EAIC receives complaint of misconduct from the public against an enforcement officer or against an enforcement agency, all complaints received will be investigated in a 'preliminary investigation'. It is conducted by the Complaints Division to ensure the validity of the complaint. After the initial investigation is completed, its finding and recommendations will be presented to the Complaint Committee. If the Complaint Committee agrees on the findings and recommendations then it will be brought to the Commission for its deliberation and decision.

Amongst the decisions that can be concluded at the Commission Meetings are as follows:

- i) complaints to be referred to a relevant Disciplinary Authority;
- ii) complaints to be referred to the MACC;
- iii) complaints to be fully investigated; and
- iv) complaints to be rejected.

If it is decided that a complaint has to be fully investigated, the Investigation Section will conduct an investigation into the complaint. The findings of the investigation will subsequently be presented at the Commission's Meeting for the Commission's consideration and decision.

Part IV of the Act 700 dealt with the provisions in regards to dealing of complaints in which under subsection 26 (2) of Act 700 provides for an action that should be taken by the EAIC when complaint or complaints received by the EAIC reveal an offence under part IV of the Malaysian

Anti-Corruption Commission Act (MACC). In such case, a report will be referred by the Complaint Officer and presented to the Complaints Committee for recommendation. The evaluation by this Committee will be referred to the Commission with the recommendation to refer the complaint to MACC in accordance with subsection 26(2) of Act 700.

Section 26(2) provides as follow:

Where the Complaints Committee is satisfied that an offence under Part IV of the Malaysian Anti-Corruption Commission Act 2009 is disclosed, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation to refer the complaint to the Malaysian Anti -Corruption Commission for the Commission's consideration.

In accordance with subsection 27(2) of Act 700 if the Commissioners agree with the recommendation of Complaint's Committee the Commission will refer the said complaint to the MACC for their further action.

Section 27(2) reads as follow:

Where the Commission, after considering the report and the recommendation of the Complaints Committee under the subsection 26(2), agrees with the recommendation of the Complaints Committee, the Commission shall refer the complaint to the Malaysian Anti-Corruption Commission for its action.

By virtue of section 28 of the Act 700, EAIC may commence an investigation in respect of a misconduct it becomes aware of on its own initiative only if the Commission is satisfied that the matter is of significant interest to the public or that it is in the public interest to do so. In fact, following the media reports of specific issues, EAIC would investigate the issues of misconduct as reported in the media, in accordance with the Act.

Upon completion of such investigation, the Commission will make its decision either to refer such misconduct to the Disciplinary Authority (DA) or the MACC or the Public Prosecutor (PP) as the case may be. Upon receiving such referral from EAIC, the said DA, MACC or PP shall conduct its own investigation and communicate its findings to EAIC within thirty days from the date of receipt of the complaint as provided in subsection 27(3) of Act 700.

In the event that EAIC is not satisfied with the action taken or punishment given, EAIC may make a recommendation or request for further explanations for such actions taken.

In order to disseminate knowledge on preventing corruption in the organisation as well as to the public, the Commission will conduct a research and few programmes that have been planned throughout the year in order to make sure the correct practices are well implemented among the officer upon any misconduct behaviour or executions.

The message upon EAIC's functions and scope also been conveyed to public through the activities and programmes which are based on prevention of misconduct and strengthening integrity amongst enforcement officers and agencies. As the supervising body for enforcement agencies as listed in the Schedule to Act 700, in line with the roles and functions of EAIC as provided under section 4(d) and (h), EAIC will submit its recommendations for improvement as well as to prevent misconduct within the said agencies.

Description of Body or Bodies Responsible for Conducting Research and Disseminating Knowledge about the Prevention of Corruption.

(A) MACC-University Collaboration

Since 2012, the Public Perception on the Effectiveness of the MACC Survey (KPKPTS) is conducted every year on regularly basis, once every four month. The survey is to measure the effectiveness of the MACC efforts and initiatives in combating corruption in Malaysia via three-pronged approach, i.e., enforcement, prevention and education. It also to know public perception and experiences towards corruption in Malaysia.

The MACC appoints local university, namely Universiti Kebangsaan Malaysia (National University of Malaysia) and Universiti Putra Malaysia (Putra University of Malaysia) to carry out this survey to ensure the independent and integrity of its findings. The MACC uses the findings in formulating new strategies and approaches or enhancing the current strategies and approaches.

The survey adopts both quantitative and qualitative methods, with 9,000 respondents throughout Malaysia. The respondents were categorized into 6 groups, namely, politics, government servants, private sector, students, non-governmental organization (NGO) and public.

(B) INTEGRITI-DOSM Collaboration:

The Malaysian Institute of Integrity (INTEGRITI) collaborates with Department of Statistics Malaysia (DOSM) to establish National Integrity Perception Index (Indeks Persepsi Integriti Nasional in National Language -IPIN). This yearly survey started in 2006 with more than 10,000 respondents throughout Malaysia. The objectives of IPIN are:

- i. to measure the level of understanding among public towards corruption, public service delivery, good corporate governance and business ethics, public harmonization, quality of life and good values;
- ii. to measure the public perception towards media; and
- iii. to evaluate public perception towards government initiatives for public.

IPIN consists of 6 sub-indices, namely:

1. Corruption Perception Index (Indeks Persepsi Rasuah)
2. Public Service Delivery Quality Perception Index (Indeks Persepsi Kualiti Penyampaian Khidmat Awam),
3. Ethical Business Practices & Corporate Social Responsibility Perception Index (Indeks Persepsi Amalan Etika Perniagaan & Tanggungjawab Sosial Korporat),
4. Stability of Family Institution & Community Perception Index (Indeks Persepsi Kemantapan Institusi Keluarga & Komuniti),
5. Life Quality & Community Prosperity Perception Index (Indeks Persepsi Kualiti Hidup & Kesejahteraan Masyarakat),
6. Perception on Good Values Index (Indeks Persepsi Budi Bahasa)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Complaints received by MACC from 2013-2015 are as follows:

COMPLAINTS/INFORMAT ION	2013	2014	2015
Corruption related	4,027	2,953	2,892

Non-Corruption related	3,900	3,630	3,451
TOTAL	7,927	6,584	6,343

Source: MACC Annual Report 2013-2015

Complaints received by Enforcement Agency Integrity Commission (EAIC) according to Month from 2011-2015 are as follows:

Month	2011	2012	2013	2014	2015	Total
January	0	13	36	25	26	100
February	0	11	23	26	20	80
March	0	45	14	23	20	102
April	0	31	26	37	23	117
May	0	44	24	42	24	134
June	0	27	32	27	17	103
July	0	25	44	21	12	102
August	0	19	16	19	40	94
September	4	23	25	21	32	105
October	3	34	27	20	31	115
November	4	25	14	29	38	110
December	7	32	20	19	24	102
Total	18	329	301	309	307	1264

(Source: EAIC)

The following are the statistics of the number of complaints referred to the MACC under subsection 26(2) of Act 700 read together with subsection 27(2) of Act 700.

Decision of the Commission	Year/Number of Complaints received						
	2011	2012	2013	2014	2015	2016	Total
Complaints referred to the Malaysian Anti-Corruption Commission	3	6	5	6	5	0	25
Complaints referred to the Disciplinary Authority of Royal Malaysian of Police and Malaysian Anti-Corruption Commission	1	3	12	17	5	0	38

(Source: EAIC)

See attachments as follow:

1. Annual Report of INTEGRITI (2013-2015)
2. Annual Report of MACC (2013-2015)
3. Annual Report of GTP (2013-2015)
4. Survey on Public Perception on the Effectiveness of MACC carried out by local universities (2013-2015)

5. Malaysia Corruption Barometer by TI-Malaysia
6. KPMG's Survey on Bribery
7. IPIN - National Integrity Perception Index (annual) carried out by INTEGRITI and DOSM (refer to INTEGRITI annual report 2015, page 85)
8. Merdeka Centre Survey - Corruption Phenomenal in Small and Medium Enterprises 2012

(b) Observations on the implementation of the article

The principal institution in Malaysia tasked with the prevention of corruption and overseeing and coordinating the implementation of anti-corruption policies is the Malaysian Anti-Corruption Commission (MACC), established under the Malaysian Anti-Corruption Commission Act 2009 (Act 694). Pursuant to Section 7(f) and (g) of the Act, the Commission is also mandated to educate public authorities, public officials and members of the public about corruption and its detrimental effects, to foster public support for anti-corruption initiatives, and to increase knowledge about the prevention of corruption.

MACC is further tasked with overseeing and coordinating the implementation of anti-corruption policies. The coordination of prevention and education activities of the MACC is carried out by the MACC Prevention and Education Divisions under the supervision of the Deputy Chief Commissioner (Prevention). Monitoring of prevention activities is further carried out by independent oversight bodies.

MACC operates through 15 offices nationwide, with approximately 30 percent of its workforce focused on corruption prevention functions.

The coordinating agency for the National Integrity Plan (NIP) is the Malaysian Institute of Integrity (INTEGRITI), which monitors, coordinates and evaluates activities and implementation of the NIP.

The coordinating body for the NKRA Fighting Corruption Initiatives under the Government Transformation Programmes (GTP) is the Performance Management & Delivery Unit (PEMANDU) under the Prime Minister's Department. PEMANDU's main role and objective is to oversee the implementation, assess the progress, facilitate, support the delivery, and drive the progress of the GTP and the Economic Transformation Programme (ETP). A number of institutions are responsible for implementing anti-corruption policies/measures under NKRA, including the MACC, Attorney General's Chambers (AGC), Public Services Department (PSD), Royal Malaysia Police (RMP), Royal Malaysian Customs Department (RMCD) and Malaysian Institute of Integrity (INTEGRITI).

Coordination of Government and Public Sector Integrity Management is carried out by a Special Cabinet Committee on Government Management Integrity (JKKMKPK) and by the Integrity & Governance Committees (JITU).

A number of structures are in place to deal effectively with grievances and complaints from citizens, including by the MACC, Royal Malaysia Police (RMP), Public Complaints Bureau (Prime Minister's Department) and the Enforcement Agency Integrity Commission (EAIC).

Several bodies in addition to the MACC are responsible for conducting research and disseminating knowledge about the prevention of corruption, including local universities and the Malaysian Institute of Integrity (INTEGRITI) in collaboration with the Department of Statistics Malaysia (DOSM).

The paragraph under review appears to be implemented.

Paragraph 2 of article 6

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Independence of the Malaysian Anti-Corruption Commission.

The Malaysian Anti-Corruption Commission (MACC) is established by an Act of Parliament, namely, the Malaysian Anti-Corruption Act 2009 (Act 694).

The independence of the MACC is provided for under the provisions of Act 694 as follows:—"An Act to provide for the establishment of the Malaysian Anti-Corruption Commission, to make further and better provisions for the prevention of corruption and for matters necessary thereto and connected therewith".

The mandates of MACC, as laid down under Section 2 of MACC Act 2009, are as follows:

- a. to promote the integrity and accountability of public and private sector by constituting an independent and accountable anti-corruption body;
- b. to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public and private sector administration and on the community.

Legal safeguards for the independence of MACC

Oversight of the MACC is exercised by five independent committees to ensure that the functions of the Commission under section 7 are carried out effectively. In carrying out its functions, the MACC is only answerable or accountable to the following Independent Oversight Bodies:-

(a) Anti-Corruption Advisory Board (ACAB)

The Anti-Corruption Advisory Board (ACAB) is set up by the provision of law under Section 13 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694). The members of the ACAB are appointed by the Yang di-Pertuan Agong (King) from among individuals who have rendered distinguished public service or have achieved distinction in their professions. The Chief Commissioner of the MACC shall be appointed as an ex officio member of the ACAB as stipulated under Section 13(2)(b) of the said Act. The term of office of members appointed by the Yang di-Pertuan Agong (King) shall be three years and such members shall not hold office

for more than two terms.

(b) Special Committee on Corruption (SCC)

The Special Committee was set up by the provision of law under section 14 of the Malaysian Anti-Corruption Act 2009 (Act 694). The members of the SCC are appointed by the Yang di-Pertuan Agong (King), and shall be drawn from both the members of the Senate and the House of Representatives; none of them shall be members of the administration. The term of office of members of the Special Committee shall be three years, but a member shall not hold office for more than two terms.

(c) Complaints Committee (CC)

The Complaints Committee was formed by the provision of law under section 15 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694), with the members duly appointed by the Minister.

(d) Operations Review Panel (ORP)

The Operations Review Panel (ORP) is appointed administratively by the Prime Minister from among experts who represent relevant professions and who can represent the quality of integrity and independence of the Commission. The ORP shall serve as a checks-and-balances mechanism for ongoing cases handled by the MACC. The ORP may also present its views to the MACC on cases should further clarification be required.

(e) Consultation and Corruption Prevention Panel (CCPP)

The Consultation and Corruption Prevention Panel is appointed administratively by the Prime Minister from among individuals who represent various civil society organizations, including academics, businessmen, religious figures, media experts and social activists that can assist the MACC in fulfilling its objective of achieving a zero tolerance of corruption in society.

Appointment of the Head of MACC

The Chief Commissioner of the MACC is appointed by the Yang di-Pertuan Agong (The King) on the advice of the Prime Minister under Section 5(1), (2) and (3) of Act 694:

(1) The Yang di-Pertuan Agong (King) shall, on the advice of the Prime Minister, appoint a Chief Commissioner of the Malaysian Anti-Corruption Commission for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) Where the Chief Commissioner is appointed from among members of the public services, the period of appointment of the Chief Commissioner shall not extend beyond the date of his compulsory retirement from the public service, but where he so attains the age of compulsory retirement he may be reappointed as Chief Commissioner by the Yang di-Pertuan Agong (King), on the advice of the Prime Minister, on contract for such period and on such terms and conditions as may be specified in the instrument of appointment.

(3) The Chief Commissioner shall, during the period of his appointment as set out in the instrument of appointment, hold office at the pleasure of the Yang di-Pertuan Agong (King), subject to the advice of the Prime Minister.

The Procedures for the Recruitment and Selection of Specialized Staff of MACC.

The Public Service Department (PSD) is the centralized agency for the recruitment of all public officials, including officers of MACC. However, MACC provides the criteria needed of personnel, in term of academic qualification and experience, to the PSD. The vacancies of such positions are published on the PSD's website. The selection process is handled by PSD and the MACC interview board. The recruitment of experts is carried out through the creation of "open-posts" which meet the requirements of the MACC in the fields of forensic accounting, education, engineering, and law.

The Procedures for Ensuring the Allocation of Necessary Material Resources of the Anti-Corruption Bodies, including Annual Budgets and Expenditures.

- a. Procedures for the annual budget of the MACC are provided for under the Financial Procedure Act 1957 (Revised-1972) (Act 61). See Article 9 paragraph 2(a).
- b. Material resources for the MACC are acquired through government contracts or purchases budgeted by the MACC. These contracts/purchases include technical aids or equipment to assist in the field of detection (surveillance and intelligence gathering), investigation, prevention and educational hardware and software.

Description of the Mandatory and Optional Training Requirements for Staff of the Malaysian Anti-Corruption Commission.

Training of MACC officers comprises the following:

- a. Mandatory in-house training for the officers of the Malaysian Anti-Corruption Commission is carried out by the Malaysia Anti-Corruption Academy (MACA), which provides basic and advanced courses in the areas of corruption detection, investigation, prevention and prosecution.
- b. Short-courses (optional) in local institutions, e.g. Institute of Public Administration (INTAN), Judicial and Legal Training Institute (ILKAP), Royal Police Training Centre (PULAPOL) and Royal Police College; and overseas at anti-corruption authorities, e.g., the ICAC Hong Kong, the British Crown Agents, U.S. FBI, U.K. National Policing Improvement Agency, the Anti-Corruption & Civil Rights Commission of South Korea, and New York Police Department.
- c. Post-graduate Courses (Master's Degree) locally or overseas, e.g. Masters in Anti-Corruption Studies Programme with National University of Malaysia (Universiti Kebangsaan Malaysia), HELP University Kuala Lumpur, the International Anti-Corruption Academy (IACA) and the University of Wales.

Note: The requirements of this paragraph under review are not applicable to the Malaysian Institute of Integrity (INTEGRITI), NKRA Fighting Corruption Division and other bodies mentioned in article 6 paragraph 1 above, as they are not specialized anti-corruption bodies described under paragraph 55 of Legislative Guide of UNCAC. The INTEGRITI is an off-budget Federal Government agency set up as a Company registered under the Companies Act of Malaysia and does not follow policies and procedure of personnel management in the public sector. The MAMPU and NKRA Fighting Corruption Division, on the other hand, are Central Agencies essentially set up to formulate and coordinate anti-corruption initiatives (policies), programmes and projects to meet the requirements of the Central Government under the Government Transformation Programme and to provide support and secretariat services to operating agencies (MACC).

The Independence of the Enforcement Agency Integrity Commission (EAIC).

EAIC is a statutory body which is independent from the government administration and answerable to the Parliament. The establishment and functions of the Commission are provided for in Part II of the Act 700. On 1 April 2011, the Yang di-Pertuan Agong (King) appointed seven (7) Commissioners of EAIC pursuant to section 5(1) of the Act 700. The Constitution of the appointed Commission consists of a Chairman, a Deputy Chairman and five (5) Commissioners.

Section 3 of the Act 700 provides as follow:

- (1) A body corporate to be known as the Enforcement Agency Integrity Commission is established.
- (2) The Commission shall have perpetual succession and a common seal. (3) The Commission may sue and be sued in its name.
- (4) Subject to and for the purposes of this Act, the Commission may, upon such terms as the Commission deems fit-
 - (a) enter into contracts;
 - (b) acquire, purchase, take, hold and enjoy movable and immovable property of every description; and
 - (c) convey, assign, surrender, yield up, charge, mortgage, demise, reassign, transfer or otherwise dispose of, or deal with, any movable or immovable property or any interest in the property vested in the Commission.

The Commissioners are appointed from different backgrounds and academic disciplines which enable the Commission to perform its duties more efficiently and effectively. In addition, the appointment of the Court of Appeal Judge as the Chairman of EAIC enables the EAIC to carry out its functions freely without any undue influence.

Since its establishment, Yang di-Pertuan Agong (King) has made two appointments of Commissioners which are for the term of 2011-2014 and 2014-2017. As of now, besides the Chairman who is a Court of Appeal Judge, other Commissioners are practitioner lawyers, academics, retired civil servant and a former Speaker of the State Legislative Assembly.

Act 700 applies to 21 enforcement agencies as listed under the Schedule of the Act 700. Section 5(2) states that no person shall be eligible to be appointed as Commissioner if he or she is or was an enforcement officer. This is to avoid any undue influence.

Section 5 of the Act 700 reads as follows:

- (1) The Yang di-Pertuan Agong (King) shall, on the advice of the Prime Minister, appoint not more than seven Commissioners, of whom there shall be a Chairman and a Deputy Chairman for such period and on such terms and conditions as may be specified in the instrument of appointment.
- (2) No person shall be eligible to be appointed as a Commissioner if he is or was an enforcement officer.
- (3) The appointment of Commissioners under this section shall be published in the Gazette.

With regard to the establishment of the EAIC, Dato' Seri Mohamed Nazri Aziz, the former Minister at the Prime Minister's Department, in his speech during the Second Reading of the Enforcement Agency Integrity Commission Bill in the Parliament on 25 June 2009, stated that

the EAIC was founded on the model of Australia and the United Kingdom. He said that the establishment of an independent commission to oversee the government agencies involved in law enforcement aimed to detect, investigate and prevent acts of corruption and misconduct among enforcement officials other than police officers.

The Royal Commission to Enhance the Operation and Management of the Royal Malaysian Police recommended that the model in New South Wales, Australia and the United Kingdom has worked well and has successfully established a credible and effectively functioning police force. Therefore, the government believes that the establishment of the Enforcement Agency Integrity Commission is an effective way to ensure that the laws, regulations and procedures are followed. The Act is a step forward by the government towards restoring people's trust in government institutions and to ensure that any investigation carried out by government agencies are in order and in accordance with the procedures and laws so as to enhance professionalism in the way agencies work. The Government believes that the establishment of the EAIC will improve accountability, and help restore and maintain the confidence of the public and private sector institutions and government enforcement, as well as to establish the ombudsman system in the country.

The protection of the Commissioners and officers of the Commission is provided for under section 49 of Act 700, which states that no action, suit, prosecution or proceeding shall be instituted in any court against the Commissioners, the chief executive officer, other officers and staff of the Commission, or any member of the Task Force in respect of any act or thing done or committed by him in such capacity.

In addition, section 2 of the Public Authorities Protection Act 1948 (PAPA) provides that the PAPA shall apply to any action, suit, prosecution or proceedings against the Commission or member of the Task Force in respect of any act or thing done or committed by him or her in such capacity. The Commissioner is protected, and whoever commits any act of contempt against a Commissioner will be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both, as provided under section 45 of the Act 700.

Section 45 of the Act 700 reads as follows:

- (1) A person who commits an act of contempt against a Commissioner commits an offence and shall on conviction be liable to imprisonment for a term not exceeding two years or to a fine not exceeding one hundred thousand ringgit or to both.
- (2) For the purpose of this section, an 'act of contempt' means-
 - (a) any act of disrespect or any insult or threat offered to a Commissioner while sitting in a hearing; and
 - (b) any act of disrespect or any insult or threat to a Commissioner at any other time and place on account of him proceeding in his capacity as a Commissioner.

By virtue of section 46 of Act 700, the Government must make provisions for adequate funding to enable EAIC to fulfil its functions and obligations effectively under this Act. In 2014, the EAIC received an allocation amounting to RM7.724 million, which included expenditures for emoluments, services and supplies, capital assets and fixed grants and charges. This allocation represented an increase of 0.31% from the year 2013's allocation, which amounted to RM7.7 million. In 2015, EAIC only received RM7.7 million.

Appointment of officers and consultants of EAIC.

In 2015, to ensure that EAIC services run smoothly, more than 90% of the positions were filled in five (5) recruitment sessions that were conducted by the Human Resource Management Unit,

Management Services Division.

The procedures for appointment of the officers and staff of the Commission are provided for under section 14 of the Act 700:

- (1) There shall be appointed such number of officers and staff of the Commission as may be necessary to assist the Commission in discharging its functions effectively and efficiently and for the purpose of carrying into effect the provisions of this Act.
- (2) The Commission may appoint any officers from any enforcement agency on secondment basis to be its investigators.
- (3) The Commission may appoint such number of legal officers as may be necessary who shall be seconded from amongst officers of the Judicial and Legal Service or appointed from amongst advocates and solicitors to assist the Commission.
- (4) An officer of the Commission having directly or indirectly, by himself, a member of his family or his associate, any interest or connection to an enforcement officer under investigation by the Commission shall disclose his interest or connection forthwith to a Commissioner and shall not be involved in any investigation conducted by the Commission as regards that enforcement officer.
- (5) The Commission may, with the approval of the Yang di-Pertuan Agong (King), make regulations with respect to the conditions of service of its officers and staff.

EAIC may engage persons, including retired or former members of an enforcement agency, on such terms and conditions as the Commission deems fit, as consultants to perform such services as it deems appropriate, as provided under section 15 of the Act 700.

Programmes and Training of EAIC.

In 2015, EAIC conducted a few dialogue sessions with the top management of the enforcement agencies. The main objectives of the dialogue sessions were to discuss current issues, procedures and regulations connected to enforcement activities, to get feedback from the top management on current matters related to the agencies and to build stronger cooperation and commitment. During the respective sessions, all officers were reminded to practice positive norms with full commitment to integrity and non-tolerance of corruption.

The sessions were attended by officers of various levels from the enforcement agencies under EAIC's purview, including the heads of department and senior officers. The dialogue included a questions and answers session on EAIC's operational and complaints management process and investigations. The Commissioner engaged with the members of the enforcement agencies to discuss challenges and future improvements. Such a programme was part of EAIC's effort to spread awareness to enforcement staff and officers in each state, regarding EAIC's roles and functions as provided under the Act. It was a platform for EAIC to give and receive feedback, as well as to discuss problems faced by enforcement officers in enforcing the law.

Based on the participant evaluation forms, almost all of them understood the concept and value of integrity in carrying out their duties. 60% of the participants were aware of EAIC's background, power, roles and functions, while 40% recognized EAIC as the agency that monitors enforcement agencies without understanding its scope and function which they assumed were similar to the Public Complaint Bureau and Malaysian Anti-Corruption Commission.

EAIC is ready to monitor all issues involving matters of integrity, especially those related to enforcement agencies under its supervision. In line with that, EAIC has taken the communal approach by organizing meetings with the agencies involved to convey its feedback and

observations on issues raised. EAIC also gave direct feedback to the top management of the agencies regarding the certain matters raised. Matters related to Standard Operating Procedure compliance in investigation activities and law enforcement were also focused during the discussion sessions.

Visits to enforcement agencies under its supervision is one of the approaches taken by EAIC, as provided for under section 4(h) of the Act. In 2015, EAIC focused on conducting visits to the agencies which had the lowest complaint percentage. This was an early preventive measure and also intended to expose the officers at state and district levels to issues and scenarios of misconduct.

In line with its functions under subsection 4(1)(d) of the Act, EAIC has conducted several audits based on the agencies' Standard Operating Procedures. The audits were meant to identify weaknesses in the working procedures/Standard Operating Procedures currently being used by the enforcement agencies and subsequently recommend necessary improvements to be made. EAIC also conducted a number of seminars and talks to enforcement officers, especially in agencies under its purview. In general, the sessions also served as a refresher course for all enforcement officers to further motivate them in carrying out their responsibilities.

No.	Seminar/Talk	Organizer	Objective
1.	Talk on Integrity and Royal Malaysian Police (RMP)	Maktab RMP Cheras, Kuala Lumpur	To enhance work performance levels among RMP officers. Participants were given a clearer picture of the functions and roles of EAIC and its jurisdiction under Act 700. Emphasis was also given on the importance of enhancing the integrity level in RMP's public delivery system.
2.	Seminar on Handling of Complaints and Investigations by EAIC	Logistic Department, RMP, Bukit Aman, Kuala Lumpur	To explain EAIC's functions and jurisdiction under Act 700 and to clarify the different types of misconduct. To explain EAIC's process of receiving and investigating complaints and to enhance awareness on integrity.
3.	Seminar on Integrity and the roles of EAIC	Immigration Department Malaysia, Putrajaya	To brief on the functions and roles of EAIC and to promote awareness of integrity in the area of enforcement to the heads of divisions, Immigration Department of Malaysia.
4.	Talk on Integrity in the Context of Enforcement	Royal Customs Department of Gelang Patah, Johor	To explain the Act 700 and enhance awareness of the importance of integrity.
5.	Talk on Mechanism, Monitoring Method and Prevention of Misconduct	Companies Commission of Malaysia	To explain types of misconduct and complaint and investigation management under Act 700 as well as to explain the mechanism to prevent misconduct.
6.	Talk on Enforcement Agency Integrity Commission Act 2009 and Its Significance	Judiciary and Legal Training Institute (ILKAP)	To improve the knowledge and skills of participants on enforcement agency negligence and exposing participants to the challenges and issues related to the law of negligence.

The purpose of the establishment of EAIC was not to find faults or disgrace any enforcement officer but to enhance integrity and strengthen accountability and credibility. At the same time,

EAIC hopes that all enforcement agencies will be more proactive in their efforts to improve and enhance integrity within their agencies.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Reports prepared by the anti-corruption bodies and institutions, including budgetary submissions and expenditure reports

MACC Annual Report 2013-2015

Analytical assessments of the human and material resource needs of the anti-corruption body or bodies, including number of employees

Hay Group Human Resource assessment on MACC 2011(slide presentation)

Studies, analysis and evaluation reports on the effectiveness and performance of the anti-corruption body or bodies

Survey on Public Perception of the Effectiveness of MACC

Parliamentary reports regarding the effectiveness and performance of the anti-corruption body or bodies

Report of Special Committee on Corruption 2013-2015

Reports of the effectiveness of measures taken in various sectors to prevent corruption

Integrity Assessment Report (MyIA)

(b) Observations on the implementation of the article

The Malaysian Anti-Corruption Commission (MACC) is established by an Act of Parliament, namely, the Malaysian Anti-Corruption Act 2009 (Act 694). There are legal safeguards for the independence of the MACC and oversight is exercised by five independent committees to ensure that the functions of the Commission under section 7 are carried out effectively.

During the country visit, officials explained that a draft legal amendment has been developed under the leadership of MACC's Special Committee on Corruption (SCC) and is currently under review by the Attorney General's Chambers, which would enshrine the procedure for the appointment and removal of the MACC Chief Commissioner in the Constitution.

A second initiative under development is to establish a separate service commission, independent from the central Public Service Department, in the MACC, which would be in charge of the recruitment and retention of all MACC staff.

The reviewers welcome efforts to establish a Constitutional tenure for the Chief Commissioner of the MACC and encourage further attention and appropriate action to advance the matter.

(c) Successes and good practices

The work of the different oversight panels and committees that continuously scrutinize the operations of the MACC without interfering in its functions are positively noted.

Paragraph 3 of article 6

3. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that may assist other States Parties in developing and implementing specific measures for the prevention of corruption.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Has your country provided the information as prescribed above? If so, please also provide the appropriate reference.

1. Malaysian Anti-Corruption Commission (MACC)

Block D6, Complex D

Federal Government Administrative Centre, P.O Box 6000

62007 Putrajaya.

Tel: +603-88867000 | Fax: +603-88889562

2. Malaysian Institute of Integrity (INTEGRITI)

INTEGRITI Tower,

Persiaran Tuanku Syed Sirajuddin, off Jalan Tuanku Abdul Halim, 50480 Kuala Lumpur

Tel: +603-6209 2000 Fax: +603-6203 1005

3. Enforcement Agency Integrity Commission (EAIC) Level 5, Blok Menara

Bangunan Menara Usahawan

No. 18 Persiaran Perdana, Precint 2 62652 Putrajaya, Malaysia

Tel: +603-8888 1904

(b) Observations on the implementation of the article

The provision is implemented.

Article 7. Public sector

Paragraph 1 of article 7

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:

(a) That are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;

(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;

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

(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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Overview:

The Malaysian civil/public service is governed by Article 132 of the Constitution of Malaysia, which stipulates that the public service shall consist of:

- a) the General Public Service of the Federation
- b) the Police Force
- c) the Judiciary and the Legal Service
- d) the Education Service
- e) the Armed Forces
- f) the Joint Public Service
- g) the State Public Service.

For all intents and purpose, statutory bodies and the local authorities are also considered as part of the public service. This is because both these autonomous bodies resemble the public service in many respects, since they adopt the procedures of the public service pertaining to appointments, terms and conditions of service and the remuneration system. In addition, their officers and staff also receive pension and other retirement benefits similar to the employees in the public service.

To ensure the impartiality of the public service, and to protect it from political interference, a number of service commissions were established under the Constitution. The Head of the service commissions or council are appointed by the Yang di-Pertuan Agong (the King). The commissions/council presently existing are:

- (i) Judicial and Legal Commission;
- (ii) Public Service Commission;

- (iii) Education Service Commission;
- (iv) Armed Forces Council; and
- (v) Police Force Commission.

Under the Services Commission Act 1957 [Act 393] the term “commission “means, the Public Service Commission (PSC), the Judicial and Legal Service Commission, the Police Service Commission and the Education Service Commission, each of which are governed by their individual legislative and administrative powers.

This country report shall cover mainly the practices of the Public Service Commission (PSC), as it is the foremost personnel agency for the majority of Malaysia’s government service (employing nearly 1.2 million persons, compared to the total of 1.8 million public officers, inclusive of the Armed Forces). Also, most, if not all, aspects of human resources management policies come within the ambit of the Public Service Department (PSD) and the Public Service Commission (PSC).

The Public Service Commission of Malaysia (PSC) was founded on 31 August 1957, which happens to be the same day as the historic Independence Day of the Malay Peninsula during the reign of the British. The Declaration of Independence on 31 August 1957 itself has initiated a new supreme and independent order and leadership in the Federation of the Malay Peninsula. Officially, the Public Service Commission was formed according to Article 144(1) of the Federal Constitution, which reads as follows:

Article 144(1) of the Federal Constitution

Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service to which its jurisdiction extends.

The Public Service Commission of Malaysia’s function under Article 144(1) of the Federal Constitution stipulate 6 main functions of the Commission, which are;

- a. Appointment
- b. Confirmation of Service
- c. Conferment Into Pension Status
- d. Promotion
- e. Transfer
- f. Exercise of Disciplinary Control.

Elements of efficiency, transparency and objective criteria in the recruitment, hiring, retention, promotion and retirement of civil servants.

(A) Announcements of Vacancies

Since 2009, the PSC no longer advertises vacancies twice a year in newspapers as was normally done before. Ongoing advertisements of vacancies are done through the PSC portal. In addition, the PSC also advertises to suit the needs of some particular positions to get more applications. Therefore, applicants must check for information frequently and may amend their application accordingly. Applications can be filed at any time during the year. It is also to be noted that

besides the PSC portal, announcements of vacancies are published on SPA Facebook.

Applications to enter the public service must be made online at the portal www.spa.gov.my of the Public Service Commission of Malaysia (PSC), using the Registration Form (SPA 8i). An applicant is allowed to select up to 15 options (positions). If the vacancies match the positions in the 15 options given to applicants, they will be called for an interview, provided that their qualifications meet the selection requirements. The online registration of applications (Form SPA 8i) for vacancies enables both the PSC and candidates (applicants) to keep track of the status of the applications which will be published on the PSC portal.

Basic Education for Public Service –

(a) Support Group (Grade 11- 40)

- Lower Secondary Evaluation (PMR)- Grade 11
- Malaysian Certificate of Education (SPM)-Grade 19
- Malaysian Higher School Certificate (STPM)/Malaysian Certificate of Religious Study (STAM) Diploma-Grade 29

(b) Management and Professional Group (Grade 41 and above)

- Bachelor Degree/Master's Degree/PhD

(B) Profiling-Based Recruitment (MyRecruitment)

In an effort to enhance the effectiveness and efficiency of the recruitment exercise, the Public Service Commission Malaysia (PSC) has introduced profiling based recruitment through MyRecruitment to produce a quality workforce whereby a perfect fit between candidate profiles with a job profile is likely to be obtained. Job profiling identifies the most important competencies, and candidates' profiling uncover education, experience, skills, desired jobs and qualifications. It is a model that consists of processes of appointing the most suitable candidates for the right job that would help the public service get the most appropriate persons and the best talents.

It is the PSC's hope that the government transformation from traditional recruitment processes towards MyRecruitment would gain the public's trust, thus enhancing positive perception of the government's integrity towards supplying a dynamic workforce for the public service sector. A comprehensive structure of evaluation is used to measure a candidate's merit by not limiting the evaluation to academic achievements alone. As many have come to understand, the search for talent is competitive; to achieve a first class work culture, it all has to start with getting the right person with the right background, experience and competencies for the right job.

This model starts with the profiling process of a candidate. Candidates who have submitted their online application through the Continuous Registration and Recruitment System (CRRS) are screened in accordance with the prerequisites of the service scheme. Upon successful screening, candidates are called to attend further stages of shortlisting, which are the examination, competency assessment and interview. The ideal profile of a candidate, which focuses on psychology, aptitude, personality testing and competencies assessment through evaluation by examination and competency assessment, will be selected for an interview. The number of potential candidates are reduced to a more promising number to be appointed.

(C) Procedure for recruitment

MyRecruitment requires candidate to undergo four stages of shortlisting successfully before being appointed. Those stages are structured as follows:

Initial Screening

It is the very first stage of shortlisting, where candidates' online applications are screened in accordance with the scheme of service for the applied post.

The screening process is done electronically from the information obtained in the SPA8i application form that meets the criteria of the scheme of service. Additional criteria for the selection of suitable candidates which are not in the scheme of service, such as physical fitness, body mass and height or gender ratio may also be predetermined by certain departments, such as the Royal Malaysia Police, the MACC and other law enforcement agencies.

It should also be noted that both the Royal Police Services Commission and the Legal and Judiciary Services Commission have collaborated with the PSC for the recruitment of candidates for positions in the Royal Malaysia Police Department and positions of legal officers in the Legal and Judiciary Service Commission. The role of the PSC is only limited to managing online applications for the two Commissions.

Examination

The screened candidates are then called for written examination, which consists of general knowledge, problem solving and language proficiency. Additionally, candidates are required to take on psychometric (personality and aptitude) tests, which in a way afford early detection of the integrity or lack of integrity of the candidate. The examination is conducted online and is also simultaneously (Malaysian local time) made available to overseas candidates.

Competency Assessment

Candidates who have passed the examination are then called for competency assessment. Specific competencies are assessed from the aspects of Attitude-Skill-Knowledge that a candidate possess to match the job and the responsibilities of a respective job, such as candidates' skills in multiple languages, social orienteering skills, etc.

Interview

The interview is a further assessment session and the final stage of shortlisting, in which a candidate is evaluated for prospective employment. An interview is the final instrument to evaluate and validate a candidate's overall performance in the aspects of knowledge, skills and personality. The interview hopes to determine whether or not the applicant is suitable for the job.

The Board of Interview, comprising of a Chairman (normally from the Services Commission concerned) and a Representative of the Department having the vacancy, is represented by experienced officers and those who have vast knowledge and the ability to match the right candidates with the right job.

To ensure fairness and objectivity in the interview exercise, the Board members are required to adhere to interview ethics. In this respect, it is made compulsory for representatives on the Board to also attend a briefing on interview ethics which is conducted by the PSC a few days before the

interview exercise begins. The decision of the Board to select or reject candidates is based on the interview performance appraisal, with those scoring 80 % of the total rating and above being selected, while those below 80% being rejected.

Recording of ratings using MyGIM - Assessment Management System

To further ensure efficiency and integrity in the assessment of interviewed candidates, the evaluation (marks) of candidates are recorded in the online MyGIM database. MyGIM is only accessible to members of the interview Board and for a limited time period (dates of interview) and the ratings must be entered into MyGIM once a candidate has been interviewed. This will prevent any alteration of the ratings by any of the Board members.

(D) Appointment

Every officer who is to be appointed to the public service shall comply with the following conditions for appointments (please see General Orders Chapter A):

- (a) The candidate shall be examined and certified fit to serve by a registered medical practitioner; and
- (b) The candidate shall make a statutory declaration under the Statutory Declaration Act 1960 (Act 13) that he-
 1. does not have any criminal record
 2. is not a drug addict
 3. does not possess foreign citizenship
 4. is not a judgement debtor (bankrupt)
 5. was not medically boarded out; and
 6. has never been terminated from the public service.

Security Vetting (Service Circular No. 6 of 2011)

Before being officially appointed, the candidate has to undergo security vetting by the Chief Government Security Office regarding the background of the officer, to ensure that he/she is free and cleared of any subversive, espionage and sabotage elements. This process is applied for every officer appointed under the Professional and Management Group (i.e., a degree holder or higher) and the Support Group (with a minimum qualification of the Malaysia Higher Education Certificate (Sijil Tinggi Pelajaran Malaysia) or its equivalent), Diploma and those who are required to undergo vetting. Failure to clear vetting would result in the termination of service.

(E) Confirmation of Service

Confirmation of a recruited candidate is based on the performance appraisal and passing of the examination on government laws and regulations. Recruited personnel are required to undergo a probation period of 1 to 3 years and fulfil all the conditions specified in the scheme of service before being confirmed into the service.

Candidates, before being confirmed into the service, have to:

- (i) undergo the Mind Transformation Course;
- (ii) pass the Public Service Examination (if required); and
- (iii) obtain a recommendation from the Head of Department or Service; or
- (iv) Pre-service courses are not a requirement for confirmation, but a requirement for an appointment.

(F) Promotion

Promotion and acting on promotion are regulated under the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012 (or Peraturan-Peraturan Pegawai Awam (Pelantikan, Kenaikan Pangkat dan Penamatan Perkhidmatan) 2012), read together with Public Service Promotion Board Regulations 2010 [P.U.(A) 75] (or Peraturan-Peraturan Lembaga Kenaikan Pangkat Perkhidmatan Awam 2010 [P.U.(A) 75]) and Service Circular 7 of the 2010 Guidelines on Management of Acting and Promotion in Public Service (or Panduan Pengurusan Pemangkuan Dan Kenaikan Pangkat Dalam Perkhidmatan Awam Bilangan 7 Tahun 2010). Accordingly,

- (1) The promotion of an officer is based on merit.
- (2) In considering the merit of an officer for promotion, the Promotion Board shall take into consideration-
 - The efficiency and performance of the work of the officer;
 - The qualifications, knowledge, skills and experience of the officer;
 - The personal characteristics, including the suitability for the promotional post, integrity, potential and leadership of the officer; and
 - The extramural activities and contributions of the officer to the country and society.

The Performance Appraisal System is used in determining annual salary progression and promotion. This system introduces a more systematic and reliable assessment, because there are fewer subjective elements. It recognizes the need to give more weight to different aspects for different service groups. Aspects that are evaluated include:

- (a) work output based on knowledge, work quality, timeliness, ability to manage and make decisions;
- (b) good values, such as trustworthiness and reliability;
- (c) potential for leadership; and
- (d) the annual targets, as agreed upon by the officer being evaluated and the supervising officer.

Under the New Remuneration Systems (SSM), seniority in the civil service is no longer given top priority. The selection process for officers to be promoted includes an assessment of qualities such as leadership, innovativeness and creativity, in addition to experience and the Performance Appraisal Report.

Promotion of confirmed public officials to a higher grade is not automatic. A confirmed public official due for promotion has to go through a period of acting* on the post to which he or she is to be promoted. Conditions for acting are as follows:

- (a) confirmed in the service;
- (b) achieved a performance level that is required;

- (c) recommendation from the Head of Department/Service;
- (d) free from disciplinary punishment (Service Circular 3 of 2009: Policy on Promotion for Officers under Investigation and Disciplinary Punishment (or Dasar Kenaikan Pangkat Bagi Pegawai Yang Sedang Disiasat Dan Telah Dikenakan Hukuman Tata tertib);
- (e) has declared assets;
- (f) cleared integrity vetting by the Malaysian Anti-Corruption Commission;
- (g) cleared from the strict lenders' list of education loans funders, i.e. National Higher Education Fund Corporation (PTPTN), an agency under Ministry of Higher Education; and
- (h) other conditions stipulated by the Promotion Board.

* Period of acting is a minimum of 6 months.

* For the purpose of promotion of officers to Grade 48 and above, the selection process is carried out by the individual ministerial departmental Search Committee in charge of succession planning, vide Service Circular No. 3 of 2006: Guidelines to establish Search Committee and Implementation Process of Succession Planning (Pekeliling Perkhidmatan Bilangan 3 Tahun 2006: Panduan Mewujudkan Search Committee dan Proses Pelaksanaan Pelan Penggantian (Succession Planning)).

Recommendations of Search Committee

For an officer to be recommended for promotion by the Search Committee he/she must possess the characteristics of a "towering personality" described below:

- a) having motivation, enthusiasm, clear vision and constantly striving to achieve outstanding success;
- b) having a high quality of leadership which is capable of motivating, directing and encouraging the team;
- c) possessing high-level knowledge and skills;
- d) being resilient, highly competitive and self-reliant. as well as having the characteristics of industry and high management skills;
- e) being highly creative, constructive, scientific, progressive, innovative, critical, global and analytical;
- f) being rational, liberal, forward looking, competent, independent and confident in thinking;
- g) having self-esteem and patriotism; and
- h) having ethical and moral values.

Composition of Promotion Board

Board Chairperson and members must be of higher rank than candidates to be interviewed.

Category	Panel
A	One Chairperson and no less than 2 but not more than 4 other members
B	One Chairperson and no less than 2 but not more than 4 other members
C	One Chairperson and no less than 2 but not more than 4 other members
D	One Chairperson and one member

Board Member Replacement- Paragraph 10 of P.U.(A) 75/2010

In order to ensure justice and fairness, for any member of the Promotion Board to convene any promotion proceeding, the member concerned shall be replaced in that proceeding by an officer who is to be appointed by the Chief Secretary to the Government of Malaysia (except a replacement who is appointed by the Prime Minister), provided that the replacement officer is more senior in rank than the officer under consideration.

Career Advancement in Public Service: Fast Tracking and Subject Matter Expert (SME)

By virtue of Letter of Service Circular No. 15 of 2011, the Government has implemented new measures in the public service provisions for promotion of public officers. The Letter of Service Circular entitled, "Career Advancement of Federal Public Officers under the New Public Office Remuneration (Surat Pekeliling Perkhidmatan Bilangan 15 Tahun 2011: Kemajuan Kerjaya Pegawai Perkhidmatan Awam Persekutuan Di Bawah Saraan Baru Perkhidmatan Awam)", refers. The said Letter of Service Circular No. 15 of 2011 provides the basis for promotion to positions of higher grade for officers in the Top Management and the Management and Professionalism Group who are high performers, and thus leads to the retention/attraction of talent through the process of fast tracking high performers and recognition of subject matter experts.

The process of fast tracking high performers and recognition of subject matter experts is carried out through the recommendations made by the Head of Department, the Performance Appraisal Panel and the Expert Assessment Panel to their respective Search Committees, which is set up under Service Circular No. 3 of 2006 (Pekeliling Perkhidmatan Bilangan 3 Tahun 2006) mentioned above. The recommendation of the Search Committee is then forwarded to the Board of Promotion for endorsement. For public officers in the Implementer Group (Pegawai Kumpulan Pelaksana) who have 15 years of public service, the promotion method provided under paragraph 28 of the Letter of Service Circular No. 15 of 2011 is by way of Personnel to Holder (Khas Untuk Penyandang)

(G) Pension

The mandatory retirement age for a public servant is 60. Public sector personnel appointed on or after 12 April 1991 can either opt to join the pension scheme or the employees' provident fund scheme.

Retirement Benefits

Under the Pensions Act 1980 (Act 227), retirement benefits payable to public sector personnel are:

- a) Gratuity;
- b) Lifelong monthly pension;
- c) Cash award in lieu of accumulated leave. These payments are given to a pensionable employee upon retirement. For those on optional retirement, only gratuity and cash award in lieu of accumulated leave are paid upon retirement, whereas pension is only payable upon attaining the

age of 55. Upon the pensioner's demise, derivative pensioner benefit is extended to the dependents, namely widow, or widower and eligible children; and

d) Pensioners are also entitled to receive medical treatment at government hospitals and clinics or any other medical institutions permissible under special circumstances.

Under Section 3 of Act 227, pension is not an absolute right:

(1) No officer shall have an absolute right to compensation for past service or to any pension, gratuity or other benefit under this Act.

(2) Where the Yang di-Pertuan Agong (King) is satisfied that an officer has been guilty of negligence, irregularity or misconduct, the Yang di-Pertuan Agong (King) may reduce or withhold a pension, gratuity or other benefit for which the officer would have been eligible but for the provision of this section.

(H) Exit Policy

The implementation of Exit Policy will retain committed and performing officers, in order to enable the public service to improve its competitiveness to face the challenges of the current and future environment, in line with the principles of “People First and Performance Now”. This policy is being implemented through “Termination on the Ground of Public Interest” under Rules No. 49 P.U. (A) 395/1993, as stated in the Service Circular No. 7 of 2015: Exit Policy for Under-Performers. Officers who have health problems that affect their ability to perform their duties will be terminated through either: “Retirement on the Ground of Public Interest” under Rules No. 49 P.U. (A) 395/1993; section 10(5) (d) Retirement Act 1980 [Act 227] for officers who choose the retirement scheme; or subsection 6A (6) of Act 227 for officers who choose the Employee’s Provident Fund (EPF) scheme.

Complaint/appeal against selection/recruitment process into the public service

There is currently no regulation for appealing against decisions in the selection process.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Examples/case studies in which measures (administrative practices) regarding the management and recruitment of public officials have been successfully introduced in practice;

a. Please refer to Profiling Based MyRecruitment above.

b. Refer to article entitled, “Recruitment Practices in the Malaysian Public Sector: Innovations or Political Responses?”, Kuan Heong Woo, Universiti Sains Malaysia. Kuan Heong Woo is a lecturer in the School of Social Sciences at Universiti Sains Malaysia, Penang, Malaysia. Her research and teaching focus on public administration, representative bureaucracy, and Malaysian politics.

c. Refer to article entitled, “Competency Based Recruitment, Selection Practices and Service Quality In The Malaysian Public Sector,” Ilhaamie Abdul Ghani Azmi.

(b) Observations on the implementation of the article

Malaysia has implemented the provision, as evidenced by the comprehensive and detailed

measures and procedures governing the recruitment, hiring, retention, promotion and retirement of civil servants. Additional measures on hiring, promotion and termination apply to certain categories of officials, such as the Royal Malaysia Police, the MACC and other law enforcement agencies.

However, it is noted that there is currently no regulation for appealing against decisions in the selection/recruitment process into the public service, as these matters are determined on a case-by-case basis. It is recommended that Malaysia consider specifying in the relevant regulations the right of appeal of appointment and promotion decisions.

Article 7, subparagraph 1(b)

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:

(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;

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

A. List of public positions vulnerable to corruption

In 2013, the Inspection and Consultancy Division (ICD) of the Malaysian Anti-Corruption Commission (MACC) conducted a study which identified the high risk areas vulnerable to corruption as follows:

1. Procurement;
2. Enforcement;
3. Licensing;
4. Land matters
5. Construction.

The identified areas which are vulnerable to corruption listed above are based on the number of Inspection and Consultation papers opened, as well as results from a series of interviews and surveys which were conducted with various stakeholders. The study invariably indicated that the public officials who occupy positions in relation to the above mentioned five areas, namely procurement, enforcement, licensing, land matters and construction, are most vulnerable to corruption.

From the MACC statistics it can be ascertained that the majority of officers involved in corruption – based on the total number allegations and Investigation Papers (both overt and covert) and the total number of arrests made for various offences under the MACC Act 2009 – are those from the Support Group and those from the Managerial and Professional Group,

followed by those in the Top Management Group.

B. Requirement and Procedure for the Selection of Individuals to Public Positions Vulnerable to Corruption

The Malaysian Public Service has only a generic procedure for the selection/recruitment of individuals into the public service under the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012, irrespective of the vulnerability of certain public positions to corruption. The procedure for selection is described under subparagraph 1 (b) of Article 7 above.

Nevertheless, in accordance with the provisions of paragraph (d) of Regulation 16 of the Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012, a Head of Service may impose specific conditions, if any, in the recruitment exercise as part of the screening process to only select individuals with high integrity. One of such conditions is the requirement for candidates to undergo psychometric testing for integrity and honesty, which has been developed by MIMOS (Malaysia's National R&D Centre in ICT), to determine specific aspects of a candidate's character that are of particular importance for high risk posts.

In the case of the Royal Malaysia Police, for instance, since 2013 an integrity test, dubbed the Malaysia Integrity Test (MIT), has been imposed on all new recruits to the Royal Malaysian Police Force (RMP), in order to ensure that only personnel of high quality and integrity are recruited. Only those who pass this test will be called for an interview and will be recruited, if they pass the interview.

C. Training requirements and curricula for public positions vulnerable to corruption

There is no specific training for candidates who have been appointed to positions vulnerable to corruption. However, it is the policy of the Government of Malaysia that every public officer recruited effective from 1 January 2013 is required to undergo the Mindset Transformation Program (Kursus Program Transformasi Minda), mandated under Service Circular No. 14 of 2012 (Pekeliling Perkhidmatan Bil. 14 Tahun 2012) under the supervision and inspectorate of the Public Service Department to ensure the implementation of MTP. The MTP, which replaces the mandatory Induction Course, is a precondition for confirmation of the public officer in the public service. Failure by an officer to successfully complete the course due to disciplinary or commitment problems shall be a debarment to repeat the MTP course and the officer is terminated from service.

The syllabus of the Mindset Transformation Program is divided into the following segments:

- Segment 1: Country and the Public Administration;
- Segment 2: Role and Responsibilities of Officer;
- Segment 3: First Class Work Culture.

Included under Segment 2 are syllabi on Integrity and Security Management (Integrity, Corruption and Security), as well as Conduct and Discipline of Public Administration (Disciplinary Prohibition and Punishment).

D. Rules for rotation to other positions

In respect of job rotation for public officials, the provisions of Service Circular No. 3 of 2004

entitled, “Guidelines on Transfer of Public Officials” (Pekeliling Perkhidmatatan Bilangan 3 Tahun 2004: Panduan Pertukaran Pegawai Awam), apply. Rotation is clearly spelled out as one of the objectives of the government policy to transfer public officials, namely, “to prevent any misappropriation, abuses of power, and corruption”. The Guidelines also impose the responsibility on Heads to Department to ensure that “an officer who has close family ties, as for example, husband-wife, his/her siblings and his/her children, is not to be posted in any service which is under the direct supervision of any one of them”. Under Service Circular No. 3 of 2004, for purposes of transfer, public officials are classified into two categories, namely,

- (a) sensitive post, and
- (b) non-sensitive post.

Sensitive positions are those that are empowered and are:

- (i) directly involved with customers during law enforcement;
- (ii) engaged directly with customers during the processing of an application that can generate financial returns or any other form of rewards;
- (iii) directly involved with the client when enforcing the law, required to carry out tasks for payment or collection of revenue from customers; and
- (iv) those who make decisions based on consideration of discretionary powers, whether a customer is eligible or ineligible for something or has/does not violate any regulations or laws;

Non-sensitive positions are those that do not have the characteristics of sensitive positions in (i) to (iv) above.

The said Service Circular provides that Heads of Departments are to consider implementing the policy guidelines to ensure that those public officials in sensitive posts are transferable within 3 to 5 years (maximum) of service, while those in non-sensitive posts are transferable within 3 to 8 years (maximum) of service.

As an additional measure in implementing Service Circular No. 3 of 2004, the Ministry of Home Affairs of Malaysia has instructed that every public official who is under the Ministry, especially those working in high risk areas such as border, immigration and police, shall undergo a periodic test entitled, Security Profiling System (Sistem Pemprofilan Keselamatan). The test comprises of 5 indicators: personality, mental health, integrity, competency and patriotism. The public official will be transferred to another low risk area if he/she fails the test.

3. Please provide examples of the implementation of those measures

Assessment reports of civil servant positions or public sectors considered to be especially vulnerable to corruption

1. Public Service Integrity Assessment

The MACC initiated the Integrity Assessment on Public Service in Malaysia (MyIA) as an effort to strengthen and promote integrity and to enhance the public service delivery system as a whole. The annual assessment aims to establish integrity benchmarks and to evaluate the level of integrity within and outside public service agencies. The findings are vital to assist agencies in developing programmes and activities towards enhancing integrity among civil servants, with the focus on creating an efficient and effective public service in Malaysia. Moreover, the findings

can be utilised by Integrity Officers in agencies to coordinate the functions of the Integrity Unit, as stipulated in Service Circular No. 6 of 2013.

Findings of the study

The MyIA integrity assessment was centred on 20 government ministries/agencies that deal directly with the public and involved touch point programmes. During the eight-month assessment period (April to November 2014), there were two categories of respondents, namely, 5,803 and 478 internal and external respondents, respectively. The internal respondents comprised of officers and staff from government ministries/agencies, while external respondents were clients and vendors of government ministries/agencies.

List of government ministries and agencies involved in the Malaysian Public Service Integrity Assessment in 2014

1. Prime Minister's Department
2. Ministry of Home Affairs
3. Royal Malaysian Police
4. Immigration Department of Malaysia
5. Ministry of Finance
6. Malaysian Royal Customs Department
7. Ministry of Transportation
8. Road Transport Department
9. Ministry of Health
10. Ministry of Education
11. National Anti-Drug Agency
12. Ministry of Defence
13. Ministry of Works
14. Public Works Department
15. Ministry of Natural Resources and Environment
16. Forestry Department Peninsular Malaysia
17. Ministry of Agriculture and Agro-Based Industry
18. Department of Agriculture
19. Federal Land Development Authority (FELDA)
20. Ministry of Domestic Trade, Co-operatives and Consumerism

Overall, the study showed a 'Good' level of integrity in public services in Malaysia, with a score of 73% in the Comprehensive Integrity Index. Furthermore, several recommendations were put forward based on the findings, such as:

- a. Government ministries/agencies need to upgrade the efforts in all components, especially internal integrity to improve the Comprehensive Integrity Index score;
- b. Intensive intervention measures by heads of departments to raise the level of integrity in the respective ministries/agencies; and
- c. Implementation of the study to be extended to public agencies nationwide with the aim of

assessing the level of integrity of the Malaysian public services.

The Comprehensive Integrity Index (73%) is an indicator of the level of integrity in the Malaysian public service based on a 360 degree assessment, which encompasses three components, namely: Internal Integrity Index (66.7%), Staff Integrity Index (79.3%) and External Integrity Index (74%) for the 20 government ministries/agencies.

(Source: MACC Annual Report 2014, pages 124-125)

2. Case Study on the Implementation of Job Rotation

Job Rotation in the Royal Malaysian Customs Department:

The Customs Department of Malaysia has taken proactive steps and made job rotations more credible with the support of a computer system. The Customs Department has developed an e-placement system using internal resources to prevent "hot staff" from being placed at "hot-spot" or "hot-job" positions. To implement the "Hot job Rotation", the agency has imposed a standard operating procedure for the placement of Customs officials.

Under the guideline entitled, "Fixed Staffing Direction: Policy for Placement and Transfer of Customs Officers," three terms have been defined:

- a. Hot job: The type of work identified to have bribery risks, such as baggage, container and vehicle checks, premise investigations and account audits, as well as enforcement and confiscation operations.
- b. Hot spot: Places of work identified to have bribery risks, such as at Port Klang, Johor Bahru and Kuala Lumpur.
- c. Hot Staff: Customs officials that may have been involved in bribery with records of wrongdoings from the courts, public complaints and the Malaysia Anti-Corruption Commission.

The criteria for "hot job" placements are:

- a. Hot staff officials will not be posted to any "hot jobs" or at any "hot spots";
- b. Those placed in a "hot job" or at "hot spots" will only have a posting of three years.

Challenges and Impact

For the Royal Malaysian Customs, certain challenges do arise from implementing the "hot job" rotations. "The cost involved to relocate officers within states will be high and there will be a deficiency of breaking down specialization, as officers may not be able to be fully proficient as they may need to leave their "hot job" when the time comes," said one official. "Some officers that are relocated may have a negative point of view on this job rotation exercise, citing bias and favouritism," he added. However, the Royal Malaysian Customs is in the midst of arranging new guidelines to face these challenges. The impact of this initiative has borne fruit. From February to September 2016, there have been 12 transfer directions, involving 350 customs officers of various ranks. From there, a corresponding increase has been observed in the amount of tax collected by Customs from January to September 2016, increasing to RM 21.56 billion from RM 19.74 billion collected in 2009 in the same period. Total confiscations by the department from January to September 2010 increased to RM 346.45 million, surpassing 2009's record of RM

338.05 million.

(Source: Star Online dated 11 November 2010)

Statistics on Public Positions Vulnerable to Corruption Based on Arrest

Category	Public Position	2013	2014	2015
		Arrest	Arrest	Arrest
Support Group	Assistant Officer/Junior Officer/Junior Administrator/Clerk/Technician/ etc.	124	178	303
Management and Professional Group	Officers/Senior public officials (exclude police and army)	9	16	31
	Senior Police Officers	13	13	30
	Director General/Senior Assistant Director/ Assistant Director/Director/Deputy Director	17	13	11
	Headmasters/Lecturers/Teachers	5	2	7
	Senior army officers (Major/Lt. Col/ Colonel)	3	3	7
	Local Council Members	1	0	0
	Total	172	225	389

(Source: MACC)

(b) Observations on the implementation of the article

During the country visit the rotation system for public officials in positions deemed vulnerable to corruption was further discussed. It was clarified that the procedure is determined based on the decision of a Head of Department. Reassignment to non-sensitive positions may be done for up to 8 years, while those for sensitive positions is up to 5 years. A judicial rotation system in the subordinate courts (for magistrates, registrars and lower court officers) on a 3-4 year basis is also in place.

(c) Successes and good practices

It is positively noted that Malaysia has assessed and identified the high risk areas vulnerable to corruption, also within the MACC, based on internal statistics, and has taken measures to mitigate these risks, including through specific staff training and rotation systems.

Article 7, subparagraph 1(c)

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:

(c) That promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Remuneration

The Public Service Department (PSD) is the lead agency in the development of public service human resources in Malaysia. PSD's functions, among others, is to introduce a competitive and comprehensive remuneration package to civil servants and to develop a harmonious employer-employee relationship. This function is carried out by the Remuneration Division of PSD. The main functions of this division are to:

- i. Prepare proposals on salary, allowance and perquisites for decision by the relevant authorities;
- ii. Manage the formulation, implementation and monitoring of public sector policies relating to the employer-employee relationship; and
- iii. Undertake research on remuneration and prerequisites.

Public Service remuneration consists of salary, fixed allowances and variable payments, such as housing and expert service allowance. Public Service personnel are also provided with various emoluments, such as medical treatment/hospitalization and quarters. The objective of such remuneration is to ensure that members of the Public Service receive fair and reasonable wages and compensation in carrying out their duties. There are four main principles used to determine public service salaries:

- i. Rate for the Job - responsibilities, complexity of duties in relation to the type of service or posts;
- ii. Qualification and Training - necessary academic requirements and training needed;
- iii. Relativity and parity - within the same scheme of service (vertical); and
- iv. Confined to a specific service grouping (horizontal).

PSD has been conducting continuous studies to improve the remuneration of the Malaysian Public Service. Extensive research is done before a proposal is made to the Government. The Department also receives and studies proposals from ministries, agencies and trade unions.

All proposals are tabled to Government at the Special Cabinet Committee Meeting on Public Service Transformation. The meeting is chaired by the Prime Minister and is held at least twice a year. All decisions of this special meeting are, however, subject to various factors, including the Government's financial position and the country's economic performance, and are tabled to the Cabinet Meeting preceding implementation.

Since Malaysia's independence in 1957, the Malaysian public service remuneration system has undergone various transformations. The present remuneration system, which was called the Malaysia Remuneration System (or "SSM"), was introduced in 2002 based on the provisions of Service Circular No. 4 of 2002: Implementation of the Malaysia Remuneration System for members of the Federal Public Service. The remuneration of the Malaysian civil service is currently (as of 1 November 2002) based on the provisions of Service Circular No. 4 of 2002: Implementation of the Malaysia Remuneration Systems for members of the Federal Public

Service (Pekeliling Perkhidmatan Bilangan 4/2002: Perlaksanaan Sistem Saraan Malaysia Bagi Anggota-Anggota Perkhidmatan Awam Persekutuan 2002). The basic features of the said circular are as follows:

a. Remuneration and equitable pay scales

Public Service remuneration consists of salary, fixed allowances and variable payments such as housing and critical service allowance. Public Service personnel are also provided with various emoluments such as medical treatment/hospitalization and quarters for certain essential services like the Fire service and Police force. The objective of such remuneration is to ensure that members of the Public Service receive fair and reasonable wages and compensation in carrying out their duties.

b. Pension

The mandatory retirement age for a public servant is 60. Public sector personnel appointed on or after 12 April 1991 can either opt to join the pension scheme or the employees' provident fund scheme.

Retirement Benefit

Retirement benefits payable to public sector personnel are:

- i. Gratuity
- ii. Lifelong monthly pension
- iii. Cash award in lieu of accumulated leave.

These payments are given to a pensionable employee upon retirement. For those on optional retirement, only gratuity and cash awards in lieu of accumulated leave are paid upon retirement, whereas pension is only payable upon attaining the age of 60. Upon the pensioner's demise, the remaining pension is granted to the dependents, namely widow, or widower and eligible children.

3. Please provide examples of the implementation of those measures

Since its implementation in November 2002, the SSM has undergone seven improvements to the pay scales and various other improvements on allowances and prerequisites. The latest adjustment was made through Circular No. 1 of 2016: Rationalization of the Scheme of Service of the Federal Public Service under the Malaysian Remuneration System, implemented beginning 1 July 2016.

The summary of the seven revisions made since 2002 are as follows:

- i. Service Circular No. 7 of 2007 - revision of pay scales between 7.5% to 35%;
- ii. Service Circular No. 1 of 2012 - revision of pay scales between 7% to 13% and introduction of new annual increment rate;
- iii. Service Circular No. 2 of 2013 - revision of pay scales by extending the maximum salary;

- iv. Service Circular No. 5 of 2013 - special additional annual increment;
- v. Service Circular No. 36 of 2013 - revision of pay scales by extending the maximum salary;
- vi. Service Circular No. 2 of 2015 - introduction of special annual increment rate to those who have reached the maximum salary; and
- vii. Service Circular No. 1 of 2016 - revision of lowest starting salary of RM1, 200, extension of maximum salary and special additional annual increment.

All revisions to the remuneration are notified to ministries and agencies by issuing a Circular that is either published on the PSD's website or through official government letter.

Annual increments of public officials are not automatic but will be based on their performance appraisal.

(b) Observations on the implementation of the article

The provision is implemented.

Article 7, subparagraph 1(d)

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:

(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.

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

A. Integration of Integrity and Corruption Prevention Into Training of Civil Servants

The Malaysian Public Sector Human Resources Training Policy

The policy on training public servants of the Prime Minister's Department and Federal Departments under the New Remuneration Scheme (SSM) is governed under the provisions of the Public Sector Human Resources Training Policy - Service Circular No. 6 of 2005 (or Dasar Latihan Sumber Manusia Sektor Awam -Pekeliling Perkhidmatan Bilangan 6 Tahun 2005). The Services Circular Objectives are to:

- (i) prepare members of the public sector to be qualified, capable and competent;

- (ii) achieve high quality work outcomes;
- (iii) enhance competency and productivity;
- (iv) establish noble values and a positive attitude;
- (v) ensure a value-creation and value-added public sector service; and
- (vi) prepare career path improvements.

Under the said policy, the drivers to attain the said objectives are under the purview of the Public Sector Training Board, headed by the Director General Department of Civil Service in regard to policy/guidelines implementation and assessment, and the Human Resources Development Panel, headed by the Secretaries General of Ministries or Heads of Departments in regard to training needs and plans.

Integrating integrity and corruption prevention in training public officials is carried out through the following programmes/courses:

(a) Mindset Transformation Programme (MTP)

The MTP is implemented through Service Circular No. 14 of 2012 (described above). The objectives of the MTP are to:

- (i) provide exposure to officers regarding concepts of nationhood, principles and philosophy of nation building, government administrative system, as well as basic regulations of government administration;
- (ii) foster individuality, identity and the patriotism of officers to be more competent and capable of adapting in the public service
- (iii) inculcate values of excellency in work culture, in order that officers can deliver efficiently and effectively; and
- (iv) prepare officers with a first class mind, in alignment with the goals of developed nations.

Subjects on integrity, corruption and code of conduct violations are incorporated into the syllabus of MTP.

(b) Specialised Anti-Corruption Programmes at Malaysia Anti-Corruption Academy (MACA)

These programmes are made available to public officials upon requests by individual Government Department/Agencies or co-sponsored by the MACA with the Department or Agency concerned. The programmes include courses on the following aspects:

- (i) specialized (advanced) courses on the detection, prevention, investigation and prosecution of corruption;
- (ii) corruption risk management workshop (CRM);
- (iii) anti-corruption plan/mechanism for departments;
- (iv) management of code of ethics;
- (iv) forensic accounting.

(c) Certified Integrity Officer (CeIO) Programme

This is a mandatory programme for CeIOs appointed or seconded to Ministries, Departments or

Agencies at the Federal and State Government levels. CeIOs are required to attend a 22-day programme (spread over a period of 6-months) developed under Prime Minister's Directive No. 1 of 2009 Series 1 of 2011, in line with the National Integrity Plan to create positions of Ethics Officers within the corporate sector to enhance ethics and integrity.

(d) Continuous Learning on Anti-Corruption

This is being implemented by MACA and its partners locally and abroad, through the following post-graduate programmes:

(i) Master's in Corruption Studies Programme in collaboration with Universiti Kebangsaan Malaysia (UKM)

(ii) Master's in Anti-Corruption Studies in collaboration with the International Anti-Corruption Academy (IACA), Austria

(e) MACC Outreach Programmes on Anti-Corruption

In Malaysia, such educational programmes for public officials are handled by the Malaysian Anti-Corruption Commission's (MACC) Community Education Division and the Malaysian Institute of Integrity (INTEGRITI). Their outreach programmes include seminars, lectures, dialogues, workshops, etc. on corruption and related crimes. These programmes are carried out systematically, with yearly set targets by the MACC in collaboration with government departments.

B. Evaluation of Performance

In accordance with Letter of Service Circular No. 2 of 2009: Enhancing the Performance Management and Appraisal System for Civil Servants (Surat Pekeliling Perkhidmatan No. 2 Tahun 2009: Pemantapan Pengurusan Sistem Penilaian Prestasi Pegawai Perkhidmatan Awam), the performance of the Public Officer shall be quantified based on leadership, work output, knowledge, skills, expertise, personal qualities and his contribution to the community at the district/department/ministry/state/international level, apart from his official duties.

Consequences of Failure to Perform - Exit Policy

Under the Exit Policy for underperformers in the Public Service, which is implemented through Service Circular No. 7 of 2015 (Pekeliling Perkhidmatan Bil.7 Tahun 2015: Pelaksanaan Dasar Pemisah Bagi Pegawai Yang Berprestasi Rendah Dalam Perkhidmatan Awam), an underperformer can be terminated of his service by virtue of Regulation No. 49 of the Public Officers (Conduct and Discipline) Regulations 1993, depending on the facts of each case.

In the case of an officer who has underperformed due to illness and who could not recover from his illness, he can be medically boarded out under paragraph 10 (5) (a) of the Pensions Act 1980.

Under the said Circular, an underperformer is defined as an officer:

(i) whose marks are less than 60% based on the Annual Performance Appraisal report;

(ii) whose marks are equivalent to less than 60%, if the appraisal is based on other instruments of appraisal approved by the Director of Public Service; or

(iii) whose Key Performance Indicator (KPI) achievement is below target (for those who are evaluated based on KPI).

The procedures to terminate an officer under the Exit Policy are as follows:

- (1) An officer who has been identified as an underperformer is subjected to one year of observation while undergoing an Intervention and Improvement Programme or financial counselling under the charge of a government psychologist;
- (2) The officer will be assessed by a Special Performance Appraisal Panel (SPAP) to determine if he could be retained or terminated;
- (3) Upon receiving an unfavourable report from SPAP, the Head of Department shall give the officer a letter of explanation as to why s/he should not be terminated within 14 days to the Exit Policy Assessment Panel (EPAP);
- (4) EPAP will decide to either (i) retain or (ii) terminate the officer;
- (5) The decision of EPAP to terminate the service of the officer is then forwarded by the Public Service Department (PSD) to the AGC for their comments and legal review. Following the endorsement of the AGC, the PSD will proceed to get the agreement of the Public Service Commission to terminate the service of the officer; and
- (6) The officer who has been retained by the SPAP after the first year of observation would also be subjected to another consecutive 3- year observation, during which time he may also be terminated of his service if he has not shown any improvements.

3. Please provide examples of the implementation of those measures

Statistics on the number of programmes and officers attending courses related to integrity (organized by Cluster for Professional Development and Ethics, INTAN as below):

2014 - 17 training programmes attended by 407 officers

2015 - 10 training programmes attended 269 officers.

Statistics of public officials that have undergone integrity and anti-corruption training (MACA):

As of September 2016, there are 68 CeIOs in total appointed/seconded to the various Integrity Units of Public Sectors and GLCs as per table below:

Sector	No. of Ministries/Departments/ Agencies	No. of CeIOs
Public Sector Ministries/ Departments/Agencies with IUs	38	50
Public Sector Departments/ Agencies without IUs	4	4
GLC with IUs	13	14
Total	55	68

Example of Training Curricula (MACA):

Please see “Program Latihan Tahunan SPRM” 2016 (Annual MACC Training Programme 2016)

Example of Tools and Methods used to evaluate and improve training Programmes. Feedback and evaluation forms at the end of each session of a module

(b) Observations on the implementation of the article

The provision is implemented.

Paragraph 2 of article 7

2. Each State Party shall also consider adopting appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to prescribe criteria concerning candidature for and election to public office.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A. Criteria Concerning Candidature for and Election to Public Office

Article 47 of the Federal Constitution - Qualifications for membership of Parliament

Every citizen resident in the Federation is qualified to be a member-

(a) of the Senate, if he is not less than thirty years old;

(b) of the House of Representatives, if not less than twenty-one years old, unless he is disqualified for being a member by this Constitution or by any law made in pursuance to Article 48.

B. Criteria for Disqualification

Article 48 of the Federal Constitution - Disqualification for membership of Parliament

(1) Subject to the provisions of this Article, a person is disqualified for being a member of either House of Parliament if-

(a) he is and has been found or declared to be of unsound mind; or

(b) he is an undischarged bankrupt;

(c) he holds an office of profit;

(d) having been nominated for election to either House of Parliament or to the Legislative Assembly of a State, or having acted as election agent to a person so nominated, he failed to lodge any return of election expenses required by law within the time and in the manner so

required; or

(e) he has been convicted of an offence by a court of law in the Federation (or, before Malaysia Day, in the territories comprised in the State of Sabah or Sarawak or in Singapore) and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand ringgit and has not received a free pardon;

(f) he has voluntarily acquired citizenship of, or exercised rights of citizenship in, any country outside the Federation or has made a declaration of allegiance to any country outside the Federation.

(2) Federal law may impose, for such periods as may be specified thereby, disqualification for membership of either House of Parliament on persons committing offences in connection with elections; and any person who has been convicted of such an offence or has in proceedings relating to an election been proved guilty of an act constituting such an offence, shall be disqualified accordingly for a period so specified.

(3) The disqualification of a person under paragraph (d) or paragraph (e) of Clause (1) may be removed by the Yang di-Pertuan Agong (King) and shall, if not so removed, cease at the end of the period of five years beginning with the date on which the return mentioned in the said paragraph (d) was required to be lodged, or, as the case may be, the date on which the person convicted as mentioned in the said paragraph (e) was released from custody or the date on which the fine mentioned in the said paragraph (e) was imposed on such person and a person shall not be disqualified under paragraph (f) of clause (1) by reason only of anything done by him before he became a citizen.

(4) Notwithstanding anything contained in the foregoing provisions of this Article, where a member of either House of Parliament becomes disqualified from continuing to be a member thereof pursuant to paragraph (e) of Clause (1) or under a federal law made in pursuance of Clause (2)

(a) the disqualification shall take effect upon the expiry of fourteen days from the date on which he was

(i) convicted and sentenced as specified in the aforesaid paragraph (e); or

(ii) convicted of an offence or proved guilty of an act under a federal law made in pursuance of Clause (2); or

(b) if within the period of fourteen days specified in paragraph (a) an appeal or any other court proceedings is brought in respect of such conviction or sentence, or in respect of being so convicted or proved guilty, as the case may be, the disqualification shall take effect upon the expiry of fourteen days from the date on which such appeal or other court proceedings is disposed of by the court; or

(c) if within the period specified in paragraph (a) or the period after the disposal of the appeal or other court proceedings specified in paragraph (b) there is filed a petition for a pardon, such disqualification shall take effect immediately upon the petition being disposed of.

(5) Clause (4) shall not apply for the purpose nomination, election or appointment of any person to either House of Parliament, for which purpose the disqualification shall take effect immediately upon the occurrence of the event referred to in paragraph (e) of Clause (1) or in Clause (2), as the case may be.

(6) A person who resigns his membership of the House of Representatives shall, for a period of five years beginning with the date on which his resignation takes effect, be disqualified from being a member of the House of Representatives.

Disqualification/Non-eligibility for office under the Election Offences Act 1954 (Act 5)

If found to have been convicted of Electoral Offences under Section 3 (1) of the Election Offences Act 1954 (Act 5) as follows:

Any person who-

- (a) knowingly makes any false statement on or in connection with any application to be placed on any register of electors;
- (b) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to a returning officer any nomination paper knowing the same to be forged;
- (c) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper;
- (d) without due authority supplies any ballot paper to any person;
- (e) sells or offers to sell any ballot paper to any person or purchases or offers to purchase any ballot paper from any person;
- (f) not being a person entitled to be in possession of any ballot paper which has been marked with any authorized mark has any such ballot paper in his possession;
- (g) puts into any ballot box anything other than the ballot paper which he is authorized by law to put in;
- (h) without due authority takes out of the polling station any ballot paper or is found in possession of any ballot paper outside a polling station;
- (i) without due authority destroys, takes, opens, or otherwise interferes with any ballot box, ballot paper or packet of ballot papers in use or intended to be used for the purposes of an election;
- (j) without due authority prints any ballot paper or what purports to be or is capable of being used as a ballot paper at an election;
- (k) for the purposes of an election, manufactures, constructs, imports, has in his possession, supplies or uses, or causes to be manufactured, constructed, imported, supplied or used, any appliance, device or mechanism by which a ballot paper may be extracted, affected or manipulated after having been deposited in a ballot box during the polling at any election;
- (l) votes at any election when he is not entitled to vote thereat;
- (m) prints any advertisement, handbill, placard or poster which refers to an election and contains a reproduction of a ballot paper, or of what purports to be a ballot paper, to be used or likely to be used at such election;
- (n) obstructs or prevents a voter who is otherwise entitled to vote from voting at an election; or
- (o) votes in an election at more than one polling station in the same constituency or a different constituency, shall be liable, on conviction, to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand ringgit or to both such imprisonment and fine and, subject to any provision to the contrary in any written law relating to any election, shall until the expiration of five years from such conviction, be incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction:

Provided that nothing in paragraph (m) shall be deemed to prohibit, during the campaign period, the printing in any such advertisement, handbill, placard or poster of the name or symbol of one candidate only, together with a reproduction of a cross or other mark indicating approval of any such name or symbol.

Corrupt Practices - under Section 7 (Personation), Section 8 (Treating), Section 9 (Undue Influence), and Section 10 (Bribery) which are punishable under Section 11:

Section 7 - Personation

Every person who at an election applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person or who, having voted once at any such election, applies at the same election for a ballot paper in his own name, shall be guilty of the offence of personation.

Section 8 - Treating

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating.

Section 9 - Undue influence

(1) Every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

(2) A person shall be deemed to interfere with the free exercise of the electoral right of a person within the meaning of this section who induces or attempts to induce such person to believe that he, or any person in whom he is interested, will be rendered an object of divine displeasure or spiritual censure.

Section 10- Bribery

The following persons shall be deemed guilty of the offence of bribery:

(a) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

(b) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavor to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other

person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;

(c) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavor to procure the election of any person, or the vote of any elector or voter at any election;

(d) every person who, either before or during an election, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavors to procure, the election of any person, or the vote of any elector or voter at an election;

(e) every person who, either before or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

(f) every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;

(g) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

(h) every person who, after an election, directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and

(i) every person who, either before or during an election, directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavor to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavor to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

Section 11

(1) Every person who-

(a) commits the offence of personation, or aids, abets, counsels or procures the commission of the offence of personation;

(b) commits the offence of treating, undue influence or bribery;

(c) prints, publishes, distributes or posts up or causes to be printed, published, distributed or posted up any advertisement, handbill, placard or poster which refers to any election and which does not bear upon its face the names and addresses of its printer and publisher;

(d) makes or publishes, before or during any election, for the purpose of affecting the return of

any candidate, any false statement of fact in relation to the personal character or conduct of such candidate;

(e) makes or publishes, before or during any election, for the purpose of promoting or procuring the election of any candidate, any false statement of the withdrawal of any other candidate at such election; or

(f) being a candidate or election agent knowingly makes the declaration as to election expenses required by section 23 falsely, shall be guilty of a corrupt practice, and shall, on conviction by a Sessions Court, be liable, in the case referred to in paragraphs (a) and (b), to imprisonment for a term not exceeding two years and to a fine of not less than one thousand ringgit and not more than five thousand ringgit, and, in any other case, to imprisonment for a term not exceeding one year and to a fine not exceeding two thousand ringgit. Offences under paragraphs (a) and (b) shall be seizable offences within the meaning of the Criminal Procedure Code.

(2) Every person who is convicted of a corrupt practice shall, subject to any specific provision to the contrary in any written law relating to any election, by conviction become incapable of being registered or listed as an elector or of voting at any election or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction:

Provided that such disability shall cease on the expiry of five years from such conviction.

C. There are no requirements for candidates to:

- a) demonstrate the absence of a conflict of interest or disclose certain information about relevant interests as a condition of their candidacy;
- b) file asset declarations prior or upon entry into office;
- c) demonstrate compliance with tax obligations, past and present

Although there are no requirements for a candidate to demonstrate the absence of a conflict of interest conditional upon his candidacy, the issue of prohibition of conflict of interest will arise upon the candidate being elected to office based on the following provisions of the Federal Constitution under Article 48 (1)(c):

Subject to the provision of this Article, a person is disqualified for being a member of either House of Parliament if he holds an office of profit.

The term “office of profit” means any whole time office in any of the public services, and includes-

- (a) The office of any judge of the Federal Court, of the Court of Appeal or of a High Court;
- (b) The office of the Auditor General;
- (c) The office of the Election Commission, of a member (other than an ex officio member) of a Commission to which Part X applies, or of a member (other than an ex officio member) of any corresponding Commission established by the Constitution of a State; and
- (d) Any other office not specified in Clause (3) of Article 132 which may be declared by Act of Parliament to be an office of profit.

Under Article 56 (5) of the Federal Constitution:

A member (of Senate) who is elected to be President or Deputy President shall be disqualified from holding such office if after 3 months of his election to such office or at any time thereafter he is or becomes a member of any board of directors or board of management, of an officer or employee, or engages in the affairs or business, of any organization or body, whether corporate

or otherwise, or of any commercial, industrial or other undertaking, whether or not he receives any remuneration, reward, profit or benefit from it.

Provided that such disqualification shall not apply where such organization or body carries out any welfare or voluntary work or objective beneficial to the community or any part thereof, or any other work or objective of a charitable or social nature, and the member does not receive any remuneration, reward, profit or benefit from it.

A similar prohibition applicable to the Speaker and Deputy Speakers of the House of Representatives is provided for under Article 57 (5) of the Federal Constitution; subsection 6(1)(c) of the Eighth Schedule to the Federal Constitution provides that a member of the Legislative Assembly is disqualified if he holds an office of profit.

The term “Legislative Assembly” means the representatives assembly, however called, in the Legislature of a State (and in particular includes the Council Negeri in Sarawak) but except in the Eighth Schedule includes also a Legislative Council. In respect of a member of the Executive Council, subsection 2 (8) of the Eighth Schedule to the Federal Constitution provides as follows:

A member of the Executive Council shall not engage in any trade, business or profession connected with any subject or department for which he is responsible and shall not, so long as he is engaged in any trade, business or profession, take part in any decision of the Executive Council relating to that trade, business or profession or in any decision likely to affect his pecuniary interest therein.

The term “Executive Council” means the Cabinet or other body, however called, which in the Government of a State corresponds, whether or not the members of it are Ministers, to the Cabinet of Ministers in the Government of the Federation (and in particular includes the Supreme Council I Sarawak).

On the issue of declaration of assets by elected officials, members of the Cabinet declare their assets to the Prime Minister.

Cabinet ministers administratively, under the BN-led government declare their assets to the PM and State Executive assemblymen declare to the respective Chief Ministers of State Government after being elected into office. Asset declared by Cabinet ministers are not made publicly available whereas those of the State Governments of Pulau Pinang and Selangor are made accessible to members of the public in their government portals.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Zero cases found related to EC.

But there is a punishment for making a false declaration under section 31 of the Elections (Conduct of Elections) Regulations 1981, which clearly states that :

“if any persons makes a false declaration under sub regulation 19(7) or sub regulation 20(1), he shall be guilty of illegal practice for the purpose of the Elections Offence Act 1954

(b) Observations on the implementation of the article

While conflicts of interest of elected officials are regulated upon their election to office (Articles 48 (1)(c) and 56 (5) of the Federal Constitution), there is no requirement for candidates for election to public office to disclose their assets, as is the case for other public officers. Under the Election Offences Act, candidates must only, within 31 days after the date of publication of an election result, file a statement of election expenses with the State elections commission, which covers all expenses incurred by the candidate during his or her campaign (section 23). Statements

of elections expenses are made available for public inspection by the State elections commission (section 24). Moreover, pursuant to a separate code of ethics for members of parliament, officers of the ruling political party are required to declare their assets biennially within the party; it was clarified that these rules apply only to members of the current ruling party and there is no wider obligations for candidates for public office to disclose their assets.

Based on the discussions during the country visit, Malaysia is encouraged to 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.

Paragraph 3 of article 7

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(N) No

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Legal definition of donation/ contributions to a political party:

There is no legal definition on the word “donation”.

“The only law that exists today is about spending by the candidates during the official campaign period and there is no law on donations.”

(Source: Report of the National Consultative Committee on Political Financing, page18)

Laws, rules and regulations pertaining to political funding:

The existing domestic legislation governing funding and expenses of political parties comprises the **Societies Act 1966 (Act 335)** and the **Election Offences Act 1954 (Act 19)**.

1. Under the Societies Act 1966 (Act 335), a political party is obligated to:

a. furnish, within 60 days after holding of its annual general meeting (or if no AGM within 60 days after the end of each calendar year), to the Registrar of Societies the accounts of the financial year of the society, together with a balance sheet showing the financial position at the close of the financial year of the society [Section 14(1) paragraph(d)], and information as regards the description of any money or property, any pecuniary benefit or advantage received by the society from any person ordinarily resident outside Malaysia or an organization, authority, government, or agency of any government outside of Malaysia [Section 14(1) subparagraph (db)].

b. fulfil an obligation, at any time by a notice under Section 14 (2) paragraph (d), to furnish the

Registrar of Societies a duly audited account of the society and, pursuant to Section 14 (2) sub paragraph (db), a description of money or property, any pecuniary benefit or advantage received by the society from any person ordinarily resident outside Malaysia or an organization, authority, government, or agency of any government outside of Malaysia.

Nothing is mentioned as to what circumstances are required for the registrar to exercise this power.

2. The relevant sections of the Election Offences Act 1954 (Act 19) in relation to the expenses of political parties are as follows:

Section 15: Payment of expenses through election agent

(1) Except as permitted by or in pursuance of this Act, no payment and no advance or deposit shall be made by a candidate at an election, or by any agent on behalf of the candidate, or by any other person at any time, whether before, during, or after such election, in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent of the candidate; and all money provided by any person, other than the candidate, for any expenses incurred on account of or in respect of the conduct or management of the election, whether as gift, loan, advance, or deposit, shall be paid to the candidate or his election agent and not otherwise:

Provided that this subsection shall not be deemed to apply to any payment by the returning officer or to any sum disbursed by any person out of his own money for any small expense legally incurred by himself, if such sum is not repaid to him.

(2) A person who makes any payment, advance, or deposit in contravention of this section or pays in contravention of this section any money so provided as aforesaid shall be guilty of an illegal practice.

Section 15A. Prohibition of certain expenses during campaign period

(1) No expenses shall, with a view to promoting or procuring the election of a candidate, be incurred during the campaign period, by any person other than the candidate, his election agent and persons authorized in writing by the election agent on account-

- (a) of holding, convening or organizing any open public meeting, open public rally, open public display or open public entertainment or giving open public address or lecture;
- (b) of printing or issuing advertisements, circulars or publications; or
- (c) of otherwise presenting to the electors the candidate or his views or the extent or nature of his backing, or disparaging another candidate:

Provided that this paragraph shall not-

- (i) restrict publication in a newspaper or other periodical of any matter relating to the election;
- (ii) apply to expenses incurred by any person in travelling or in living away from home, or to similar personal expenses.

(2) Where a person incurs any expenses required to be authorized by an election agent under subsection (1), he shall within fourteen days after the date of publication of the result of the election in the Gazette send to the election agent a return, accompanied by a declaration made by him (or in the case of an association or body of persons, a director, general manager, secretary or other similar officer thereof) verifying the return and giving particulars of the matters for which the expenses were incurred:

Provided that this subsection shall not apply to any person engaged or employed for payment or

promise of payment by the candidate or his election agent.

(3) The expenses shown in the return referred to in subsection (2) shall be included in the return made by the election agent in accordance with subsection 23(1), and the authority received from the election agent shall be annexed to and deemed to form part of such return.

(4) Any person who incurs any expenses in contravention of this section, or who makes any declaration required by subsection (2) which is false and which he either knows or believes to be false or does not believe to be true, shall be guilty of an illegal practice.

Section 16. Period for sending in claims and making payments for election expenses

(1) Every payment made by an election agent in respect of any expenses incurred on account of or in respect of the conduct and management of an election shall, except where less than ten ringgit or where, from the nature of the case, such as travel by rail or postage, a receipt is not obtainable, be vouched for by a bill stating the particulars and by a receipt.

(2) Every claim against a candidate at an election or his election agent in respect of any expenses incurred on account of or in respect of the conduct or management of such election, which is not sent in to the election agent within the time limited by this Act, shall be barred and shall not be paid; and subject to such exception as may be allowed in pursuance of this Act, an election agent who pays a claim in contravention of this section shall be guilty of an illegal practice.

(3) Except as by this Act permitted, the time limited by this Act for sending in claims shall be fourteen days after the date of publication of the result of the election in the Gazette.

(4) All expenses incurred by or on behalf of a candidate at an election, which are incurred on account of or in respect of the conduct or management of such election, shall be paid within the time limited by this Act; and, subject to such exception as may be allowed in pursuance of this Act, an election agent who makes a payment in contravention of this provision shall be guilty of an illegal practice.

Section 19. Expenses in excess of maximum to be illegal practice

(1) Subject to such exception as may be allowed in pursuance of this Act, no sum shall be paid and no expense shall be incurred by a candidate at an election or by his election agent, after the date of publication of the notice of the election in the Gazette, during or after an election, on account of or in respect of the conduct or management of such election, in excess of-

- (a) two hundred thousand ringgit in the case of an election to the Dewan Rakyat;
- (b) one hundred thousand ringgit in the case of an election to a Legislative Assembly;
- (c) ten thousand ringgit in the case of an election to a local authority other than a local council;
- (d) three thousand ringgit in the case of an election to a local council:

Provided that paragraphs (c) and (d) shall have no application in Sabah and Sarawak.

(2) Any candidate or election agent who knowingly acts in contravention of this section shall be guilty of an illegal practice.

Section 20. Certain expenditure to be illegal practice

(1) No payment or contract for payment shall, for the purpose of promoting or procuring the election of a candidate at any election, be made-

- (a) on account of the conveyance of electors or voters to or from the poll, whether for the hiring of vehicles, vessels or animals of transport of any kind whatsoever, or for railway fares, or otherwise; or

(b) to or with an elector or voter on account of the use of any house, land, building, or premises for the exhibition of any address, bill, or notice, or on account of the exhibition of any address, bill or notice.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any payment or contract for payment is knowingly made in contravention of this section either before, during, or after an election, the person making such payment or contract shall be guilty of an illegal practice, and any person receiving such payment or being a party to any such contract, knowing the same to be in contravention of this section, shall also be guilty of an illegal practice.

(3) A person shall not let, lend, or employ for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he keeps or uses for the purpose of letting out for hire, and if he lets, lends, or employs such vehicle, vessel or animal of transport knowing that it is intended to be used for the conveyance of electors or voters to and from the poll he shall be guilty of an illegal practice.

(4) A person shall not hire, borrow, or use for the purpose of conveyance of electors or voters to and from the poll any vehicle, vessel or animal of transport of any kind whatsoever which he knows the owner thereof is prohibited by subsection (3) to let, lend, or employ for that purpose, and if he does so he shall be guilty of an illegal practice.

(5) Nothing in subsection (3) or (4) shall prevent a vehicle, vessel or animal of transport of any kind being let to, or hired, employed, or used by an elector or voter or several electors or voters at their joint cost for the purpose of being conveyed to or from the poll.

(6) Notwithstanding anything in the preceding provisions of this section-

(a) where it is the ordinary business of an elector or voter as an advertising agent to exhibit for payment, bills and advertisements, a payment to or contract with such elector or voter, if made in the ordinary course of business, shall not be deemed to be an illegal practice within the meaning of this section;

(b) where electors or voters are unable at an election to reach their polling stations from their place or residence without crossing the sea or a branch or arm thereof or a river, means may be provided for conveying such electors or voters to their polling stations, or to enable them to cross the river in order to reach their polling stations, and the amount of payment for such means of conveyance may be in addition to the maximum amount of expenses allowed by this Act: Provided always that such means of conveyance shall be made available equally to all such electors or voters who wish to avail themselves thereof

Section 21. Certain employment to be illegal

(1) No person shall, for the purpose of promoting or procuring the election of a candidate at any election, be engaged or employed for payment or promise of payment for any purpose or in any capacity whatever, except for the purpose or in the capacities following:

(a) one election agent and no more;

(b) not more than one polling agent at any one time for each polling area or polling district: Provided that where more than one polling station is provided in any polling area or polling district, an additional polling agent may be employed in respect of each polling station; and

(c) a reasonable number of clerks and messengers having regard to the area of the constituency or electoral ward and the number of electors on the register or list of electors for such constituency or electoral ward.

(2) Subject to such exception as may be allowed in pursuance of this Act, if any person is engaged or employed in contravention of this section, either before, during, or after an election, the person engaging or employing him shall be guilty of an illegal practice.

Section 27. Punishment for conviction for illegal practice

(1) Every person who commits an illegal practice shall, on conviction by a Sessions Court, be liable to a fine of five thousand ringgit and, subject to any specific provision to the contrary in any written law relating to any election, shall by conviction until the expiration of five years from such conviction become incapable of being registered or listed as an elector or of voting at any election under this Act or of being elected at any election, and if at that date he has been elected at any election, his seat shall be vacated from the date of such conviction.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Measures undertaken to ensure transparency in political funding:

Establishment of the National Consultative Committee on Political Funding (NCCPF)

In efforts to ensure transparency in political funding, the Prime Minister has in February 2012 announced that the government will soon regulate for all political parties that all forms of funding must be channelled to an official party account. This will be done through a new initiative under the Government Transformation Programme (GTP), as recommended by the Malaysian Anti-Corruption Commission (MACC) Advisory Board.

Towards this end, the government has established a National Consultative Committee on Political Financing (NCCPF) to outline a comprehensive and inclusive political financing plan to ensure consultative steps and consideration are taken from every level. The NCCPF announced by the Prime Minister (PM) on 14 August 2015 will be led by two ministers and will ensure any money received for the purpose of politics is done so with "integrity".

Terms of Reference

The NCCPF launched on 14th August is to provide a people consultative forum for members of the civil society to discuss ways to improve the transparency, accountability and integrity compliance of political parties and politicians in the securing of funds for the purpose of political activities. The functions of NCCPF are:

1. To identify, discuss and address the issues of political financing of political parties and politicians;
2. To examine and evaluate comparative best practices, legal and regulatory mechanism that are in used in other countries to curb abuses and prevent corruption in political financing;
3. To examine and evaluate suitable institutional support or framework to supervise and monitor political financing to political parties and politicians;
4. To formulate appropriate legal and regulatory requirements to facilitate oversight, transparency and accountability;
5. To consult interest groups and other stakeholders on the matter; and
6. Finally, to make recommendations to the Cabinet concerning the necessary legislation, regulations and institutional support to administer and monitor compliance.

The report with recommendations of the NCCPF was completed in August 2016 based on the principles of:

Principle 1: Supremacy of the rule of law. Principle 2: Enhancement of civic participation
Principle 3: Protection of civil rights
Principle 4: Transparency
Principle 5: Accountability and integrity Principle 6: Healthy political competition

Recommendations

32 recommendations of the NCCPF are as follows:

1. The implementation must be forward-looking and not clouded by the desire to name and shame previous deeds.
2. The implementation must be gradual but fast.
3. The guiding principles outlined in Chapter 6 must guide the process to design detailed rules, regulations and steps in reforming political financing in Malaysia.
4. A new Political Donation and Expenditure Act (PDEA) should be introduced and it must include robust provisions to cater for all the considerations in this report.
5. The guiding principles outlined in Chapter 6 should be included as preamble in the Act itself.
6. The PDEA must impose the same level of scrutiny, transparency and accountability on the income and expenditure of political parties at all levels (national, state, division, branches) and for all purposes
7. An Office of the Controller of Political Donations and Expenditure must be created.
8. The Controller should be overseen by a Board comprising credible and trusted figures with no active politicians.
9. Parliamentary Standing Committee on Political Financing should be created.
10. The rules stipulated in the PDEA should cover bank accounts held by political parties and politicians in Malaysia and abroad.
11. Donation is defined to include direct, indirect and in-kind contributions.
12. Donations can be made to legitimate political parties or to individual politicians.
13. Cash donations from foreign sources to a political party or politician should be banned.
14. Donations to individual politicians must be robustly regulated.
15. Donations to political parties must be robustly regulated.
16. Donations to political parties should be tax-deductible.
17. "Third party" support is regarded as an income
18. Money from unknown sources must be confiscated.
19. The rules on donation cover all direct, indirect and in-kind donations regardless of the purpose of the donation.
20. There shall be no cap on the amount that can be donated to a party or a politician.
21. All expenditure must be recorded and the accounts must be audited and reported to the Controller.
22. "Third party" support that are (a) valued at more than RM3,000 or (b) cumulatively above RM3,000 per annum from the same source or (c) cumulatively above RM3,000 from multiple sources for the same activity, must be disclosed.
23. Limits on party or candidate spending should be removed.

24. All donations to a party or politician that are (a) above RM3,000 or (b) cumulatively above RM3,000 per annum from the same source or (c) indirect or in-kind donation valued at above RM3,000, must be reported to the Controller with details of the donor(s) within 30 days of receiving the support.
25. Recommendation 25: Only the offending layer of the party or individual will be subject to sanction.
26. The implementation of the rules on disclosure should be gradual, with full implementation aimed for GE15.
27. Recommendation 27: State-funding should be provided to support the effective operations of the constituency offices of elected Members of Parliament and elected State Legislative Assembly members.
28. State-owned enterprises of all types, be it at federal, state or local (if any) level, and all their subsidiaries, are banned from making direct, indirect or in-kind contributions to politicians or political parties.
29. Companies receiving government contracts or concessions should be banned from making direct, indirect or in-kind political contributions.
30. Steps should be taken to criminalise discrimination or victimisation of donors and a mechanism should be created to enable donors who feel they have been unfairly treated to seek justice.
31. Government contracting processes should be reformed to remove possibilities of political favours.
32. There must be visibly greater commitment to inculcate integrity into the political system.

Example of case under Election Offences Act 1954 - Zero case found

(b) Observations on the implementation of the article

Malaysia indicates that it has not fully complied with the requirements of Article 7 paragraph 3 under review. Political party financing is not currently regulated in Malaysia, although several steps have been taken towards enhancing transparency in the financing of political parties and candidates for elections, as described further in the introduction to this report.

As described in the response and further clarified during the country visit, the 32 recommendations made by the National Consultative Committee on Political Funding (NCCPF) have been submitted to the ruling and opposition parties for consultation and would be submitted for public comment thereafter. Consultations were being held with political parties and the Minister for Governance, Integrity and Human Rights, and the development of a comprehensive and inclusive political financing plan, taking into account international good practices, was also one of the KPIs for 2017.

Based on the discussions during the country visit, the reviewers welcome steps being taken by Malaysia toward adopting rules on political party financing.

Paragraph 4 of article 7

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legal framework for promoting transparency and preventing conflicts of interest standards is as follows:

A. Regulation 4(2) of Public Officers (Conduct and Discipline) Regulations 1993, P.U.(A) 395 of 1993

An officer shall not-

- (a) subordinate his public duty to his private interests;
- (b) conduct himself in such a manner as is likely to bring his private interests into conflict with his public duty;
- (c) conduct himself in any manner likely to cause reasonable suspicion that-
 - (i) he has allowed his private interests to come into conflict with his public duty so as to impair his usefulness as a public officer; or
 - (ii) he has used his public position for his personal advantage
- (d) conduct himself in such a manner as to bring the public service into disrepute or bring discredit to the public service;
- (e) lack efficiency or industry;
- (f) be dishonest or untrustworthy;
- (g) be irresponsible
- (h) bring or attempt to bring any form of outside influence or pressure to support or advance any claim relating to or against the public service, whether the claim is his own or that of any other officer;
- (i) be insubordinate or conduct himself in any manner which can reasonably be construed as being insubordinate; and
- (j) be negligent in performing his duties.

B. Outside employment-Regulation 5 P.U. (A) 395 of 1993

(1) Save insofar as he is required in the course of his duty or is expressly authorized to do so, an officer shall not-

- (a) take part, directly or indirectly, in the management or proceedings of any commercial, agricultural or industrial undertaking;
- (a) undertake for reward any work for any institution, company, firm or private individual;
- (b) as an expert, furnish any report or give expert evidence, whether gratuitously or for reward; or
- (c) function as an executor, administrator or receiver.

(2) Notwithstanding the provisions of subregulation (1), an officer may apply for written permission from the Head of Department to undertake specified service of the type mentioned in subregulation (1) for the benefit of himself or his close relative or for any non-profit-making body of which he is an office holder.

(3) In considering whether or not permission under subregulation (2) should be granted, the Head of Department shall have regard to the code of conduct laid down in regulation 4 and in particular, shall ensure that the outside employment-

(a) shall not take place during office hours and during such time when the officer is required to perform his official duties;

(b) does not in any way tend to impair the officer's usefulness as a public servant; and

(c) does not in any way tend to conflict with the interest of the department or be inconsistent with the officer's position as a public servant.

(4) Save insofar as it may otherwise be prescribed, all sums received by an officer by way of remuneration for rendering any of the service mentioned in subregulation (1) shall be paid into the Federal Treasury pending its decision as to the amount, if any, which may be retained by the officer personally and by members of his staff.

C. Ownership/Disposal of Property-Regulation 10 P.U.(A) 395 of 1993

(1) An officer shall, on his appointment to the public service or at any time thereafter as may be required by the Government, declare in writing to his Head of Department all properties belonging to him, his spouse or child or held by any person on his behalf or on behalf of his spouse or child.

(2) An officer who does not own any property shall make declare in writing to that effect.

(3) Where, after making a declaration under subregulation (1), an officer or his spouse or child acquires any property, either directly or indirectly, or any property acquired by him or his spouse or child is disposed of, that officer shall immediately declare such acquisition or disposal of property to his Head of Department.

(4) Where an officer or his spouse or child intends to acquire any property, and the acquisition is inconsistent with regulation 4, the acquisition shall not be made without the prior written permission of the Secretary General of the Ministry.

(5) In deciding whether or not to grant permission under subregulation (4), the Secretary General of the Ministry shall have regard to the following matters:

(a) the size, amount, or value of the property in relation to the officer's emolument and any legitimate private means;

(b) whether the acquisition or holding such property will or is likely to conflict with the interests of the public service, or the officer's position as a public servant, or be in any way inconsistent with regulation 4;

(c) any other factor he may consider necessary for upholding the integrity and efficiency of the public service.

(6) The Head of Department shall, if he is satisfied with the declaration of property made by the officer, direct it to be recorded in the officer's record of service that the declaration had been made.

(7) Every declaration under subregulation (1) shall be categorised as classified and every person who gains information under this regulation of any such declaration shall comply with the procedures and regulations pertaining of the management of the Government's classified documents.

(8) In this regulation, “property” includes property of any description, whether movable or immovable, as may be prescribed by the Director General of Public Service from time to time.

Note: Regulation 10 is to be read conjunction with Service Circular No. 3 of 2002: Ownership and Declaration of Property by Public Officers (or Pekeliling Perkhidmatan Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta oleh Pegawai Awam).

Administrative sanctions against breaches of P.U.(A) 395 regulations - Types of disciplinary punishments:

- (a) Warning
- (b) Fine
- (c) Forfeiture of emoluments
- (d) Deferment of salary movement
- (e) Reduction of salary
- (f) Reduction in rank or
- (g) Dismissal.

Body responsible for enforcing regulations under P.U.(A) 395 of 1993:

Disciplinary Boards of Ministries, Federal or State Governments, Statutory Bodies and Local Authorities.

D. Offence of using office or position for gratification-Section 23 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)

Section 23- Offence of using office or position for gratification

(1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.

(2) For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.

(3) For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a State shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution or Laws of the Constitution of that State.

(4) This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

Criminal Sanction: Section 24 of MACC Act 2009:

- (a) imprisonment for a term not exceeding twenty years, and
- (b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary

nature, or ten thousand ringgit, whichever is the higher.

Note: The provisions of section 23 MACC Act 2009 are similar to the provisions of section 15 of the repealed Anti-Corruption Act 1997 (Act 575) and section 2(1) of the Emergency (Essential Powers) Ordinance No. 22 of 1970 (repealed).

Body responsible for enforcing provisions of MACC Act 2009:
Malaysian Anti-Corruption Commission.

E. Public Servant unlawfully engaging in trade-Section 168 Penal Code

Whoever, being a public servant, and being legally bound as such public servant not to engage in trade engages in trade, shall be punished with imprisonment for a term which may extend to one year, or with fine, or with both.

Body responsible for enforcing provisions of Section 168 Penal Code:
Royal Malaysia Police/MACC.

F. Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant-Section 165 Penal Code

Whoever, being a public servant, accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing, without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted, by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

Body responsible for enforcing provisions of Section 165 Penal Code:
Royal Malaysia Police/MACC.

G. Public servant unlawfully buying or bidding for property-Section 169 Penal Code

Whoever, being a public servant, and being as such public servant not to purchase or bid for certain property, purchases or bids for such property, either in his own name or in the name of another, or jointly or in shares with others, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both, and the property, if purchased shall be confiscated.

Body responsible for enforcing Section 169 Penal Code:
Royal Malaysia Police.

H. Initiatives of the National Key Result Area-Fighting Corruption

- i. Implementation of Myprocurement and Mypartnership portal to ensure transparency in public procurement
- ii. Defining parameters of support letters to deter undue influence by individuals on decision-making process of public officials in procurement process
- iii. Training for procurement officers

- iv. Implementation of Integrity Pact tool- a formal agreement between contractors/suppliers and the Government to abstain from corruption activities as required by Ministry of Finance Treasury Circular No. 10 of 2010
- v. Demarcation between procurement and Privatisation/Public Private Partnership
- vi. Reviewing the Procurement Price Negotiation
- vii. Enhance technical capability and costs committee at every ministry and agencies

Publicity of standards:

The legislation, regulation and initiatives mentioned are publicly available through publications and governmental websites.

See attachments:

- a. Malaysian Anti-Corruption Commission Act 2009
- b. Treasury Instructions (Arahan Perbendaharaan)
- c. Ministry of Finance Malaysia Treasury Circular Letter No.10/2010 (Kementerian Kewangan Malaysia Surat Pekiling Perbendaharaan Bil 10 Tahun 2010)
- d. Public Officers (Conduct and Discipline) Regulations 1993. P.U. (A) 395.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

As described in the paragraph above, Malaysia has the necessary legal provisions and practice circulars governing transparency and preventing conflict of interest in the public sector decision-making process in administration and procurement.

Examples of Cases of Conflict of Interest (under the Malaysian Anti-Corruption Commission Act 2009/Anti-Corruption Act 1997/Penal Code/ Emergency Ordinance 22/1970) committed by public officials charged in court:

- i. PP v. Dato' Waad Mansor [2005] 1 CLJ 421
- ii. PP v. Datuk Hj Sahar Arpan [1999] 3 CLJ 427
- iii. PP v Amir Dagang [2009] 10 CLJ 448
- iv. Mohd Khir Toyo v. PP [2015] 8 CLJ 769.

Example of Public Servant Involving in Business- Section 168 Penal Code

In 2013 an Army Pathologist was charged by the MACC in the Shah Alam Sessions Court with an offence under section 168 of the Penal Code as a civil servant who was unlawfully engaging in trade with a business company on 1 January 2012 located in Klang.

(b) Observations on the implementation of the article

Malaysia has established legal measures and an administrative framework to regulate conflicts of interest in the public sector. Regulations on gifts and entertainment have also been adopted. In addition, currently all categories of public officers are required to declare their assets, as further described under articles 52(5), 8(5), 8(1) and 7(4) of the Convention.

Malaysia provided case examples of conflict of interest violations committed by public officials who were charged in court.

It was further clarified during the country visit that, apart from asset disclosures, there is currently no requirement for public officials to disclose potential conflicts of interest, which are prohibited by the Public Officers (Conduct & Discipline) Regulations 1993 and other related Service Circulars (see article 8(5) of the Convention below). It is noted that such disclosures of conflicts are currently required for members of the Tender Board during the procurement process. Based on the discussions during the country visit, Malaysia is encouraged to consider adopting, in addition to existing asset declaration requirements, systems and procedures for public officials to declare potential conflicts of interest, i.e., outside activities, employment and substantial gifts or benefits from which a conflict may arise. This would also help further the detection, enforcement and administrative sanctioning, where appropriate, of conflict of interest violations.

Article 8. Codes of conduct for public officials

Paragraph 1 of article 8

1. In order to fight corruption, each State Party shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

A. Integrity, Honesty and Responsibility of Public Officials

The qualities of integrity, honesty and responsibility of public officials are prescribed principally under Regulation 4 of the Public Officers (Conduct and Discipline) Regulations 1993 P.U.(A) 395, which provides as follows:

Regulation 4

- (1) An officer shall at all times give his loyalty to the Yang di-Pertuan Agong (King), the country and the Government.
- (2) An officer shall not:
 - (a) subordinate his public duty to his private interests;
 - (b) conduct himself in such a manner as is likely to bring his private interests into conflict with his public duty;
 - (c) conduct himself in any manner likely to cause a reasonable suspicion that:
 - i) He has allowed his private interests to come into conflict with his public duty so as to impair his usefulness as a public officer: or

- ii) He has used his public position for his personal advantage;
- (d) conduct himself in such a manner as to bring the public service into disrepute or bring discredit to the public service;
- (e) lack efficiency or industry;
- (f) be dishonest or untrustworthy;
- (g) be irresponsible;
- (h) Bring or attempt to bring any form of outside influence or pressure to support or advance any claim relating to or against to public service, whether the claim is his own claim or that of any officer;
- (i) be insubordinate or conduct himself in any manner which can be reasonably construed as being insubordinate; and
- (j) be negligent in performing his duties.

These are complemented with administrative policies of Clean, Efficient and Trustworthy (Bersih, Cekap dan Amanah); Integration of Islamic Values (Penerapan Nilai-nilai Islam); Excellent Work Culture (Budaya Kerja Cemerlang); Code of Work Ethics (Kod Etika Kerja) Clients Charter (Piagam Pelanggan) and ISO 9000 certification, which were introduced through development administration circulars of public services (Pekeliling Kemajuan Perkhidmatan Awam) from time to time.

These administrative circulars formed the basis of administrative reform. They covered micro matters such as improving the quality of official telephone calls, guidelines on conducting meetings, strategies to improve quality, and establishing quality control circles, to macro matters such as law enforcement monitoring system at District Level Administration, Standard Accounting System for Government Agencies (SAGA), and improvement of public complaints management process.

Continuing the effort made under the previous administration, the new administration embarked on instilling a performance based culture among civil servants through introducing a system of KPIs for public agencies. A directive was issued in 2005 instructing all government agencies to use KPIs and their associated benchmarks. The use of KPIs is seen as one of the tools to strengthen the public sector's institutional and implementation capacity.

The Malaysian Public Service Commitment 2008 launched by the Chief Secretary to the Government on 16 January 2008 outlines the definition towards a customer-focused public service. The main goal is to institutionalize quality services in all 27 ministries, over 720 Government agencies and 144 local authorities in the 14 states including the Federal Territory. In essence the Malaysian Public Service is geared towards One Service, One Delivery, No Wrong Door policy.

In April 2009, the Prime Minister introduced the Government Transformation Programme (GTP) with two main objectives, first, to transform the government to be more effective in its service delivery and be accountable for outcomes that matter most to the people or rakyat; and second, to help Malaysia move forward to become an advanced, united, and just society with high standards of living for all. This is encapsulated in the concept of "People First, Performance Now".

B. Laws, policies, administrative regulations or instructions or other practices aimed at promoting integrity, honesty and responsibility among public officials:-

The primary administrative regulation which aims at promoting integrity, honesty and

responsibility among public officials is the Public Officers (Conduct and Discipline) Regulations 1993 which is part of the General Administrative Orders and Instructions (Perintah-Perintah Am dan Arahan Pentadbiran) made by the Yang di Pertuan Agong (King) by virtue of Clause (2) of Article 132 of the Federal Constitution.

These General Orders and Instructions provide the legal basis for all supplementary instructions which come in the form of:

- Development Administration Circulars (Pekeliling Kemajuan Perkhidmatan Awam) issued by the Prime Minister's Office;
- Directives of the Rt. Hon. Prime Minister (Perintah YAB Perdana Menteri);
- Service Circulars (Pekeliling Perkhidmatan); and
- Letters of Service Circulars (Surat Pekeliling Perkhidmatan) issued by the Chief Secretary to the Government of Malaysia or the Director General of Public Services mainly: (i) to develop improvements in the general government administration and (ii) to substantiate and provide guidelines towards the implementation/enforcement of these Regulations or Orders.

Among the practices emanating from these Orders, Development Administration Circulars, Service Circulars, Letters of Service Circulars and Public Services Development Circulars that promote integrity, honesty and responsibility among public officials are the following:

1. Taking an oath of service -Regulation 20 (1) (b) of Public Officers (Appointment, Promotion and Termination of Service) Regulations 2012:

The said regulation requires that every candidate appointed into the Public Services to make a statutory declaration on oath in accordance with the Statutory Declaration Act 1960 (Act 13) stating that he:

- (i) has no criminal records;
- (ii) has never been terminated from any job;
- (iii) is not a drug addict;
- (iv) does not possess any foreign citizenship;
- (v) is not a bankrupt;
- (vi) has not been pensioned off due to health reasons; and
- (vii) has not been terminated of his service from public service.

2. Giving a letter of Undertaking - Regulation 20 (3) of Public Officers (Appointment, Promotion and Termination of Service)

The said regulation requires that every candidate who is appointed into the public services, shall sign the Letter of Undertaking (Surat Aku Janji) stating, as specified in the First Schedule, that he shall comply with the provisions of the Public Officers (Conduct and Discipline) Regulations 1993 [P.U. (A) 395/1993], General Orders, Circular, Circular Letter, Regulations and other orders issued and enforced by the Government from time to time throughout his service in the public service.

3. Making public officers responsible for public delivery based on their conduct, vide Service Circular No. 28 of 2009 (Pekeliling Perkhidmatan Bil. 28 Tahun 2009: Tanggungjawab Pegawai Awam Berdasarkan Tatakelakuan Pegawai Awam). The said circular requires that public services delivery be enhanced and executed with speed, efficiency and effectiveness. It reiterates Regulation 4 of Public Officers (Conduct & Discipline) Regulations 1993 by reminding public

officers:

- a. to perform their duties efficiently;
- b. to be honest and trustworthy;
- c. to be responsible with integrity;
- d. not to place public interest above private interest;
- e. not to use public position for personal advantage;
- f. to uphold the image of public service; and
- g. not to be negligent in performing their duties

The said circular also sends a reminder that Heads of Department are responsible for the supervision and control of the conduct of their subordinate officers.

4. Inclusion of the Public Officers (Conduct and Discipline) Regulations 1993 P.U. (A) 395 of 1993 as a compulsory subject in the syllabus of Mind-set Transformation Programme Course (Kursus Program Transformasi Minda) for all public services Grade 17-41;

5. Inclusion of a Management of Integrity module in:

- a. Induction & Foundation Courses (Kursus Pengenalan dan Asas) for Grade 17-29 Common User group;
- b. Promotion Exercise Courses; and
- c. Pre-Service Courses as mandated under the Government of Malaysia General Circular No. 4 of 1999: Integrity Management Module (Kerajaan Malaysia Pekeliling Am Bil 4 Tahun 1999: Modul Pengurusan Integriti) targeted at the following groups of public officers:
 - i. Top Management Group or equivalent;
 - ii. Management and Professional Group or equivalent; and
 - iii. Support Group or equivalent.

6. Making personal qualities of integrity, honesty and responsibility counted in the Performance Appraisal System.

In accordance with Letter of Service Circular No. 2 of 2009: Enhancing the Management of the Civil Servant Performance Appraisal System (Surat Pekeliling Perkhidmatan No. 2 Tahun 2009: Pemantapan Pengurusan Sistem Penilaian Prestasi Pegawai Perkhidmatan Awam) the performance appraisal categories described as “excellent” (90-100%), “good”(80-89.99%), “average”(60-79.99%), “unsatisfactory” (50-59.99%) and “weak” (49.99% and below) achieved by a Public Officer shall be based on aspects of his/her leadership, work output, knowledge, skills, expertise, personal qualities as well as social activeness and contribution to society apart from his/her official duties.

7. Mandatory declaration of assets by Government officers under Service Circular 3/2002; (Please refer to responses in paragraph 5 of Article 8 below).

8. Making declaration of gifts/entertainment compulsory through the issuance of Gift Giving and Gift Receiving Guidelines (Regulation 8) and Guidelines Receiving and Giving Entertainment (Regulation 9) under Service Circular No. 3 of 1998 (Pekeliling Perkhidmatan Bil. 3 Tahun 1998: Garis Panduan Pemberian dan Penerimaan Hadiah Di Dalam Perkhidmatan Awam)

8.1 Gifting Declaration Guidelines

Under the Circular any gift which is more than one-fourth (¼) of the officer's monthly emolument or MYR 500, whichever is higher, has to be declared to the Head of Department for the latter's approval.

The Head of Department, in deciding whether or not to grant permission to the officer, has to consider the following:

- (a) ensure that the gift received is permissible under provisions of the Public Officers (Conduct & Discipline) Regulations 1993;
- (b) the gifting does not give rise to any suspicion that the officer has misused his position or powers to obtain the gift;
- (c) the frequency of receiving gift by the officer;
- (d) the relationship between the gift giver and the officer in connection with his official duties and authority; and
- (e) the general Departmental interest.

8.2 Entertainment Guidelines

In principle no public officer is allowed to receive or give entertainment from/to anyone. Nevertheless, it is permissible under the following circumstances:

- (a) that such entertainment does affect the powers and responsibilities of the officer;
- (b) such entertainment is not contradictory to his conduct under Regulation 4 of Public Officers (Conduct & Discipline) Regulations 1993;
- (c) due regard be given to the sensitivity of the Department in which he serves;
- (d) due regard be given to the sensitivity of the society on the responsibilities of the officer; or/and
- (e) frequency of entertainment received.

8.3 In addition to this Circular, a public officer is required by law under Section 25 (1) the Malaysian Anti-Corruption Commission Act 2009 to report such gift (promised or offered) to the Commission or a police officer if the gift was a corruptly given to him. Failure on the part of the officer to report the gifting is an offence under the MACC Act 2009 (Penalty: Fine not exceeding MYR 100,000 or imprisonment of not more than 10 years, or both).

9. Letter of Service Circular 4 of 2000: Guidelines on Public Officers Honorary/Nominee Memberships in Private Golf and Recreation Clubs And Free Usage of Facilities of these Clubs by Bodies or Societies of Departments (Surat Pekeliling Perkhidmatan No.4 Tahun 2000: Keahlian Pegawai Awam Di Dalam Kelab Golf dan Kelab Rekreasi Swasta secara Kehormat atau Nominee serta Penggunaan Kemudahan Secara Percuma Di Kelab Tersebut oleh Badan atau Persatuan Jabatan). This Circular Letter has been issued to supplement Service Circular No. 3 of 1998 (cited above) with regards to Regulations 8 and 9 of the Public Officers (Conduct & Disciplinary) Regulations 1993.

Under this guideline a public officer who has been offered honorary or nominee membership of a golf or recreational club needs to obtain a written permission from his Head of Department.

Under paragraph (iii) of the Circular Letter, the Head of Department is empowered to withdraw Honorary/Nominee membership of the public officer if he has ascertained that such membership

is in conflict with the conditions set out below:

- (i) the membership does not in any way tend to be in conflict with the Department interest or his position as well as influencing his official duties;
- (ii) the number of honorary/nominee membership in hand;
- (iii) the membership is not in an way in conflict with the provisions of paragraph 4 of the Public Officers (Conduct & Discipline) Regulations 1993.

The same rule for the approval of individual honorary or nominee membership also applies to receiving free usage of facilities offered by golf or recreation clubs for government bodies or sports, social & welfare, inclusive of bodies with full government officer's memberships.

10. Issuance of Guidelines on Outside Employment by Public Officers; Please see information under paragraph 5 of Article 8 below.

11. Issuance of Prime Minister's Department Guidelines on Action as Regards Patronage Received from Government Leaders or Influential Persons or Individuals Concerning Particular Government Matters (Garis Panduan Tindakan Ke Atas Sokongan Yang Diterima Daripada Pemimpin Kerajaan, Individu Berpengaruh atau Mana-mana Orang Mengenai Sesuatu Urusan Kerajaan)

Under the Guidelines, all Secretaries General of Ministries, Heads of Federal and State Departments, Local Governments and Federal Statutory Bodies have been instructed to disregard and not to take into consideration patronages (written or verbal) as the basis, for merit or qualification in Government decision-making processes.

The term "patronage" means any communication, written or verbal, communicated through letters, memos, minutes, e-mails, SMSs, word of mouth, telephone calls etc. with the purpose to support any application or influence any decision for consideration.

The term "Government Leader" means a Member of Administration under Clause (2) Article 160 of the Federal Constitution;

The term "Influential Person" means an individual who hold position in Government or connection with the authorities, public figures or politicians etc.

A Public Officer includes any Public Officer who is appointed on a permanent, contract or temporary basis.

"Government matters" refer to all Government matters, such as procurement, human resources management, application for approval of licences/ permits, loans, scholarships, citizenships etc.

12. Other initiatives:

(a) Establishing Governance and Integrity Committees (JITU)

In addition to the above efforts the Malaysian Government has also implemented mandatory requirement to set up Integrity and Governance Committees (Jawatankuasa Integriti Keutuhan Tadbir Urus) at the Federal, State and District levels.

The establishment of the Integrity and Governance Committee (JITU) is a testimony to the government's commitment to strengthening the integrity of the government administrative system based on the principles of comprehensiveness, systematization, integration and sustainability. The objectives of JITU are as follows:

- a. Developing a government administration and public service that are efficient, disciplined and of high integrity, through the practice and culture of moral values and ethics;

- b. Planning and implementing preventive and remedial measures to counter problems and weaknesses especially those concerning the government's financial management, public administration, handling of disciplinary cases, corruption, abuse of position and malpractice, which are also forbidden by religion, laws and regulations; and
- c. Proactive detection and resolution of current issues of high impact across agencies through discussions, collaboration and immediate action for the public.

In general, JITUs plays a crucial role in identifying, fulfilling, reporting and monitoring the implementation of new initiatives and solving issues or complications related to integrity and governance, based on the six terms of reference of JITU.

Terms of reference of JITU:

1. Policy and Legislative
2. Systems and Procedures of the Delivery Services
3. Detection, Punitive Action and Rehabilitation
4. Instilling a Culture of Noble Values and Code of Ethics
5. Customer Management
6. Forming Consensus among Stakeholders.

Arising from this Circular, therefore, and under the terms of reference of instilling a culture of noble values and Code of Ethics, the JITUs of government departments have formulated Code of Ethics for officers and staff of their individual departments or organizations.

(b) Establishing Integrity Units in all government agencies

A recent initiative promulgated under Service Circular No. 6 of 2013 (Pekeliling Perkhidmatan Bilangan 6 Tahun 2013) requires that all Government departments and agencies are to establish Integrity Units within the Departments and Agencies to be headed by a Certified Integrity Officer (CeIO). CeIO are required to attend a 6-month Certified Integrity Officer Programme at the Malaysia Anti-Corruption Academy (MACA).

As of 31 December 2015, 887 Integrity Unit have been established nationwide.

(c) Training Programmes for public officials regarding the promotion of integrity, honesty and responsibility in public service include the following:

Training Programmes at the National Institute of Public Administration (INTAN). INTAN is the training provider for the following courses:

1. The Mind-set Transformation Programme (mandatory)

This is a mandatory course designed for newly recruited civil servants from the support group/category. It is a mandatory course and is a pre-condition for confirmation in the civil service. The programme is conducted in four series annually to meet the requirements of various ministries and departments. The Public Service Department (JPA) is responsible for the selection process. In addition, the Management Development and Innovation Cluster also accept participants from Statutory Bodies from Grades 1 to Grade 41. Basically, the course aims to introduce participants to general aspects of public service. Participants were also taught the importance of teamwork and instilling good values to create a highly professional public service workforce.

2. Corporate Directors Leadership and Integrity Course (non-mandatory)

This is a programme designed specifically to increase participants' awareness of the roles and fiduciary responsibilities of government representatives on the Boards of Directors in Government Linked Companies (GLC), understanding the directorship roles, responsibilities and duties in order to discharge their duties ethically, with integrity and effectively.

This programme also stresses the importance of understanding that the effectiveness of the BOD hinges upon having a leader who is able to form a coalition of individual of diverse skills, qualifications and experience and to galvanise this diversity to lead and control the business corporation. It explains the mechanics of a vigilant and effective board which addresses the "tone from the top" that sets the ethos of the entire business enterprise.

This course also aims to impart knowledge which can ensure corporations meet wider stakeholder expectations, such as environmental and social interests, in addition to maximising shareholder wealth. In addition, it also focuses on enhancing participants' awareness of the current corporate governance and developments by updating the participants with latest guidelines for directors on corporate governance issues and challenges, corporate disclosure requirements, disclosure and transparency and the role of Gatekeepers and influences, i.e. in keeping abreast with industry, regulatory and compliance issues, trends and best practices.

The Corporate Directors Leadership and Integrity Course includes topics on the Corporate Integrity System Malaysia & Stakeholder Engagement, Internal Control as a Corruption Prevention Tool, Audit Committee and Risk Management, and Common Offences Committed by the Board of Directors under the Company Act.

3. Strengthening Integrity for Civil Servants Course

This course includes the topics on Values, Integrity, Corruption and Government's Efforts for Strengthening an Integrity among Civil Servants.

4. Self-Governance Course

The course includes the topics on Understanding the Concept of Human from Islamic Perspectives, Self-Conflicts and Religion as a Tools to Control Self-Emotions.

5. Diploma in Public Management for Administrative and Diplomatic Officers (PTD)

New intake which includes Human Recourses Management and Integrity Module, Leadership and Strategic Management as well as Public Financial Management

Training Programmes at Malaysia Anti-Corruption Academy (MACA) MACA is the training provider for the following courses:-

1. The Certified Integrity Officers (CeIO) Programme (mandatory for CeIOs)

The CeIO training programme is mandatory pre-condition for the appointment of CeIOs in Integrity Units set up at medium- and high- corruption risk public sector agencies identified by the MACC in line with Service Circular No.6 of 2013: Establishment of Integrity Units at all Public Agencies (Pekeliling Perkhidmatan Bil.6 Tahun 2013: Penubuhan Unit Integriti Di Semua Agensi Awam).

This programme has been developed in compliance with the Honorable Prime Minister of Malaysia Directive No. 1 of 2009 Series 1 no. 1 in 2011: Implementation of Certified Integrity

Programme (Arahan YAB Perdana Menteri No. 1 Tahun 2009 Siri 1 No.1 Tahun 2011 : Pelaksanaan Program Pegawai Integriti Bertauliah). Additionally it was designed to meeting the needs of the National Integrity Plan (NIP) for the creating of the Ethics Officer in the corporate sector organizations aim to enhance ethics and integrity.

The program aims to produce and equip certified Integrity Officers (CeIOs) in public (as well as private sector) organizations with the necessary knowledge, skills and expertise to manage all the aspects related to integrity which includes, (i) planning, implementation and monitoring activities with regards to enhancing integrity in the organization; (ii) advising management in terms of integrity; (iii) assist the Secretariat of the Governance Committee (JKTU) public sector; and (iv) act as an organization liaison officer with the Corporate Integrity Centre (CIDC) of MACA.

2. Other training/courses/workshops offered at MACA include:

Executive CeIO Programme; CeIO Enhancement Course; Training on Corporate Integrity; Integrity Based Leadership; Corruption Risk Management; Certificate Course for Strategic Management of Anti-Corruption Programme, which are open to both domestic and international participants.

Specialized bodies to promote integrity, honesty and responsibility:

1. Malaysian Anti-Corruption Commission (MACC) - Community Education Division; Agency Integrity Management Division; and Inspection and Consultation Division
2. The National Institute of Public Administration (INTAN) in collaboration with Public Services Department (JPA)
3. Malaysian Institute of Integrity (INTEGRITI)

Note: Specialized staff from these institutions collaborate in training courses organized by any of them individually or severally.

D. Incentives offered to Government Officials that promote integrity, honesty and accountability

1. Annual Incentive Awards and Medals for Excellent Service by Federal Government

This is implemented through Service Circular No. 13 of 2012 entitled "Conferment of Awards and Incentives of Excellent Service Medal and Excellent Service" (Pekeliling Perkhidmatan Bilangan 13 Tahun 2012 Penganugerahan Pingat Perkhidmatan Cemerlang Dan Pemberian Anugerah Perkhidmatan Cemerlang).

Types of Awards include:

(i) Excellent Service Medal (ESM))

Qualification for Excellent Service Medal (ESM):

- a) officer who has been confirmed in the permanent service;
- b) officer who has completed 5 years of public service;
- c) public service officer from Grade 1 to Grade 54 or their equivalent;
- d) achieved excellence for his annual appraisal and activities and contributions for three (3) consecutive years;
- e) cleared security (criminal) vetting of the Royal Malaysia Police;
- f) cleared integrity vetting of Malaysian Anti-Corruption Commission; g) cleared integrity vetting of Insolvency Department of Malaysia;

- h) no record of disciplinary action taken;
- i) recommendation from Human Resource Development Panel

Basis for Consideration:-

According to the Public Administration Advancement Circular (Pekeliling Kemajuan Pentadbiran Awam) No. 2 Year 2002, the conditions under which an officer is given the Excellent Service Award are as follows:

- a. The officer has completed one year of service on the last day of the assessment year;
- b. The officer has scored 85% or above for the Annual Performance Appraisal Report; and
- c. The officer's activities and contributions (score of 10 points and above) are taken into account.

Incentives of ESM:

- 1. Excellent Service Medal;
- 2. Certificate for Excellent Service Medal;
- 3. Premium Savings Certificate of MYR 1000.00

Additional incentives: opportunity and priority to be considered for
· career development courses, seminar and conferences; and
· candidacy for Prestigious Federal and State Awards.

(ii) Excellent Service Award (ESA)-for all categories of officers-permanent, temporary or contract basis- who have served at least one (1) year.

Criteria for ESA:

- i. The officer has scored 85% or above for the Annual Performance Appraisal Report; and
- ii. has no record of any disciplinary action during the annual performance appraisal.

Other Incentives: Candidacy for Federal and State Prestigious Award

E. Mechanism for monetary rewards and issuance of Letters of Commendation by the MACC Assessment Panel to public officials who refused and reported bribes on a case by case basis.

This is implemented by the Chief Secretary through the Government's Letter SPRM/BKP: 20/22/1.9 dated 11 May 2011, entitled "Award for Public Officials who Report Giving or Receiving of Bribes".

Criteria for recognition:

- 1. the report must be made to the MACC
- 2. the gratification is of value or anything capable of being valued legally as a bribe;
- 3. the reporting public official must give his fullest cooperation to the MACC till the case has been successfully prosecuted in court, including being a prosecution witness;
- 4. the prosecution case must result in a conviction and any appeal against such conviction must

have been exhausted; and

5. the award is exclusive only for the member of public service and not for the ministry, department or agency or for a pensioner, on the condition that the report was made while he was in service.

Incentive entitlement:

1. A sum of money equivalent to the value of property recovered or an equivalent market value of the property if the property so recovered is not in form of money; and
2. A letter of Commendation; and
3. Recommendation for candidacy for Federal or State Award.
4. A minimum of MYR500 reward if there was no recovery or seizure of property resulting from the investigation.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Studies

1. European Journal of Economics, Finance and Administrative Sciences ISSN 1450-2275 Issue 31 (2011) © EuroJournals, Inc. 2011 <http://www.eurojournals.com>: Enhancing Malaysian Public Sector Transparency and Accountability: Lessons and Issues by-Nur Barizah Abu Bakar Corresponding Author, Academic Trainee, Department of Accounting Faculty of Economics and Management Sciences International Islamic University Malaysia PO Box 10, 50728, Kuala Lumpur MALAYSIA Tel: +60 19 288 4540; Fax: +60 3 6196 4850 E-mail: nur.barizah@gmail.com; Zakiah Saleh Senior Lecturer, PhD, Faculty of Business and Accountancy University of Malaya, Kuala Lumpur, MALAYSIA and Muslim Har Sani Mohamad Assistant Professor, PhD, Department of Accounting Faculty of Economics and Management Sciences International Islamic University Malaysia Kuala Lumpur, MALAYSIA
2. IJMS 15 (Bumper Issue), 69-90 (2008) New Public Management in Malaysia: in search of an Efficient and effective service delivery by Siti Nabiha Abdul Khalid School of Management Universiti Sains Malaysia

Statistics on the number of programmes and officers attending courses related to integrity

1. Cluster for Professional Development and Ethics, National Institute of Public Administration (or Institut Tadbiran Awam Negara) (INTAN):
 - a. 2014 - 17 training Programmes and attended 407 officers
 - b. 2015 - 10 training Programmes and attended 269 officers
2. Training courses conducted by Malaysia Anti-Corruption Academy
 - a. MACC Annual Report 2013, page 202-207
 - b. MACC Annual Report 2014, page 222-234
 - c. MACC Annual Report 2015, Page 168-202

(b) Observations on the implementation of the article

Malaysia has adopted comprehensive programmes and a number of measures to promote integrity, honesty and responsibility among its public officials. Malaysia also provided examples and statistics on the number of programmes and officers attending courses related to integrity.

The paragraph under review is implemented.

(c) Successes and good practices

The use of KPIs, introduced by government directive in 2005 instructing all government agencies to use KPIs and their associated benchmarks, is seen as one of the tools to strengthen the public sector's institutional and implementation capacity and to simplify administrative measures.

The Corporate Directors Leadership and Integrity Course is also noted as a positive measure to strengthen integrity in government linked companies, among a range of other integrity training programmes offered by institutions such as MACA, the Malaysian Institute of Integrity and the National Institute of Public Administration.

Paragraph 2 and 3 of article 8

2. In particular, each State Party shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.

3. For the purposes of implementing the provisions of this article, each State Party shall, where appropriate and in accordance with the fundamental principles of its legal system, take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the International Code of Conduct for Public Officials contained in the annex to General Assembly resolution 51/59 of 12 December 1996.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

The principal code of conduct for all Government public officers is the Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) 395 of 1993, which is also adopted and adapted by State Governments and Local Authorities. The code of conduct for Statutory Bodies is regulated under the Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605).

According to Act 605, the term "statutory body" means "a body, by whatever name called, incorporated by federal law for the purposes of the Federal Government, but does not include a local authority" with the exception of the following authorities, which include:

1. Central Bank of Malaysia
2. Employees Provident Fund Board
3. Inland Revenue Board of Malaysia
4. Armed Forces Fund Board (Lembaga Tabung Angkatan Tentera)

5. Pilgrims Fund Board (Lembaga Tabung Haji)
6. Social Security Organization
7. National Savings Bank
8. Securities Commission
9. Malaysian Communications and Multimedia Commission

Generally, such regulations include the following common provisions:

1. Regulations pertaining to codes of conduct, including specific prohibitions and violations;
2. Responsibilities and duties in relation to disciplinary control and supervision;
3. Disciplinary procedures and codes of conduct;
4. Punishments imposed for breach of the code of conduct; and
5. Provisions on related miscellaneous matters.

In addition to the above, are specific areas of (mis)conduct such as:

- a. sexual harassment;
- b. outside employment;
- c. dress etiquette;
- d. consumption of dangerous drugs;
- e. accepting or giving presents;
- f. giving or accepting entertainment;
- g. ownership of property;
- h. maintaining a standard of living beyond emoluments and legitimate private means;
- i. borrowing and lending of money;
- j. serious pecuniary indebtedness;
- k. involvement in the futures market;
- l. lucky draws, lotteries etc other than for purpose of charity;
- m. publication of books;
- n. making public statements;
- o. prohibition on acting as editor, etc in any publication
- p. taking part in politics

List of Codes of Conduct for Public Officers:

- a. Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) 395 of 1993
- b. Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605).

Review of the Code of Conduct for Public Officers:

The review of the Public Officers (Conduct and Discipline) Regulations 1993 is carried out by the Service Division, JPA. Review will be done if necessary.

Amendments to the Public Officers (Conduct and Discipline) Regulations 1993 between 1995-2015 are as follows:

- i. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 1995 - P.U.(A)329/1995-21.9.1995
- ii. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 1996 - P.U.(A) 478/1996 -26.9.1996
- iii. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2002 - P.U.(A)246/2002-20.6.2002
- iv. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2006 - P.U.(A) 111/2006, 23.3.2006
- v. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2007 - P.U.(A) 132/2007 -29.3.2007
- vi. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2010 - P.U.(A) 250/2010 -1.8.2010
- vii. Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2011 - P.U.(A) 435/2011 -1.1.2012
- viii .Public Officers (Conduct and Discipline) Regulations 1993 (Amendment) 2015 - P.U.(A) 252/2015 -23.10.2015

Improvements that have been made cover:

- i. Definition of terms;
- ii. Structure;
- iii. Code of conduct (e.g., sexual harassment, drug abuse, involvement in futures' market, public statements, etc.);
- iv. Types of punishments;
- v. Implementation of punishment; and
- vi. Procedural matters (e.g., absence without leave, criminal proceedings).

Specialized Staff to ensure application of the Code:

Officers of the Service Division, JPA are responsible for handling all civil service matters (including disciplinary proceedings), reviewing current regulations and conducting studies on enhancing civil service performance.

Programmes and activities regarding application of the Public Officers (Conduct and Discipline) Regulations 1993 PUA 395/1995 and related service circulars are conducted by the Human Resources Departments in the respective ministries/agencies. The frequency of such outreach programmes depends on each ministry's/agency's needs and training regarding this matter.

Certified Integrity Officers in Integrity Units in Government Agencies

The Government of Malaysia has by virtue of Service Circular No. 6 of 2013 (Pekeliling Perkhidmatan Bilangan 6 Tahun 2013) made it mandatory that Integrity Units (IUs) be established in all government agencies. This IU is to act as the focal point on all matters pertaining to integrity management under the supervision of the newly established (in 2013) Agency Integrity Management Division of the MACC. The IU is to be headed by a Certified Integrity Officer (CeIO) appointed/seconded by Public Service Department to be attached to certain high- and medium risk government agencies identified by the MACC. The core functions of the IU are:

- a. Governance- to ensure the practice of good governance
- b. Integrity Enhancement
- c. Detection and Prevention
- d. Complaints management
- e. Compliance
- f. Disciplinary matters.

The establishment of such units in each of the government sectors is in tandem with the government's aspiration to strengthening integrity among public servants and uphold the principles of integrity and accountability towards excellent public service delivery. Through high integrity among public servants, the government expects the people's confidence in public agencies to be boosted. The objectives of this unit are:

- a. to promote good values and the code of ethics among public servants;
- b. to prevent criminal misconduct and violations of the code of conduct for public servants;
- c. to identify and report on abuse of power/ corruption/ noncompliance with procedures or misconduct of public servants to related agencies; and
- d. to act as the disciplinary secretariat at the Ministry level.

The responsibilities of the CeIO include:

- a. planning, implementing and monitoring effective integrity programmes at their ministry, department and agency
- b. reporting all violations of integrity
- c. coordinating action on violations of integrity
- d. implementing an integrity restoration program
- e. producing articles in relation to integrity
- f. assisting and supporting the Secretariat to the Federal Committee of Management Integrity and Governance
- g. advising management on aspects of integrity
- h. monitoring the service delivery system
- i. ensuring compliance with rules and regulations of the organization.

The Accreditation Board for the CeIO programme is chaired by the Chief Commissioner of the MACC and the members are: the CEO of the Companies Commission Malaysia (CCM); the Director General of Malaysian Administrative Modernisation and Management Planning Unit (MAMPU); the Director General of Public Service, Chairman of Business Ethic Institute Malaysia (BEIM); Chairman of Malaysian Institute of Corporate Governance (MICG); President of Institute of Integrity Malaysia (INTEGRITI) and the Advisor to the British Malaysian Chamber of Commerce (BMCC).

As of September 2016, there are 68 MACC officers appointed/seconded as CeIOs in the various Integrity Units of Public Sectors and GLCs, as per the table below:

Sector	No. of Ministry/ Department/ Agency	No. of CeIO
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Public Sector Ministries/Departments/ Agencies with Integrity Units (IUs)	38	50
Public Sector Departments/ Agencies without IUs	4	4
Government Linked Companies with IUs	13	14

The Complaints Committee and Task Force of the Enforcement Agency Integrity Commission established under Section 16 and Section 17 of the EAIC Act 2009

Officers of the Commission are appointed under Section 14 and Section 15 of the EAIC Act 2009. The Complaints Committee and the Task Force whose members comprise of officers of the Commission are established under Section 16 and Section 17 of the Act as follows:

Section 14. Officers and staff of the Commission

(1) There shall be appointed such number of officers and staff of the Commission as may be necessary to assist the Commission in discharging its functions effectively and efficiently and for the purpose of carrying into effect the provisions of this Act.

(2) The Commission may appoint any officers from any enforcement agency on secondment basis to be its investigators.

(3) The Commission may appoint such number of legal officers as may be necessary who shall be seconded from amongst officers of the Judicial and Legal Service or appointed from amongst advocates and solicitors to assist the Commission.

(4) An officer of the Commission having directly or indirectly, by himself, a member of his family or his associate, any interest or connection to an enforcement officer under investigation by the Commission shall disclose his interest or connection forthwith to a Commissioner and shall not be involved in any investigation conducted by the Commission as regards that enforcement officer.

(5) The Commission may, with the approval of the Yang di-Pertuan Agong (King), make regulations with respect to the conditions of service of its officers and staff.

Section 16. Complaints Committee

(1) The Commission shall establish a Complaints Committee which shall consist of such number of officers of the Commission as the Commission deems necessary or expedient.

(2) The Complaints Committee shall have the following duties and responsibilities:

(a) to receive complaints of misconduct from any person to the Commission;

(b) to keep and maintain a register of all complaints received by the Commission;

(c) to assess the complaints in accordance with section 23;

(d) to determine the nature of the misconduct;

(e) to conduct any preliminary investigation into the complaint under section 25; and

(f) to inform the complainant of the status of his complaint and the actions taken after the Commission has made its findings.

Section 17. Task Force

- (1) The Commission may establish such number of Task Forces as it deems necessary to assist the Commission in performing its functions effectively and efficiently under this Act.
- (2) The members of a Task Force may comprise the officers of the Commission and the consultants engaged under section 15.
- (3) A Task Force shall perform such functions and duties conferred upon the Task Force under this Act.
- (4) The members of a Task Force shall have all the powers of investigation as contained in the Criminal Procedure Code [Act 593] and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof.
- (5) The Commission may establish joint task forces with any other authorities as it deems necessary.

Compliance of Malaysian Code of Conduct with International Standards:

Malaysia has complied with principles of the International Code of Conduct for Public Officials - as per General Assembly resolution 51/59 dated 12 December 1996. Please also see UN Report E/CN.15/2002/6/Add.1

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Implementation of the Code of Ethics and Conduct of the Malaysian Anti-Corruption Commission (MACC)

This Code combines moral values with the uniformed deeds and actions to guide MACC officers to perform their duties and responsibilities with the objective to:

1. Strengthen the level of integrity of MACC officers in the execution of their duties and responsibilities; and
2. Clarify permissible and non-permissible actions by MACC officers in accordance to the enforced policies, guidelines and the law.

Integrity is a core element in the Code of Ethics and Conduct of the MACC. The core values of integrity upholding the MACC in shaping the "MACC Values" are "Trustworthy, Firm, Fair, Independent, Transparent and Professional". In addition, positive values such as Discipline, Cooperation, Loyalty and Commitment also form the "MACC Values", to be consistently upheld by all MACC officers in executing their duties and responsibilities.

(Note: The Code of Ethics and Conduct of the Malaysian Anti-Corruption Commission is available in the national language on the MACC website, www.sprm.gov.my)

Programme by Public Service Department (JPA) / National Institute of Public Administration (Institut Tadbir Awam Negara) (INTAN)

Statistics on number of programmes and officers attending courses organised by INTAN as below:

2013 - 591 training Programmes and attended 16,885 officers

2014 - 767 training Programmes and attended 50,069 officers

2015 - 919 training Programmes and attended 72,216 officers

Evaluation of the Effectiveness of Applicable Codes or Standards of Conduct:

Currently JPA is reviewing the effectiveness of Public Officers (Conduct and Discipline) Regulations 1993 to strengthen current regulations on various aspects, including procedural, benchmarking on types of punishment implemented by various countries, surcharge implementation, etc.

Studies/Journals

a. The Laws Relating to Staff Discipline at Malaysian Universities by Shad Saleem Farugi, Emiritus Professor of Law, UiTM (Universiti Teknologi MARA) and Visiting Professor and Honorary Legal Adviser USM (Universiti Sains Malaysia) July 2011.

b. UN Economic and Social Council Report of the Secretary-General entitled, "Implementation of the International Code of Conduct for Public Officials" E/CN.15/2002/6/Add.1.

(b) Observations on the implementation of the article

Several codes of conduct for public entities have been adopted in Malaysia. These include the principal code of conduct for all Government public officers at the Federal, State and local level and statutory bodies [Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) 395 of 1993] and a separate code applicable only to statutory bodies. In addition, Codes of Ethics and Conduct have been adopted for members of parliament (MPs), as well as individual ministries and agencies, such as the Malaysian Royal Customs Department and the MACC. For members of the judiciary, reference is made to the Judges' Code of Ethics 2009 and information provided under article 11.

It is noted that the standards of conduct are reviewed regularly and have been amended several times. Officers of the Service Division, JPA are responsible for handling all civil service matters (including disciplinary proceedings), reviewing current regulations and conducting studies on enhancing civil service performance. Evaluation of the effectiveness of the codes of conduct is also being done by JPA.

Paragraph 4 of article 8

4. Each State Party shall also consider, in accordance with the fundamental principles of its domestic law, establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Anti-corruption reporting systems for public officials

The anti-corruption reporting system for public officials is implemented through the following measures:

1. Reporting System of the MACC

Under Section 7 (a) of the MACC Act 2009 (Act 694) it is provided that officers of the Commission shall have the function to receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Chief Commissioner considers practicable; and

In accordance with Section 9 of Act 694: Officer deemed to be always on duty, it is provided as follows:

Every officer of the Commission shall, for the purposes of this Act, be deemed to be always on duty when required to perform his duties or functions and may perform the duties or functions and exercise the powers conferred on him under this Act or under any other written law at any place within or outside Malaysia.

The MACC, with its headquarters in the Federal Administrative Centre in Putrajaya, has branch offices in all the 13 States of Malaysia and 2 other Federal Territories and 20 Sub-branches within the larger States (in terms of geographical and/or population size) which are open to the public 24/7.

Reporting to the MACC

An information received by or made to the MACC or its officers can either be in the form of complaint or a report of an offence under Act 694. An information complaint or complaint may be converted into a report under Section 29 (1) of Act 694 to initiate an open investigation.

The MACC does not establish any specific system or channel for reporting corruption by public officers but a common reporting system meant for both members of the public and public officers alike.

Information and complaints on corruption can be made to the MACC through numerous ways:

a	Making a report (in person) directly to officers of the MACC at the Headquarters and its branches/sub-branches
b	Telephone or Toll-free hot line 1-800-88-6000
c	Short Messaging Service (SMS) via 019-600 0696
d	Fax the information to 03-8888 9562
e	Letter via P.O Box 6000 (without postage stamp)
f	MACC email at info@MACC.gov.my
g	Lodging a report via the Complaints Management Portal at the MACC website: http://www.sprm.gov.my
h	Call any MACC Officer

2. The roles of Integrity Units in all government agencies established vide Service Circular No.

This service circular, which came into force on 1 August 2013, is a directive from the Director General of Public Services that makes it mandatory for all government agencies (inclusive of Government-Linked Companies) under the Federal Services Commissions, Ministers, State, District, Statutory Bodies and Local Government to set up Integrity Units (IUs) which have been categorized by the MACC according to their levels of corruption risk. The functions of the IU are coordinated by the Public Sector Integrity Management Division (BPIA) of the MACC.

The Integrity Unit is to be headed by a Certified Integrity Officer (CeIO) who has undergone a CeIO certification programme organized and administered by the Corporate Integrity Development Center (CIDC) of the Malaysia Anti-Corruption Academy (MACA).

Among the core functions of the IU in respect of reporting corruption are:

- (a) Detection and Verification - to detect and verify complaints of misconduct, criminal activities and transgression of organizational ethics, as well as ensure that appropriate action is taken to address them and to report criminal activities to the appropriate enforcement authorities
- (b) Complaints Management - to receive and take action on all complaints/information of crime/misconduct as well as ethical transgression.

These IUs shall report their activities as per paras. (a) and (b) above to the MACC quarterly.

3. Referrals

Referrals of information or complaints of corruption offences made to other law enforcement agencies like the Royal Malaysia Police (RMP); Enforcement Agency Integrity Commission; the Public Complaints Bureau and Heads of Departments/Agencies

Management of Information on Corruption

All information and complaints received by the MACC through the various channels and referrals mentioned above are managed and registered under the Complaints Management System (CMS) developed (in 2012) by the MACC Record Management and Information Technology Division (or Bahagian Pengurusan Rekod dan Teknologi Maklumat) (BPRTM).

With the CMS in place, a complainant who lodged a report via CMP (Complaints Management Portal) will be registered in the system and given a reference number. He/she may use the reference number to track the status of his/her complaint through the CMS. All complaints in the system are regularly monitored to ascertain that no complaint which will be overlooked or not taken into action. The CMS also allows a direct interaction with the complainant if the MACC requires verification or further details to the complaint or information received.

Information is processed daily by the Record Management and Information Technology Division's Information Evaluation Committee (JMM) and Pre-Information Evaluation Committee (Pra JMM), before being brought for decision-making to the main Information Evaluation Committee. The main Information Evaluation Committee is chaired by the Deputy Chief Commissioner (Operations) and consists of the following members:

- a. Director of Investigation Division
- b. Director of Special Operations Division
- c. Director of Intelligence Division
- d. Director of Inspection and Consultation Division; and
- e. Director of BPRTM

Criteria for Information to be brought forward by Pre-Information Evaluation Committee (Pra JMM)

The composition of Pra JMM shall be made up of the Director of BPRTM as chair and Division Head Information Management Division (IMD) and one other officer of the IMD as members. In evaluating which information are to be brought forward to the main Information Evaluation Committee, information is evaluated based on the following criteria:

- (1) Information that contains elements of corruption, misappropriation and abuse of power;
- (2) Information, though not corruption related but that involve high-profile individuals;
- (3) Information that are against officers of the Commission;
- (4) Information obtained by Officers of the Commission; and
- (5) Information received by Duty Officers.

Guidelines for making reports

Again, there are no specific guidelines issued for public officials to lodge report of corruption. A general guide line for lodging a report has, however, been developed and disseminated by the MACC to members of the public as to what should be contained in the information or report lodged. The MACC requires that the information or report should have the following details:

- (a) disclosure of an offence;
- (b) the date, time, and venue of the incident;
- (c) the identity (ies) of the offender (s) or suspect(s);
- (d) the identity (ies) of witness (es) who can corroborate the alleged offence; and
- (e) documentary proofs (if any).

Protection for Reporting Persons

A public official is accorded the same protection as a member of the public in accordance with the following provisions of the law:

1. Protection under the MACC Act 2009 (Act 694)

Section 29 (4). Power to investigate reports and enquire into information

A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commission and above.

Section 65. Protection of informers and information

(1) Subject to subsection (2), where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be

disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand ringgit; and for the purposes of any investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.

2. Protection under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613) (AMLATFAPUAA)

Section 5 of AMLATFAPUAA- Protection of informers and information

(1) Where a person discloses to an enforcement agency his knowledge or belief that any property is derived from or used in connection with a money laundering offence or any matter on which such knowledge or belief is based

a. if he does any act in contravention of subsection 4(1) and the disclosure relates to the arrangement concerned, he does not commit an offence under that subsection if the disclosure is made-

i. before he does the act concerned, being an act done with the consent of the enforcement agency; or

ii. after he does the act, but the disclosure is made on his initiative and as soon as it is reasonable for him to make it;

b. notwithstanding any other written law, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and

c. he shall not be liable for damages for any loss arising out of-

i. the disclosure; or

ii. any act done or omitted to be done in relation to the property in consequence of the disclosure.

(2) Where any information relating to an offence under this Act is received by an officer of the competent authority or reporting institution, the information and the identity of the person giving the information shall be secret between the officer and that person and everything contained in such information, the identity of that person and all other circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of subsection 8(1) or section 14.

(3) Any person who knowingly discloses any false information under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one million ringgit.

Section 6 of AMLATFAPUAA- Restriction on revealing disclosure under section 5

(1) No person shall, subject to subsection (2)-

a. reveal that a disclosure was made under section 5;

- b. reveal the identity of any person as the person making the disclosure; or
- c. answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).

(2) Subsection (1) shall not apply to a witness in any civil or criminal proceedings-

- a. for an offence under subsection 4(1) or subsection (3) of this section; or
- b. where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.

(3) No person shall publish in writing or broadcast any information, including a report of any civil or criminal proceedings but excluding information published for statistical purposes by a competent authority or the Government, so as to reveal or suggest-

- a. that a disclosure was made under section 5; or
- b. the identity of any person as the person making the disclosure.

(4) Subsection (3) shall not apply in respect of proceedings against the person making the disclosure for an offence under subsection 4(1) or subsection (1).

(5) If information is published or broadcast in contravention of subsection (3), each of the following persons, namely-

- a. in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor of the newspaper or periodical publication
- b. in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it
- c. in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication;

commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, shall in addition be liable to a fine not exceeding three thousand ringgit for each day or part thereof during which the offence continues to be committed.

(6) In this section, "broadcast" includes any broadcast by radio, film, videotape, television or electronic

3. The Whistleblowers Protection Act 2010 (Act 711) Section 7- Whistleblower protection

(1) A whistleblower shall, upon receipt of the disclosure of improper conduct by any enforcement agency under section 6, be conferred with whistleblower protection under this Act as follows:

- (a) protection of confidential information;
- (b) immunity from civil and criminal action; and
- (c) protection against detrimental action, and for the purpose of paragraph (c), the protection shall be extended to any person related to or associated with the whistleblower.

(2) A whistleblower protection conferred under this section is not limited or affected in the event that the disclosure of improper conduct does not lead to any disciplinary action or prosecution of the person against whom the disclosure of improper conduct has been made.

(3) This Act does not limit the protection conferred by any other written law to any person in relation to information given in respect of the commission of an offence.

4. The Witness Protection Act 2009 (Act 696)

Section 13 - Action where a witness is included in the programme

(1) The Director General shall take such actions, as he considers necessary and reasonable, to protect the safety and welfare of a participant.

(2) The action may include-

(a) providing accommodation for the participant;

(b) relocating the participant;

(c) applying for any document necessary to allow the participant to establish a new identity;

(d) providing transport for the transfer of the property of the participant;

(e) providing payment equivalent to the remuneration that the participant was receiving before being included in the Programme including any increment to the remuneration which the participant would have been entitled to, if he was not included in the Programme;

(f) where the participant is unemployed before being included in the Programme, providing payments to the participant for the purpose of meeting the reasonable living expenses of the participant including, where appropriate, living expenses of the family of the participant and providing, whether directly or indirectly, other reasonable financial assistance;

(g) providing payments to the participant for the purpose of meeting costs associated with relocation;

(h) providing assistance to the participant in obtaining employment or access to education;

(i) providing other assistance to the participant with a view to ensuring that the participant becomes self-supporting; and

(j) any other action that the Director General considers necessary.

(3) Notwithstanding any written law to the contrary, there shall be no relocation of any participant by the Director General under paragraph (2)(b)-

(a) to the State of Sabah from any place outside the State of Sabah; and

(b) to the State of Sarawak from any place outside the State of Sarawak.

(4) Where the Director General makes a request to any person, having the power or duty under any other written law to issue birth certificate, identity card, marriage certificate or any other document relating to the identity of a participant, to issue a new document necessary to allow the participant to establish a new identity, such person shall comply with the request.

(5) The Director General shall not apply for any document to allow a participant to establish a new identity under paragraph (2)(c) unless he has obtained a written consent from the participant.

(6) The Director General may permit his officer to use assumed names in carrying out their duties in relation to the Programme and to carry documentation supporting those assumed names.

5. The Penal Code:- Section 503 read together with Section 506

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment for a term which may extend to two years or with fine or with both; if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence

punishable with death or imprisonment, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

6. Abduction and Criminal Intimidation of Witness Act 1947 (Act 191) Section 5.

Whoever commits criminal intimidation-

- (a) with intent to impede the course of justice; or
- (b) so that the course of justice is thereby impeded, shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

Mechanism for monetary rewards and issuance of Letters of Commendation by the MACC Assessment Panel to public officials who refused and reported bribes on a case by case basis. This is implemented through by Chief Secretary through the Government’s Letter SPRM/BKP: 20/22/1.9 dated 11 May 2011, entitled “Award for Public Officials who Report Giving or Receiving of Bribes”. Criteria for recognition:

- i. the report must be made to the MACC
- ii. the gratification is of value or anything which is capable of being valued legally as bribe;
- iii. the reporting public official must give his fullest cooperation to the MACC till the case has been successfully prosecuted in court, including being a prosecution witness;
- iv. the prosecution case must result in a conviction and for any appeal against such conviction have been exhausted; and
- v. the award is exclusive only for the member of public service and not for the ministry, department or agency and for a pensioner, on the condition that the report was made while he was in service.

Incentive entitlement:

- i. A sum of money equivalent to the value of property recovered or an equivalent market value of the property if the property so recovered is not in form of money;
- ii. A letter of Commendation and Recommendation for candidacy for Federal or State Award; and
- iii. A minimum of MYR500 reward if there was no recovery or seizure of property resulting from the investigation.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics regarding the number of information/reports made by public officials to MACC from 2014-2016

		Public Official				
No.	Year	Public Official (from various sources)	Letter from Government Department	Letter from Royal Malaysia Police	MACC Officers and Head of Integrity Unit	Total

1	2014	232	10	32	2333	2607
2	2015	260	11	34	2499	2804
3	2016	199	23	29	2836	3087
Total		691	44	95	7668	8498

(b) Observations on the implementation of the article

The MACC does not establish any specific system or channel for reporting corruption by public officers but a common reporting system is in place for both members of the public and public officers alike. In addition, the functions of the Integrity Units in all government agencies, established in accordance with Service Circular No. 6 of 2013, are detection, verification and complaints management.

Paragraph 5 of article 8

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The basis for making declaration of assets/property owned by public officials (all categories) is provided for under Regulation 10 of the Public Officers (Conduct & Discipline) Regulation 1993 P.U. (A) 395/1993 (cited above) read in conjunction with Service Circular No. 3 of 2002: Ownership and Declaration of Property by Public Officers (or Pekeliling Perkhidmatan Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta oleh Pegawai Awam).

Regulation 10 of P.U. (A) 395/1993 - Ownership property:

(1) An officer shall, on his appointment to the public service or at any time thereafter as may be required by Government, declare in writing to his Head of Department all properties owned by him or by his spouse or child or held by any person on his behalf or on behalf of his spouse or child.

(2) An officer who does not own any property shall make a declaration in writing to that effect.

(3) Where, after making declaration under sub-regulation (1), an officer or his spouse or child acquires any property, either directly or indirectly, or any property acquired by him or by his spouse or child is disposed of, that officer shall immediately declare such acquisition or disposal of property to his Head of Department.

(4) Where an officer or his spouse or child intends to acquire any property and the acquisition is inconsistent with regulation 4, the acquisition shall not be made without the prior written permission of the Secretary General of the Ministry.

(5) In deciding whether or not to grant permission under sub-regulation (4), the Secretary General of the Ministry shall have regard to the following matters:

a) the size, amount or value of the property in relation to the officer's emoluments and any legitimate private means;

b) whether the acquisition or holding of such property will or is likely to conflict with interests of the public service or with the officer's position as a public servant, or be in any way inconsistent with regulation 4; and

c) any other factor which he may consider necessary for upholding the integrity and efficiency of the public service.

(6) The Head of Department shall, if he is satisfied with the declaration of property made by the officer, direct that it be recorded in the officer's records of service that the declaration has been made.

(7) Every declaration under sub-regulation (1) shall be categorised as classified and every person who gains information under this regulation of any such declaration shall comply with the procedures and regulations pertaining to the management of the Government's classified document.

(8) In this regulation, "property" includes property of any description, whether movable or immovable, as may be prescribed by the Director General of Public Service from time to time.

The said regulation is implemented with reference to Service Circular No. 3 of 2002 entitled "Ownership and Declaration of Property by Public Officer" (Pekeliling Perkhidmatan Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam).

The said circular makes declaration of property mandatory by a public officer:

- i. upon being appointed to the service
- ii. as required by the government
- iii. upon acquisition of additional property
- iv. upon disposal of property

Periodic declaration- once in five years

Information required:

1. Particulars of officer/Position/Place of Work
2. Particulars of Family members/Position/Work Place
3. Particulars of Dependents
4. Monthly income of both the officer and his spouse
5. Monthly deductions (instalments) for loans

Types of property to be declared:

(a) Movable Property

(i) cash deposited or savings

(ii) stocks, shares, debentures, bonds or other securities

(iii) all types of trading, business or commercial, licenses or permits

(iv) others- motor vehicle, jewellery, club membership, household furniture and sports equipment which individually exceeds 6 months emoluments or RM 10,000.00, whichever is the lesser

(b) Immovable Property

(i) land, including those under temporary occupation license

(ii) housing property

(iii) shops lots, office spaces, stalls

(c) Business owned by family members- Paragraph 25 of Service Circular 3/2002

(d) Business licences inherited- Paragraph 26 of Service Circular 3/2002.

Explanation to ownership of property:

(i) Date of ownership

(ii) Value of property

(iii) Method of ownership (inheritance/ purchase/ gift etc.)

(iv) Quantity/ Size/No. of Units (Housing/Landed property)

Types of Forms:

1. Declaration for no changes in ownership of property-Annexure "A"

2. Form JPA (T) 1/02 Declaration (i) First Time (ii) Additional Acquisition - Annexure "B"

3. Form JPA (T) 2/02 Disposal of Property-Annexure "C"

4. Form JPA (T) 3/02 Declaration of Companies/Businesses - Annexure "D"

Procedure for declaration:

a. Declarations are made electronically in the Human Resources Management Information System (HRMIS).

b. Declarations are submitted to the Secretariat of the respective organization whose duties are

(i) to acknowledge receipt of the declaration

(ii) check and endorse the declaration

(iii) present the declaration forms to the Head of Department.

c. The Head of Department, in endorsing the declaration, shall take into consideration:

(i) the financial ability of the public officer to own the property declared

(ii) the property declared is acquired does not contravene any regulation

(iii) the acquisition of the property is not by way of use of official position, or in conflict with his official and private interest

- (iv) instalment payment does not present a financial burden
- (v) other factors in connection to the integrity and efficiency of the public service.
- d. The Head of Department may seek further information, if necessary, and issue a 30-day notification for explanation from the public officer if he is of the view that the value of the property is beyond the financial ability of the officer concerned.
- e. Upon satisfying himself that the property declared are satisfactorily acquired, the Head of Department shall endorse his decision of approval in the Declaration Form.
- f. The public officer shall then be notified of the decision taken by the Head of Department.

Penalties for non-declaration:

In accordance with paragraph 29 of the Service Circular, an officer who fails to make declaration of property might face disciplinary action provided for under P.U.(A) 395 of 1993.

Regulation 11 of P.U. (A) 395/1993-Maintaining a standard of living beyond emoluments and legitimate private means:

- (1) Where the Head of Department is of the opinion that an officer is or appears to be-
 - (a) maintaining a standard of living which is beyond his emoluments and other legitimate private means, if any, or
 - (b) in control or in possession of pecuniary resources or property, movable or immovable, the value of which is disproportionate to, or which could not reasonably be expected to have been acquired by the officer with his emoluments and other legitimate means, the Head of Department shall, by notice in writing, requires the officer to give a written explanation within a period of thirty days from the date of receipt of such notice on how he is able to maintain such standard of living or how he obtained such pecuniary resources or property.
- (2) The Head of Department shall, upon receipt of this explanation under sub-regulation (1) or, where the officer fails to give an explanation within the specified period, upon the expiry of such period, report this fact to the appropriate Disciplinary Authority together with the officer's explanation, if any.
- (3) Upon receipt of the report under sub-regulation (2), the appropriate Disciplinary Authority may take disciplinary action against the officer or take such other action the officer as it deems fit.

Mechanism for verification:

Currently, the practice is limited to verifying an officer's obligation to comply with the directive under the Service Circular. Further, in certain departments verification of content is carried out based on cases of new acquisition of property that are declared.

In the case of the MACC, verification of declaration made by its own officers is being carried out by a Taskforce setup within the Excellence and Professionalism Division. The Taskforce upon receipt of asset declaration will perform two actions:-

1. acting as the secretariat, they are to ensure that all officers have declared their assets in accordance with the requirements of Service Circular No.3 of 2002, cited above. Failure of any officer to make declaration could affect his/her confirmation to the post/position he/she is holding and also would not be considered for promotion; and
2. an examination of the property declared against the master payroll list . The latter is carried out on a sampling basis and should the Taskforce detect an officer who has acquired property beyond his known source (s) of income, the Division shall open up a file to start an inquiry. The

officer concerned will be given a letter of explanation by the Taskforce.

Failure to satisfactorily account for the acquisition could subject the officer concerned to disciplinary action under the Public Officers (Conduct & Disciplinary) Regulation 1993, cited above, under either: Regulation 11 (maintaining a standard of living beyond emoluments and legitimate private means, or Regulation 12 (borrowing money), or Regulation 13 (serious pecuniary indebtedness), as the case may be.

Confidentiality of declaration

All declarations are classified as “confidential” documents, as provided for under paragraph 28 of the Service Circular No. 3 of 2002.

Investigative Powers of Heads of Department:

The law does not provide any investigative powers to the Head of Department or any verification body under his supervision to obtain any confidential document from the officer concerned.

Under Regulation 11(1) of the Public Officers (Conduct and Discipline) Regulations 1993 P.U. (A) 395 of 1993 or Paragraph 16 of Service Circular 3/2002, the Head of Department may issue a 30-day notification for explanation (not production of documents) from the public officer if he is of the view that the value of the property is beyond the financial ability of the officer concerned.

Failure to submit an explanation on the expiry of 30 days is considered a disciplinary offence under Regulation 11(2) and 11 (3) of P.U. (A) 395 of 1993.

Outside employment:

Conditions under which a public officer could engage in outside employment are regulated under Regulation 5 of P.U.(A) 395/1993 and other related Service Circulars issued from time to time as follows:

A. Regulation 5 of P.U.(A) 395/1993

(1) Unless and to the extent he is required or authorized to do so in the course of his duties as an officer of a public service, an officer shall not-

- (a) take part, either directly or indirectly, in the management or dealings of any commercial, agricultural or industrial undertaking;
- (b) undertake for reward any work with any institution, company, firm or private individual;
- (c) as an expert, furnish any report or give any evidence, whether gratuitously or for reward etc; and
- (d) function as an executor, administrator or receiver;

(2) Notwithstanding sub-regulation (1), an officer may, with prior written permission of his Head of Department, carry on any of the activities or perform any of the services specified in that sub-regulation, either for his benefit or for the benefit of his close relatives or any non-profit making body of which he is an officer bearer.

B. Service Circular 9/1995: Involvement of Public Officers in Cooperative Movement (Pekeliling Perkhidmatan 9 Tahun 1995: Penglibatan Pegawai Awam dalam Pergerakan Koperasi)

C. Service Circular 7/1982: Involvement of Government Staffs in Board of Directors of Private Commercial Companies/ Enterprises or Commercial Companies/Enterprises of Cooperatives/ Funds/ Unions where Government Staffs have interest in terms of Capital Investments and/or Equity

(Pekeliling Perkhidmatan 7 Tahun 1982: Penglibatan Kakitangan Kerajaan dalam Lembaga Pengarah Syarikat Perdagangan/Perusahaan Persendirian atau Syarikat Perdagangan/ Perusahaan di mana Koperasi/Tabung/Kesatuan Sekerja Kakitangan Awam Mempunyai Kepentingan dari segi Pelaburan Modal dan/atau Ekuiti)

D. Service Circular 2/1987: Permission for Government Officers to Establish Family Holding Companies (Pekeliling Perkhidmatan 2 Tahun 1987: Kebenaran Kepada Pegawai Awam Bagi Menubuhkan Syarikat Pegangan Keluarga)

E. Service Circular 2/2009: Prohibition of Get-Rich-Quick Schemes

(Pekeliling Perkhidmatan Bil.2 Tahun 2009: Larangan Penglibatan Pegawai Awam Dalam Skim Cepat kaya)

F. Letter of Service Circular No.16/1979: Outside Employment (Part-time Lecturer or Tutor in Universities or Institutions of Higher Learning)

Regulation 4, General Regulations Chapter D 1969 (Surat Pekeliling Perkhidmatan bil. 16 tahun 1970 Pekerjaan Luar (Pensarah atau Tutor Sambilan di Universiti atau Pusat Pelajaran tinggi).

Peraturan 4, Perintah 2 Am Bab 'D' 1969. Note: Regulation 4 is now Regulation 5 in P.U.(A) 1993.

G. Circular Letter Chief Secretary of Ministry of Health of Malaysia No. 5 of 2006 - Procedure of Implementation for Medical and Dentistry Officer for doing outside employment (Locum) (Surat Pekeliling Ketua Setiausaha Kementerian Kesihatan Malaysia Bil 5 Tahun 2006 -Tatacara Pelaksanaan Pegawai Perubatan dan Pergigian Melaksanakan Pekerjaan Luar (Lokum)).

H. Circular Letter Director General of Ministry of Health of Malaysia No. 2 of 2010 - Guidelines of Medical Officer of Ministry of Health Doing Outside Employment (Lokum) in Private Sector (Surat Pekeliling Ketua Pengarah Kesihatan Malaysia Bil 2/2010 - Garis Panduan Pelaksanaan Pekerjaan Luar (Lokum) Di Sektor Swasta oleh Pegawai Perubatan KKM)

I. Service Circular Letter of Malaysia Ministry of Education No.1 of 2006: Guidelines of Approval for doing Outside Employment as Tuition Teacher or Part Time Lecturer

(Surat Pekeliling Perkhidmatan Kementerian Pelajaran Malaysia Bil. 1 Tahun 2006; Garis Panduan Kelulusan Melakukan Pekerjaan Luar Sebagai Guru Tuisyen Atau Tenaga Pengajar Sambilan)

Activities from which conflict of interest may arise:

The activities of this nature are regulated under the following regulations of the Public Officers (Conduct & Discipline) Regulations 1993:

Borrowing money- Regulation 12

(1) No officer may borrow from any person or stand as surety to any borrower, or in any manner place himself under a pecuniary obligation to any person-

(a) who is directly or indirectly subject to his official authority; (b) with whom the officer has or is likely to have official dealings;

(c) who resides or possesses land or carries on business within the local limits of his official authority; or

(d) who carries on the business of money lending.

(2) Notwithstanding sub-regulation (1), an officer may borrow money from or stand surety to any person who borrows money from any financial institution, insurer or co-operative society or incur debt through acquisition of goods by means of hire-purchase agreement, if-

(a) the financial institution, insurer or co-operative society from which the officer borrows money is not directly subject to his official duty;

(b) the borrowing does not and will not lead to public scandal and cannot be construed as an abuse by the officer of his public position to his private advantage;

(c) the aggregate of his debts does not or is not likely to cause the officer to be in serious pecuniary indebtedness as defined under sub-regulation 13 (7) and (8);

Publication of books, etc.- Regulation 18

An officer shall not publish or write any book, article or other work which is based on classified document;

Prohibition on acting as editor etc. in any publication- Regulation 20

An officer shall not act as the editor of, or take part directly or indirectly in the management of, or in any way make any financial contribution or otherwise to any publication, including any newspaper, magazine or journal, regardless of the means by which it is published, except the following publications:

(a) departmental publications;

(b) professional publications;

(c) publications of non-political voluntary organizations; and

(d) publications approved in writing by the Head of Department for the purpose of this regulation.

Taking part in politics- Regulation 21

(1) Except as provided in sub-regulation (3), an officer in the Top Management Group and the Managerial and Professional Group is prohibited from taking an active part in political activities or wearing any emblem of a political party, and in particular he shall not under sub-paragraph

(e) stand for election for any post in any political party; or

(f) hold any post in any political party.

(2) An officer in the Support Group may stand for election or hold office or be appointed to an post in a political party after first obtaining the written approval of the Director General of Public Service or the Secretary General of the appropriate Ministry, as the case may be.

(3) Notwithstanding the provisions on sub-regulation(1), an officer who has been granted leave until the date of his retirement for the purpose of finishing his accumulated leave may participate in political activities provided that-

- (a) he has obtained the prior written approval of the Director General of Public Service or the Secretary General of the appropriate Ministry, as the case may be; and
- (b) by being so engaged he does not contravene the provisions of the Official Secret Act 1972 (Act 88);
- (4) An application for approval under paragraph 3(a) shall be made at least 3 months prior to the date the officer is allowed to go on leave prior to retirement
- (5) Nothing in this regulation shall preclude an officer from being an ordinary member of any political party.
- (6) An officer who has been accepted as an ordinary member of any political party shall as soon as possible inform this fact to the Head of Department.

Note: Any application for written approval under this Regulation is governed by Service Circular No.5 of 1996: Application by Public Officers Taking Part in Politics (Pekeliling Perkhidmatan Bil.5 Tahun 1996: Permohonan oleh Pegawai Awam Untuk Mengambil Bahagian Dalam Aktiviti Politik).

Honorary or nominee membership in private golf and recreational clubs read in conjunction with Service Circular 4 of 2000: Guidelines on Public Officers Honorary/Nominee Memberships in Private Golf and Recreation Clubs And Free Usage of Facilities of these Clubs by Bodies or Societies of Departments (Surat Pekeliling Perkhidmatan No.4 Tahun 2000: Keahlian Pegawai Awam Di Dalam Kelab Golf dan Kelab Rekreasi Swasta secara Kehormat atau Nominee serta Penggunaan Kemudahan Secara Percuma Di Kelab Tersebut oleh Badan atau Persatuan Jabatan) - cross referencing response in Article 8 paragraph 1 above.

Measures to prevent Conflict of Interest Regarding Outside Employment:

Public registry of businesses

The only public registry which involves public officials in business can be obtained through the Registrar of Business or Companies maintained by the Companies Commission Malaysia. However, such public registry does not directly prevent conflict of interest cases which involve the participation of public officials in outside employment. The registry at best serves as a starting point or source of information to verify of their involvement. More often than not, public officials may register their businesses/companies under the names of their proxies (relatives, junior officers or close friends).

The prevention of conflict of interest by public officers involving in outside employment is dealt with in the following ways:

1. Permission granted by Heads of Department is subject to Regulation 4 of P.U.A 395/1993 as provided for under Regulation 5 (3) of the said Circular:
 - (3) In considering whether or not permission should be granted under sub-regulation (2) The Head of Department shall have regard to the code of conduct as laid down in regulation 4 and shall ensure that the activity or service-
 - (a) does not take place during office hours and during such time when the officer is required to perform his official duties
 - (b) does not in any way tend to impair the officer's usefulness as an officer of the public service; and

(c) does not in any way tend to conflict with the interests of the public service or be inconsistent with the officer's position as an officer of the public service.

Additional conditions to (a) - (c) above for granting approval by Heads of Department may include as follows:-

(i) the applicants are prohibited from using office equipment and facilities (official vehicles, telephone, computers, fax machines etc.) at all times for matters in connection with their outside employment;

(ii) The valid period of each approval is 12 months and renewable with fresh application;

(iii) The permission to carry on outside employment shall automatically cease upon the officer/staff being transferred to another State/Division. The officer/staff shall apply for approval under the new Heads of Department in the State/Division concerned.

2. Regulating Involvement of Public Officers as Office Bearers/Board of Directors in Companies belonging to Government Cooperatives, Funds and Unions

A. Service Circular 9/1995: Involvement of Public Officers in Cooperative Movement (Pekeliling Perkhidmatan 9 Tahun 1995: Penglibatan Pegawai Awam dalam Pergerakan Koperasi)

Under sub-paragraphs (vii); (viii) and (ix) of Paragraph 5 of Service Circular 9/1995, which address those public officers who are office bearers in cooperatives, it is stated among other conditions that:

(vii) prohibited from using their positions in the cooperatives to handle service problems on account of their own interest or those of certain groups, establishments, societies etc.

(viii) prohibited from using official information for the purpose of the cooperative movements;

(ix) all activities of cooperatives must be conducted in line with provisions of the Public Officers (Conduct and Discipline) Regulations 1993

B. Service Circular 7/1982: Involvement of Government Staffs in Board of Directors of Private Commercial Companies/ Enterprises or Commercial Companies/Enterprises of Cooperatives/ Funds/ Unions where Government Staffs have interest in terms of Capital Investments and/or Equity (Pekeliling Perkhidmatan 7 Tahun 1982: Penglibatan Kakitangan Kerajaan dalam Lembaga Pengarah Syarikat Perdagangan/Perusahaan Persendirian atau Syarikat Perdagangan/ Perusahaan di mana Koperasi/Tabung/Kesatuan Sekerja Kakitangan Awam Mempunyai Kepentingan dari segi Pelaburan Modal dan/atau Ekuiti)

In accordance to the provisions in paragraph 3.3 of Service Circular 7/1982 the Government of Malaysia takes a serious view as regards the involvement of Government staffs who are Board Chairpersons and Members of Board of Directors in companies belonging to Cooperatives/Funds/Unions for the following reasons:

(a) they can influence certain quarters to approve procurement tenders to their companies;

(b) they can bring disrepute to the Public Services by subordinating the interest of the Government over that of their companies;

(c) their roles at times encompass the day-to-day management level of their companies;

(d) their roles are apparently to enhance their company businesses by doing businesses with

Government agencies.

Hence, under the provisions of paragraph 4.1 of Service Circular 7/1982 the Government has decided that:-

- (a) Government staffs who are members of Government Officers Cooperatives/Funds/Unions shall be prohibited from holding positions as members of Board of Directors in private or joint-venture companies established by such bodies ; and
- (b) Governments staff shall be prohibited from being appointed in their private capacities as Board Directors in any company.

C. Service Circular No. 3 of 1985: Guideline on Appointment and Government Official Role as Chairman, Chief Executive and Public Corporation Director Board Member, Government Companies and State Interests Companies (Garis Panduan Mengenai Perlantikan Dan Peranan Pegawai Kerajaan Sebagai Pengerusi, Ketua Eksekutif Dan Ahli Lembaga Pengarah Perbadanan Awam, Syarikat-Syarikat Kerajaan Dan Syarikat-Syarikat Kepentingan Kerajaan).

- i. regulation on the maximum number of appointments as a member of BOD in companies with a government interest; and
- ii. responsibilities of government representatives as a BOD (refined in the “Garis Panduan Ahli Lembaga Pengarah Lantikan Menteri Kewangan (Diperbadankan)”).

D. Service Circular No. 8 of 1978: Fees, Allowances and Compensation can be kept by Public Official who appointed as Chairman/Members in Board/Statutory Body for Lecturer Association and Committee/ Local Authority/ Business Entities which Government has interest (Elaun-Elaun Dan Pampasan Yang Boleh Disimpan Oleh Pegawai-Pegawai Kerajaan Yang Dilantik Menjadi Pengerusi/Ahli-Ahli Dalam Lembaga/Jemaah Pensyarah Badan-Badan Berkanun/Kuasa-Kuasa Tempatan/Badan-Badan Perniagaan Yang Kerajaan Mempunyai Kepentingan)

E. Service Circular No 2 of 1993 - Fees, Allowances and Compensation can be kept by Public Official who appointed as Chairman/Members in Board/ Statutory Body for Lecturer Association and Committee/ Local Authority/ Business Entities which Government has interest (Amendment to para 2 of Service Circular No. 8 of 1978) [Bayaran (Fees), Elaun-Elaun Dan Pampasan Yang Boleh Disimpan Oleh Pegawai-Pegawai Kerajaan Yang Dilantik Menjadi Pengerusi/Ahli-Ahli Lembaga Pengarah Badan-Badan Berkanun/Kuasa-Kuasa Tempatan/Badan-Badan Perniagaan Yang Kerajaan Mempunyai Kepentingan (Pindaan para 2 PP Bil 8 Tahun 1978))

3. By way of agreement

This comes in the form of a Letter of Undertaking:

Regulation 20(3), Public Officers (Appointment, Promotion and Termination of service) Regulations 2012 states that every candidate shall sign a Letter of Undertaking as specified in the First Schedule providing that he shall comply with the provisions of the Public Officers (Conduct and Discipline) Regulations 1993 [P.U. (A) 395/1993], General Orders, Circular, Circular Letter, Regulations and other orders issued by the Yang di-Pertuan Agong (King) from time to time throughout his service in the public service.

4. By way of Self-Declaration of Interest during Government Procurement processes as follows:

(a) Provision of sub-paragraph (i) of Paragraph 193 of Treasury Instructions requires that:

Any member of the Tender Board who has any interest in any tender, the said member shall have to declare his interest and abstain himself from any deliberation and decision of the tender concerned. This action of such member shall be also be recorded in the minutes of the Tender Board Meeting.

(b) The Integrity Pact mechanism implemented through Letter of Treasury Circular No.10 of 2010: Guidelines on Implementation of Integrity Pact in Government Procurement. Under the Guidelines every government officer who is involved in government procurement processes is required to make a declaration that he “shall immediately declare to the Head of Department if any of my family member(s) or close relative(s) has any interest in any procurement activity undertaken by me” in a Declaration By Civil Servant Involve in Government Procurement Form (APPENDIX A). This is to be executed when the officer reports for duty or assumes the duties and the form shall be kept in the officer’s personal file. Every Head of Division shall ensure that all officers and staff renew the declaration annually.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics regarding the level of compliance with asset declaration requirements applicable to public officials

Key Performance Index For HRMIS In Asset Declaration

No	Ministry/ State Secretary Office/ Agency	2013	2014	2015
1	Accountant General's Department (<i>Jabatan Akauntan Negara</i>)	94.92	91.02	97.04
2	National Audit Department (<i>Jabatan Audit Negara</i>)	95.14	96.22	99.14
3	Royal Malaysian Customs Department (<i>Jabatan Kastam Diraja Malaysia</i>)	95.59	96.58	94.89
4	Syariah Judiciary Department Malaysia (<i>Jabatan Kehakiman Syariah Malaysia</i>)	97.14	99.82	100.00
5	Public Works Department (<i>Jabatan Kerja Raya</i>)	94.48	95.66	96.70
6	Attorney General’s Chamber (<i>Jabatan Peguam Negara</i>)	100.00	100.00	100.00
7	Department of Irrigation and Drainage (<i>Jabatan Pengairan dan Saliran Malaysia</i>)	99.61	98.15	96.64
8	Higher Education Department (<i>Jabatan Pengajian Tinggi</i>)	*N/A	100.00	100.00
9	Ministry of Youth and Sports (<i>Kementerian Belia dan Sukan</i>)	99.46	97.48	99.77

10	Ministry of Home Affairs (<i>Kementerian Dalam Negeri</i>)	97.48	95.94	95.70
11	Ministry of Rural and Regional Development (<i>Kementerian Kemajuan Luar Bandar dan Wilayah</i>)	98.55	96.82	94.55
12	Ministry of Works (<i>Kementerian Kerja Raya</i>)	94.64	93.86	96.54
13	Ministry of Urban Wellbeing, Housing and Local Government (<i>Kementerian Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan</i>)	93.64	93.87	95.03
14	Ministry of Health (<i>Kementerian Kesihatan Malaysia</i>)	*N/A	91.65	95.23
15	Ministry of Finance (<i>Kementerian Kewangan</i>)	95.88	94.69	93.88
16	Ministry of Communications and Multimedia (<i>Kementerian Komunikasi dan Multimedia</i>)	99.35	98.58	99.96
17	Ministry of Foreign Affairs (<i>Kementerian Luar Negeri</i>)	94.39	99.93	99.93
18	Ministry of Tourism and Culture (<i>Kementerian Pelancongan dan Kebudayaan</i>)	90.60	88.73	99.41
19	Ministry of Women, Family and Community Development (<i>Kementerian Pembangunan Wanita, Keluarga dan Masyarakat</i>)	92.14	93.87	91.50
20	Ministry of Education, Malaysia (<i>Kementerian Pendidikan Malaysia</i>)	*N/A	99.75	99.47
21	Ministry of Higher Education (<i>Kementerian Pendidikan Tinggi</i>)	*N/A	97.64	97.88
22	Ministry of Transport (<i>Kementerian Pengangkutan</i>)	99.04	98.72	98.78
23	Ministry of International Trade and Industry (<i>Kementerian Perdagangan Antarabangsa dan Industri</i>)	93.53	83.82	97.56
24	Ministry of Domestic Trade , Cooperatives and Consumerism (<i>Kementerian</i>	94.90	90.25	96.14

	<i>Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan)</i>			
25	Ministry of Defence (<i>Kementerian Pertahanan</i>)	85.00	92.07	93.46
26	Ministry of Agriculture and Agro-Industry (<i>Kementerian Pertanian dan Industri Asas Tani</i>)	96.77	94.97	95.36
27	Ministry of Plantation Industry and Commodity (<i>Kementerian Perusahaan Perladangan dan Komoditi</i>)	98.25	88.72	91.47
28	Ministry of Science, Technology and Innovation (<i>Kementerian Sains, Teknologi dan Inovasi</i>)	95.60	98.60	99.65
29	Ministry of Natural Resources and Environment (<i>Kementerian Sumber Asli dan Alam Sekitar</i>)	99.11	98.72	99.59
30	Ministry of Human Resources (<i>Kementerian Sumber Manusia</i>)	97.91	97.18	95.55
31	Ministry of Energy, Green Technology and Water (<i>Kementerian Tenaga, Teknologi Hijau dan Air</i>)	94.52	92.30	99.72
32	Ministry of Federal Territory (<i>Kementerian Wilayah Persekutuan</i>)	94.08	100.00	100.00
33	Director General of Health (<i>Ketua Pengarah Kesihatan</i>)	*N/A	91.65	95.23
34	Director General of Education (<i>Ketua Pengarah Pelajaran</i>)	*N/A	99.99	99.47
35	Johor Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Johor</i>)	*N/A	37.77	89.89
36	Kedah Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Kedah</i>)	*N/A	88.94	97.05
37	Kelantan Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Kelantan</i>)	*N/A	17.07	100.00
38	Melaka Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Melaka</i>)	94.73	96.26	97.58

39	Pahang Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Pahang</i>)	93.48	97.57	98.59
40	Perak Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Perak</i>)	89.12	98.82	98.75
41	Perlis Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Perlis</i>)	98.35	99.02	100.00
42	Pulau Pinang Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Pulau Pinang</i>)	93.12	95.94	96.90
43	Selangor Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Selangor</i>)	96.87	91.67	99.66
44	Negeri Sembilan Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Sembilan</i>)	98.70	98.69	100.00
45	Terengganu Government State Secretary's Office (<i>Pejabat Setiausaha Kerajaan Negeri Terengganu</i>)	**N/A	47.14	100.00
46	Federal Secretary Sabah (<i>Setiausaha Persekutuan Sabah</i>)	**N/A	100.00	100.00
47	Federal Secretary Sarawak (<i>Setiausaha Persekutuan Sarawak</i>)	**N/A	94.59	100.00
48	Malaysian Anti-Corruption Commission (<i>Suruhanjaya Pencegahan Rasuah Malaysia</i>)	99.70	99.83	99.65
49	Deputy Secretary General of Prime Minister's Department (<i>Timbalan Ketua Setiausaha Kanan Jabatan Perdana Menteri</i>)	95.54	100.00	100.00
50	Public Private Partnership Unit (<i>Unit Kerjasama Awam Swasta</i>)	94.37	97.30	100.00
51	Malaysian Administrative Modernisation and Management Planning Unit (<i>Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia</i>)	95.31	96.35	97.51

52	Implementation Coordination Unit (<i>Unit Penyelarasan Pelaksanaan</i>)	99.08	99.46	100.00
53	Economic Planning Unit (<i>Unit Perancang Ekonomi</i>)	99.80	100.00	99.79

**N/A: Agency not involved in Declaration of Asset Criteria KPI HRMIS

(Source: Public Service Department (Jabatan Perkhidmatan Awam-JPA))

The JPA does not maintain any record of cases of possible illicit enrichment through the declaration of asset requirement. Most of the cases that concerned the JPA centred on breaches of financial regulations. Should there be any reasonable suspicion of any bribery actions, such cases will be referred to MACC for further investigations

The JPA can only detect cases of illicit enrichment in the centralised Human Resources Management Information System or HRMIS through complaints made by a whistleblower, Head of Department, random check, suspicions, and “Christmas shopping”.

Reports made by the Declaration of Asset Secretariat to the Heads of Department for endorsement/approval are only in regard to compliance/non-compliance with the said Circular No. 3 of 2002. Verification of the contents of such declaration or outside employment is on a case-by-case basis at the individual department levels.

Cases of illicit enrichment, outside employment and conflict of interest depend largely on public complaints/allegations or STR reports by reporting institutions under AML/CTF obligations in compliance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 made directly to law enforcement agencies like the Malaysian Anti-Corruption Commission, the Royal Malaysia Police or the Inland Revenue Board for investigations under offences of unexplained assets, money-laundering or public officer’s involvement in businesses, abuse of positions for his own or relatives’ benefit.

The following are some cases successfully charged in court based on complaints against public officials:

Case of non-declaration/failure to declare assets - leading to Disciplinary Action:

Ramzan bin Jantan v Timbalan Ketua Polis Johor (Deputy Chief Police Officer of Johor) & Anor [2008] MLJU 111.

Case of non-declaration/failure to declare assets-leading to Criminal Charges:

Pendakwa Raya (or PP) v Tan Sri Muhammad bin Muhammad Taib [1999] MLJU 123

Impact Studies:

Paper on “How can Malaysia’s Asset Declaration System be improved to help combat corruption?” Shaza Onn, IDEAS.

(b) Observations on the implementation of the article

The basis for making declaration of assets/property owned by public officials (all categories) is provided for under Regulation 10 of the Public Officers (Conduct & Discipline) Regulation 1993 P.U. (A) 395/1993 (cited above) read in conjunction with Service Circular No. 3 of 2002: Ownership and Declaration of Property by Public Officers. Declarations are made electronically

in the Human Resources Management Information System (HRMIS) and disciplinary penalties for non-declaration are provided for, in accordance with paragraph 29 of the Service Circular. Declarations are further verified by the Secretariat of the respective organization, only in regard to compliance/non-compliance with the said Circular No. 3 of 2002, although verification of the contents of such declarations or outside employment is on a case-by-case basis at the individual department levels; declarations are endorsed by the Head of Department. All declarations are classified as “confidential” documents, as provided for under paragraph 28 of the Service Circular No. 3 of 2002.

Based on the table of “Key Performance Index For HRMIS On Asset Declarations” there appears to be a high level of compliance with asset declaration requirements by public officials.

It was clarified by MACC officials that the MACC uses asset declarations primarily to detect cases of potential illicit enrichment.

The observations made above under article 7(4) in respect of disclosures of conflicts of interest are referred to. In addition, Malaysia could 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, as presently there is no system of external oversight/reporting on the outcomes of the verification outside each ministry.

Paragraph 6 of article 8

6. Each State Party shall consider taking, in accordance with the fundamental principles of its domestic law, disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Institutional Mechanism mandated to investigate suspected violations and ensure that disciplinary or other measures are enforced:

There are three types of Institutional Mechanisms:

A. Investigations under the Enforcement Agency Integrity Commission Act 2009

The EAIC is set up under the Enforcement Agency Integrity Commission Act 2009 (Act 700). The enforcement agencies to which this Act applies are as follows:

- 1) National Anti-Drugs Agency
- 2) Malaysian Maritime Enforcement Agency
- 3) Ikatan Relawan Rakyat Malaysia (RELA)

- 4) Department of Environment
- 5) Immigration Department of Malaysia
- 6) Royal Customs Department of Malaysia
- 7) Department of Occupational Safety and Health
- 8) National Registration Department
- 9) Civil Aviation Department
- 10) Road Transport Department
- 11) Industrial Relations Department
- 12) Fisheries Department
- 13) Department of Wildlife and National Parks
- 14) Labour Department
- 15) Ministry of Health (Enforcement Division)
- 16) Ministry of Tourism Malaysia (Enforcement Unit of Licensing Division)
- 17) Ministry of Domestic Trade, Co-operatives and Consumerism (Enforcement Division)
- 18) Ministry of Housing and Local Government (Enforcement Division)
- 19) Commercial Vehicles Licensing Board
- 20) Registrar of Businesses
- 21) Royal Malaysia Police

The EAIC Act 2009 provides for investigations of a disciplinary nature by a Complaints Committee set up under Section 16 and by the Commission under Section 28 of the Act.

Section 16. Complaints Committee

- (1) The Commission shall establish a Complaints Committee which shall consist of such number of officers of the Commission as the Commission deems necessary or expedient.
- (2) The Complaints Committee shall have the following duties and responsibilities:
 - (a) to receive complaints of misconduct from any person to the Commission;
 - (b) to keep and maintain a register of all complaints received by the Commission;
 - (c) to assess the complaints in accordance with section 23;
 - (d) to determine the nature of the misconduct;
 - (e) to conduct any preliminary investigation into the complaint under section 25; and
 - (f) to inform the complainant of the status of his complaint and the actions taken after the Commission has made its findings.

Section 26. Findings of the Complaints Committee

- (1) Where the Complaints Committee is satisfied that a disciplinary offence is disclosed and that the complaint would be better dealt with by the appropriate Disciplinary Authority, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation to refer the complaint to the appropriate Disciplinary Authority for the Commission's consideration.
- (3) Where the Complaints Committee is satisfied that a misconduct as specified in section 24 is

disclosed and that there is a basis for the Commission to commence a full investigation, the Complaints Committee shall immediately make a report to the Commission of the complaint together with a recommendation for the Commission to commence a full investigation into the misconduct for its consideration.

The Commission acting under Section 27, may in turn agree with the recommendation of the Complaints Committee to refer the matter to the appropriate Disciplinary Authority or conduct full investigation into the matter or conduct its own investigation under Section 28 (if the matter is of public interest).

Section 28. Commission may commence investigation on own initiative

Without prejudice to section 27, the Commission may commence an investigation in respect of a misconduct it becomes aware of on its own initiative only if the Commission is satisfied that the matter is of significant interest to the public or that it is in the public interest to do so.

Section 31. Powers of the Commission relating to investigation

(1) The Commission shall, for the purposes of an investigation under this Act, have the power-

(a) to conduct hearings if the Commission considers necessary or desirable to do so;

(b) to procure and receive all such evidence, whether written or oral, and to examine all such persons as witnesses as the Commission considers necessary or desirable to procure or examine;

(c) to require the evidence, whether written or oral, of any witnesses to be made on oath or affirmation (such oath or affirmation to be that which could be required of the witness if he was giving evidence in a court of law) or by statutory declaration;

(d) to summon any person residing in Malaysia to attend any meeting or hearing of the Commission to give evidence or produce any document or other thing in his possession; (e) to issue a warrant of arrest to compel the attendance of any person who, after having been summoned to attend, fails to do so and does not excuse such failure to the

satisfaction of the Commission, and to order such person to pay all costs which may have been occasioned in compelling his attendance or by reason of his refusal to obey the summons, and also to fine such person a sum not exceeding five thousand ringgit

(f) to fine in a sum not exceeding five thousand ringgit any person who, being required by the Commission to give evidence on affirmation or to produce a document or other thing, refuses to do so and does not excuse such refusal to the satisfaction of the Commission;

(g) to admit, notwithstanding any of the provisions of the Evidence Act 1950 [Act 56], any evidence, whether written or oral, which may be inadmissible in civil or criminal proceedings;

(h) to award any person who has attended any meeting or hearing of the Commission such sums as in the opinion of the Commission may have been reasonably incurred by such person by reason of such attendance; and (i) to admit or exclude the public from such hearing or any part thereof.

(2) Notwithstanding paragraph (1)(d), where a person summoned is a person under detention under any written law, such summons shall be issued in accordance with the laws applicable in relation to the place of detention

Section 34. Hearings

(1) For the purposes of an investigation, the Commission may hold a hearing if the Commission deems it necessary or expedient.

(2) A hearing shall be presided by such number of Commissioners as the Commission deems fit on a case-to-case basis.

(3) A person appearing at a hearing is entitled to be informed of the general scope and purpose of the hearing, unless the Commission is of the opinion that to disclose such information would seriously prejudice the investigation concerned.

(4) The Commission may be assisted by a legal officer appointed under section 14.

Section 35. Public and closed hearings

(1) All hearings are to be open to the public.

(2) Notwithstanding subsection (1), a hearing or part of a hearing may be closed to the public if the Commission is satisfied that-

(a) information or documents that may be given, or a matter that may arise during the public hearing or a part of the hearing is of a confidential nature; or

(b) the hearing or part of the hearing of a matter or part of a matter would not be conducive to the due administration of this Act if the hearing or part of the hearing is open to the public.

(3) In making these decisions, the Commission is obliged to have regard to any matters that it considers to be related to public interest.

(4) The Commission may give directions as to the persons who may be present at a hearing when it is being held as a closed hearing, and no person shall be present at the hearing in contravention of any such direction.

Section 36. Right of appearance of interested person

If it is shown to the satisfaction of the Commission that any person is substantially and directly interested in any subject matter of a hearing, the Commission may authorize the person to appear at the hearing or a specified part of the hearing.

Section 29. Prevention of dual investigation

On being informed by the Commission under subsection 27(4) that the Commission is investigating a complaint of misconduct of a disciplinary nature or a criminal nature, the Disciplinary Authority or the relevant enforcement agency, as the case may be-

(a) shall not conduct any disciplinary proceedings or investigation into a subject matter which is the same subject matter of the complaint of misconduct; or

(b) where a complaint as regards the same subject matter had been made or referred to the Disciplinary Authority or to the enforcement agency by any other person and the Disciplinary Authority or enforcement agency is conducting disciplinary proceedings or an investigation into the complaint against the enforcement officer concerned, shall immediately cease its disciplinary proceedings or investigation into that complaint.

B. Investigations by the Malaysian Anti-Corruption Commission

Although the MACC is not the main authority to carry out investigation into disciplinary violations per se, investigations by the MACC into offences of corruption committed by public officers under the MACC Act 2009 may simultaneously disclose disciplinary violations connected with acts of corruption by the public officers under investigation or misconduct that does not amount to any corrupt element by the perpetrators to warrant criminal indictments. Such cases, with the consent of the Deputy Public Prosecutor, are referred to the Heads of Department under whom the public officers serve for disciplinary action to be taken. Referrals on disciplinary cases to Heads of Departments by the MACC do not have to go through the EAIC for further action. The enforcement of MACC recommendations for disciplinary actions are monitored by

Integrity Units of Government Agencies concerned.

C. The Investigation Committee set up by Disciplinary Authority

(This paragraph refers to the procedure as stipulated under subregulation 37(5) P.U.(A)395/1993)

This mechanism will be imposed after the Disciplinary Authority evaluates representation from the officer and if the Disciplinary Authority is of the opinion that the case against the officer requires further clarification. In such cases, the Disciplinary Authority may establish an Investigation Committee for the purpose of obtaining such further clarification.”

Paragraph (5) of Regulation 37 of the Public Officers (Conduct & Disciplinary) Regulations 1993 provides that in cases with a view to dismissal or reduction in rank “If the appropriate Disciplinary Authority is of the opinion that the case against the officer requires further clarification, the Disciplinary Authority may establish an Investigation Committee for the purpose of obtaining such further clarification.”

Regulation 37A Composition of Investigation Committee

- (1) The Committee shall comprise not less than two officers;
- (2) Members of the Investigation Committee shall be higher in rank than the officer under investigation but the Head of Department of the officer under investigation shall not be a member of the Investigation Committee.

Regulation 37 B Procedure to be followed by the Investigation Committee

- (1) The Investigation Committee
 - (a) shall inform the officer under investigation of the date when the question of his dismissal or reduction in rank will be brought before the Investigation Committee; and
 - (b) may call and examine any witness or take any action as it thinks necessary and proper for obtaining further clarification regarding the case.
- (2) If the Investigation Committee is of the view that the officer should be allowed to be present before the Investigation Committee to exculpate himself, the officer shall present himself before the Committee for such purpose.
- (3) If witnesses are called and examined by the Investigation Committee, the officer shall be given opportunity to be present and to cross-examine the witnesses on his own behalf.
- (4) No documentary evidence shall be used against an officer unless the officer has previously been supplied with a copy of the evidence or given access to the evidence.
- (5) The Investigation Committee may permit the Government or the officer to be represented by an officer in the public service or, in exceptional cases, by an advocate and solicitor.
- (6) If the Investigation Committee permits the Government to be represented, it shall also permit the officer under investigation to be similarly represented’
- (7) If the officer under investigation who is required to appear before the Investigation Committee fails to appear on the date and the time appointed and if no sufficient ground is shown for an adjournment, the Investigation Committee may proceed to consider and decide on the complaint or may adjourn the proceeding to another date.
- (8) Upon the completion of its investigation, the Investigation Committee shall submit a report on such investigation to the appropriate Disciplinary Authority.

(9) If the appropriate Disciplinary Authority is of the opinion that the report submitted to it under sub-regulation (8) is vague in particular matters or that further investigation is required, the appropriate Disciplinary Authority may refer the matter back to the Investigation Committee for further investigation.

Disciplinary Measures and Processes:

Regulation 38 of the Public Officers (Conduct and Discipline) Regulations 1993 provides for the types of disciplinary punishments:

If an officer is found guilty of a disciplinary offence, any one or any combination of two or more of the following punishments, depending upon the seriousness of the offence, may be imposed on the officer:-

- (a) warning;
- (b) fine;
- (c) forfeiture of emoluments;
- (d) deferment of salary movement;
- (e) reduction of salary;
- (f) reduction in rank; or
- (g) dismissal.

Procedures and Processes for Disciplinary Action

A. Disciplinary Action procedures in cases where an officer is absent without leave and cannot be traced

Introduction

The disciplinary action procedure in relation to cases where an officer is absent without leave and cannot be traced is provided in Regulation 26, Public Officers (Conduct and Discipline) 1993.

Head of Department's Action

Where an officer is absent from duty without leave, or without prior permission or without reasonable cause for 7 consecutive working days and cannot be traced, the Head of Department shall cause a letter to be delivered personally or sent by A.R registered post to the officer at his last known address, instructing the officer to immediately report for duty.

If the letter is delivered, the Head of Department shall proceed to submit a report to the appropriate Disciplinary Authority to institute disciplinary action against the officer, regardless of whether the officer has reported for duty or otherwise.

If, however, the A.R. Registered letter is returned undelivered, the Head of Department shall report the matter to the Disciplinary Authority having the jurisdiction to impose a punishment of dismissal or reduction in rank upon the officer.

Disciplinary Authority Action

In cases where the letter has been delivered successfully, upon receiving the Head of Department's report, the Disciplinary authority may proceed to take the usual disciplinary action.

On the other hand, in cases where the letter is returned undelivered, upon receipt of the Head of Department's report, the Disciplinary Authority which has jurisdiction to impose a punishment of dismissal or reduction in rank on the officer shall take steps to publish a notice in at least one daily newspaper published in the language and having national circulation as determined by the Disciplinary Authority as provided in Regulation 26(4), Public Officers (Conduct and Discipline) Regulations 1993. The newspaper notice shall provide the following details:

- a. the fact that the officer has been absent from duty and cannot be traced; and
- b. requiring the officer to report for duty within 7 days from the date of such publication;

Post publication of notice action

In the event that the officer reports for duty within 7 days from the date of publication of the notice, the Head of Department shall report the matter to the appropriate Disciplinary Authority. Subsequently, the Disciplinary Authority shall institute the usual disciplinary proceeding against the officer.

If the officer fails to report for duty within 7 days from the date of publication of the notice, the officer shall be deemed to have been dismissed from the service with effect from the date he was absent from duty. After this, the dismissal of the officer shall be notified in the Gazette, pursuant to Regulation 26(7), Public Officers (Conduct and Discipline) Regulations 1993.

B. The usual Disciplinary Action: Cases in relation to officers who are absent without leave or unsatisfactory work performance

Introduction

Disciplinary action procedures in relation to cases involving absence without leave for a specified time and unsatisfactory work performance are provided in Regulations 35, 36 and 37, Public Officers (Conduct and Discipline) Regulations 1993.

Disciplinary Violation Report

Pursuant to Regulation 3C, Public Officers (Conduct and Discipline) Regulations 1993, it is the duty of every officer, particularly the Head of Department to exercise disciplinary control and supervision over his subordinates and to take appropriate action as soon as possible for any breach of the provisions of these Regulations.

The Head of Department is responsible to provide a report of any disciplinary violation to the relevant Disciplinary Authority. In general, the report should consist of the following documents:

- a. information pertaining to the officer and his job position;
- b. an updated service statement;
- c. information on the alleged violation. Particularly the fact, date, time or duration of the violation;
- d. Statement in relation to the wrongdoing citing the relevant provisions or orders breached;
- e. Supporting evidence/record, investigation report, witness statements and other;
- f. Any other administrative action taken against the officer.

Determination of types of Breach/ Violation (Regulation 35)

Upon receipt of a report of a breach of code of conduct, the lower Chairman of the Disciplinary Authority (having the jurisdiction to impose a punishment other than dismissal or reduction in rank) must consider and determine whether the disciplinary offence complained of warrants a punishment of:

- a. Dismissal or reduction in rank (Regulation 37); or
- b. A punishment lesser than dismissal or reduction in rank (Regulation 36).

The type of breach/violation decided by the Disciplinary Authority Chairman will determine the type of Disciplinary Action that will be taken against the officer.

Disciplinary cases not with a view to a dismissal or reduction in rank procedure (Regulation 36):

In accordance with Regulation 36(1), if the Chairman of the disciplinary proceeding determines that the disciplinary offence complained of against an officer is of a nature that warrants a punishment lesser than dismissal or reduction in rank and is satisfied that there exists a disciplinary offence, he shall inform the officer by notice of the facts of the disciplinary offence alleged to have been committed by the officer and shall give the officer an opportunity to make a written representation within a period of 21 days from the date when he was informed of the facts.

The Disciplinary Board shall forthwith determine if the officer is guilty of the offence and impose on the officer any one or more of the punishment other than dismissal or reduction in rank as specified in Regulation 38 as it deems appropriate.

Disciplinary cases with a view to dismissal or reduction in rank procedure (Regulation 37):

If it is determined that the disciplinary offence complained of against the officer is of a nature that warrants a punishment of dismissal or reduction in rank, the Chairman of the appropriate Disciplinary Authority to which the case is referred to shall consider and determine if there exists a prima facie case against the officer. If a prima facie case appears to exist, the Chairman of the appropriate Disciplinary Board shall direct that a charge containing the facts of the disciplinary offence alleged to have been committed by the officer and grounds on which it is proposed to dismiss or reduce the rank of the officer be forwarded to the officer. The officer will then be required to submit a written representation containing the grounds on which he relies to exculpate himself within 21 days from the date when the officer is informed by notice.

The Disciplinary Board shall forthwith determine if the officer is guilty of the offence and impose on the officer any one or more of the punishments other than dismissal or reduction in rank, as specified in Regulation 38, as it deems appropriate.

Disciplinary Charge Letter

The charge directed to the officer must contain facts of the disciplinary offence alleged committed by the officer. The grounds of breach must be attributable to the relevant disciplinary regulations provided as stated in Regulation 4, Public Officers (Conduct and Discipline) Regulations 1993.

The disciplinary charge letter must be signed by the Chairman of the Disciplinary Board or any member of the same Disciplinary Board on behalf of the Chairman.

Disciplinary Decision Notice

Disciplinary results/decisions must be notified to the officer and accordingly executed, although an appeal may be made against the result/decision. The grounds of which the officer has been found guilty of the charge must be stated in the notice. The option of an appeal by the officer must also be informed in the same notice. Should the aggrieved officer decide to exercise such option, it may do so by making an appeal to the Disciplinary Appeal Board within 14 days of receipt of the decision.

Disciplinary Record

All records and documents pertaining to the disciplinary action must be preserved accordingly. The details and particulars of the decision(s) made by the Disciplinary Board and the Disciplinary Appeal Board and punishments imposed as directed by such decision(s) must be recorded in the officer's records of service.

C. Disciplinary procedures in relation to officers convicted of criminal offence

Introduction

The disciplinary action procedure arising from an officer's conviction of a criminal offence shall be subject to the provisions in Regulations 28, 29 and 33, Public Officers (Conduct and Discipline) Regulations 1993.

Interpretation of the terms 'Convicted' or 'Conviction', 'Criminal offence' and 'Court' (Regulation 3)

- a. 'Convicted' or 'Conviction' in relation to an officer, means a finding by court, under any written law that such officer is guilty of a criminal offence.
- b. 'Criminal offence' means any offence involving fraud or dishonesty or moral turpitude.
- c. 'Court' means a court, including a Syariah Court.

Procedure where criminal proceedings are instituted against an officer

Where criminal proceedings are instituted against an officer, the Registrar or Senior Assistant Registrar of the court in which the proceedings are instituted shall send to the Head of Department under whom the officer is serving a report containing information and copies of documents pertaining to the proceeding. The Head of Department shall then forward the report to the appropriate Disciplinary Authority that has the power to impose a punishment of dismissal or reduction in rank together with his recommendation as to whether or not the officer should be interdicted from duty.

Upon consideration of the report, the appropriate Disciplinary Authority may, if it deems fit, interdict the officer from the exercise of his duties pursuant to Regulation 44(1)(a), Public Officers (Conduct and Discipline) Regulations 1993.

Upon completion of the criminal proceedings against the officer, the appropriate Disciplinary Authority shall proceed to suspend the officer from the exercise of his duties as stated in Regulation 45(1)(a), with effect from the date of the officer's conviction pending the decision of the Disciplinary Authority pertaining to the conviction. During the whole suspension period, the officer will not be entitled to any part of the emoluments.

However, where the criminal proceedings against an officer result in his acquittal, and there is no appeal by or on behalf of the Public Prosecutor against such acquittal, the officer shall be

allowed to resume his duties and he shall be entitled to receive any emoluments which had not been paid during the period of his interdiction, as well as the annual leave and other entitlements to which he was entitled to during the period of his interdiction.

Disciplinary Action

In accordance with Regulation 29, where criminal proceedings made against an officer result in his conviction, and the officer does not appeal against such conviction, the Head of Department shall immediately obtain a copy of the court's decision together with the officer's records of service and the recommendation of the Head of Department and forward it to the appropriate Disciplinary Authority. The recommendation of the Head of Department should state details pertaining to the type of action/decision that should be imposed on the officers, depending on the nature and seriousness of the offence committed in relation to the degree of disrepute which the conviction has brought to the public service.

In accordance with Regulation 33(1), the appropriate Disciplinary Authority must consider the report, records of service and the Head of Department's recommendation provided prior to deciding the appropriate decision that should be imposed on the officer.

Regulation 45A states that where disciplinary proceedings against an officer result in the officer to be dismissed, the officer shall not be entitled to any part of the emoluments which has not been paid to him during the period of his interdiction or suspension. On the other hand, where disciplinary proceedings against an officer result in a punishment other than dismissal being imposed on the officer, the officer shall be entitled to receive any part of his emoluments which has not been paid to him during the period of his interdiction or suspension.

Exception to the 'right to be heard'

For the purpose of taking a disciplinary action against an officer who has been convicted of a crime, there will be no requirement for a charge to be served against the officer nor will 'the right to be heard' be applicable. This is due to the fact that any disciplinary action taken in this circumstance does not involve the act of determining the type of violation/breach, and whether there exists a prima facie case as how the usual disciplinary action would be.

Disciplinary Decision

Disciplinary results/decisions must be notified to the officer and accordingly executed, although there may be an appeal made against the result/decision. The grounds on which the officer has been found guilty of the charge must be stated in the notice. The option of an appeal by the officer must also be informed in the same notice. Should the aggrieved officer decide to exercise such option, it may do so by making an appeal to the Disciplinary Appeal Board within 14 days of receipt of the decision.

Disciplinary Record

All records and documents pertaining to the disciplinary action must be preserved accordingly. The details and particulars of the decision(s) made by the Disciplinary Board and the Disciplinary Appeal Board and punishments imposed as directed by such decision(s) must be recorded in the officer's records of service.

D. Disciplinary procedure where there is an order of detention, banishment, etc.

Introduction

The disciplinary action procedure arising from an order of detention, supervision, restricted residence, banishment or deportation and others is stipulated in Regulations 32 and 33, Public Officers (Conduct and Discipline) 1993.

Procedure in cases where there is an order of detention, banishment, etc

Where there is an order of detention (other than an order of remand), supervision, restricted residence, banishment or deportation or any order which imposes any form of restriction or supervision, whether with bond or otherwise which has been made against an officer under any law relating to the security, prevention of crime, preventive detention, restricted residence, banishment, immigration, or the protection of women and girls or of children, the Head of Department shall apply for a copy of the order from the appropriate authority. The copy of the order together with the officer's records of service and recommendation as to the punishment deemed fit to be imposed on the officer, depending on the degree of disrepute to which the officer has brought to the public service, shall then be forwarded to the appropriate Disciplinary Authority having the jurisdiction to impose a punishment of dismissal or reduction in rank.

Pursuant to Regulation 45(1)(b), Public Officers (Conduct and Discipline) 1993, the appropriate Disciplinary Authority having the jurisdiction to impose a punishment of dismissal or reduction in rank may suspend an officer from exercising his duties commencing from the date of conviction or the effective date of the order. An officer suspended during this period shall not be entitled to receive any emolument throughout the period of his suspension.

Disciplinary Action

As provided in Regulation 33(2), the Disciplinary Authority must consider the report, records of service and the Head of Department's recommendation prior to determining the proper punishment to be imposed on the officer.

Regulation 45A states that where disciplinary proceedings against an officer result in the officer to be dismissed, the officer shall not be entitled to any part of the emoluments which has not been paid to him during the period of his interdiction or suspension. On the contrary, in the event a punishment other than a dismissal is imposed on the officer, he shall be entitled to receive any part of his emoluments which had not been paid to him during the period of his interdiction or suspension.

Exception to the 'right to be heard'

For the purpose of taking a disciplinary action against an officer on whom an order of detention, supervision, restricted residence, banishment or deportation or other has been imposed, there will be no requirement for a charge to be served against the officer nor will 'the right to be heard' be applicable. This is due to the fact that any disciplinary action taken in these circumstances does not involve the act of determining the type of violation/breach, and whether there exists a prima facie case as how the usual disciplinary action would be.

Disciplinary Decision

Disciplinary results/decisions must be notified to the officer and accordingly executed, although there may be an appeal made against the result/decision. The grounds on which the officer has been found guilty of the charge must be stated in the notice. The option of an appeal by the officer must also be informed in the same notice. Should the aggrieved officer decide to exercise such option, it may do so by making an appeal to the Disciplinary Appeal Board within 14 days of

receipt of the decision.

Disciplinary Record

All records and documents pertaining to the disciplinary action must be preserved accordingly. The details and particulars of the decision(s) made by the Disciplinary Board and the Disciplinary Appeal Board and punishments imposed as directed by such decision(s) must be recorded in the officer's records of service.

E. Interdiction and suspension

Introduction

Interdiction and suspension procedures are provided in Regulations 43, 44 and 45, Public Officers (Conduct and Discipline) 1993. Only the appropriate Disciplinary Authority having the jurisdiction to impose a punishment of dismissal or reduction in rank may, interdict or suspend an officer, namely, the Public Services Commission or Disciplinary Board for the Support Group (No.1), subject to the type of group of service the officer belongs to.

Interdiction for the purpose of an investigation (Regulation 43)

If an officer is alleged or reasonably suspected of having committed a criminal offence of a serious disciplinary offence, and the Head of the Department is of the opinion that, for the purpose of facilitating investigation against the officer, the presence of the officer would hamper investigation, the Head of Department may recommend to the Disciplinary Authority that the officer be interdicted.

Regulation 43 also states that the appropriate Disciplinary Authority may have the officer interdicted for a period of not more than 2 months for the purpose of facilitating an investigation. The officer shall be entitled to receive full emoluments during this interdiction period.

Prior to deciding whether to interdict an officer or otherwise, the appropriate Authority shall take the following factors into consideration:

- a. Whether the allegation or the suspected offence is directly related to the officer's duties; and
- b. Whether the presence of the officer in the office would hamper investigation.

In the event, during the interdiction period criminal proceedings are instituted against the officer in any court or a disciplinary action is taken against him with a view to dismiss or reduce the officer's rank, the interdiction order shall cease to have effect from the date such criminal proceedings are instituted or disciplinary action is taken against the officer and the appropriate Disciplinary Authority shall take further action as it thinks fit under Regulation 44.

Interdiction (Regulation 44)

It is stated in Regulation 44, that if criminal proceedings, or disciplinary action proceedings with a view that a punishment of dismissal or reduction in rank be imposed on the officer, have been instituted, the appropriate Disciplinary Authority may if it thinks fit and proper interdict the officer from exercising his duties.

In deciding as to whether to interdict an officer or not, the appropriate Disciplinary Authority shall take the following factors into account:

- a. Whether the nature of the offence with which the officer is charged is directly related to his duties;
- b. Whether the presence of the officer to exercise his duties in the office would hamper investigation or may be source of embarrassment to or adversely affect the name or image of the department;
- c. Whether, taking into account the nature of the offence with which the officer is charged, the interdiction of the officer would result in the Government incurring a loss.

The interdiction order may be made effective from the date he was arrested or from the date the summons were served on him or from such date as may be determined by the appropriate Disciplinary Authority until the criminal proceedings or disciplinary proceedings have been completed. During the whole interdiction period, the officer shall be entitled to not less than half of his emoluments as the appropriate Disciplinary Authority deems fit.

The appropriate Disciplinary Authority may recall an officer who has been interdicted to resume his duties whilst the criminal proceedings or disciplinary proceedings are still pending. The officer shall be paid his full emoluments from the date his duties are resumed. However, any part of his emoluments which has not been paid during his interdiction shall not be paid until the criminal proceedings or disciplinary proceedings have been completed. If upon completion of the criminal proceedings or disciplinary action the officer is acquitted, any amount of emoluments that have not been paid to the officer during the interdiction period must be made to the officer.

Suspension (Regulation 45)

The appropriate authority having the jurisdiction to impose a punishment of dismissal or reduction in rank may suspend an officer from exercising his duties if:

- a. The officer has been convicted by any criminal court; or
- b. An order as specified in Regulation 32, has been made against the officer.

The period of suspension shall commence from the date of conviction or the effective date of the order, as the case may be. Throughout the suspension period, the officer shall not be entitled to receive any emolument as well as any part of his emoluments which has not been paid to the officer during the period of his interdiction.

Unpaid Emolument

Where a disciplinary proceeding against an officer results in the officer being dismissed, the officer shall not be entitled to any part of the emolument which has not been paid to him during the whole period the officer was interdicted or suspended.

In contrast, the officer shall be entitled to receive any part of his emolument which has not been paid to him during the period of his interdiction or suspension, in the event the disciplinary proceedings against the officer result in a punishment other than dismissal of the officer.

F. Procedure on Disciplinary Appeal Introduction

Provisions pertaining to matters related to disciplinary appeal are provided in the Public Services Disciplinary Board Regulations, 1993 (P.U.(A) 396)

Right to appeal (Regulation 14)

Any officer aggrieved by a decision of the Ministry/ Department Disciplinary Board may appeal against such decision to the Disciplinary Appeal Board. (Note: there are no appeal provisions available to officers who have been dismissed through Gazette).

Public Services Disciplinary Appeal Board (Regulation 12)

The Public Services Disciplinary Appeal Board is located at Public Services Commission Malaysia.

Procedure of Appeal (Regulation 15)

An appeal shall be made in writing to:

Pengerusi

Lembaga Rayuan Tata tertib Perkhidmatan Awam Suruhanjaya Perkhidmatan Awam Malaysia
Aras 9, Blok C7, Parcel C

Pusat Pentadbiran Kerajaan Persekutuan 62502 Putrajaya.

The appeal letter must be sent through the Head of Department within 14 days from the date of receipt of the disciplinary proceeding decision.

Head of Department's Function

The Head of Department shall, not later than 30 days from the date of receipt of the appeal submit such appeal to the Disciplinary Board together with a copy of the records of proceedings of the Disciplinary Board, including the grounds on which the Disciplinary Board relied upon in arriving at its decision.

Disciplinary Board's Function

Upon receipt of the appeal, the Disciplinary Board shall, in not less than 30 days from the date of receipt of the appeal, submit to the Disciplinary Appeal Board the appeal letter, copies of the disciplinary proceedings recorded, including the reasons and grounds of which the decision is derived from.

Relevant Information/Documents required to be submitted by the Department to the Disciplinary Appeal Board

The information/documents required to be submitted by the Department to the Disciplinary Appeal Board are as stated in the checklist provided. However, the specific documents required may vary depending on the disciplinary action/case in question.

Disciplinary Appeal Board Decision

Decisions made by the Disciplinary Board are final.

Documents Checklist

- a. Officer's identity card number.
- b. Updated records of service.

- c. Reports pertaining to the breach of code of conduct including investigation report (if available).
- d. Charge letter.
- e. Acknowledgement receipt of the charge sent.
- f. Review/comments by the Head of Department in relation to the representation provided.
- g. Minutes of the sentencing.
- h. Decision letter by the Disciplinary Board.
- i. Acknowledgement receipt by the officer pertaining to the decision received by the officer.
- j. Appeal letter
Regulation 14(1) & 15(1), Public Services Disciplinary Board and Regulations 1993 (P.U.(A) 396)
- k. Head of Department's review in relation to the appeal submitted.
Regulation 15(2), Public Services Disciplinary Board and Regulations 1993)P.U.(A) 396)
- l. Disciplinary Board's grounds of decision.
Regulation 15(3), Public Services Disciplinary Board and Regulations
- m. Court's charge sheet.
- n. Head of Department's recommendations.
- o. Court's decision/judgement.
- p. Confirmation as to the status of the case, e.g. whether there are any appeal/otherwise made to the court.
- q. Head of Department's recommendation pursuant to Regulation 29(2), Public Officers (Conduct and Discipline) Regulations 1993.
- r. Interdiction order notice/letter.
- s. Copy of detention/supervision order.
- t. Copy of the complete list of punch card for cases where the officer is absent without leave or failure to punch in or out the punch card.
- u. Updated leave statement/record for cases in relation to breach of attendance/absent without leave.
- v. Supporting documents:
 - i. Malaysian Anti-Corruption Commission report (for MACC cases) ii. Other related documents in relation to the case in question (if any).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics on Disciplinary Punishment 2011-2015

No.	Punishment	2011	2012	2013	2014	2015
1.	Warning	2,247 (37.52%)	2,646 (44.25%)	2,182 (45.79%)	1,982 (47.48%)	1,031 (37.93%)
2.	Fine	720 (12.02%)	833 (13.93%)	721 (15.13%)	737 (17.66%)	301 (11.07%)

3.	Forfeiture of emoluments	973 (16.25%)	786 (13.14%)	493 (10.35%)	545 (13.06%)	452 (16.63%)
4.	Deferment of salary movement	510 (8.52%)	432 (7.22%)	417 (8.75%)	162 (3.88%)	216 (7.95%)
5.	Reduction of salary	253 (4.22%)	191 (3.19%)	148 (3.11%)	125 (3.00%)	129 (4.75%)
6.	Reduction in rank	22 (0.37%)	35 (0.59%)	33 (0.69%)	23 (0.55%)	7 (0.26%)
7.	Dismissal	1,264 (21.10%)	1,057 (17.68%)	771 (16.18%)	600 (14.37%)	582 (21.41%)
	Grand Total	5,989 (100%)	5,980 (100%)	4,765 (100%)	4,174 (100%)	2,718 (100%)

Source: Public Service Department (*Jabatan Perkhidmatan Awam-JPA*)

Statistics on Disciplinary Cases 2011-2015

No	Offence	2011	2012	2013	2014	2015	Total
1.	Absence from duty	2,404 (78.98%)	1,931 (74.70%)	1,762 (77.72%)	1,334 (82.70%)	1,135 (68.91%)	8,566 (76.78%)
2.	Criminal Proceedings	437 (14.36%)	272 (10.53%)	280 (12.35%)	223 (13.83%)	154 (9.34%)	1,366 (12.24%)
3.	Failure to declare property/ Ownership property	113 (3.71%)	222 (8.59%)	126 (5.56%)	0 (0%)	0 (0%)	461 (4.14%)
4.	Drugs abuse/ Drugs	43 (1.42%)	101 (3.91%)	65 (2.87%)	20 (1.24%)	63 (3.83%)	292 (2.62%)
5.	Sexual Harassment	13 (0.43%)	19 (0.74%)	11 (0.47%)	7 (0.43%)	10 (0.61%)	60 (0.54%)
6.	Serious pecuniary indebtedness	15 (0.49%)	16 (0.62%)	9 (0.40%)	2 (0.12%)	16 (0.98%)	58 (0.52%)
7.	Outside employment	8 (0.26%)	10 (0.39%)	6 (0.26%)	1 (0.06%)	0 (0%)	25 (0.22%)
8.	Making public statement	1 (0.03%)	2 (0.08%)	2 (0.10%)	1 (0.06%)	6 (0.36%)	12 (0.11%)
9.	Receiving presents/ presents	5 (0.16%)	2 (0.08%)	0 (0%)	0 (0%)	2 (0.12%)	9 (0.08%)
10.	Others	5 (0.16%)	10 (0.39%)	6 (0.27%)	25 (1.56%)	261 (15.85%)	307 (2.75%)
	Grand Total	3,044 (100%)	2,585 (100%)	2,267 (100%)	1,613 (100%)	1,647 (100%)	11,156 (100%)

(Source: Public Service Department (*Jabatan Perkhidmatan Awam-JPA*))

(b) Observations on the implementation of the article

Malaysia has adopted disciplinary and other measures for public officials who violate the codes and standards of conduct. The provision under review is implemented.

Article 9. Public procurement and management of public finances

Paragraph 1 of article 9

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:

(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;

(b) The establishment, in advance, of conditions for participation, including selection and award criteria and tendering rules, and their publication;

(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;

(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;

(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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia's Government Procurement (GP) Regime

1. Introduction

The prime objective of the Malaysian GP is to support Government programmes by obtaining value for money through the acquisition of works, supplies and services. To meet this objective, close attention is given to price factors as well as non-price factors such as whole life cost,

quality, quantity, timeliness, maintenance and warranty. The benefits or value from procurement should be commensurate with the costs involved, and the best procurement is thoroughly evaluated and justified.

2. Policies, Principles and Objectives

2.1 Government Procurement Policies

The Malaysian GP policies provide support for the full achievement of the objectives and aspirations of the National Development Policy and Vision 2020 which is part of Malaysia's effort towards becoming a developed nation. 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 (all indigenous groups listed in Article 161A of the Federal Constitution) 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 GP is used as a tool to achieve socio-economic and development objectives.

2.2 Procurement Principles

In general, GP is essentially based on the following principles:

(a) Public Accountability

Procurement should 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

GP 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 GP 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

GP comprises the following objectives:

- (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 in 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 GP 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 GP 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) [Act 61]

The Financial Procedure Act 1957 (Revised 1972) [Act 61] 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, as well as 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. In ensuring fairness and best value for money, public procurement of supplies undergoes the following processes:

- (a) consent to do procurement (TI No.168)
- (b) conducting market survey (TI No.169)
- (c) determining clear specification for supplies/services (TI No.174)
- (d) use of local content, supplies and services (TI No.169.2)
- (e) purchase through electronic system (TI No.168A)
- (f) direct purchase for procurement below RM20,000 (TI No.173)
- (g) quotation for procurement above RM20,000 but not more than RM500,000 (TI No.170)
- (h) tender for procurement above RM500,000 (TI No.171) through advertisements in MyPROCUREMENT (mandatory) and local newspaper (TI No.172.1)

4.4 Government Contract Act 1949 [Act 120]

The Government Contract Act 1949 [Act 120] 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 (1 Pekeliling Perbendaharaan, 1 PP)

Treasury Circulars are issued pursuant to Section 4 of the Financial Procedure Act 1957 (Revised-1972) [Act 61] from time to time to inform, clarify, implement, improve and amend certain policies, rules and procedures whenever required by the Government and financial authorities.

5. Categories of Government Procurement

5.1 For purposes of procurement, the Malaysian GP has been categorized as follows (1PP/PK1 - Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan or The Government Procurement Powers, Principles and Policy):

(a) Works

Works contracts include construction and engineering activities involving infrastructure and

structures such as buildings, airports, roads/highways, dams and drainage. 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 and furniture.

(c) Services

Services include engagement of manpower, expertise and consultants in the areas of feasibility studies, research, designing, surveying and management. 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 RM20,000 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 Work Indent to a contractor who is registered with Contractor And Entrepreneur Development Division, Ministry of Works (Bahagian Pembangunan Kontraktor Dan Usahawan, BPKU) and Construction Industry Development Board (CIDB).

6.2 Quotation

(a) Procurement of supplies and services above the value of RM50,000 and up to RM500,000 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 RM20,000 and up to RM500,000 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 BPKU and CIDB.

6.3 Tenders

Procurement of works, supplies and services above the value of RM500,000 must be done through a tender process. 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 detailed 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 with 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 RM50. The contents of the tender documents include general and specific terms and conditions, specifications, a copy of the agreement, price schedule, delivery period, objection period and the scope of works expected.

7.3 Advertisement

(a) Local Tender

All local tenders shall be advertised in MyPROCUREMENT portal. The content of the tender advertisement should be clear, neat and simple. Agencies may also advertise in at least one (1) local Malay language newspaper. Bidders are given a submission period of not less than 21 days for local tenders.

(b) International Tender

All international tenders shall be advertised in MyPROCUREMENT portal. Agencies may also advertise in two (2) local dailies; one in Malay and one in English. 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 the advertisement in the dailies. Only contractors fulfilling the local registration requirement may purchase tender documents for local tenders.

In the case of international tenders, supplies and services contractors are exempted from the local registration requirement. However, works contracts require foreign contractors to register with CIDB.

The requirement to register with CIDB is mandatory for all contractors dealing with the construction industry in Malaysia under Section 25 of Construction Industry Development Board Act 1994 (Akta Lembaga Pembangunan Industri Pembinaan Malaysia), or Construction Industry Development Board Act (Amendment 2011) [Act 520] <http://www.lawnet.com.my/LawNet/Public/LawLibrary/SubDocumentDetails.aspx?DocumentID=17471&LibraryID=2>.

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 RM60,000 for bids below RM5 million, to RM1 million for bids exceeding RM30 million for supplies and services. For works contracts, bidders are required to furnish tender deposits ranging

from RM50,000 for contracts below RM10 million, to RM1 million for contracts exceeding RM100 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 specifically made available for this purpose. Tender proposals by bidders should include the technical and financial proposals prepared separately in two (2) 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 (2) separate committees (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 RM100 million for works and RM50 million for supplies and services, the tenders would then be sent with the recommendation of the Agency Procurement Boards to the Ministry of Finance for final decision.

Information of successful bidders is displayed on 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 are required to undergo a registration process. This includes all contractors of works, supplies and services.

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 seven (7) classes of registration for construction and seven (7) classes for electrical contractors under the CIDB 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, and suspension of registration for a maximum period of five (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 GP 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 Federal ministries and departments including at the State level 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 for procurement of supplies, services and works above the value of RM500,000 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 (Revised-1972) [Act 61] 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 known as Agency Procurement Board 'A' and Agency Procurement Board 'B'. The Agency Procurement Board 'A' is empowered to decide on tenders up to RM50 million for supplies and services, and up to RM100 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 RM20 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 RM100 million for works for Government Ministries/Departments and tenders above RM100 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 (LOI) will be issued to the successful bidder, if necessary. The LOI may consist of additional terms and conditions, mostly safeguards and important for the successful implementation of the contract. The LOI 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 (LOA) 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 LOA to the Government. If negotiations are necessary where the LOI so requires, then upon completion of negotiations, the LOA is issued to the successful bidder and it must be returned to the Government for the formalisation of contract. The LOA forms a part of the contract documents and is legally binding.

13. Formal Contract

Formal contracts are drawn upon the receipt of the LOA 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 RM200,000 and less than RM500,000; and
- ii. 5 percent for contracts exceeding RM500,000.

(b) For Works contract

5 percent of the contract value exceeding RM200,000.

System for Appeals, Reviews and Remedies

Complaint and review mechanisms that are already in place in Malaysia allow bidders to verify that the procurement process conforms to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules.

Malaysia offers bidders a multitude of channels for complaint. A failed bidder may complain to a procuring agency, which may cancel a tender if it finds any irregularities. An aggrieved bidder may also complain to the Public Complaints Bureau or the Malaysian Anti-Corruption Commission. In addition, the Compliance and Accreditation Section, GP Division of the Ministry of Finance monitors adherence to procurement rules, and may also set up special task forces to investigate complaints. The Minister of Finance, however, has the ultimate decision-making authority regarding complaints.

Audits are also important review mechanisms. All procuring agencies in Malaysia have internal audit units that regularly examine weaknesses in and possible breaches of procurement rules. The Auditor General conducts external audits of procurement procedures and may order corrective actions. The reports of the Auditor General are published and presented annually to Parliament. In Malaysia, procurement records are kept for seven (7) years. The records are generally accessible only to authorized procurement personnel.

Remedial action under Integrity Pact Mechanism:

Clause on Corruption in Government Procurement Documents: "Termination on Corruption, Unlawful or Illegal Activities" (The Government Procurement Powers, Principles and Policy (1PP/PK1 - Punca Kuasa, Prinsip dan Dasar Perolehan Kerajaan) reads as follows:

- (a) Without prejudice to any other rights of the Government, if the [Company/Firm], its personnel, servants, or employees is convicted by a court of law for corruption or unlawful or illegal activities in relation to this [Agreement/Contract] or any other agreement that the [Company/Firm] may have with the Government, the Government shall be entitled to terminate

this [Agreement/Contract] at any time, by giving immediate written notice to that effect to the [Company/Firm].

(b) Upon such termination, the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.

(c) For the avoidance of doubt, the Parties hereby agree that the [Company/Firm] shall not be entitled to any form of losses including loss of profit, damages, claims or whatsoever upon termination of this [Agreement/Contract].

Measures to Regulate Matters Regarding Personnel Responsible For Procurement:

Personnel responsible for procurement are subjected to the following regulations:

Regulations on Declaration of Interest

Any officer who has a vested interest in the Quotation/Tender is required to declare his/her interest and to dismiss himself/herself in writing [TI No.197.3(c)].

Guidelines for Overseas Trips Due to Government Procurement (1PP/PK 2 - Kaedah Perolehan Kerajaan: Garis Panduan Tugasan ke Luar Negara Berkaitan Perolehan Kerajaan)

A circular setting out conditions and procedures to be complied with in regards to overseas trips (for training/ plant inspection/ tender assessment) sponsored by suppliers or firms in connection with contracts awarded.

Guidelines for Implementation of Integrity Pact in Government Procurement (1PP/PK 1 - Punca Kuasa, Prinsip Dan Dasar Perolehan Kerajaan: Lampiran 1.2 Garis Panduan Perlaksanaan Integrity Pact Dalam Perolehan Kerajaan)

The Integrity Pact comprises of a declaration process by bidders not to offer or give any form of bribes as a means to obtain contract or to facilitate certain processes in Government Procurement. Both bidders and civil servants are required to sign the pact to refrain from getting involved in corrupt practices throughout the procurement process until the project is completed.

Regulations on Training of Personnel in Charge of Procurement

Specific training for procurement personnel that also include integrity, which are undertaken by the National Institute of Public Administration (INTAN) Malaysia under the Financial Management Center. Details of the courses are available at www.intanbk.intan.my. Courses conducted by the Center include Government Procurement Management, Accountability in the Financial Management, Financial Procedures, Cost Strategic and Asset Management.

Malaysia and UNCITRAL (United Nation Commission on International Trade Law)

Malaysia is a member of the UNCITRAL Commission since 2007-2013 and has been elected for another six-year term beginning 8 July 2013. Malaysia has also participated in Working Group 1: Procurement under the UNCITRAL Model Law on Public Procurement (2011).

NOTE: The above mentioned legislation, regulations, circulars and guidelines are made accessible to the public on the website of the Ministry of Finance at www.treasury.gov.my.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

PROCUREMENT SYSTEM

The ePerolehan (eP) is a procurement system that uses a secure online environment to enable Government agencies and suppliers to perform procurement efficiently and in transparent manner. It encompasses all types of Government procurement.

The eP modules include Registration, Central Contract, Ministry Contract, Direct Purchase, Quotation, Tender and eBidding as follows:

Central Contract

- For eP that concerns a specific supply contract to a selected supplier determined by the Ministry of Finance within a specified period.

Ministry Contract

- For procurement relating to a specific goods supply contract to a selected supplier determined by the Ministry of Finance for a specified period.

Direct Purchase

- For procurement of supplies and services at a value not exceeding RM20,000.
- Market study through the online supply and service catalogue.
- Online checking of allocation and approval.

Supplier/Consultant Registration

- The main portal that enables the suppliers to register with the Ministry of Finance.
- The Supplier Registration System offers activities such as application for Bumiputera status, Profile update/renewal and new registration.

Quotation

- Online offer and evaluation.
- For procurement of supplies and services at a value of more than RM20,000 up to RM500,000.

eBidding

- Procurement module concept of Electronic Reverse Auction (ERA) that enables the suppliers to compete interactively.
- Promotes savings for the Government because the prices are based on the actual market prices.

Tender

- For procurement of supplies and services at a value exceeding RM500,000.
- Online supplier offer and evaluation.

The eP is widely used by all 25 Ministries and Agencies in Malaysia since its establishment in 2000. To monitor the effectiveness of the system, the eP Procurement Steering Committee which is under the purview of GP Division, Ministry of Finance will sit at least twice a year to review the performance of eP, transaction analysis and also savings from eBidding. The aim is to ensure

75% of the annual allocation for the procurement of supplies and services is implemented through eP. Details of the system can be found at this link: <http://home.eperolehan.gov.my/en/government>.

In light of improving current eP system, the Malaysian Government will be introducing “ePerolehan Baharu” to meet the growing business demands, provide faster and more efficient system to increase productivity and reduce costs. Further detail of the exercise can be read here <http://www.commercedc.com.my/index.php/nextgenep>.

PROCUREMENT PROGRAMMES

The Public Procurement Accredited Certification Course (Sijil Pentauliah Perolehan Kerajaan, SPPK) <https://www.intanbk.intan.my/iportal/index.php/ms/sijil-pentauliah-perolehan-kerajaan-sppk>:

The Public Procurement Accredited Certification Course was jointly developed between National Institute of Public Administration (Institut Tadbiran Awam Negara, INTAN) and the Ministry of Finance, with the assistance of experienced procurement experts. This course aims to equip officers with the knowledge, expertise and techniques to efficiently and effectively manage government procurements. The programme comprises Introductory and the Advanced modules, encompassing state-of-the-art methodologies in procurement management.

It is offered to Government officers directly involved in the management of government procurement in Ministries/Agencies/Statutory Bodies and State Governments. The course is based on the procurement policies and procedures embedded in the Treasury Circulars or IPP for Government Procurement issued by the Ministry of Finance.

Procurement Certification Programme under United Nations Development Programme/Chartered Institute of Purchasing and Supply (UNDP/CIPS):

The UNDP procurement certification courses are accredited by the Chartered Institute of Purchasing and Supply (CIPS), United Kingdom. The courses comprise a variety of specialized procurement training and certification courses focusing on transactional, tactical or strategic aspects of procurement, all in compliance with high international qualification standards. Participants also have access to a world-wide community of procurement professionals. The courses are offered to UN organizations, International Finance Institutions and their borrowers, Inter-governmental organizations, NGO’s and Governments.

The Malaysian Government started to send participants to the UNDP/CIPS programme beginning in 2013 and plans to have it as a continuous programme annually.

(b) Observations on the implementation of the article

The following matters were clarified during the country visit.

Apart from the regulations on self-declarations of interest for members of the Tender Board (Treasury Instruction No. 193), as well as the Integrity Pact in Government Procurement and the general Public Officers (Conduct & Discipline) Regulation 1993 (P.U. (A) 395/1993), special provisions in Instruction No. 167 hold controlling officers and procurement personnel accountable for losses incurred. Training for procurement officers is undertaken by the National Institute of Public Administration (INTAN).

Screening of procurement personnel is carried out by the Head of Department as well as the MACC, and procurement staff is subject to rotation every three years. Rules on the responsibility

of procurement staff and disciplinary matters in cases of irregularities are found in T.I. 167.2.

Regarding the procedure for tenders for the procurement of works, supplies and services above the value of RM500,000, it was clarified that all contractors intending to participate in local tenders must be registered with the Government, while international tenders will be invited for supplies and services if there are no locally produced supplies or services available and a joint venture is not possible. International bidders are not required to pre-register, but must submit tender deposits. It was explained that the registration requirement for local tenders enhances the expertise of bidders. Moreover, the registration procedure is simple and fast – registration takes 14 days as per the working charter for tenders – and that the registration system is linked with the Companies Commission of Malaysia. Exemption from the registration requirement may be applied in cases of emergency or if specific expertise is required that is not available through the registered bidders. Furthermore, line ministries are not confined to any single list of registered bidders, as separate registration is conducted for each procurement in question. The same procedures are applicable to tenders at the State and local government levels, with the tender procedure being centralized through the Ministry of Finance.

In addition to tender advertisements and bidding invitations for particular tenders, it was clarified that information on the selection and award procedure (i.e., lowest acceptable bid) is published in Treasury Circulars on the MyPROCUREMENT portal of the Ministry of Finance.

Concerning the procedure for complaints/appeals in the tendering process, it was explained that upon receipt of a complaint the Ministry of Finance may form a specific team (“flying squad”) to investigate irregularities in a specific tender. Moreover, the Ministry of Finance also calls individual line ministries who handle the procurement to cancel a particular tender. Furthermore, steps are underway to establish a domestic review procedure, whereby bidders can complain about the results of the tender, registration, or the response of the individual line ministry handling of the procurement. Monitoring would be carried out by the line ministries themselves. It was reported that at present there are very few complaints of procurement violations, with complaints or irregularities reported in less than 5 percent of tenders (mostly international tenders). Consideration was also being given to expanding the complaints procedure under Malaysia’s international trade agreements.

The reviewers welcome efforts underway by Malaysia to establish a domestic review procedure, which includes a complaint mechanism for aggrieved parties, and encourage the Ministry of Finance more generally to have an overview of the procurement processes followed by line ministries.

(c) Successes and good practices

The Integrity Pact in Government Procurement and Malaysia’s electronic MyPROCUREMENT system are positively noted.

Paragraph 2 of article 9

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:

- (a) Procedures for the adoption of the national budget;*
- (b) Timely reporting on revenue and expenditure;*
- (c) A system of accounting and auditing standards and related oversight;*
- (d) Effective and efficient systems of risk management and internal control; and*

(e) Where appropriate, corrective action in the case of failure to comply with the requirements established in this paragraph.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Article 9, subparagraph 2(a)

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 measure shall encompass, inter alia:

(a) Procedures for the adoption of the national budget;

Legislation- Articles 99, 100, 101,102, 103 and 104 of the Constitution of Malaysia

Malaysia is a federation of thirteen states with a two tier systems of government - the federal government and the state governments. The relationship between the central government and the component states and the division of the financial burdens including financial provisions regulating the financial affairs at both these levels of government are set out in the Federal Constitution.

The requirements for budget preparation are provided in Article 99 of the Federal Constitution as well as Section 15 of the Financial Procedure Act 1957 (Revised-1972) [Act 61].

The supreme ruler or Yang di-Pertuan Agong (King) as the repository of the executive authority of the federation, is charged with the management of all public funds of the federation. The King through the Minister of Finance makes known to parliament each year the financial needs of the government which are then granted by parliament from revenues raised from taxes and other sources. No taxes can be raised nor any expenditure made without the authority of parliament.

Procedure:

The procedure for the preparation of the budget is given in Treasury Instruction Nos. 29-51. Based on TI Nos. 29-51, the preparation of estimated revenue and expenditure for the Federal and States is the responsibility of the Secretary General to the Treasury and State Financial Officer respectively.

Prior to year 2002, budget is prepared and approved on an annual basis. However beginning year 2002, with the effect of Treasury Circular No. 2/2002 the budget preparation and examination process is carried out once every two years instead of annually. This change of budgetary procedure, however, is purely administrative and does not involve amendments to the Federal Constitution or the Financial Procedure Act 1957 (Revised-1972) [Act 61].

The budget preparation process can be discussed both at the Federal and Agency level:

Federal Level

At the Federal level the 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:

1. to examine and analyse agencies plans and programmes
2. to allocated financial resources for the implementation of such plans and programmes in the most effective and efficient manner
3. to conform to the national objectives through the preparation of annual 4. approval by Parliament.

The process of preparing the budget is as follows:

- i. January: Treasury issues the call circulars to all ministries or agencies requesting for the submission of budget proposals for the following year. Apart from highlighting the short-term economic scenario of the nation, the call circular spells out the budget strategies and macroeconomic targets to be achieved, the procedures to be followed, format to be used and the date of submission of budget proposals.
- ii. March: Submission of budget proposals by government agencies
- iii. April: Government agencies are required to submit their budget proposal for operating expenditure in March and for the development expenditure in April. After government agencies have submitted their proposals, the Treasury begins the budget examination process with each ministry or agency by reviewing the progress of existing programmes and projects as well as ensuring that new programmes and projects comply with the broad strategies and criteria set in the call circular. Officers of BDM hold discussions with all government agencies to fix the expenditure ceiling for the following year for the recurrent and development expenditure
- iv. May-July: Preliminary budget hearing and actual budget hearing is held. Preliminary budget hearing is conducted to check budget proposals with policy directives. It is chaired by the Budget Review officer (BRO) with representatives from the Economic Planning Unit (EPU) and the Public Service Department (PSD). The purpose of actual budget hearing is to examine staff requests by the PSD to ensure that annual budget proposals conform to the five year development plan, consider physical and financial performance for past years, and to look at the government financial position and the New Economic Policy objectives. After completion of the budget hearing, the BRO prepares a budget staff paper which contains the assessment on the proposals, reasons for accepting and rejecting the proposals and the amount recommended for the New Year.
- v. July-August: The Minister of Finance has a dialogue session with every significant business and community group. The dialogue lasts for about two weeks and covers consultation with the Malaysian Institute of Economic Research (MIER), Economic Association of Malaysia, Consumers and Bankers Association, Chambers of Commerce and voluntary organizations. The Treasury officials closely follow the dialogues and take note of the criticisms of existing policies and study the proposals for new policies and tax changes. Present at these dialogues are two Deputy Finance Ministers, Bank Negara Governor and deputy, Head of EPU and Secretary General of key economic agencies. These core agencies and Statistic Department form the Interagency Planning Group (IAPG). They are the government think-tank for the formulation of all major economic planning policies. For budget preparation, IAPG chaired by the Treasury provides all data and analysis on the economy and its prospective performance. Treasury officials then study all this economic and financial information and advise the budget committee chaired by the Minister of Finance. This committee plans the budget strategy, the budget policies and

specific new tax proposals.

vi. September: the Minister of Finance, Bank Negara Governor and their officials attend the annual meeting of the World Bank and International Monetary Fund (IMF) in Washington. The purpose of this meeting is to get feedback on their current state and outlooks on the world economy. The information gathered is fed back to the budget planners in the Treasury who draft the minister's budget speech.

vii. October: The budget speech is presented in Parliament on the last Friday in October each year. The budget speech covers the economic performance of current year, economic prospect of budget year, budget strategy, and budget allocation.

viii. November-December: The budget is debated in both Houses of Parliament. After approval by the Senate, it is forwarded to the Yang di-Pertuan Agong (King) for royal consent and gazette. The Minister of Finance then issues a general allocation warrant to the Accountant General's office as an authority for the Accountant General to utilize the consolidated funds required for expenditure. In return the AG issues an allocation warrant to all controlling officers in various government agencies to utilize the allocation provided for payment of the approved expenditure.

Agency Level

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

Process:

Once the agencies receive the circular from the Treasury, they instruct various departments under them to prepare the budget input. The Budget Implementation Committee of the agency then prepares the budget based on the input provided by its departments. The budget proposal is then submitted to the Treasury and relevant Ministry. The Budget Management Division of the Treasury examines and approves the budget. The budget is then presented to Parliament for approval. After it has been approved by both houses of Parliament and consented to by the Yang di-Pertuan Agong (King), an allocation warrant is sent to the relevant Ministry and agency.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Please see Budget Speech 2017 by the Prime Minister attached.

Public access through yearly publication of the Federal Budget as well as on-line at the Ministry of Finance Website (<http://www.treasury.gov.my>).

Article 9, subparagraph 2(b)

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 measure shall encompass, inter alia:

(b) Timely reporting on revenue and expenditure;

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Timely reporting on revenue and expenditure is governed by the Financial Procedure Act 1957 (Revised 1972) [Act 61] for Federal Government agencies:

Section 16 of the Financial Procedure Act 1957 (Revised 1972) [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 1957 [Act 62], 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 Section 3 of the Financial Procedure Act 1957 (Revised-1972) [Act 61] means a period of twelve months ending on the 31st day of December in any year;

Section 16 - Yearly statement of accounts

(1) The financial authority shall, for the purposes of section 9 of the Audit Act 1957 [Act 62], as soon as practicable after the end of every financial year prepare in respect of that year-

(a) a full and particular statement of the Consolidated Revenue Account showing under the purposes and subdivisions of the estimates laid before the Legislature in respect of that year the amounts estimated to be received and spent in that year and the amounts actually received and spent together with amounts actually received and spent under any purposes and subdivisions not included in the estimates so laid;

(b) a full and particular statement of the Consolidated Loan Account showing receipts and expenditure of loan moneys;

(c) a statement of receipts and expenditure of moneys accounted in the Consolidated Trust Account;

(d) a statement of the accounts of any fund created by the Federal Constitution or by or under section 10 and not accounted in the Consolidated Trust Account;

(e) so far as is practicable, a statement of the assets and liabilities of the Federation or the State at the end of the financial year, the manner in which the assets are invested or held, and the general purposes in respect of which the liabilities are outstanding; and

(f) such other statements as the financial authority may think fit.

(2) As soon as possible after the Auditor General has caused the statements referred to in subsection (1) to be examined and audited they shall be laid before the Legislature.

Section 9(2) Audit Act 1957 [Act 62]

(2) In the event of any such statement not being received within a period of seven months after the close of the financial year to which it relates, the Auditor General shall submit a report to that effect to the Yang di-Pertuan Agong (His Majesty the King) who shall cause it to be laid before the Dewan Rakyat at its next meeting, and in the case of a report relating to a statement due from the Menteri Besar or Chief Minister of a State, the Auditor General shall, before submitting the report to the Yang di-Pertuan Agong, submit a copy thereof to the Ruler or Yang di-Pertua Negeri of that State who shall cause it to be laid before the Legislative Assembly at its next meeting.

Timely reporting on revenue and expenditure of Statutory Bodies is governed by Statutory

Bodies (Accounts and Annual Reports) Act 1980 [Act 240].

Section 7-

Every statutory body shall in respect of each financial year and within one month after the receipt of its audited statement of accounts and the Auditor General's report thereon, if any, submit the same to the Minister together with a report of its activities.

Section 9-

(1) Where a statutory body is unable to submit its statement of accounts for audit within six months after the end of the financial year to which the accounts relate, it shall, before the expiry of such time limit, apply in writing to the Minister for an extension thereof and shall set out the reasons for applying for such extension.

(2) Where a statutory body applies under subsection (1) for an extension of the time limit of six months, the Minister if satisfied with the reasons for the application, may, with the concurrence of the Minister of Finance, grant such extension of the time limit as may be deemed necessary but such extension of the time shall not in any case exceed a period of three months in the aggregate in respect of each financial year, and the statutory body shall then submit its statement of accounts for audit within the time limit as extended.

3. Please provide examples of the implementation of those measures

The Ministry of Finance (MOF) makes available information relating to revenues it receives from various sources (direct and indirect taxes as well as non-tax revenues) and expenditures on a quarterly basis. This information is published in a regular publication called the *Malaysian Economy: Quarterly Updates*, and is available in both hard and soft copies. This information can also be accessed through the MOF's website at the following link: <http://www.treasury.gov.my/index.php/ekonomi/ekonomi-malaysia-suku-tahunan.html>.

Federal Government Financial Statements are prepared annually by the Accountant Generals of Malaysia:

- a. according to the requirements of Section 16(1) of the Financial Procedure Act, 1957 (Revised 1972) [Act 61], Government Accounting Standards and International Public Sector Accounting Standards (IPSAS) - Financial Reporting under the Cash Basis of Accounting;
- b. by consolidating financial information from all accounting offices of the Accountant General's Department of Malaysia (AGD) as well as Ministries.

Financial Statements are audited by the Auditor General before being tabled in Parliament, according to the requirements of Section 16[2] of the Financial Procedure Act 1957 (Revised 1972) [Act 61]. In accordance with the quality policy of the National Audit Department, the certification of Financial Statements, issuance of Audit Certificates and preparation of Audit Reports are done within four months of receiving the auditee's complete Annual Financial Statements.

For financial year 2013 to 2015, AGD has successfully prepared and forwarded the Financial Statements to the Auditor General three months earlier than the statutory date, i.e. six months after the financial year end, whereas Audit certifications were also issued within the stipulated time. Details are as follows:

Financial Year	Submission Date For Auditing	Auditor General's Certificate Date
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2015	24.02.2016	14.04.2016
2014	25.02.2015	22.06.2015
2013	27.02.2014	06.06.2014

Article 9, subparagraph 2(c)

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 measure shall encompass, inter alia:

(c) A system of accounting and auditing standards and related oversight;

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Accounting Standards of the Public Sector

The Accountant General's Department, through its accounting system and its financial procedures, has taken all appropriate measures to ensure that financial transactions recorded in the accounting system adhere to the rules and regulations prescribed by the government, such as the Federal Constitution, the Financial Procedure Act 1957 (Revised-1972) [Act 61], Treasury Instructions and Treasury Circulars. This is to ensure that transparency and accountability in the management of public finances are taken into consideration.

The Malaysian Government comprises of three levels of government, which are the Federal Government, State and Local Government. Each level of government prepares its own accounts and produces financial statements based on the respective accounting basis applied.

The accounting standards used by each level of government are as follows:

1. Federal/State Government

Malaysian Government Accounting Standards (Piawaiian Perakaunan Kerajaan - PPK), and International Public Sector Accounting Standards (IPSAS) Cash basis - financial reporting under the cash basis of accounting.

2. Local Government/Statutory Bodies

(i) Private Entity Reporting Standards (PERS) / Malaysian Private Entity Reporting Standards (MPERS - effective 2016) issued by MASB for agencies that are not bound by the Companies Act 2016 (Act 777), and any other laws governed by the Securities Commission (SC) and the Central Bank (BNM).

(ii) Malaysian Financial Reporting Standards (MFRS) issued by MASB for agencies that are

bound by the Companies Act 2016 (Act 777), and any other laws governed by the Securities Commission (SC) and the Central Bank (BNM)

3. Going forward, Malaysia is embarking on accrual accounting. The Malaysian Public Sector Accounting Standards (MPSAS) are designed to apply to the general purpose financial reports of all public sector entities other than Government Business Enterprise (GBEs). Public sector entities include the Federal Government, State Governments and their agencies, and Local Governments, unless otherwise stated (refer 2(i) and 2(ii)).

Accounting Systems of the Malaysian Government

The Malaysian government has adopted and developed various accounting systems to ensure effectiveness and accountability in accounting and reporting for the public sector.

A. Federal Level Accounting Systems:

Government Financial and Management Accounting Systems (GFMAS) is an accounting system that is used by the Accounting General Department since year 2006. GFMAS is an integrated system that is capable of facilitating financial planning, budget control, and government accounting. It is a platform that combines all accounting functions that cover payments, receipts, salary management, unclaimed moneys, government loans and loans/advances to civil servants, investments and the preparation of Federal Government Financial Statements.

B. State Level Accounting Systems:

Standard Computerised Accounting System of State Government (Sistem Perakaunan Berkomputer Standard Kerajaan Negeri - SPEKS) is an integrated accounting system which is developed by the Accountant General for the State Government excluding Sabah and Sarawak. It is a platform that combines all accounting functions that cover payments, receipts, salary management, state government loans and loans/advances to civil servants, investments and the preparation of State Government Financial Statements.

C. Agency Level Accounting Systems:

Standard Accounting System for Government Agencies (SAGA) or any computerized accounting and financial systems (developed or modified accounting packages in the market) for government agencies which comply with all the requirements of Generally Accepted Accounting Principles and SAGA Compliance criteria set by the Accountant General's Department.

Audit Standards of the Public Sector

Articles 106 and 107 of the Federal Constitution and the Audit Act 1957 [Act 62] require the Auditor General to audit the Federal Government's Financial Statements, financial management, activities of the Ministries/Departments as well as management of the Federal Government companies and submit his reports to His Majesty, Seri Paduka Baginda Yang di-Pertuan Agong (King) and obtain his assent before tabling them in Parliament. To fulfil these responsibilities, the National Audit Department needs to carry out four types of audit as follows:

- i. Attestation Audit - to give an opinion as to whether the Federal Government's Financial Statement for the year concerned shows a true and fair view as well as its accounting records are maintained properly and kept up to date.
- ii. Compliance Audit - to evaluate whether the financial management of the Federal

Ministries/Departments is in accordance with relevant financial laws and regulations.

iii. Performance Audit - to evaluate whether the Federal Government's activities/programmes/projects have been carried out efficiently, economically and achieved its desired objectives/goals.

iv. Government Companies' Management Audit - to evaluate whether the Federal Government companies have been managed in a proper manner.

The Auditing Standards that are taken in practice refer to the Malaysian Approved Standards on Auditing, which are based on the International Standards on Quality Control and International Standards on Auditing.

3. Please provide examples of the implementation of those measures

The Government of Malaysia has made it mandatory for Ministries/Departments/Agencies to establish norms in their service delivery by defining clearly the outcomes through KPIs and their client charters.

This is further strengthened through the signing of Performance Agreements by all levels of officers in the public sector. To ensure that targets set as prescribed by the client charters are achieved efficiently, monitoring and performance reviews are conducted regularly. This further enhances accountability. This approach also helps in an early detection so that precautions or remedial actions could be taken to avoid further losses. The Performance Agreement is used as a tool to measure periodically performance in an objective and transparent manner and to hold accountable all those entrusted with resources and authorities.

Through the above practice, the sense of accountability permeates to all levels of the public service. The control structure embedded with integrity and accountability measures will assist the NAD in conducting performance evaluation.

Some innovative and unconventional approaches initiated by the National Audit Department (NAD) to establish accountability in the public sector are:

- a. The NAD has been actively engaged in the government's efforts to educate and increase awareness among politicians, government officers and other interested parties on issues of accountability, good governance, transparency and integrity.
- b. The topic of audit and accountability is a mandatory topic in all government induction courses where senior officers from the NAD will participate as subject matter experts.
- c. Best Practices Guides or Checklists issued by the NAD as an output from audits conducted in specific areas serve as useful guides for use for the purpose of benchmarking.
- d. Circular letters are issued by central agencies as a result of audit observations and recommendations to further strengthen the accountability framework. Through these circular letters new requirements to strengthen accountability reporting or procedures to enhance controls are explained.
- e. Since 2002, the NAD has also introduced several programmes which aim at improving good governance and accountability, such as: Adopted Agencies, Audit on On-Going Construction Projects and ICT System Development. The NAD offers an advisory and consultancy role on financial management and project management to Ministries/Departments/Agencies that are found weak in these areas. The role of the NAD is to raise awareness on accountability and good governance as well as to promote the practice of prudence risk management in their key activities. The NAD assists organizations in risk

assessment, by identifying potential hazards and their likelihood to occur and the consequences to the organisation should they occur. Identifying risks and instituting controls to mitigate potential risks will identify all parties or individual responsible and accountable for their actions/inactions. The NAD's role here is merely to promote best practice to achieve better governance and accountability. The management of each organization concerned is responsible and accountable for whatever decisions are made/ course of action is taken in relation to organisational affairs. In this regard, we NAD has received overwhelming support and acknowledgements from Ministries/Departments/ Agencies on the positive impact of these programmes towards enhancing their organizational reputation.

The Auditors General emphasize on quality assurance in every phase of the performance auditing process, beginning with planning and implementation to reporting as well as the follow-up mechanisms. Quality Assurance Guidelines 2012 have been published on the Intranet, which all auditors can access for reference. Quality assurance reviews are conducted by each audit sector in the form of meetings and discussions at regular intervals at every phase of the audit. The data-gathering process and analytical work are monitored by the Deputy Audit Director. Monitoring of audit progress is done through the Audit Branch's meetings.

For the reporting aspect, every year, a group of experts is appointed as a member of the Audit Report Committee where the draft audit report is presented for verification process. The role of this Committee, which includes representatives of MACC, is to ensure that:

- i. all relevant audit findings are included in the report;
- ii. the report is reader-based, well structured, clear and concise; and
- iii. the presentation of the entire report balanced in content and not misleading.

The National Audit Department (NAD) has introduced an Accountability Index to measure the quality of financial management of ministries/departments/agencies and states. This covers budgets, revenues, expenditures, trust accounts, procurement, assets and government vehicles. Ratings are to be given every year to ministries/departments/agencies to measure the compliance level of financial management. This AI serves also to ensure that government services delivery achieves integrity and accountability.

The National Audit Department (NAD) envisages its training center (National Audit Academy) to be utilized as a platform for enhancing professionalism in public sector auditing and to produce qualified government auditors. It is entrusted with the responsibility to upgrade and enhance the auditing knowledge, skills and attitude of auditors through systematic and planned training programmes. It takes into account the requirements for current training needs and the need to be prepared for future challenges. In addition, it serves to promote awareness within the public sector on the importance of public accountability through courses offered in the fields of auditing, accounting, information and communication technology and management.

Please see attachments:

- a) Report of World Bank No 20371-MA Malaysia Public Expenditures May 22, 2000
- b) Enhancing Malaysian Public Sector Transparency and Accountability: Lessons and Issues, European Journal of Economics, Finance and Administrative Sciences ISSN 1405-2275 Issue 31 (2011) <http://www.eurojournals.com>.

Article 9, subparagraph 2(d)

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 measure shall encompass, inter alia:

(d) Effective and efficient systems of risk management and internal control; and

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Malaysia fulfils the requirements of sub-paragraph 2 (d) of article 9 under review and addresses compliance with this paragraph under the following sub-topics.

Risk Management Systems and Internal Control

Federal Ministries/Departments and State Secretary's Offices are required to establish Internal Audit Units in accordance with Treasury Circular PS 3.1 - "The Implementation of Internal Audit in Federal Ministries/ Departments and States Secretary's Offices".

Its objective is to help an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes. The roles and responsibilities of Internal Audit Units among others are to:

- (a) Ascertain the reliability and effectiveness of the financial system and internal controls in the organization;
- (b) Ascertain the level of compliance towards all laws, policies, regulations and directives which are still enforceable;
- (c) Ascertain that the activities of the organization are being implemented economically, efficiently and effectively;
- (d) Ascertain that the assets and interest of the organization are being properly safeguarded against theft, fraud and malpractices;
- (e) Give opinion/advice on internal controls of all systems including ICT systems;
- (f) Report audit findings to the Chief Executive and follow up on the resolution of audit issues; and
- (g) Table internal audit reports at the Audit Committee Meeting.

Furthermore, Federal Ministries/Departments and State Secretary's Offices are also required to establish an Audit Committee in accordance with Treasury Circular PS 3.2 - "Establishment of Audit Committees at Federal Ministries/Departments and States' Government Level".

The objectives of the Audit Committee are to discuss the audit findings raised by the Internal Audit Unit and National Audit Department as well as to ensure that preventive and corrective action had been taken by management. The functions of the Audit Committee among others are to:

- (a) Review the integrity of internal control and management information systems;
- (b) Report whether an effective financial and accounting system and related controls exists as

- an early warning sign of the organisation's weaknesses;
- (c) Ensure that there is no obstacle/hindrance that can impair the implementation of internal audit and be given appropriate access to the information;
 - (d) Ensure that the Internal Audit Unit has adequate resources and competent human resources to perform effectively; and
 - (e) Review the Internal Audit and National Audit Department reports to ensure that all issues raised were resolved satisfactorily and to endorse follow-up actions.

In Treasury Instructions (TI) (Arahan Perbendaharaan), there are several descriptions of the roles and responsibilities of public officials who are in charge of financial activities such as accounting, payment, receipts, procurement and management of public assets.

In the future, the Government of Malaysia plans to implement Accrual Accounting to promote transparency and accountability of public finance in which all public assets and liabilities have to be taken into account.

Systems of risk management and internal 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 Chief Ministers (or Menteri Besar) and at the District Level, the District Officers chair the District Development Committee.

However, the sole responsibility in the monitoring and evaluation of the various plans and policies is 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 different plan requirements.

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

- a) 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.
- b) In the 1970s, there was a shift in the monitoring emphasis, with the focus being 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.
- c) 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 agencies. The database contained:

- i. information on development projects approved by the Economic Planning Unit (EPU);
 - ii. annual allocations approved by the Treasury;
 - iii. progress in project implementation in financial, as reported by implementing agencies; and
 - iv. information on development expenditures as recorded in the accounting system of the Accountant-General's Department.
- d) 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 of the six pilot projects under the Electronic Government flagship application. The scope of the Project Monitoring System II (SPP II) covers application, data and communication. The Project Monitoring System is capable of effectively monitoring and controlling the flow of budgets allocations. One can conclude that the monitoring system is designed:

- a. to identify and address failures, problems and delays in the implementation of the various development activities;
- b. to measure the physical and monetary performance against the achievement of the objectives and benchmarks;
- c. to ensure that activities are implemented on schedule and within the stipulated cost;
- d. to inform/ coordinate the activities of the various ministries and state government including controlling budget allocation.

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.

Starting from the 10th Malaysian Plan, SPPII has further evolved to enable for online application of development projects and online reporting of Project Outcomes. These improvements allowed SPPII to provide for end to end solution that caters for the full Project Cycle consisting of Planning - Implementation - Evaluation (PIE).

On 6 March 2005 the Government of Malaysia (GOM) 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. The circular was reviewed and revised during the 10th Malaysia Plan to correspond to Outcome Based Approach (OBA), Outcome Based Budgeting (OBB), Value Management (VM) and Outcome Based Monitoring which were outlined in the plan. The new circular, Guidelines For Measuring the Achievement of Programmes/Projects Development Through Outcome

Evaluation Circular No.1/2012 was introduced and implemented effective from 19 December 2012.

Risk Management Systems (RMS) in Public Financial Management

In the area of public financial management, Malaysia has implemented several legal and administrative measures to mitigate certain vulnerabilities (corruption, cheating, fraud, misrepresentation, theft, undue influence and cybercrimes) that affect the efficiency and transparency of the government financial management. These measures that come in the form of legislation, instructions, and related circular letters, namely:

(1) The Financial Procedure Act 1957 (Revised 1972) [Act 61] which is an Act to provide for the control and management of the public finances of Malaysia, and for financial and accounting procedure including procedure for the collection, custody and payment of the public moneys of the Federation and of the States and the purchase, custody and disposal of public property, other than land, of the Federation and of the States and for the matters connected therewith.

(2) The Contracts Act 1950 - an act detailing parameters under which contracts and agreements (for works and services) between the Government and parties to procurement contracts operate as well as protecting government interests, in cases of:

- (a) coercion;
- (b) undue influence;
- (c) fraud;
- (d) misrepresentation; or
- (e) mistake,

(3) Treasury Instructions (Arahan Perbendaharaan) which are the principal financial and accounting procedures issued by the Treasury in line with Section 4 of the Financial Procedure Act 1957 (Revised 1972) [Act 61] and encompass the regulations that need to be adhered to in the management of Government funds including procurement.

The Treasury Instructions are divided into three (3) areas:

- a. Financial Procedure
- b. Financial Accounting Procedures
- c. Auditing, Losses, and Write-Off Procedures

Application: all Ministries, Federal Departments, State and Local Governments and Federal Statutory Bodies.

(4) Other related Circulars issued from time to time

(5) Corruption Risk Management (CRM)

Corruption Risk Management (CRM) is a risk-based approach developed by the MACC to assist the management of both the public sector and private sector to detect and assess risks of corruption in organizations in tandem with the implementation of the Prime Minister's Directive No. 1 of 2009.

Although the PM's Directive No. 1 of 2009 has since been replaced with the PM's Directive No. 1 of 2014 the primary objective in respect of preventing corruption in the overall government administration including financial management under the two Directives remained the same, namely to:

“Plan and implement preventive and rehabilitative measures to overcome problems and weaknesses particularly in Government financial management, public administration, handling of disciplinary cases, corruption, abuse of power and embezzlement prohibited by religious

values, laws, and regulations.” (PM’s Directive No.1/2014)

The Corruption Risk Management (CRM) methodology is developed to minimise or eliminate risks in the implementation of core activities, inclusive of financial management in a public body. The CRM adopts a risk assessment and risk management approach to aid agencies in developing a Corruption Risk Management Plan.

CRM is essentially a management tool for agencies to identify threats/risks of corruption in their organizations and to take measures to improve practices, systems and work procedures in order to avoid the existence of opportunities for corruption, abuse of power and embezzlement.

The CRM will help the management to formulate the Risk Management Plan of Corruption for their organizations under the following seven (7) terms of reference:

- (a) Policy and Legislation;
- (b) Work system and procedures;
- (c) Universal values and Code of Ethics;
- (d) Client Management;
- (e) Internal Control;
- (f) Detection, Sanction and Rehabilitation ; and
- (g) Recognition and Appreciation.

Implementation of CRM

Currently, the CRM approach is being implemented through two methods:

(i) in the form of workshops and training seminars to various Ministries, Federal and State government agencies as well as GLCs by the Enterprise Risk Management Team under the auspices of the Anti-Corruption & Ethics Centre (ACE), Division of Inspection and Consultancy of the Malaysian Anti-Corruption. The number of workshops and training seminars on corruption risk management held for government departments and agencies as follows:

Year	Number Of Workshops
2013	14
2014	32
2015	35

(ii) a mandatory directive to conduct corruption risk assessment, with a view to developing a CRM Action Plan by all Certified Integrity Officers (CeIOs) in the Integrity Units of Government Ministries and Departments, following a decision of the 2015 National Meeting of the Committee on Integrity and Governance (JITU) chaired by the Minister in the Prime Minister’s Department in charge of Governance, Integrity and Human Rights. The CRM Action Plan of the Road Transport Department (Jabatan Pengangkutan Jalan) Malaysia under the Ministry of Transport (MOT) that has been developed will be the benchmark plan for all other CRM Action Plans.

Internal Control in Public Financial Management

The National Audit Department (NAD) created a ranking system to measure effectiveness of administrative controls. NAD is the Malaysian Supreme Audit Institution responsible for evaluating management performance of all ministries, departments, and autonomous entities at the central, states and local governments in Malaysia. To respond to concerns of the government on the repeated cases of non-compliance and weak internal controls mentioned in the annual audit reports, NAD developed a detailed rating system to measure control performance according to eight major criteria:

- (i) organizational management control;
- (ii) budgetary control;
- (iii) receipts control;
- (iv) expenditure control;
- (v) bank accounts control;
- (vi) asset and inventory management;
- (vii) investment and loan management; and
- (viii) financial statements.

The methodology used is based on a four-star rating classification of a set of indicators and sub-indicators to indicate if performance is considered excellent, good, satisfactory, and not satisfactory.

The Accountability Index

The Accountability Index is an objective way to measure and compare control effectiveness across the entire government. The information since 2007 is available at NAD webpage www.audit.gov.my under the label "Accountability Index".

A. The Methodology

For each criterion there is a set of indicators and sub-indicators used to capture the most relevant control issues. The assessment of the Organizational Management Control aims to ascertain to what extent the agencies have established an effective structure, system and procedure on financial management.

The main indicators and sub-indicators to measure this criterion are:

- (i) organization structure: organization chart; delegation of power; segregation of duties; existence of structures such as Board of Directors, Top Management, and Councils;
- (ii) system and procedures: financial and accounting regulations; work procedure manual; desk file; surprise/spot checks;
- (iii) committee and Internal Audit Unit: financial management and accounts committee, audit committee; development action committee; management integrity committee; internal audit unit;
- (iv) human resource management: establishment; work transition plan; human development panel; training; surcharge.

On Budgetary Control the aim is to assess whether budgetary controls ensure that the agency budget is properly planned, prepared, and executed according to the legislation and entities' objectives. Budget preparation; allocation distribution; approval of virement/supplementary allocation; monitoring of expenditure/performance; and reporting are evaluated.

On the Control of Receipts the objective is to ascertain whether receipts are effectively managed according to the laws and regulations, and safekeeping, accuracy and completeness of accounting records are ensured. There are five indicators for this area:

- (i) control of revenue forms: usage of revenue forms and recoding of revenue forms;
- (ii) receipt of monies: authority/approval; security controls; receipts through mails; and receipts at the counter;
- (iii) bank-in collections;

- (iv) accounting control on receipts/revenues; and
- (v) management of account receivables.

On Expenditure Controls the aim is to determine whether all expenditures have been approved and utilized according to entities' objectives. It includes:

- (i) accounting control;
- (ii) procurement management: direct purchase; general controls of quotation/tender; management of quotation; management of tender; records and contract agreements; and e-procurement;
- (iii) payment management: internal control on payment process; expenditure requiring special approval; payment registers/records; bill register; and management of petty cash imprest.

Regarding cash management there are three indicators to evaluate the management of the consolidated fund, revolving funds, and deposit accounts.

On asset and inventory management the focus is on the agencies' capacity to properly manage, safeguard, and report on assets according to specific laws and regulations. There are seven indicators in this area:

- (i) general controls: asset committee; asset management unit; and asset officer;
- (ii) collection (delivery and acceptance controls): receiving officer and collection regulations;
- (iii) registration: registration administration; custody of register; and asset labeling;
- (iv) usage, custody, and inspection: usage; custody; asset inspection/stock verification; and usage of department's vehicles;
- (v) asset maintenance: maintenance regulations and maintenance of vehicles;
- (vi) disposal: inspection board and disposal procedures; and
- (vii) loss and write-off: management of loss and management of write-off.

On Investment and Loan Management the objective is to assess whether investment and loans are properly managed. For investment management, the indicators cover the investment committee and the management of investment. For loan management, the indicators relate to the authority to obtain a loan, authority to give a loan, loan records, and loan agreement.

Finally, on the Financial Statement the purpose is to measure whether the financial position of the agency is adequately demonstrated in the accounting reports. The two indicators used are related to financial performance and submission of financial statements in terms of completeness and timeliness.

The score is calculated by attributing a 1 to 4 point score for each indicator or sub-indicator. Then weighted system considers the differences on risk and complexity. The weight list varies also if the agency is a federal or a state agency or is another other agency of the government. The weight list used is the following:

Elements	Weight Federal and State Ministry or Department	Weight for other Government Agencies
Organisation Management Control	10	20
Budgetary Control	15	5

Receipt Control	20	15
Expenditure Control	25	25
Cash Management Control	10	10
Asset and Inventory Management	20	15
Investment and Loan Management	0	5
Financial Statement	0	5
Total	100	100

This comprehensive approach provides a tangible and comparable mechanism to inform authorities of the areas in which controls are more effective. Because NAD uses a standardized scoring system it gives managers a transparent tool to assess performance on control mechanisms. Results so far have indicated that federal ministries, for example, score between 60 and 90. This means that there is good compliance on basic control requirements. However, as Malaysia is implementing more sophisticated reforms such as performance budgeting, the next step would be to include other variables related to the achievement of program objectives, cost-effective use of budget resources, and effectiveness of government policies.

(Source: Mario Pessoa (2011) Deputy Division Chief at International Monetary Fund)

Roles and Responsibilities of Public Officials Authorized to Certify Payment Orders, Financial Reports

Section 15A- of the Financial Procedure Act 1957 (Revised-1972) [Act 61] provides for the appointment of Controlling Officers who also act as Accounting Officers appointed under Section 4 of the said Act.

Section 4- Duties of accounting officers

Every accounting officer shall be subject to this Act and shall perform such duties, keep such books and render such accounts as may be prescribed by or under this Act or by instructions issued by the Treasury in matters of financial and accounting procedure not inconsistent therewith: Provided that a State accounting officer shall in addition be subject to any instructions of the State financial authority not inconsistent with the foregoing.

Section 15A -Controlling Officers

(1) The Minister or the Menteri Besar or Chief Minister, as the case may be, may appoint, in respect of each purpose of expenditure provided for any financial year in the estimates, a

controlling officer to control, subject to any directions given by the financial authority, the expenditure authorized under that purpose and to be the chief accounting officer in respect of all public moneys collected, received or disbursed and all public stores received, held or disposed of by or on account of the department or service for which the purpose is provided.

(2) Every controlling officer shall, subject to any written law and of any instructions issued by the financial authority under section 4, prescribe the extent to which the powers and duties conferred or imposed upon him may be exercised or performed on his behalf by any accounting officer under his control, and give such directions as may be necessary to secure the proper exercise or performance of such powers and duties.

(3) Every controlling officer shall, if so required by the Minister or the State financial authority, as the case may be, to the extent that he is responsible for the control of the public moneys to which any part of the statements referred to in section 16 relates, certify under his hand, subject to such explanation or qualification as he may think necessary, the correctness of that part of the statement and the propriety of the charges shown therein.

(4) Every controlling officer shall report in writing to the appropriate Service Commission and financial authority every event of possible surcharge under paragraph 18(a), (b), (c), (d) or (e) which arises or occurs under his control. (5) The officer appointed under subsection (1) to be controlling officer in respect of each purpose of expenditure provided for any financial year shall be designated by the title of his office in the estimates of expenditure in respect of that year laid before the Legislature pursuant to Article 99 of the Federal Constitution or pursuant to the Constitution of the State, and such designation in the estimates shall constitute sufficient notification of the appointment.

Authority responsible for Financial Reports

The public officials responsible for financial reports are

- (i) the financial authorities of the Federal Consolidated Fund, namely, the Chief Secretary of Treasury, and in the case of the Consolidated Fund of a State, namely, the principal officer in charge of the financial affairs of a State; and
- (ii) the Auditor General as provided for under Section 16 of the Financial Procedure Act 1957 (Revised-1972) [Act 61] as follows:-

Section 16 -Yearly Statement of accounts

(1) The financial authority shall, for the purposes of section 9 of the Audit Act 1957 [Act 62], as soon as practicable after the end of every financial year prepare in respect of that year-

(a) a full and particular statement of the Consolidated Revenue Account showing under the purposes and subdivisions of the estimates laid before the Legislature in respect of that year the amounts estimated to be received and spent in that year and the amounts actually received and spent together with amounts actually received and spent under any purposes and subdivisions not included in the estimates so laid;

(b) a full and particular statement of the Consolidated Loan Account showing receipts and expenditure of loan moneys;

(c) a statement of receipts and expenditure of moneys accounted in the Consolidated Trust Account;

(d) a statement of the accounts of any fund created by the Federal Constitution or by or under section 10 and not accounted in the Consolidated Trust Account;

(e) so far as is practicable, a statement of the assets and liabilities of the Federation or the State at the end of the financial year, the manner in which the assets are invested or held, and the

general purposes in respect of which the liabilities are outstanding; and

(f) such other statements as the financial authority may think fit.

(2) As soon as possible after the Auditor General has caused the statements referred to in subsection (1) to be examined and audited they shall be laid before the Legislature.

Liability of public officials for unintentional errors or wrongdoings

The liability of public officials for unintentional errors or financial wrong doing by subordinates is in the form of a surcharge, as provided for under Section 18 and Section 21 of the Financial Procedure Act 1957 (Revised-1972) [Act 61] as follows:

Section 18- Surcharge

If it appears to the appropriate Service Commission, after consultation with the financial authority, that any person who is or was in the employment of the Federal Government or the Government of a State-

(a) has failed to collect any moneys owing to the Federal Government or the Government of the State for the collection of which he is or was responsible;

(b) is or was responsible for any improper payment of public moneys of the Federal Government or the Government of the State or for any payment of public moneys which is not duly vouched;

(c) is or was responsible for any deficiency in, or for the destruction of, any public moneys, stamps, securities, stores, or other property of the Federal Government or the Government of the State;

(d) being or having been an accounting officer, fails or has failed to keep proper accounts or records; or

(e) has failed to make any payment, or is or was responsible for any delay in the payment, of public moneys of the Federal Government or the Government of the State to any person to whom such payment is due under any law or under any contract, agreement or arrangement entered into between that person and the Federal Government or the Government of the State, and if a satisfactory explanation is not, within a period specified by the Commission, furnished to the Commission with regard to the failure to collect, improper payment, payment not duly vouched, deficiency or destruction, or failure to keep proper accounts or records, or failure to make payment, or delay in making payment, the Commission may surcharge against the said person a sum not exceeding the amount of any such amount not collected, such payment, deficiency, or loss or the value of the property destroyed, as the case may be; and with regard to the failure to keep proper accounts or records, or the failure to make payment, or the delay in making payment, the Commission may surcharge against the said person such sum as the Commission may think fit.

Section 21- Recovery of surcharge

The amount of any surcharge made under section 18 and not withdrawn under section 20 shall be a debt due to the Government concerned from the person against whom the surcharge is made and may be sued for and recovered in any court at the suit of that Government and may also be recovered by deduction-

(a) from the salary of the person surcharged if the Minister or the Menteri Besar or Chief Minister so directs; or

(b) from the pension of the person surcharged if the Minister so directs, by equal monthly instalments not exceeding one-fourth of the total monthly salary or pension, as the case may be,

of the officer.

Maintenance, organization and storage of financial records.

Financial records in Malaysia are electronically generated and therefore subject to Guidelines on Electronic Records Management under Electronic Records Management And Archives Management Policy issued by National Archive of Malaysia, the detailed procedures of which are cited in Article 9 paragraph 3.

Additional Information on Risk Management in Public Financial Management

The risk management system in the area of public financial management specifically on public procurement is based on several drivers under different ministries. The Implementation and Coordination Unit (ICU) under the Prime Minister's Department is responsible and accountable for implementation of projects. In each Ministry, there are Key Performance Indicators (KPI) whereby these indicators will be evaluated and reviewed constantly.

Each Ministry is required to provide an Annual Procurement Plan to ensure all procurements for the year are properly planned taking into consideration all risks. Other than that, each Ministry is also required to establish a committee that among its responsibility are to identify and classify potential risks and provide mitigation plans.

The National Audit Department is responsible for carrying out audits on all Federal Ministries, Federal Departments, State Government, Federal and State Statutory and Local Authorities. The scope of auditing encompasses financial statements auditing, compliance auditing and performance audit auditing. Under the performance audit, the National Audit Department also implements the Accountability Index in giving a rating to Ministries which is included 20% with 55 indicators on procurement matters. The Audit Reports will be tabled in Parliament and will be scrutinised by the Public Account Committee (PAC).

These processes are conducted to mitigate risks in the area of public financial management.

3. Please provide examples of the implementation of those measures

Internal or external reports regarding the effectiveness and efficiency of the risk management system and internal controls

1. Treasury Circulars related to internal control are as follows:

- (a) AM 1.1 - Government Asset management;
- (b) PS 1.2 - Implementation of Accrual Accounting for Federal Government;
- (c) PS 3.1 - The Implementation Of Internal Audit In Federal Ministries/ Departments And States Secretary's Offices;
- (d) PS 3.2 - Establishment Of Audit Committees At Federal Ministries/ Departments And States' Government Level; and
- (e) PS 5.1 - Guidance for Implementation of Financial Management and Accounts Committee.

2. Other examples of the implementation of internal control can also be viewed in the Audit Report and Annual Audit Report by the Internal Audit Unit of the respective Ministries. External reports on risk management and internal control can be viewed in the Auditor- General's Report and Inspection Report (Laporan Naziran e-SPKB 'Sistem Perancangan dan Kawalan Belanjawan Elektronik') by the Accountant-General's Department.

Statistics on number of reports made of suspected financial mismanagement or misconduct, including the number of follow-up investigations and their outcomes

1. Auditor General's Report 2013, 2014 and 2015 (Attached)

1.1 Follow-up Action taken on reprimands contained in the Auditor General report 2015, Series 1.

The AG's Report 2015, Series 1 was tabled in Parliament on May 18. The two types of reprimand contained in the report are:

- (i) corrective, involving the upgrading of systems and procedures, and
- (ii) punitive because of misappropriation, abuse of power, misconduct and negligence in carrying out duties.

In the report were 751 reprimands, comprising 708 corrective reprimands (94.3 per cent) and 43 punitive ones (5.7 per cent) involving four (4) ministries, two (2) federal statutory bodies, seven (7) state governments and two (2) federal companies.

Out of the 708 corrective reprimands, remedial actions have already been undertaken by the ministries or agencies involved on 280 reprimands or 39.5 per cent, while for the other 428 reprimands (60.5 per cent) it is still in the process as the actions will take time.

Six Special Investigation Committees were set up to probe four ministries over 10 punitive reprimands as contained in the Auditor-General's Report 2015, Series 1. The four are the Works Ministry, Home Ministry (KDN), Prime Minister's Department (JPM), and Urban Wellbeing, Housing and Local Government Ministry. The investigations were aimed at obtaining the relevant information with regard to witnessing of the wrongdoings and involvement of the officers in the reported cases.

Based on the investigations, two (2) reprimands involved procurement management and services at the Civil Defence Department, JPM, and implementation of the Malaysian Immigration System (myIMMs), Ministry of Home Affairs (KDN), which provided the basis for initiating disciplinary proceedings against six officers involved- four (4) on Grade 48 and above and the other two(2) on Grade 44 and below.

Eight (8) reprimands had no elements of misappropriation, power abuse, misconduct or negligence in carrying out tasks, but instead required improvements to the system, procedures and existing rules."

A total of 33 reprimands involving federal statutory bodies, state governments and federal companies, were brought by the National Audit Department to the AG's Report Action Committee to determine the kinds of action to be taken.

1.2 Follow- up Action taken on AG Report 2014

From the AG's Report 2014 which contained 49 punitive reprimands, 99 officers faced disciplinary proceedings or investigations by the Malaysian Anti-Corruption Commission (MACC). The Disciplinary Board decided that 15 of them be given warnings or demoted while the verdicts or punishment for 20 other officers are still in the process of being determined. The board found 64 of the officers not guilty of misconduct. They included 16 officers who retired, as such no disciplinary action could be taken against them unless if their cases involved criminal offences. According to the AG's Reports from 2012 until 2014, a total 147 officers faced surcharge or disciplinary actions including warnings and sacking, as decided by the Disciplinary Board.

1.3 Statistics of cases investigated and follow-up action by MACC based on Auditor General's Report

MACC actions pertaining Auditor General's Report 2006-2015 (10 years)

Year	Arrests	Prosecute (Person)	MACC Report Submitted To Agencies For Disciplinary Actions (Person)
2006	16	16	9
2007	0	0	0
2008	3	3	4
2009	0	0	0
2010	0	0	5
2011	4	4	7
2012	1	1	7
2013	0	0	0
2014	0	0	1
2015	0	0	0
TOTAL	16	24	33

Example of Corruption Risk Management Plan

Please see Pelan Pengurusan Risiko Jabatan Pengangkutan Jalan Malaysia (Slide Presentation) attached.

Studies

1. Bebe Abu Bakar, Siti Zaleha Abdul Rashid and Adriana Mohd Rizal. Risk Management Practices in the Malaysian Public Sector, Journal of Global Business and Social Enterprise Vol.1 No.2 (2016) page 88-101: www.gbse.com.my
2. David R. Stiles, Yusuf Karbhari and Muslim H.S.Muhamad, The New Public Financial Management in Malaysia, ResearchGate Conference Paper August 2006, <http://www.researchgate.net/publication/234054286>

(b) Observations on the implementation of the article

In respect of internal controls of public financial management, the response states that NAD developed a rating system to measure controls in response to concerns of the government on the repeated cases of non-compliance and weak internal controls mentioned in the annual audit reports; an Accountability Index was also developed. Malaysia further provided statistics on the number of reports made of suspected financial mismanagement or misconduct, including the number of follow-up investigations and their outcomes, based on the Auditor General's reports.

In terms of risk-management in the area of public financial management, the response refers to the Corruption Risk Management (CRM) methodology of the MACC's Inspection and Consultancy Division (ICD), the system of internal controls of national budget expenditures on development projects/programmes under the National Action Council (NAC), as well as the functions of the Internal Audit Units in Federal Ministries/Departments. Apart from these, a risk-based approach (RBA) is also applied to all financial and performance audits.

The reviewers are of the view that Malaysia could consider strengthening the risk-management

system in the area of public financial management.

Article 9, subparagraph 2(e)

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 measure shall encompass, inter alia:

(e) Where appropriate, corrective action is the case of failure to comply with the requirements established in this paragraph.

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

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

A. Appointment of the Auditor General under The Federal Constitution :

- a) Article 105: provides for the appointment of the Auditor General
- b) Article 106: provides for the powers and duties of the Auditor General
- c) Article 107: provides for reports of the Auditor General to be laid before the House of Representatives.

B. Establishment of Internal Audit Unit (IAU) under Treasury Circular No.2 of 1979 (replaced by Treasury Circular PS 3.1) entitled "Implementation of Internal Auditing in Federal Government Agencies". The IAU in the Ministry or Department is responsible for the followings:

- a) Evaluate whether the agency's financial operations are properly managed to ensure all policies, laws and regulations that are mandatory are followed;
- b) Review and evaluate systematically the agency's operations in terms of their adequacy, efficiency, effectiveness and economy;
- c) Make recommendations on how to improve the agency's operations in areas that require improvement or corrective measures;
- d) Submit 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; and
- e) Where necessary, provide 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.

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

- 1. 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.
2. 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.
 3. In the absence of the Chairman or Vice chairman 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.
 4. No member may be appointed or nominated to or act as Chairman or member of the Public Accounts Committee while he is a Minister.
 5. The Committee shall have power to send for persons, papers and records, and to report from time to time.

3. Please provide examples of the implementation of those measures

The Treasury Internal Audit carries out follow up audit on issues raised by the National Audit Department (NAD) and Treasury Internal Audit itself within the year or following year after various types of audit being conducted, if necessary.

As a measure taken to promote transparency and accountability in the management of public finances, National Audit Department had introduced Auditor General's Dashboard. Brief description about the system as follows:

1. Auditor General's Dashboard (AGD) had been launched on 30 May 2013 in accordance with Government Transformation Programme (GTP 2.0) under National Key Result Area Corruption Initiative to cater to public needs in ensuring transparency of the issues raised in the Auditor's General report and to track issues highlighted.
2. The Objective of the AG' Dashboard as follows:
 - i. As a channel to ensure that urgent action is taken by audit towards issues raised in Auditor General Report and in the same to solve pending issues
 - ii. To provide brief and accurate information about issues online
 - iii. Encourage transparency
 - iv. As a medium to accelerate issue solving raised in Auditor General Report
 - v. To improve public perceptions to Auditor General Report specifically and National Audit Department generally
3. AGD can be assessed online by public and interested parties that want to know current status of the raised issues where it creates a more accountable procurement environment. Through AGD Government agencies are required to update the current status of unsettled issues via online where automatic notification will be sent for those unsettled issues. The audit findings been categorized by traffic light colours, i.e. red, yellow and green and been explained as follows:
 - i. Red - action not been taken up by the agencies (no action)
 - ii. Yellow - corrective action been taken up in stages (in action)

iii. Green - corrective action been taken up and issues settled (completed)

4. Current statistics on the follow up actions on Auditor's General Report for 2015 as follows:

Status	No. of Audit Findings		Total
	1st Series	2nd Series	
No Action	5	29	34
In Action	298	622	920
Complete	448	293	741
TOTAL	751	944	1,695

5. Action Committee on Auditor's General (AG's) Report has been established to cater action that need to be taken by the Government agencies as to safeguard recurring of the punitive issues. This committee been chaired by Auditor General himself and members are from the Attorney General's Chambers, Public Service Department, Treasury, Royal Malaysia Police, Malaysian Anti-Corruption Commission and Economic Planning Unit.

6. Whereas Putrajaya Inquisition is a platform to clear all unresolved issues in the AG's report that been pending more than a year and chaired by the Prime Minister.

7. Apart from the above AGD's mechanism, Audit Committee and Financial And Account Management Committee been set up to adhere transparency and accountability in public finance and been explained as follows:

i. Audit Committee is set up accordance to circular by treasury at ministry level to discuss issues raised by Internal Audit and National Audit Department and to ensure preventive and corrective action taken by management and to ensure the weaknesses not occur again in the future.

ii. Financial And Accounts Management Committee is set up accordance to circular by treasury at ministry level to discuss budget, accounting, procurement, asset and store expenditure allocation performance by federal statutory body

(b) Observations on the implementation of the article

Malaysia describes a series of measures taken, primarily in the form of follow-up action to address the findings of the Auditor General's reports. The Auditor General's Dashboard system appears to be an effective tool in this regard.

Paragraph 3 of article 9

3. Each State Party shall take such civil and administrative measures as may be necessary, in accordance with the fundamental principles of its domestic law, to preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia's administrative measures to record, store and preserve the integrity of accounting books, records, financial statements or other documents related to public expenditure and revenue and to prevent the falsification of such documents are within the ambit of the Treasury Instructions (Arahan Perbendaharaan), Treasury Circulars (Pekeliling Perbendaharaan), as well as the National Archives Act 2003 [Act 629], which is an Act to provide for the creation, acquisition, custody, preservation, use and management of public archives and public records; and for other matters connected therewith.

Standards to prevent the falsification of official government accounting books, records, financial statements or other documents:

(i) Any new or amendment to the financial forms must be approved by the Secretary-General of Treasury.

Reference numbers will be assigned to appear on the approved forms. The National Audit Department must be consulted upon printing any collection/revenue forms and if the revenue form is required by law, advice from the Attorney-General's Chambers must be sought.

Printing of financial forms is carried out by printers that are registered with the Ministry of Finance or under a special concession scheme (Skim Konsesi Khas) i.e. Syarikat Percetakan Nasional Malaysia Berhad and Percetakan Keselamatan Nasional Berhad. The printed collection/revenue forms are controlled through serial numbers.

Financial transactions are carried out through the electronic system i.e. e-SPKB (Sistem Perancangan dan Kawalan Belanjawan Elektronik) for expenditure and e-Terimaan for receipts. It involves a single point of data entry and will automatically update the relevant records. Only authorised personnel are allowed to access the system. This will preserve the integrity of the accounting books, record and financial statements. Reference can be made in Treasury Instructions (Arahan Perbendaharaan) 60, 64, 65, 66, 66A, 67 and 80.

(ii) Control and Issuance of Financial Forms

a. Government agencies must ensure that all financial forms are recorded, checked and stored satisfactorily, controlled and used after they have been issued

b. Government agencies that collect revenue from stamp duties are required to get the prior approval of the Chief Secretary of Treasury.

c. Collector of Public Money is responsible for electronic collection in accordance with Treasury Circulars currently enforced

d. Officers who has been financial forms must ensure the correctness of serial numbers of the financial forms (used and unused) and record the serial numbers in the Statement of Controlled Financial Form (Penyata Mengenai Borang-Borang Hasil yang di Kawal Kew.68-Pin 2/87) stating that "I ... certified that the unused financial forms stated under column 3 have been checked and affirmed to be correct. "

e. Stock checking of financial forms must be carried out by the Store Clerk at least once a week.

In the event a collector is replaced, the stocks of all financial forms must be verified and recorded by both the handing over officer and replacement officer using the Statement of Controlled

Financial Forms (Penyata Mengenai Borang-Borang Hasil yang di Kawal Kew.68-Pin 2/87) with a statement by both officers endorsing the accuracy of the stock with the following words: “We certify that the unused revenue collection forms stated under column 3 have been checked and affirmed to be correct”.

(iii) Recording of Financial Forms.

Ministries/Departments/Government Agencies must ensure that receipts are accurately recorded and updated in the Register of Financial Forms (Daftar Borang Hasil- Kew 67-Pin 1/84).

Procedure to ensure that all official receipts that has been used are recorded in Cash Book or Electronic Cash Book immediately and properly are as follows:

- a. Recording must be carried before the end of the day.
- b. The responsible officer must check the Cash Book or Electronic Book with the official receipts on a daily basis to ensure that the recording of financial forms has been carried out properly based on receipts that had been issued.
- c. The authorised officer in charge of stamp revenue must ensure that the stamps have been cancelled to avoid usage of stamps for his own interest
- d. A report must be made immediately in cases of loss of financial forms to avoid them being used by irresponsible officers or other parties.
- e. All revenue collection forms which are obsolete should be destroyed with the approval of Auditor General of Malaysia.
- f. If revenue is collected in the form of postage stamps, provisions of the Stamps Act 1949 [Act 378] must be adhered to.

Outline of the general schedule of records retention and disposition, including any controls or security standards for government records;

The general schedule of records retention and disposition has been published by National Archives of Malaysia as below:

1. Jadual Pelupusan Rekod Urusan Am (General Records Disposition Schedules)
2. Jadual Pelupusan Rekod Kewangan dan Perakaunan (Financial And Accounting Records Disposition Schedules)

Measures in compliance with the article under review come within the ambit of the National Archives Act 2003 [Act 629] as follows:

In accordance with Section 4 of Act 629 there shall be established a National Archives of Malaysia which is declared to be a federal archives, for the purpose of providing guidelines in the creation, acquisition, storage and preservation of records and providing facilities of reference, research or other purposes.

Under Act 629, “records” means “materials in written or other form setting out facts or events or otherwise recording information and includes papers, documents, registers, printed materials, books, maps, plans, drawings, photographs, microfilms, cinematograph films, sound recordings, electronically produced records regardless of physical form or characteristics and any copy thereof.”

The term, “public records” means “records officially received or produced by any public office for the conduct of its affairs or by any public officer or employee of a public office in the course of his official duties and includes the records of any Government enterprise and also includes all records which, on the coming into operation of this Act, are in the custody or under the control of the National Archives of Malaysia established under the National Archives Act 1966 [Act

Section 25 - Prohibition against destruction of public records

(1) Notwithstanding any written law to the contrary, no person shall, except with the prior written consent of the Director General, destroy or authorize the destruction of any public records which are in the custody or under the control of that person.

(2) A person intending to destroy or authorize the destruction of any public records shall- (a) notify the Director General in the prescribed form of the intention to do so; and (b) in such notification, specify the nature of the public records in question.

(3) The Director General may require any public records specified in a notification under subsection (2) to be made available to him for his inspection and he may inspect such records.

(4) The Director General may, in accordance with section 26, consent to the destruction of the public records specified in the notification under subsection (2).

(5) Any person who contravenes subsections (1) and (2) or who fails to have available any public record as required by the Director General under subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Section 26-Disposal of public records

The Director General may authorize the disposal of any public records or classes of public records which-

(a) by reason of their number, kind or routine nature, do not in his opinion possess any permanent and enduring national or historical value or both;

(b) are not required for reference purposes in any public office after-

(i) action on the public records are completed;

(ii) the expiration of such period as may be agreed upon between the Director General and the administrative head of that public office; or

(c) their physical condition does not permit their continued preservation.

Section 27 - Record Disposal Schedule

(1) The administrative head of a public office shall prepare and submit a record disposal schedule in the prescribed form for the disposal of public records to the Director General for his approval.

(2) The Director General may approve the record disposal schedule submitted under subsection (1) and, in approving any such schedule, may impose any requirement or condition as he thinks fit.

(3) For the purpose of this section, "records disposal schedule" means a schedule identifying those records of archival value to be preserved and authorizing the destruction of the remaining records after the lapse of specified retention periods.

Section 28-Transfer of public records to National Archives

(1) Subject to subsection (2), the following public records which are in the custody or under the control of a public office shall be transferred by the administrative head of public office to the custody and control of the National Archives:

(a) any public records which have been concluded for a period of more than five years;

(b) any electronically produced records; and

(c) any non-current public records which in the opinion of the Director General are of permanent and enduring national or historical value or both.

(2) Electronically produced records shall be transferred immediately when they are no longer active.

Deposit of public records

Section 32 of the National Archives Act 2003 [Act 629]

(1) All records required under this Act to be transferred or surrendered to, or to be deposited with the National Archives, shall be deposited in the National Archives or at any other place as the Director General may direct.

(2) In any case in which records of any description are deposited with the National Archives pursuant to this Act, the Director General shall receive and retain the records in the manner and for the purposes directed by this Act, and shall make such notes or endorsements on, and give such acknowledgments in respect of, the records as may be necessary.

Procedures for Destruction of Public financial and accounting records

The destruction of financial and accounting records is the final process in records management where records have been completed and action is no longer required and has reached a minimum period of storage are destroyed in accordance with the rules. Destruction of records can help overcome the problem of office space, saving the cost of purchasing equipment storage, saving time making records search and making records management system more systematic and efficient.

All government agencies are responsible for ensuring that the financial and accounting records can be provided and can be used for a predetermined period of time. The existing regulation on the management of financial and accounting records contained in the Treasury Instructions (AP) 150 provides that "all books and financial records and accounting should be kept securely for at least the period prescribed in Annex M. This period has taken into account the needs of auditing and investigation. Books and financial records and accounting must be destroyed after a minimum period of storage. Table below shows an example of financial and accounting records listed in the Annex M.

The minimum period for keeping the books and financial records and accounting

Books or records	The minimum period of storage
Special ledgers and records, for example, the Public Loans Office Debt Register and the Register of Transfers	20 years after the final settlement of all matters and final closing of account
Main Treasury Accounting Ledger, Cash Book, Journals of General, Summary and sub-Ledgers	7 years after the final settlement of all matters and final closing of account
Collection statements including duplicate receipts	3 years
Daily Cash book, Postage Fee Books etc	1 year
Duplicate or counterfoil in the form of books	After final action on all the original form.
Reports or small listing computer	After completion of the final action on the report or

information or other related information kept at the macro graphic or other electronic media.	a computer listing
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Before the financial and accounting records are to be destroyed, all agencies under the federal government must obtain a prior permission to do so from the Director General of Archives Malaysia and the Auditor General before the final approval of the Accountant General of Malaysia as provided for in the Treasury Instruction (AP 150).

Section 25 (5) of the National Archives Act 2003 [Act 629] provides that anyone found guilty of destroying records without the approval of a public authority shall be punishable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding one year or both.

Financial and accounting records destruction procedures are as follows: Prior to the destruction of approval:

1. Identify all the old records that are stored in the office and separate the financial and accounting records from the non-financial or general records. For general record, consult with the National Archives of Malaysia in respect of the disposal procedure.
2. Separate financial and accounting records by type and year of completion. Make sure that the record is complete and no action is required for the audit or investigation purposes.
3. Identify the records that have reached the minimum storage period by reference to Annex M Treasury Instruction 150, Schedule for Disposal of Finance and Accounting Records or Department retention and disposal schedules (if any) .. Prepare a list of financial and accounting records proposed to be destroyed in order to apply for approval of destruction. Use the form Finance - Archives 04/08.
4. Submit application for destruction to the National Archives and the National Audit Office to obtain a letter of authorization / support.
5. Submit application for destruction to the Malaysian Anti-Corruption Commission and audit management in the ministry to obtain a letter of permission / support (if necessary).

Application for approval of destruction:

1. Submit the following documents to the Accountant General's Department for approval:
 - a) Letter of application;
 - b) List of financial and accounting records to be destroyed - Financial form - Archive 04/08;
 - c) A copy of the letter of approval / endorsement from the National Archives of Malaysia (compulsory);
 - d) Copies of the consent / support from the National Audit Department (compulsory); and
 - e) In accordance with the guideline issued by the National Archives of Malaysia, the letter of approval/endorsement/support from the National Archives of Malaysia, National Audit Department and Accountant-General's Office of Malaysia whereby copies will be made to the Malaysian Anti-Corruption Commission (MACC).

2. All applications for destruction of financial and accounting records shall be submitted to the following address:

Accountant General of Malaysia

Accountant General's Department
Internal Audit Management Division
Level 5 & 6, Lot 2G8B (2M11)
7, Persiaran Perdana, Precinct 2
Federal Government Administrative Centre 62594 Putrajaya

3. Internal Audit Management Division, Accountant-General's Department of Malaysia will process the application and the approval letter of destruction will be issued within ten (10) days of receipt of the applications.

After obtaining the approval of destruction:

- a. All financial and accounting records that were approved for destruction must be destroyed within three (3) months from the date of approval.
- b. Destroy the financial and accounting records in accordance with the guidelines set by the Finance Ministry letter of reference FP 557/97/54 vol. 4 (47) dated 3 November 1993. Methods of destruction of records either shredded, be sold or buried can be used while burning methods have to comply with environmental regulations in force. Use of the machine "incinerator" is encouraged to ensure that all records are destroyed completely.
- c. Submit the Finance and Accounting Record Destruction Confirmation Form (Finance - Archives 13/08) to the Accountant-General's Department, the National Archives of Malaysia and the National Audit Department within one (1) month after the destruction was carried out.

Government policies and procedures regarding the storage and preservation of electronic records, including security measures

In respect of storage and destruction of financial forms that are electronically generated, the Ministries, Departments and Government agencies concerned must ensure that sufficient internal controls are in place and are in compliance with the ISO standards prescribed in the Guidelines on Electronic Records Management under the Electronic Records Management And Archives Management Policy issued by the National Archive of Malaysia. These Guidelines provide the procedure for the following:

a. Creating Electronic Records

Records include the documents of legal or financial implications should be captured into a corporate system that has recordkeeping capability. Capture is the process of placing a document into a recordkeeping system and assigning metadata to describe the record and place it in context, so that the record can be managed over time. Capture of electronic records within a paper-based or hybrid recordkeeping system presents more difficulty and should be carefully considered by public offices. Two options, neither of which is ideal, are:

- i. Assigning an appropriate record number to electronic records within the system and then storing them separately.
- ii. Printing records such as email and word-processed documents and attaching them to the relevant hardcopy file.

b. determining how long to keep electronic records

An electronic record must be managed, and remain accessible, for its lifetime. How long an electronic record needs to be kept will influence its management. Given the vulnerable nature of most digital media and the frequency of technology change, 'long term' for electronic records generally means longer than one generation of technology. Electronic records that must be

retained for the long term will require active management to ensure their continued accessibility.

c. Storing electronic records

To ensure the ongoing protection of electronic records, public offices require efficient and effective means for maintaining, handling, and storing electronic records - both active and inactive - over time. Policies, guidelines and procedures for the storage of electronic records should be an integral component of a public office's recordkeeping framework. There are three ways in which public offices may store electronic records -online, offline or near-line.

i. Online - Online records can be contained on a range of storage devices (e.g. mainframe storage, network attached storage or PC hard drive) that are available for immediate retrieval and access. Generally, records stored online will be active electronic records -i.e. records that are regularly required for business purposes. Electronic messaging systems and word-processed documents saved to the network server fall into this category.

ii. Offline - Offline electronic records are contained on a system or storage device that is not directly accessible through the public office's network and which requires human intervention in order to be made accessible to users. Electronic records that are stored offline are usually retained on removable digital storage media (e.g. magnetic tape, CD, DVD) and are generally inactive electronic records not regularly required for business purposes. Offline electronic records may be stored offsite as part of an agency's business continuity plan. Electronic records stored offline are not immediately available for use. Public offices must take responsibility for monitoring and guarding against environmental degradation and changes in technology that may adversely affect the storage media employed.

iii. Near-line - Near-line storage of electronic records means the records are contained on removable digital storage media, but remain relatively accessible through automated systems connected to the network. These electronic records are technically considered to be offline. The use of systems such as CD jukebox or magnetic tape silos allow them to be made available through public office networks, in relatively short periods of time and without the need for human intervention (i.e. staff are not required to physically retrieve the storage media on which the required information is retained).

d. Securing Electronic Records

Security regulations require public offices to consider the security needs of their systems and to devise policies and plans to ensure that systems are appropriately protected. Public offices are required to prepare a security plan that describes the security mechanisms and procedures that have been implemented to protect electronic records and systems.

As a first step towards developing a public office security plan, formal threat and risk assessments should be conducted on all computer systems (including information systems, recordkeeping systems and online services provided by the agency) by an appropriately qualified body or agency. System vulnerabilities and potential threats should be identified and strategies developed and implemented to reduce the likelihood of security breaches occurring.

The following are some basic practices and protocols public offices may adopt to ensure they maintain adequate security for their electronic records and systems. This list is not exhaustive. Public offices should select a combination of methods to suit their needs. Limit access to electronic records, and the systems on which those records are created and kept, to authorized personnel in order to protect the integrity of the records and prevent unlawful alteration or destruction of records:

i. Establish network security systems, such as firewalls, to protect against unauthorized access (e.g. hackers) to systems that are accessible through external connections, such as the Internet.

ii. Install appropriate gateway filter software on messaging systems, and ensure that filter definitions are regularly updated, to protect against spam, denial of service attacks and malicious code, such as computer viruses.

- iii. Implement public key infrastructure (PKI) encryption technologies to ensure secure transmission of electronic records to external parties.
- iv. ‘Lock’ final electronic records to prevent any subsequent alterations or inadvertent destruction (e.g. finalizing records as ‘read-only’ within an electronic recordkeeping system).
- v. Use digital signature technologies to authenticate electronic records and provide security and confidence in authorship.
- vi. Store vital electronic records either offline or on systems without external links.
- vii. Establish appropriate systems backup procedures and disaster recovery strategies to protect against loss of electronic records.
- viii. Develop and implement audit trails to detect who accesses a system, whether prescribed security procedures were followed and whether fraud or unauthorized acts have occurred, or might occur.

e. Preserving electronic records for the long term

All public offices should develop strategies to preserve/migrate electronic records, and to ensure that all digital records are captured into a corporate recordkeeping system. Long term maintenance is particularly significant for electronic records of archival value. Inadequate preservation strategies can render electronic records inaccessible and unusable.

Allowing electronic records to become inaccessible may be considered a breach of the National Archives Act 2003 (Act 629). Accessibility requirements apply to all electronic records, not just those of archival value. Electronic records must remain accessible for as long as they are required.

Potential consequences of falsifying government documents, account books, records include the criminal offences as follows:

A. Section 167 Penal Code- Public servant framing an incorrect document with intent to cause injury

Whoever, being a public servant, and being such public servant, charged with the preparation or translation of any document, frames or translates that document in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

Under section 44 Penal Code, the term “injury” denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

B. Section 463 Penal Code- Forgery

Whoever makes any false document or part of document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

C. Section 464 Penal Code- Making a false document

A person is said to make a false document-

- (a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by, or by the authority of a person by whom or by whose authority he knows that it was

not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed;

(b) who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

D. Section 465- Punishment for forgery

Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

E. Section 471 Penal Code- Using as genuine a forged document

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document shall be punished in the same manner as if he had forged such document.

F, Section 477A Penal Code - Falsification of accounts

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud, makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particulars from or in any such book, paper, writing, valuable security or account, shall be punished with imprisonment for a term which extend to seven years, or with fine, or with both.

G. MACC Act 2009 [Act 694] Section 18* -Offence of intending to deceive principal by agent

A person commits an offence if he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material particular, and is intended to mislead the principal.

(*note: Section 18 of Act 694 is similar to Section 4 (c) of the Anti-Corruption Act 1961 [Act 57] and Section 11(c) of the Prevention of Corruption Act 1997 [Act 575] which have been repealed)

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics of document received and under storage in National Archive 2015

	File (meter)	File (Unit)	Non-File (Unit)	Box
Received Records	278.86	14,824	4,379	-

Stored Records	169.2	11,048	6,208	1,128
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Example of Cases on Falsification of Financial documents:

- a. Public Prosecutor v Ahmad Shukri bin Othman [2014]10 CLJ 571
- b. P.R. Iwn Zamri Jusoh [2014] 8CLJ 656
- c. Public Prosecutor (SPRM) v Robin Sabai [2014] 1 LNS 1302
- d. Sulfee Alias v P.P.(BPR)[2006] 1LNS 84
- e. Chandrasekaran & Ors v PP[1970] 1LNS 11

(b) Observations on the implementation of the article

Malaysia has implemented the provision under review.

Article 10. Public reporting

Subparagraph (a) of article 10

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:

(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;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

At the Federal level, Malaysia has no specific legislation regarding access to information by the public on its public administration. As a matter of fact there is in existence, the Official Secrets Act 1972 (OSA) which acts to provide a safeguard on national security in all matters relating to government administration.

The Act defines an "official secret" as:

...any document specified 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 appointed under section 2B”.

The Schedule to the Act covers "Cabinet documents, records of decisions and deliberations including those of Cabinet committees", as well as similar documents for state executive councils. It also includes "documents concerning national security, defence and international relations".

However, a document falling under the OSA can become a public document accessible to all and no more being an OSA document if it has been declassified under Section 2C of the OSA as follows:

“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”.

The effect of OSA is also embedded within the Government General Orders-Public Officers (Conduct & Discipline) Regulations 1993 regarding publication of books (Regulation 18); making of public statements (Regulation 19) and acting as editor in any publications (Regulation 20) unless such publications, making of public statements and editorial works are done with the (written) approvals of the Minister or Head of Department. Approvals of the latter are also subject to declassification of information under Section 2C of OSA. (Please see the attached copy of Government General Orders - Public Officers (Conduct & Discipline) Regulations 1993).

In a slight departure from the Federal statute, two States of Malaysia, namely State of Selangor and Pulau Pinang passed their Freedom of Information Enactments in 2010 and 2011 respectively. These laws enable the citizen to make requests to the said two State Governments for information from any State department, local council, or any entity owned or fully controlled by the State governments. However the efficacy of these State enactments does not apply to information classified under the Federal Official Secrets Act 1972 (for instance, where Federal Departments/Agencies are located in the 2 States concerned); individuals’ private information; and trade secrets obtained by the States in confidence.

Dissemination of Information on Government Organizations and Functions (including unclassified information)

Be that as it may, the Government of Malaysia has provided platforms for the public to obtain information on organizations and their respective functions under the following initiatives:

A) Malaysia's Open Data Portal

The portal serves as an online one-service-centre to access and download open government data. The Open Data Portal:

- a. Enables data to be shared with a wide range of users and to increase the transparency of government services;
- b. Provides opportunities to citizens and the business community to increase their creativity and innovation in the creation of new products;
- c. Provides a platform for people to obtain information from official sources of the Government

and as a means to obtain feedback from citizens;

d. Saves citizens' time to access the government open data; and

e. Saves the cost of applications development by government agencies.

B) Government Websites

The information on organizations and functions of the public administration can also be accessed by members of the public through the individual government agency websites/portals developed and directed under the Guidelines on Public Sector Content Development (Garis Panduan Pembangunan Kandungan Sektor Awam) UPTM 159/05/648 (14) dated 11 September 2009 read together with Circular No.1 of 2006: Public Sector Website/Portal Management (Pekeliling Am Bil 1 Tahun 2006: Pengurusan Laman Web/Portal Sektor Awam). (“The Guidelines”)

Information is made available to members of public proactively and automatically. Types of information that can be obtain electronically on Government portals and websites include:

(a) Organizational functions (Core business) and Structures

(b) Legislation, gazettes, circulars, rules and regulations

(c) Names, designation and contact details of key-personnel (telephone number/email addresses)

(d) Office contact numbers

(e) Tender announcements (procurement)

(f) FAQs

(g) Publications (Annual Reports)

(h) Statistics

Means by which information is published (Para 4 (b) of The Guidelines)

Information on the organization and function of Malaysian public administration can be accessed through:

i. Electronic media (government websites/portals, internet, kiosks, SMS, Web TV and other social networks)

ii. Print media (government publications - newsletters, brochures, annual reports)

Designated Personnel responsible for Information Management (Para 8 of the Guidelines)

Chief Information Officers (CIOs) of Government Departments and Agencies appointed by Heads of Department are responsible for the information management of the respective institutions.

Promotion/Updating (Para 7 of the Guidelines)

The promotion of Government websites and updating of information is the responsibility of the CIO. This carried out at three levels- Agency, Federal and International Levels.

Promotion of government websites is carried out through official launching through TV and newspapers announcements, electronic media, workshops, seminars and exhibitions. (Para 7 of the Guidelines)

Updating of contents - as and when necessary.

Assessment of effectiveness - once a year (as described below).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Websites, libraries, archives or other means by which information on the organization, functioning and decision-making of government is made available to the general public

The public can obtain information on the organization and functions of government through websites or portal, National Archives of Malaysia and public libraries.

Official government gazettes and publications

The Percetakan Nasional Malaysia Berhad (PNMB) is responsible to publish the official government gazette. The public can access information on official government gazette through the portal, e-Federal Gazette, available at <http://www.federalgazette.agc.gov.my>.

The publication such as annual reports of government agencies are made available to the public on government websites and in public libraries.

Examples in which requests received under freedom of information or access to information laws have led to the release of information on the organization, functioning and decision-making processes of government that would not otherwise have been made publicly available are as follows:

On 26 May 2016, the State Government of Pulau Pinang had provided the documents of undersea bed tunnel which would link the island to Butterworth pursuant to a request. The request was made through state's Freedom of Information (FOI) Enactment for MYR500. The information sought includes the agreement inked by the Penang government with Consortium Zenith-BUCG to build the undersea bed tunnel and three related expressways.

Assessment of Malaysian Government Portals and Websites

In 2006 an entity known as Multimedia Development Corporation (MDeC) was mandated to undertake an audit of all Government Agencies' websites and advise the Chairman of the Implementation Council Meeting (ICM) on proposed ways to enhance and upgrade the websites. Hence, the Malaysian Government Portals and Websites Assessment (MGPWA) has become an annual project that has contributed to tremendous improvement of Government portals and websites.

Recently known as the Provider-Based Evaluation (ProBe), the assessment is carried out so as to assist Government agencies in making their information and services available to their users through the portals and websites, apart from other existing channels. Having myGovernment portal that acts as a single gateway to Malaysian Government agencies, this is where the list of assessed portals and websites was derived from. The ultimate goal will be in line with the 90% availability and usage of Government online services of Communication, Content & Infrastructure (CCI) NKEA, under Entry Point Project (EPP) 6 Deepening of E-Government.

To reduce, or better still to eliminate the need of visiting Government agencies either for information or services, MGPWA can be treated as a portal/website parameter or reference for agencies in terms of service delivery. Conducted based on an evolved set of mandatory and non-mandatory criteria which was agreeable by the members of Technical Working Group (TWG), the assessment has always benchmarked against global studies analysing in the same field. MGPWA includes several activities, from developing criteria, assessing, benchmarking, analysing to suggesting recommendations. The eventual result sought by agencies at the end of the assessment is the star rating awarded to them from the final score obtained. This will help

them to gauge their yearly progress of the efforts undertaken to improve the respective portals/websites. An added activity is amongst the selected 5-star, central or key agencies were rendered Strategic Achievers. This is a further collaboration of MDeC with MAMPU and Public Complaints Bureau (PCB) to ensure the sustainability and integrity of the portals/websites.

Objectives

1. To reach rakyat in a broader scale for government services with no limitation, be it time, place or means. This was made possible with the inclusion of user-friendliness, safety, interactivity and transparency components in the offerings of virtual services. A citizen benefiting from this channel will be able to experience efforts extended by Government services 24 hours a day and at the comfort of their homes, workplaces and possibly using his preferred devices. In parallel with the objective, MGPWA targeted to reduce the number of portals and websites rated 2-star and below and introducing the Strategic Achievers for a sustainable and posed better integrity of these portal/websites.

2. To stay on par with the top ranked EG countries MGPWA has continuously emphasized on the importance of online services and their promotion in the portals and websites. Therefore, the criterion of online services was further classified into Government-to-Government (G2G), Government-to-Business (G2B) and more importantly, Government-to-Citizen (G2C) are identified during the assessment.

As per the MGPWA 2014 report, the number of inaccessible websites reduced from 50 in 2005 to 8 in 2014, out of a total of 1086 websites assessed.

(b) Observations on the implementation of the article

Apart from two States of Malaysia, at the Federal level, Malaysia has no specific legislation regarding access to information on its public administration, but rather the Official Secrets Act 1972 (OSA) acts to provide a safeguard on national security in all matters relating to government administration and Government General Orders also contain relevant provisions.

It was explained by the national officials that MAMPU plans to develop a policy on open data and will determine the suitability to adopt the Freedom of Information Law (FOI).

The Government of Malaysia provides platforms for the public to obtain information on the organizations and respective functions of the public administration under various initiatives, such as Malaysia's Open Data Portal, government websites, electronic and print media, as well as official government publications and annual/periodic reports. Malaysia has also taken various steps towards e-services delivery and different government agencies have their respective Public Information officers mandated with the responsibility of managing information. More specifically, Malaysia's Open Data Portal www.gov.my provides information on 18 categories of public data¹, and the information is approved by Heads of government departments.

Malaysia also provided examples of cases in which requests received under the State access to information laws led to the release of information that would not otherwise have been made publicly available.

The important role of the Public Complaints Bureau (PCB) in the Prime Minister's Office to deal with complaints made by citizens against the civil service, in particular negative decisions of a public institution to provide information, as well as to counter administrative inefficiency and to help streamline effective public services delivery, is referred to (see para. 1 of article 6 above).

¹ 1. National Elections; 2. Budget; 3. Census; 4. Legislation; 5. Public Contracts; 6. Government Spending; 7. Land Ownership; 8. National Statistics; 9. Crime; 10. International Trade; 11. Company Registration; 12. Mapping; 13. Education; 14. Agriculture; 15. Environment; 16. Health; 17. Transport; 18. Others.

Furthermore, under Order No. 53 of the Rules of Court 2012 (2 July 2012 P.U. (A)) an application for judicial review may be lodged against an adverse government decision. Subparagraph (4) of the Order specifically provides that, “(4) Any person who is adversely affected by the decision of any public authority shall be entitled to make the application.”

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

Based on a review of the information provided, the reviewers recommend that Malaysia 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 that it consider in this 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 such as OSA (see art. 13(1)(b)).

Subparagraph (b) of article 10

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:

...

(b) Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In regard to public accessibility to government-decision authorities as stipulated under the requirements of this article, it is only applicable to the States of Selangor and Pulau Pinang as provided for under their respective Freedom of Information Enactments.

State of Selangor Freedom of Information legislation

On 1 April 2011, the Freedom of Information Enactment was passed in Selangor’s state assembly. The bill was first tabled early in 2010. The Enactment is to enhance disclosure of information for the public interest, to provide individual to access to information made by every department of the State Government.

Under section 5 of the Enactment:

- (1) Any person may be given access to information made by every department.
- (2) If the information sought to be accessed by any person is contained in a document disclosure of which is subject to any written law, access to such information shall be subject to such written law.

Under section 6 of the Enactment:

- (1) Any person who applies to access information shall make an application to the department in a form prescribed by the State Authority.
- (2) An application under subsection (1) shall –
 - (a) be addressed to the Information Officer;
 - (b) state the name of the applicant and an address for correspondence;
 - (c) describe the information applied; and
 - (d) state the reason and purpose for application.
- (3) Every application shall be submitted together with payment of fee as prescribed by the State Authority.
- (4) Notwithstanding the provisions under subsections (1) and (2), any person who is unable, because of illiteracy or disability, may make an application orally, and the Information Officer who receives an oral application shall, reduce it into writing and give a copy of the application form to the applicant.
- (5) An Information Officer who receives the application shall acknowledge the application and provide the applicant with an acknowledgement receipt.

Response to applications is provided under section 7 of the Enactment:

- (1) Every department shall respond to the application made under section 6 within thirty (30) days from the date of acknowledgement of the application.
- (2) Notwithstanding provision of subsection (1), any application for information which relates to the life or liberty of an individual, a response shall be made within seven (7) days from the date of acknowledgement receipt of such application.
- (3) If there is no response as specified in subsections (1) and (2), such application shall be deemed to be rejected.
- (4) An access to the information shall be given when -
 - (a) the application to access information has been approved; and
 - (b) fee under subsection 6(3) has been paid.

Appointment of Information Officer is provided under section 3 of the Enactment

- (1) The State Authority may by Gazette appoint an Information Officer for every department. (2) The Information Officer shall, in addition to any obligation specifically provided for in other sections of this Enactment, have the following responsibilities:
 - (a) to enhance within the department the best practices in relation to maintenance, archiving and disposal of information;
 - (b) to provide training for the department in relation to maintenance, archiving and management of applications for information; and
 - (c) to serve as an intermediary to the department for receiving applications and assisting individuals seeking information.

State of Pulau Pinang Freedom of Information legislation

The Penang State Assembly became the second Malaysian state legislature to pass an FOI Bill on 4 November 2011. The Enactment is to provide for the disclosure of information for public interest, an opportunity on access to information made by every department of the State Government and any other matters connected therewith.

Under section 5 of the Enactment,

- (1) Any person may be given access to information made by every department.
- (2) If the information sought to be accessed by any person is contained in a document disclosure of which is subject to any written law, access to such information shall be subject to such written law.

Under section 6 of the Enactment:

- (1) An application for an access to information shall-
 - (a) be made to the Information Officer of a department in a prescribed form which contain-(i) the name and address of the applicant;
 - (ii) the particulars of the information; and
 - (iii) the reason and purpose of the application, and (b) be accompanied with a prescribed fee.
- (2) Notwithstanding paragraph (1)(a), any person who is unable, because of illiteracy or disability, may make an application orally, and the Information Officer who receives an oral application shall, reduce it into writing and give a copy of the application form to the applicant.
- (3) An Information Officer who receives the application shall acknowledge the application and provide the applicant with an acknowledgement receipt.

Response to application is provided under section 7 of the Enactment

- (1) Every Information Officer shall response to the application made under section 6 within thirty days from the date of acknowledgement of the application.
- (2) Notwithstanding subsection (1), any application for information which relates to the life or liberty of an individual, a response shall be made within seven days from the date of the acknowledgement of the receipt of such application.
- (3) If there is no response within the time specified in subsection (1) or (2), such application is deemed rejected.
- (4) An access to the information shall be given when-
 - (a) the application to access such information is approved; and (b) the fee under paragraph 6(1)(b) has been paid.

Appointment of Information Officer is provided under section 3 of the Enactment:

- (1) The State Authority may, by notification in the Gazette, appoint an Information Officer for every department.
- (2) The Information Officer shall have the following responsibilities:
 - (a) to enhance within the department the best practices in relation to maintenance, archiving and disposal of information;

- (b) to provide training for the department in relation to maintenance, archiving and management of applications for information; and
- (c) to serve as an intermediary to the department in receiving applications and assisting individuals seeking for information.

Note: Both the Selangor and Pulau Pinang enactments do not provide for pro-active publication of information by institutions without a special request.

As described above, a Public Complaints Bureau has been set up in the Prime Minister's Office to deal with complaints made by citizens against the civil service. The PCB also works to counter administrative inefficiency and to help streamline effective public services delivery, including by monitoring systematic weaknesses based on complaints received. In addition to inordinate delay, the PCB monitors instances of administrative injustice and failure to abide by rules. It conducts administrative audits and implements enforcement action in cases of abuse of power or other violations, as described in its annual report. See para. 1 of article 6 above.

In addition, the Malaysian Administrative Modernisation and Management Planning Unit (MAMPU) in the Prime Minister's Office monitors IT services delivery and is in charge of coordinating e-government initiatives, to expedite, simplify and streamline public services delivery.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

External Report

The Freedom of Information (State of Selangor) Enactment 2010: A Preliminary Analysis Of The Enactment And Recommendations For Improvement by Commonwealth Human Rights Initiative (CHRI). Available at:

http://www.humanrightsinitiative.org/Programmes/ai/rfi/international/laws_papers/malaysia/SelangorFOIBill2010-Critique-Del-MichelleG-Feb11.pdf

(b) Observations on the implementation of the article

Malaysia has adopted a number of measures, including the use of KPIs and their associated benchmarks by all government agencies, the Malaysian Public Service Commitment 2008, the 2009 Government Transformation Programme (GTP), the Special Taskforce to Facilitate Business PEMUDAH, as well as the use of Client Charters to transform the government to be more effective in its service delivery. As described above, in addition to the important functions of the PCB and MAMPU Malaysia has also taken various steps towards e-services delivery as a further means to simplify and improve administrative procedures.

Subparagraph (c) of article 10

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:

...

(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant publications and reports implementing the provision are as follows:

1. Publication of the findings of the “Integrity Assessment on Public Service in Malaysia (MyIA)” in the MACC Annual Report 2014 page 124-126.

The MACC initiated the Integrity Assessment on Public Service in Malaysia (MyIA) as an effort to strengthen and promote integrity and to enhance the public service delivery system as a whole. This assessment aims to establish integrity benchmarks, as well as to evaluate the level of integrity within and outside public service agencies.

The findings are vital in assisting agencies in developing programmes and activities towards upgrading integrity among civil servants, with the focus on creating an efficient and effective public service in Malaysia. Moreover, the findings can be utilised by Integrity Officers in agencies to coordinate the functions of the Integrity Unit as stipulated in Service Circular No. 6 of 2013.

Findings of the study

The MyIA integrity assessment was centred on 20 government ministries/agencies that deal directly with the public and involved touch point programmes. During the eight-month assessment period (April to November 2014), there were two categories of respondents, namely, 5,803 and 478 internal and external respondents, respectively. The internal respondents comprised of officers and staff from government ministries/agencies, while external respondents were clients and vendors of government ministries/agencies. The list of government ministries and agencies involved in the Malaysian Public Service Integrity Assessment in 2014 is as follows:

1. Prime Minister's Department
2. Ministry of Home Affairs
3. Royal Malaysian Police
4. Immigration Department of Malaysia
5. Ministry of Finance
6. Malaysian Royal Customs Department
7. Ministry of Transportation
8. Road Transport Department
9. Ministry of Health
10. Ministry of Education
11. National Anti-Drug Agency

12. Ministry of Defence
13. Ministry of Works
14. Public Works Department
15. Ministry of Natural Resources and Environment
16. Forestry Department Peninsular Malaysia
17. Ministry of Agriculture and Agro-Based Industry
18. Department of Agriculture
19. Federal Land Development Authority (FELDA)
20. Ministry of Domestic Trade, Co-operatives and Consumerism

Overall, the study showed a 'Good' level of integrity in public services in Malaysia, with a score of 73% in the Comprehensive Integrity Index. Furthermore, several recommendations were put forward based on the findings, such as:

- a. Government ministries/agencies need to upgrade the efforts in all components, especially internal integrity to improve the Comprehensive Integrity Index score;
- b. Intensive intervention measures by heads of departments to raise the level of integrity in the respective ministries/agencies; and
- c. Implementation of the study to be extended to public agencies nationwide with the aim of assessing the level of integrity of the Malaysian public services.

2. Malaysian Anti-Corruption Commission Annual Reports

The Malaysian Anti-Corruption Commission undertakes the task of publishing its annual report on corruption activities - investigation, prevention, and prosecution of cases.

3. The "Name and Shame" Database (Periodic)

The MACC also maintains personal data of persons charged and convicted of corruption offences as part of efforts to deter corrupt practices by persons already charged and also by the public at large. The database which is publicly accessible through the MACC website www.sprm.gov.my contains information on the name, image and identity card numbers of the offender, including details of the charge(s) and the penalty(ies) imposed. The retention period of the data is for three years.

4. GTP-NKRA Fighting Corruption Annual Reports

These reports cover the Government's achievements of initiatives developed to tackle corruption in the areas of Regulatory & Enforcement, Government Procurement, and Grand Corruption under the Government Transformation Programme formulated under 3 horizons: GTP1.0 from 2010 to 2013, GTP 2.0 from 2013 to 2015, and GTP 3.0 from 2015 to 2020.

5. Annual Auditor General's Report

Since 2014, the Auditor General's Report is required to be presented at every parliamentary session. The initiative is intended to enable immediate and effective investigation of issues related to corruption, abuse of position, misuse of funds and malpractice which are highlighted in the Auditor General's Report. Prior to 2014, investigations by Government agencies based on the Auditor General's Reports were rather ineffective, as they could only be initiated after tabling

of the Auditor General's Report in the third parliamentary session, nearly at the end of the year.

6. Public Accounts Committee (PAC) Report

The Public Accounts Committee is appointed at the beginning of every Parliament, for the examination of:

- a. the accounts of the Federation and the appropriation of 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 of Representatives.
- c. reports of the Auditor-General laid before the House of Representatives in accordance with Article 107 of the Federal Constitution.
- d. such other matters as the Committee may think fit, or which may be referred to the Committee by the House of Representatives.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

- a. Malaysian Anti-Corruption Commission Annual Reports 2013, 2014 and 2015
- b. GTP-NKRA Fighting Corruption Annual Reports 2012, 2013, 2014 and GTP 2.0
- c. Public Account Committee (PAC) Report on the Management of Cargo Scanning Machine-Royal Malaysian Customs Department (28 October 2014)
- d. Public Account Committee of State of Selangor (Penyata Kira-kira Wang Kerajaan) 2014. Available at <http://dewan.selangor.gov.my/assets/pdf/Penyata/Jawatankuasa%20Kira%20-%20Kira%20Wang%20Kerajaan/Penyata%20PAC.pdf>
- e. Annual Auditor General's Reports 2013, 2014, and 2015
- f. Name and Shame Database as per link below:
<http://www.sprm.gov.my/index.php/penguatkuasaan/data-pesalah-rasuah>

(b) Observations on the implementation of the article

Malaysia regularly publishes a number of relevant publications and reports assessing the risks of corruption, in addition to the integrity study of the public service and the "name and shame" database. The provision is implemented.

Article 11. Measures relating to the judiciary and prosecution services

Paragraph 1 of article 11

1. Bearing in mind the independence of the judiciary and its crucial role in combating corruption, each State Party shall, in accordance with the fundamental principles of its legal system and without prejudice to judicial independence, take measures to strengthen integrity and to prevent opportunities for corruption among members of the judiciary. Such measures may include rules with respect to the conduct of members of the judiciary.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Malaysian constitutional and legal framework to ensure the independence and integrity of the judiciary is provided for under the Federal Constitution and the Judicial Appointments Commission Act 2009 (Act 695). The superior court system of Malaysia has a three-tier structure:

- 1) the Federal Court- as the highest court of the country ;
- 2) the Court of Appeal -as an intermediary court between the Federal Court and the High Courts; and
- 3) the High Court of Malaya and the High Court of Sabah and Sarawak- as the lowest of the three-tier superior courts.

Independence and integrity of the Judiciary

a. Insulation from politics

The Federal Constitution of Malaysia under Part IX (Art. 121-131A) contains specific provisions to secure judicial independence from the control and interference of the executive and the legislature. The judicial power of the Federation is provided under Article 121(1), which provides that there shall be two high courts of co-ordinate jurisdiction and status, and they shall have jurisdiction and powers as may be conferred by or under federal law.

Article 127 of the Federal Constitution of Malaysia stipulates as follows:

The conduct of a judge of the Federal Court, the Court of Appeal or a High Court shall not be discussed in either House of Parliament, except on a substantive motion of which notice has been given by not less than one quarter of the total number of members of that House, and shall not be discussed in the Legislative Assembly of any State.

b. Contempt of Court

Article 126 of the Constitution confers on the courts the power to punish for contempt any person who, by word or deed, interferes with the administration of justice or challenges the dignity or independence of the courts.

c. Judicial Immunity

Judicial immunity is an aspect of judicial independence. In the performance of their judicial functions (emphasis added) all judges are immune from the law of torts and crime:

- i. Section 6 (3) of the Government Proceedings Act 1956 provides that no proceedings shall lie against the Government by virtue of section 5 in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of

- a judicial nature vested in him, or any responsibilities which he has connection with the execution of judicial process.
- ii. Section 14 of the Courts of Judicature Act 1964 confers that no Judge or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty
 - iii. The Defamation Act 1957 (Revised 1983) in section 11(1) confers absolute privilege on reports of judicial proceedings including pleadings, judgments, sentences or findings.
 - iv. Article 122AB(1) of the Federal Constitution provides immunities for Judicial Commissioners but no explicit protection for other judges.

Appointment of judges of the Federal Court, Court of Appeal and High Courts

The Constitution provides the number of judges for the superior courts, so that it is not easily possible for the government to fill the courts with political nominees. Under Articles 122, 122A and 122AA, currently the numbers are:

- i. The maximum number of judges for the Federal Court is eleven (by PU(A)163/2009)
- ii. For the Court of Appeal, it is thirty-two (by the Constitution of the High Courts (Judges) Order 2006, PU (A) 384, 4 Oct. 2006)
- iii. The membership of the High Court in Malaya increased to sixty (by PU(A) 164/2009)
- iv. In the High Court in Sabah and Sarawak the number increased to thirteen (by the Constitution of the High Courts (Judges) Order 2006, PU (A) 384, 4 Oct. 2006).

However, in a contradictory move the Constitution gives power to the King to increase the number of superior court judges (refer to Articles 122(1), 122A(1) and 122AA(1)).

Article 122B

- (1) The Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts and (subject to Article 122c) the other judges of the Federal Court, of the Court of Appeal and of the High Courts shall be appointed by the Yang di-Pertuan Agong (King), acting on the advice of the Prime Minister, after consulting the Conference of Rulers.
- (2) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice of the Federal Court, the Prime Minister shall consult the Chief Justice.
- (3) Before tendering his advice as to the appointment under Clause (1) of the Chief Judge of a High Court, the Prime Minister shall consult the Chief Judge of each of the High Courts and, if the appointment is to the High Court in Sabah and Sarawak, the Chief Minister of each of the States of Sabah and Sarawak.
- (4) Before tendering his advice as to the appointment under Clause (1) of a judge other than the Chief Justice, President or a Chief Judge, the Prime Minister shall consult, if the appointment is to the Federal Court, the Chief Justice of the Federal Court, if the appointment is to the Court of Appeal, the President of the Court of Appeal and, if the appointment is to one of the High Courts, the Chief Judge of that Court.

Appointment of Judicial Commissioners - Article 122AB Federal Constitution

The Federal Constitution of Malaysia, as amended in 1963, provided for the first time the provision for the appointment of judicial commissioners in the two High Courts of Malaysia.

Later in 1994, the method of appointment was amended in the following manner:

Article 122AB

(1) For the dispatch of business of the High Court in Malaya and the High Court in Sabah and Sarawak, the Yang di- Pertuan Agong (King) acting on the advice of the Prime Minister after consulting the Chief Justice of the Federal Court, may by order appoint to be judicial commissioner for such period or such purposes as may be specified in the order any person qualified for appointment as a judge of a High Court; and the person so appointed shall have power to perform such functions of a judge of the High Court as appear to him to require to be performed; and the appointment shall have the same validity and effect as if done by a judge of that Court, and in respect thereof he shall have the same powers and enjoy the same immunities as if he had been a judge of that Court.

Thus, unlike the appointment of regular judges of the High Courts, the Prime Minister is not required to consult the Conference of Rulers (Majlis Raja- Raja) and the Chief Judge of the High Court concerned before tendering his advice to the Yang diPertuan Agong as to the appointment of judicial commissioners in the High Court in Malaya and the High Court in Sabah and Sarawak.

Furthermore, the appointment of the High Court Judges are subject to the consideration and report prepared by the Judicial Appointment Commission based on the criteria stipulated under the Judicial Appointment Commission Act 2009 (Act 695) apart from the criteria under the Federal Constitution. This report is issued for the purpose of advising the Prime Minister in considering the appointment of the High Court Judges.

Unlike the judges of the three superior courts, the Federal Constitution does not limit the number of judicial commissioners to be appointed in the two High Courts of Malaysia. The current number of Judicial Commissioners as of April 2016 is 37, out of which 33 judges are posted the in High Court of Malaya and the rest are posted in High Court of Sabah and Sarawak.

Qualifications of Judges of the Federal Court, Court of Appeal and High Courts - Article 123 Federal Constitution

A person is qualified for appointment under Article 122B as a judge of the Federal Court, as a judge of the Court of Appeal or as a judge of any of the High Courts if-

- (a) he is a citizen; and
- (b) for the ten years preceding his appointment he has been an advocate of those courts or any of them or a member of the judicial and legal service of the Federation or of the legal service of a State, or sometimes one and sometimes another.

Tenure of Office and Remuneration of Judges of the Federal Court - Article 125 Federal Constitution

(1) Subject to the provisions of Clauses (2) to (5), a judge of the Federal Court shall hold office until he attains the age of sixty six years or such later time, not being later than six months after he attains that age, as the Yang di-Pertuan Agong (King) may approve.

(2) A judge of the Federal Court may at any time resign his office by writing under his hand addressed to the Yang di-Pertuan Agong (King) but shall not be removed from office except in accordance with the following provisions of this Article.

(3) If the Prime Minister, or the Chief Justice after consulting the Prime Minister, represents to the Yang di-Pertuan Agong (King) that a judge of the Federal Court ought to be removed on the ground of any breach of any provision of the code of ethics prescribed under Clause (3b) or on the ground of inability, from infirmity of body or mind or any other cause, properly to discharge

the functions of his office, the Yang di-Pertuan Agong (King) shall appoint a tribunal in accordance with Clause (4) and refer the representation to it; and may on the recommendation of the tribunal remove the judge from office.

(3a) Where a judge has committed a breach of any provisions of the code of ethics prescribed under Clause (3b) but the Chief Justice is of the opinion that the breach does not warrant the judge being referred to a tribunal appointed under Clause (4), the Chief Justice may refer the judge to a body constituted under federal law to deal with such breach.

(3b) The Yang di-Pertuan Agong (King) on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts may, after consulting the Prime Minister, prescribe in writing a code of ethics which shall also include provisions on the procedure to be followed and sanctions which can be imposed other than the removal of a judge from office under Clause (3), in relation to a breach of any provision of the code of ethics.

(3c) The code of ethics prescribed under Clause (3b) shall be observed by every judge of the Federal Court and every judicial commissioner.

(4) The tribunal appointed under Clause (3) shall consist of not less than five persons who hold or have held office as judge of the Federal Court, the Court of Appeal or a High Court, or, if it appears to the Yang di-Pertuan Agong (King) expedient to make such appointment, persons who hold or have held equivalent office in any other part of the Commonwealth, and shall be presided over by the member first in the following order, namely, the Chief Justice of the Federal Court, the President and the Chief Judges according to their precedence among themselves, and other members according to the order of their appointment to an office qualifying them for membership (the older coming before the younger of two members with appointments of the same date).

(5) Pending any reference and report under Clause (3) the Yang di-Pertuan Agong (King) may on the recommendation of the Prime Minister and, in the case of any other judge after consulting the Chief Justice, suspend a judge of the Federal Court from the exercise of his functions.

(6) Parliament shall by law provide for the remuneration of the judges of the Federal Court, and the remuneration so provided shall be charged on the Consolidated Fund.

(6A) Subject to the provisions of this Article, Parliament may by law provide for the terms of office of the judges of the Federal Court other than their remuneration.

(7) The remuneration and other terms of office (including pension rights) of a judge of the Federal Court shall not be altered to his disadvantage after his appointment.

(8) Notwithstanding Clause (1), the validity of anything done by a judge of the Federal Court shall not be questioned on the ground that he had attained the age at which he was required to retire.

(9) This Article shall apply to a judge of the Court of Appeal and to a judge of a High Court as it applies to a judge of the Federal Court, except that the Yang di-Pertuan Agong (King) before suspending under Clause (5) a judge of the Court of Appeal or a judge of a High Court other than the President of the Court of Appeal or the Chief Judge of a High Court shall consult the President of the Court of Appeal or the Chief Judge of that High Court instead of the Chief Justice of the Federal Court.

(10) The President of the Court of Appeal and the Chief Judges of the High Courts shall be responsible to the Chief Justice of the Federal Court.

Judges excluded from safeguards:

The rules about the security of tenure laid down in Article 125 do not apply to several categories of judges and persons performing judicial functions. Among them are: the additional judge of the Federal Court appointed under Article 122(1A), Judicial Commissioners appointed for limited durations under Article 122AB, judges of Sessions and Magistrates Courts (who are

answerable to the Judicial and Legal Services Commission under Article 138), Syariah court justices (who are appointed under state laws) and chairpersons of statutory tribunals (whose terms of service and tenure are derived from the enabling law that created the tribunal).

Establishment of the Judicial Appointments Commission in Malaysia

The JAC was established under the Judicial Appointments Commission Act 2009 (Act 695) in relation to the appointments of judges of the superior courts, to set out the powers of the JAC, to uphold the continued independence of the judiciary and to provide for matters connected with the Judicial Appointments Commission. The Act is essentially to improve and compliment the constitutional method of appointing the judges of the superior courts; and to ensure unbiased selection of judicial candidates for the consideration of the Prime Minister, who has the final say regarding the appointment of judges to the superior courts.

Constitution of the JAC

Members of the JAC comprise the following:

- a) the Chief Justice of the Federal Court (Chairman)
- b) the President of the Court of Appeal
- c) the Chief Judge of the High Court in Malaya
- d) the Chief Judge of High Court in Sabah and Sarawak
- e) a Federal Court judge to be appointed by the Prime Minister; and
- f) four eminent persons, who are not members of the executive or other public service, appointed by the Prime Minister after consulting the Bar Council of Malaysia, the Sabah Law Association, the Advocates Association of Sarawak, the Attorney General of the Federation, the Attorney General of a State legal service or any other relevant bodies

The main functions of the JAC are stipulated under section 21 of Act 695, particularly to:

- 1) select suitably qualified persons who merit appointment as judges of the superior court for the Prime Minister's consideration;
- 2) receive applications from qualified persons for the selection of judges to the superior court; and
- 3) formulate and implement mechanisms for the selection and appointment of judges of the superior court.

Selection criteria:

Apart from the provisions of Article 123 of the Federal Constitution cited above, Section 23 of Act 695 has specified the following criteria:

- 1) integrity, competency and experience;
- 2) objective, impartial, fair and good moral character;
- 3) decisiveness, ability to make timely judgments and good legal writing skills;
- 4) industriousness and ability to manage cases well; and
- 5) physical and mental health.

Selection procedure:

The Judicial Appointments Commission (Selection of Judges of the Superior Courts) Regulations 2009 (Peraturan-Peraturan Suruhanjaya Pelantikan Kehakiman (Proses Pemilihan dan Kaedah Pelantikan Hakim-Hakim Mahkamah Atasan) 2009, P.U.(A) 209/2009 provide a detailed and transparent procedure to be followed by the JAC in regards to the selection of Judges of Superior Courts.

The following procedure is stipulated by the Regulations:

1) Application of the vacant posts in the High Courts and proposal from the designated personalities in respect of vacancies in the Federal Court and Court of Appeal.

2) Vetting and Screening of the application and proposal

a) the Secretary of the Commission shall, inter alia, “vet the application or proposal that the applicant or candidate is qualified under Article 123 of the Federal Constitution”;

b) the Secretary shall then send the names to four agencies, namely, the MACC, the Royal Malaysia Police, Companies Commission Malaysia and Department of Insolvency Malaysia- for verification of their educational qualification, financial position, tax payment record and credit, history as to arrest and conviction;

c) the Secretary then prepares a deliberation paper on each of the candidates about whom the relevant agencies have given satisfactory and positive reports for the consideration of selection by the Commission.

3) Selection of candidates by the Commission

The selection of candidates shall be made by “majority decision”(section 24(5)), i.e. on the basis of the majority votes received, and the Commission shall select

a) not less than three persons for each vacancy in the High Court; or

b) not less than two persons for each vacancy where the vacancy is for judges of the superior courts other than the High Court.

4) The PM may require the Commission to recommend two more names for his consideration for appointments of office bearer positions to the 3 superior courts, namely the Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judge of the High Court of Malaya and the Chief Judge of the High Court of Sarawak and Sabah, and the judges of the Federal Court and the Court of Appeal, from the “reserve candidates”.

5) The PM then tenders his advice to the Yang di-Pertuan Agong (King) after consultation with the Conference of Rulers.

Code of Conduct of Judges

Malaysia’s measure implementing the provision under review is provided for under the Judges’ Code of Ethics 2009 P.U.(B) 201 which governs the conduct of all judges and provides guidance to judges in setting and maintaining high standards of personal and judicial conduct.

Section 4(1) of the Judges’ Code of Ethic 2009 provides that “A judge shall comply with the provisions prescribed in this Code.” The code of conduct is under Part III, Paragraphs 5 - 12 of the Judges’ Code of Ethics 2009 as follows:

Paragraph 5- Upholding the integrity and independence of the judiciary

A judge shall exercise his judicial function independently on the basis of his assessment of the facts and in accordance with his understanding of the law, free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect from any quarter or for any reason.

Paragraph 6- Avoiding impropriety and the appearance of impropriety in all judicial activities

(1) A judge shall act at all times in a manner that promotes integrity and impartiality of the judiciary.

(2) A judge shall not:-

(a) allow any relationship to influence his judicial conduct or judgment;

(b) lend the prestige of his judicial office to advance his or others' private interest; and

(c) convey or permit others to convey the impression to any person that they are in a special position to influence him.

Paragraph 7- Performing judicial duties fairly and efficiently

(1) The judicial duties of a judge shall take precedence over all his other activities.

(2) A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

(3) A judge shall perform his judicial duties without bias or prejudice.

(4) A judge shall dispose of all his judicial duties fairly, efficiently, diligently and promptly.

(5) A judge shall refrain from giving any public comment about a pending or impending proceedings which may be heard before the judge's court in a manner which may suggest to a reasonable person the judge's probable decision in any particular case.

(6) A judge shall not disclose or use any non-public information acquired in his judicial capacity for any purpose unrelated to his judicial duties.

(7) A judge shall endeavour to diligently and efficiently hear and complete the cases in his court and promptly write his judgments.

(8) A judge shall not conduct himself in a manner which is not befitting of a judge or which brings or is calculated to bring disrepute to his office as a judge.

Paragraph 8- Minimizing the risk of conflict with the judge's judicial obligations while conducting his extra-judicial activities

(1) A judge shall ensure that his extra-judicial activities do not:-

(a) cast reasonable doubt on his capacity to act impartially as a judge; or (b) interfere with the proper performance of his judicial duties.

(2) A judge shall avoid close association with individual members of the legal profession, particularly those who practise in the judge's court, where such association might give rise to a reasonable suspicion or appearance of favouritism.

(3) A judge shall refrain from any conduct as a member of any group, association or organization or participate in any public discussion which, in the mind of a reasonable person, may undermine confidence in the judge's impartiality with respect to any issue pending before the court.

(4) A judge shall not participate in any political activities or involvement and shall refrain from any conduct which may give rise to an appearance that the judge is engaged in political activity.

(5) Subject to proper performance of his judicial duties, a judge, with the written approval of the Chief Justice, may:-

(a) write, give lecture, teach and participate in activities concerning the law, the judicial system, the administration of justice and related matters;

(b) appear at a public hearing before an official body concerned with matters relating to the law,

the judicial system and the administration of justice and related matters;

(c) serve as a member of an official body devoted to the improvement of the law, the judicial system, the administration of justice and related matters or as a member of a body approved by the Government of Malaysia;

(d) write or speak publicly on non-legal subjects and engage in historical, education, cultural, religious, sporting or social and recreational activities, if such activities are not detrimental to the dignity of the judicial office or do not otherwise interfere with the performance of his judicial duties in accordance with this Code; and

(e) participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interference with the performance of his judicial duties.

(6) A judge shall not be involved in charitable fund raising or membership solicitation.

(7) A judge shall not act in a manner which brings disrepute to his office as a judge.

(8) A judge shall not serve as the executor, administrator, trustee, guardian or in other fiduciary capacity, except for the estate, trust or person connected with a member of his family, if such service does not interfere with the proper performance of his judicial duties.

(9) A judge shall refrain from being engaged in any financial or business dealing which may interfere with the proper performance of his judicial duties or reflect adversely on his impartiality.

(10) A judge may receive compensation and reimbursement of expenses for his extra-judicial activities permitted by this Code, if such payments do not give the appearance of influencing him in the performance of his judicial duties or otherwise give an appearance of impropriety, provided that such compensation and reimbursement shall not exceed a reasonable amount that a person who is not a judge would receive for the same activities.

Paragraph 9- Declaration of assets

A judge shall, on his appointment or at any time thereafter as may be required by the Chief Justice of the Federal Court, declare in writing all his assets to the Chief Justice of the Federal Court.

Paragraph 10-Cessation of any connection with the firm

(1) A judge shall, on his appointment, cease to have any connection with the firm where he was practising as an advocate and solicitor prior to his appointment. (2) For the purpose of subparagraph (1), the judge shall:-

(a) immediately relinquish all interest in the firm;

(b) ensure that he has no dealing with the firm or any member of the firm; and

(c) ensure that his name is removed from the firm's name.

Paragraph 11- Administrative order or direction

A judge shall comply with any administrative order or direction issued by the Chief Justice of the Federal Court, the President of the Court of Appeal and the Chief Judges of the High Courts from time to time.

Paragraph 12- Complaint against judge

Any complaint against a judge who is alleged to have committed a breach of any provision of this Code shall be made in writing to the Chief Justice of the Federal Court.

Establishment of Judges' Ethics Committee

1. The Judges' Ethics Committee is set up under the Judges' Ethics Committee Act 2010 (Act 703) to carry out enquiry into complaints against a judge on breaches of the Judges' Code of Conduct in accordance to PART IV of the Judges' Code of Ethics 2009.

2. Jurisdiction of JEC: The Committee shall have jurisdiction in matters related to conduct and discipline of all judges other than removal of a judge from office under Clause (3) of Article 125 of the Federal Constitution (above cited), in accordance with Section 4 of Act 703.

3. Membership of JEC: Section 5 of Act 703 refers.

a. Chairman- The Chief Justice of the Federal Court

b. Members- shall consist of persons who hold or have held office as the President of the Court Appeal, Chief Judge of the High Court of Malaya, Chief Judge of the High Court of Sabah and Sarawak, Judge of the Federal Court, the Court of Appeal or a High Court, as the Chief Justice of the Federal Court deems fit.

c. The appointment of the members shall be on ad hoc basis and members shall comprise of judges who are senior in the order of precedence to the judge who is the subject of a disciplinary proceeding.

4. Proceeding

Proceedings of the Committee shall be in camera (Section 8 of Act 703) and the decision of the majority (of members) shall be deemed to be the decision of the Committee (Section 15(1)).

5. Decision

The decision of the Committee shall be final and conclusive and shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any ground. No court shall have jurisdiction to entertain or determine any suit, application, question or proceeding on any ground regarding the validity of such decision. Section 15 (3) of Act 703 refers.

NOTE: In preparing a draft Code of Judicial Conduct (The Bangalore Draft) by the Judicial Group on Strengthening Judicial Integrity, references were made to several existing codes, including the Judges' Code of Ethics, which was prescribed by the Yang di- Pertuan Agong (King) on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.

Training of Judges

The Judicial Academy (Akademi Kehakiman) was set up as a training institute in 2012 to, inter alia, plan, organise and conduct training programmes and courses for judges of the superior courts. The objective of the Academy is to enhance judges' judicial skills in various dimensions of judge-craft. The Academy is headed by the Chief Justice of Malaysia as the Chairman and comprises the President of the Court of Appeal, the Chief Judge of Malaya, the Chief Judge of Sabah and Sarawak together with six judges of the Federal Court and High Court. The Academy receives its funding from the Judicial Appointments Commission (JAC). The JAC also acts as the Secretariat for the Academy. In 2012, a total of RM200,000.00 was allocated by the JAC for the setting up of the Academy and for the conduct of training courses and programmes for judges of the superior courts.

At present the Academy does not have its own premises. Hence, courses and programmes in

2012 were conducted in a Government building located in Putrajaya. It is envisaged that funding will have to be sought from the government to build the Academy's own building and for it to have its own staff and training facilities.

The course content of the training programmes are planned and coordinated by the Academy Director. The programmes and courses presently run by the Academy fall into the following categories:

(i) Courses Conducted By Appellate Judge As Facilitators

These are courses, usually held on weekends, conducted by judges from the Court of Appeal and Federal Court, in their capacity as facilitators, to train judges in areas of the law mostly heard at the High Courts, and to address issues commonly raised in this forum. These courses are meant to be interactive, where course participants are required to participate in the discussions and make oral and written presentations.

In the year 2012, a total of 84 judges attended 6 programmes conducted by the appellate judges under this category. The courses covered issues such as drug trafficking cases under section 39B of the Dangerous Drugs Act 1952, Injunctions, Election Petitions, Judicial Reviews and Appellate Interventions. In the year 2013, the following programmes were conducted:

- (a) Company Act;
- (b) How to deal with Cases Under Section 39B of the Dangerous Drugs Act 1952;
- (c) Appellate Intervention; and
- (d) Revision Appellate Judges Seminar.

(ii) Seminars By Foreign Speakers

Under this category, the Academy invites eminent foreign judges and speakers who are experts in their respective fields to conduct seminars/workshops and give talks in their specialised areas of the law. In 2012, three such seminars were organised by the Academy, namely, "Workshop on Implementing the International Framework for Court Excellence", "Court Annexed Mediation: Shortcomings and Future Developments" and "Competition Law in Malaysia"; the latter was jointly organised by the Academy and the Malaysian Competition Commission. A total of 164 judges from all levels of the superior courts attended these lectures. In the year 2013, the following seminar were conducted:

- a. Dialogue Session Between the Honorable Society of Middle Temple and Malaysia Judiciary
- b. Construction Law: Issues and Challenges

(iii) Outreach Programmes

In view of the escalating number of ecological and environmental issues in the system, the Chief Justice conceived a programme which allowed judges to witness for themselves the harrowing destruction which had been caused to the environment. This Outreach Programme was also slanted towards engaging judges in some aspects of corporate social responsibility and strengthening their collegial harmony.

- a. Outreach Programmes in 2012 in Taman Negara, Cameron Highlands; and
- b. Kundasang and in 2013, in Pulau Gemia, Marang.

(iv) Sponsoring Judges To Seminars Organised By Other Bodies/Institutions

Under this category the Academy and JAC sponsor judges of the superior courts to attend courses

organised by other local and international bodies or organisations. This is aimed at exposing judges to recent developments in the law and matters concerning the legal and judicial profession. One such programme was the “International Malaysian Law Conference” held from 26 to 28 September 2012 in Kuala Lumpur, which was attended by 23 judges of the High Court. The Chief Justice of Malaysia, the President of the Court of Appeal and both the Chief Judges regularly attend these programmes. Their very presence continue to motivate members of the Judiciary to better equip themselves in dispensing justice. The next IMLC will be held in September 2016.

Subordinate Court Level

Subordinate Courts in Malaysia are the Sessions Court, Magistrates Court, Penghulu Court and Juvenile Court. The response to the requirements of this article under review will focus only on the Sessions and Magistrates Courts as proceedings of anti-corruption matters are confined within the civil and criminal jurisdiction to these latter courts.

Appointment of judges of Subordinate Courts

Unlike Judges of the Superior Courts highlighted above, judges of Subordinate Courts are not constitutional appointments but are part and parcel of the Judicial and Legal Service, defined as public service under Article 132(1)(b) of the Federal Constitution, appointed by the Judicial and Legal Service Commission (Article 138 of the Federal Constitution).

Qualification for Judicial and Legal Service:

1. Citizen of Malaysia
2. Not less than 18 years of age
3. (i) Bachelor Law degree recognized by the government Institution of Higher Education or a qualification recognized as equivalent thereto; or (ii) Passed the Final Bar Examination
4. Pass Bahasa Malaysia/Melayu at Sijil Pelajaran Malaysia Level or equivalent qualification recognized by the government.

The procedure for appointment of judges (to positions of Sessions Court Judge or Magistrate) of Subordinate Courts level is set out under the Subordinate Courts Act 1948 [Act 92].

1. Sessions Court

A Sessions Court is presided by a Sessions Court judge. A Sessions Court Judge (Malay: Hakim Mahkamah Sesyen) must be a member of the Judicial and Legal Service of the Federation (Section 60 of the Subordinate Court Act 92). A Sessions Court judge is appointed by the Yang di-Pertuan Agong on the recommendation of the respective Chief Judge.

2. Magistrates Court

To qualify as a First Class Magistrate (Majistret Kelas Pertama), the person must be a member of the Judicial and Legal Service of the Federation. In Malaysia, a First Class Magistrate for the Federal Territory is appointed by Yang di-Pertuan Agong (King) on the recommendation of the Chief Judge whereas in each state, a First Class Magistrate is appointed by the State Authority on the recommendation of the respective Chief Judge. This is provided for under Section 78A of the Subordinate Courts Act 1948 [Act 92].

Section 79 of the Subordinate Courts Act 1948 [Act 92]

The State Authority may appoint any fit and proper person to be a Second Class Magistrate in and for the state.

In the Federal Territory, a Second Class Magistrate is appointed by the Yang di-Pertuan Agong (King).

Code of Conduct (including Declaration of Assets) for Subordinate Court Magistrates and Judges

Judges and magistrates of Subordinate Courts are subjected to the Public Officers (Conduct & Discipline) Regulations 1993.

Training for Subordinate Court Judges and Magistrates

A. Training for judges of Subordinate Courts is provided by the Judicial and Legal Training Institute (ILKAP). ILKAP has over 99 courses covering the following programmes:

1. Senior Management and Professional Programme
2. Prosecution Programme
3. Civil Programme
4. Civil Litigation Programme
5. Language Programme
6. Induction Programme

B. Courses for Magistrates cover:

Character building, Magistrates' roles and jurisdiction, Rules of Court 2012, court fee, recent amendments to the Criminal Procedure Code, summary trial conference, remand, inquest, Review, Exhibit (Criminal and Civil Cases), Types of Exhibits, Handling exhibits in court before trial, Handling exhibits in court during trial, Handling exhibits after trial (exhibit disposal), Procedures of appeal and preparation of Manual Appeal Record and E-filing (Civil and Criminal cases), Techniques of recording proceedings in court and writing grounds of judgment, Effective practical writing of grounds of judgments (Civil and Criminal Cases), Procedures of criminal case management and trial, as well as Court mediation process.

C. Training curriculum:

- a) Judicial Ethics - Code of Ethics for Judges/Judges' Ethics Committee Act/Principles of judicial officers' ethical conduct policy. Applying ethical principles in and outside the office;
- b) Human Rights and/or Fair Trial Rights;
- c) ASEAN Instruments;
- d) International/Comparative Law and Conflict of Laws; and
- e) Continuing Judicial Education- updated developments in laws and jurisprudence.

Transparency of the Court Room Process

The Malaysian courts are open and public, as per Section 15 of the Courts of Judicature Act

1964, which provides:

(1) The place in which any Court is held for the purpose of trying any cause or matter, civil or criminal, shall be deemed an open and public court to which the public generally may have access:

Provided that the court shall have power to hear any cause or matter or any part thereof in camera if the Court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety or for other sufficient reason so to do.

(2) A Court may at any time order that no person shall publish the name, address or photograph of any witness in any cause or matter or any part thereof tried or held or to be tried or held before it, or any evidence or any other thing likely to lead to the identification of any such witness; and any person who acts in contravention of any such order shall be guilty of an offence and shall, on conviction liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both.

(3) The Chief Registrar Office in 2011 had placed greater transparency to the judiciary system by placing monitoring technology system (CRT) in the courts to curb abuse of power and to encourage efficiency. The CRT records the trial proceedings and even during pre-trial case management.

Measures against Conflict of Interest/Impartiality/Bias of Judges

1. Section 417 (1) (a) of the Criminal Procedure Code provides for the power of the High Court to transfer criminal cases, whenever it is made to appear to the High Court that a fair and impartial trial cannot be had in any criminal Court subordinate to it. Thus, it may order that

(aa) that any offence be tried by any Court not empowered under sections 121 to 126 but in other respects competent to try such offence;

(bb) that any particular case or class of cases be transferred from a Criminal Court subordinate to it to any other such Criminal Court of equal or superior jurisdiction; or

(cc) that any particular criminal case be transferred to and tried before the High Court.

2. Section 439 of Criminal Procedure Code provides that:

No Magistrates shall, except with the permission of the High Court to which an appeal lies from his Court, try any case to or in which he is a party or personally interested.

3. Recusal of trial judge for apparent bias.

“The test favourable for ‘apparent bias’ or ‘real danger of bias test’ has been set out by the Federal Court ... However each case in which it is alleged that there arises a reasonable apprehension of bias will turn upon its own facts and be of little, if any, as precedent. (See *Residence Hotel and Resorts Sdn Bhd v Seri Pacific Corp Sdn Bhd* [2014] 10 MLJ 413 attached).

4. A judicial rotation system in the subordinate courts (for magistrates, registrars and lower court officers) on a 3-4 year basis is also in place.

Accessibility of Court Judgements:

Rules of Court 2012- Order 42 Delivering judgment (O. 42, r. 1)

(1) Every judgment, after the hearing of a cause or matter in open Court, shall, subject to paragraphs (3) and (4), be pronounced in open Court either on the conclusion of the hearing or on a subsequent day of which notice shall be given to the parties.

(2) Where a cause or matter is heard in Chambers, the Judge hearing it may, subject to paragraphs (3) and (4), pronounce the judgment in Chambers, or, if he thinks fit, in open Court.

(3) Whenever a written judgment is to be delivered, the Court may deliver it by directing copies thereof to be handed to the parties or their solicitors upon payment of the appropriate charges therefor, and the original thereof signed by the Judge shall be filed.

(4) When a Judge who has heard any cause or matter is unable through death, illness or other cause to pronounce judgment, the judgment written by him may be pronounced by any other Judge in open Court or in Chambers, as the case may be, and such other Judge may deliver it in Chambers by directing copies thereof to be handed to the parties or their solicitors upon payment of the appropriate charges therefor, and the original thereof signed by the Judge who wrote it shall be filed.

Judgment in proceedings heard in camera (O. 42, r. 1A)

Where proceedings are heard in camera pursuant to any written law, any judgment pronounced or delivered in such proceedings shall not be available for public inspection except that the Court may, on such terms as it may impose, allow an inspection of such judgment by, or a copy thereof to be furnished to, a person who is not a party to the proceedings.

Inspection of judgment (O.42, r. 2A)

Subject to rule 1A, a copy of every judgment delivered in any cause or matter heard in open Court shall be available for public inspection upon payment of the prescribed fee and a copy thereof shall be handed to any member of the public upon payment of the appropriate charges therefor, and nothing in Order 60, rule 4, shall apply to this rule.

Entry of judgment in Cause Book (O. 42, r. 4)

The proper officer in the Registry shall enter in the cause book a minute of judgment or final order given or made by the Court.

Other Sources of Court Decisions/Judgments to members of the public:

1. The Malaysian Court Homepage

This website contains Malaysian judicial information and links to recent judgments and superior courts rules and other related information, refer to www.kehakiman.gov.my.

2. The Official Portal of the Attorney General's Chambers of Malaysia Refer to www.agc.gov.my <http://www.agc.gov.my>.

3. Law Reports

Selected court cases are reported in any of three major law reports in Malaysia, e.g., Malayan Law Journal (MLJ - 1932 to current), Current Law Journal (CLJ - 1982 to current) and All Malaysia Reports (AMR - 1992 to current). Lower courts judgments of the Magistrate Court and the Sessions Court are published online through e-Judgment, under the Reporting Unit, International Affairs and Reporting Division of the Chief Registrar's Office, Federal Court of Malaysia.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics and Cases of Disciplinary Charges & Proceedings against Judges:

In 1988, two tribunals were appointed under Article 125(3) of the Federal Constitution to convene disciplinary proceedings against a Lord President and five Supreme Court Judges, all of whom were cited for misbehaviour in two separate but interrelated matters. See Tun Dato Haji Mohamed Salleh Abas v Tan Sri Dato Abdul Hamid bin Omar & Ors [1988] MLJ 149.

Statistics on the total number of Judges and Workload: See The Judiciary Year Book 2012, 2013, 2014.

Case Management/Assignment System:

1. See Malaysia Court Backlog and Delay Reduction Program: A Progress Report by the World Bank 2011.
2. See “The E-Court System In Malaysia” Kamal Halili Hassan 1, Universiti Kebangsaan Malaysia Maizatul Farisah Mokhtar, Universiti Kebangsaan Malaysia 2011, 2nd International Conference on Education and Management Technology IPEDR vol. 13 (2011) © (2011) IACSIT Press, Singapore.
3. Konrad Adenauer Stiftung Human Rights Resource Centre Report entitled, “Judicial Training in ASEAN: A Comparative Overview of Systems and Programmes” April 2014.

Report of Ethical Dilemma , Corruption Risks:

1. See article entitled “Rule of Law & Independence of the Judiciary: Some Issues,” by Emeritus Professor Shad Saleem Faruqi attached.
2. See article entitled “Restricting Discussion of Judicial Conduct & Article 127 of the Federal Constitution of Malaysia; Some Perspectives from the Raja Segaran v Bar Council cases. Justice Mohamad Ariff Md. Yusof, The Malaysian Year Book 2012 pg 194.
3. See article entitled “Corruption In Legal System (Malaysian Perspective On Corruption In Legal System)”: paper presented by Tun Arifin bin Zakaria, Chief Justice of Malaysia, at the 5th Asia Pacific Judicial Reform Forum on Developing Judicial Capabilities to Enhance Public and International Confidence In Legal System” 1 Nov 2013, Singapore.

Statistics and examples of cases involving members of the Judiciary subject to corruption allegations in the MACC records show that in 2010, the MACC successfully charged one (1) Magistrate under Section 16 of the MACCA 2009 and one (1) Judge of the Syariah Court under Section 10 and Section 11 of Anti-Corruption Agency Act 1997, both of whom were found guilty as charged.

1. Public Prosecutor v. Parkash Kaur A/P Sadhu Singh & Anor[1994] MLJU 517
2. Thavanathan Balasubramaniam v. PP [1997] 3 CLJ 150
3. PP v. Mohd Firdaus bin Ramlan [unreported].

The accused was charged guilty for two offences. On the first charge, he was alleged to have received RM3,000 on 11 October 2009 from a man named Md Shani Ishak in consideration of releasing him from criminal charged against him. On the second charge, on 6 October 2009 the accused was alleged to have asked for a sum of RM5,000 from the same person for the same purpose in his chamber at Kuala Krai Magistrate Court.

The Session Court Judge sentenced the accused to 3 years’ imprisonment for the first charge and

a fine amounting RM15,000 (12 months' imprisonment for the failure to pay the fine). On the second charge, the Judge sentenced him to 3 years' imprisonment and a fine amounting to RM25,000 (18 months' imprisonment for the failure to pay the fine). The imprisonment for both charges is to run concurrently.

(b) Observations on the implementation of the article

The selection procedure for judges under the Judicial Appointments Commission (Selection of Judges of the Superior Courts) Regulations 2009, as well as the Judges' Code of Ethics 2009 and the Judges' Ethics Committee established under the Judges' Ethics Committee Act 2010 (Act 703), among other measures, appear to provide a comprehensive framework to strengthen integrity and prevent opportunities for corruption among members of the judiciary. A comprehensive training programme for judges, with dedicated resources allocated by the JAC for the Judicial Academy and for training courses and programmes for judges of the superior courts, is also in place. There have been very few cases of disciplinary charges and proceedings against members of the judiciary and no reported cases of political interference in cases.

Additional measures are in place for judges of Subordinate Courts as part of the Judicial and Legal Service and the Public Officers (Conduct & Discipline) Regulations 1993, which provide a code of conduct (including declaration of assets) for Subordinate Court magistrates and judges. Training for judges of Subordinate Courts is provided by the Judicial and Legal Training Institute (ILKAP). A judicial rotation system in the subordinate courts (for magistrates, registrars and lower court officers) on a 3-4 year basis is also in place.

Malaysia has also taken measures against conflict of interest, impartiality and bias of judges and to enhance transparency in the judicial process, such as transparency of court room proceedings, accessibility of court judgements, as well as rules on the transfer of cases and the recusal of trial judges for apparent bias or conflict of interest (see, e.g., Rules of Court 2012- Order 42, Sections 417, 439 Criminal Procedure Code; *Residence Hotel and Resorts Sdn Bhd v. Seri Pacific Corp Sdn Bhd* [2014] 10 MLJ 413 attached).

Statistics and cases of disciplinary and criminal proceedings against judges were provided.

Paragraph 2 of article 11

2. Measures to the same effect as those taken pursuant to paragraph 1 of this article may be introduced and applied within the prosecution service in those States Parties where it does not form part of the judiciary but enjoys independence similar to that of the judicial service.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full

compliance with this provision of the Convention.

Independence of the Prosecution Service

In Malaysia, the Attorney-General (Peguan Negara), is the principal legal adviser to the Government. He is also the principal public prosecutor in the country, and is also known as the Public Prosecutor. He has the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial

Appointment, Function and Powers of the Attorney General as provided for under Article 145 of the Federal Constitution of Malaysia

(1) The Yang di-Pertuan Agong (King) shall, on the advice of the Prime Minister, appoint a person who is qualified to be a judge of the Supreme Court to be the Attorney General for the Federation.

(2) It shall be the duty of the Attorney General to advise the Yang di-Pertuan Agong (King) or the Cabinet or any Minister upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Yang di-Pertuan Agong (King) or the Cabinet, and to discharge the functions conferred on him by or under this Constitution or any other written law.

(3) The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial.

(3A) Federal law may confer on the Attorney General power to determine the courts in which or the venue at which any proceedings which he has power under clause (3) to institute shall be instituted or to which such proceedings shall be transferred.

(4) In the performance of his duties the Attorney General shall have the right of audience, in, and shall take precedence over any other person appearing before, any court or tribunal in the Federation.

(5) Subject to Clause (6), the Attorney General shall hold office during the pleasure of the Yang di-Pertuan Agong (King) and may at any time resign his office and, unless he is a member of the Cabinet, shall receive such remuneration as the Yang di-Pertuan Agong (King) may determine.

(6) The person holding the office of Attorney General immediately prior to the coming into operation of this Article shall continue to hold the office on terms and conditions not less favourable than those applicable to him immediately before such coming into operation and shall not be removed from office except on the like grounds and in the like manner as a judge of the Supreme Court.

Recruitment of members of prosecution service

The Prosecution Division of the Attorney General's Chambers

In exercising prosecutorial discretion, the Attorney-General functions via the Prosecution Division of his Chambers. The Division is headed by a Senior Deputy Public Prosecutor (SDPP), deputized by also two other SDPPs. Complementing them are Deputy Public Prosecutors (DPPs) and Assistant Public Prosecutors (APPs). They are fit and proper persons appointed by the Public Prosecutor, and at all times under the general control and direction of the Public Prosecutor. They exercise all or any of the rights or powers exercisable by the Public Prosecutor, except rights and powers which are to be exercised by the Public Prosecutor personally.

The Prosecution Division comprises the Headquarters Unit and the State Prosecution Units. There are fourteen (14) State Prosecution Units. The Headquarters Unit comprises the following

sub-units:

- a. Serious crime
- b. General crime and public order unit
- c. Sexual crimes and domestic violence unit
- d. Commercial and cybercrimes unit
- e. Money laundering crimes and forfeiture of proceeds of crimes unit
- f. Transnational crime unit

Apart from the above, there are also Deputy Public Prosecutors assigned to the Anti-Corruption Commission, Royal Customs and Excise Department and Securities Commission. The SDPPs, DPPs and APPs appear in all courts in the country to conduct prosecution. There are also prosecuting officers from, inter alia, the Royal Malaysian Police, Royal Customs and Excise Department, Ministry of Domestic Trade and Industry, Securities Commission, Central Bank of Malaysia, who appear in court to conduct prosecutions. Apart from the SDPPs, DPPs and the APPs the other prosecution officers are authorized in writing by the Public Prosecutor to appear in a court to conduct prosecutions. Administratively, the Headquarters Unit of the Division monitors and supervises the various prosecution units in the country. It is also responsible for the formulation of prosecution policies nationwide.

The recruitment of members into the prosecutorial service is carried out by the Judicial and Legal Service Commission set up under Article 138 and in accordance with Art. 144 (1) of the Federal Constitution of Malaysia as follows:

Article 138:

- (1) There shall be a Judicial and Legal Service Commission, whose jurisdiction shall extend to all members of the judicial, and legal service.
- (2) The Judicial and Legal Service Commission shall consist of -
 - (a) the Chairman of the Public Services Commission, who shall be Chairman;
 - (b) the Attorney General or, if the Attorney General is a member of Parliament or is appointed otherwise than from among members of the Judicial and Legal Service, the Solicitor General; and
 - (c) one or more other members who shall be appointed by the Yang di-Pertuan Agong (King), after consultation with the Lord President of the Federal Court, from among persons who are or have been or are qualified to be a judge of the Federal Court or a High Court or shall before Malaysia Day have been a judge of the Federal Court or a High Court or shall before Malaysia Day have been a judge of the Federal Court.
- (3) The person who is secretary to the Public Services Commission shall be secretary also to the Judicial and Legal Service Commission.

Article 144 (1) of Federal Constitution of Malaysia provides that the functions of the Commission are to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service under its jurisdiction.

Current Laws, Regulations and Directives Governing the Conduct of Prosecutors

(Source: Effective Administration Of The Police And The Prosecution In Criminal Justice In Malaysia By Deputy Public Prosecutor Azmi Bin Ariffin)

A. Laws And Regulations

1. The Federal Constitution of Malaysia

(i) Clause 3 of Article 145

- a. The prosecutor may institute and conduct any proceedings for a criminal offence.
- b. May discontinue criminal proceedings that are instituted.
- c. May amend a charge at any point of time during the conduct of a prosecution, if there is proper basis.
- d. Courts cannot compel the Attorney General to institute prosecution which he does not intend to institute or to proceed with any criminal proceedings which are to be discontinued.
- e. Courts cannot compel the Attorney General to enhance a charge when he is content to proceed on a lesser charge.

(ii) Clause (1) of Article 5

- a. No person shall be deprived of his life or personal liberty save in accordance with law. Prosecutors are to ensure that this fundamental liberty is strictly observed.

(iii) Article 7

- a. No person shall be punished for an act or omission which was not punishable by law when it was not done or made, and no person shall suffer greater punishment for an offence that was prescribed by law at the time it was committed.
- b. A person who has been acquitted or convicted of an offence shall not be tried again for the same offence except where the conviction or acquittal has been quashed and a retrial ordered by a court superior to that by which he was acquitted or convicted. Prosecutors are to observe the above principle against double jeopardy before making a decision to prosecute.

(iv) Article 8

All persons are equal before the law and entitled to the equal protection of the law. Prosecutors are to observe this principle of equality before the law before embarking on a decision to prosecute. The principle underlying Article 8 is that law must operate alike on all persons under like circumstances, not simply that it must operate alike on all persons in any circumstance, nor that it must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons for the purpose of legislation.

(v) Article 121

A prosecutor has to ensure compliance with this Constitutional provision which caters for the judicial power vested in the various courts in the country.

Together with this provision, a prosecutor's role in instituting criminal prosecution is regulated by the other laws made pursuant to the Federal Constitution with regards to the jurisdiction and workings of the superior and inferior courts. Examples of such legislation are Courts of Judicature Act 1964 [Act 91], Rules of the Federal Court 1980 [P.U. (A) 33], Rules of the Court of Appeal 1994 [P.U. (A) 524], Rules of Court 2012, Subordinate Courts Act 1948 [Act 92], Subordinate Courts Rules Act 1955 [Act 55]

2. Criminal Procedure Code and other Written Law Governing the Procedure for the Manner or Place of Inquiring into or Trying of the Relevant Offences.

A prosecutor has to be fully apprised of the provisions of these laws. These laws regulate the prosecution of offences in a court of law. The jurisdiction of the criminal courts has to be in consonance with the penal provisions providing for the particular offence

3. Evidence Act 1950 [Act 56]

- a. This Act defines the law of evidence. The basic analysis of the process of criminal prosecution expresses the need for an understanding of the law of evidence.
- b. Evidence may be defined as material which persuades the court of the truth or probability of some fact asserted before it.
- c. Hence the need for a prosecutor to appraise of the mechanics of the law of evidence in order to convince the court to receive and admit a piece of evidence.
- d. For a prosecutor evidence must be seen not only in the context of the mechanics by which it is to be presented, but first and foremost, in the context of the law which allows the evidence to be tendered/adduced.

4. Directives Public Prosecutor's Directives made from time to time to regulate manner and conduct of prosecutions in court.

B. Code of Conduct

All officers in the Legal and Prosecutorial services are public officers and are therefore subject to the Public Officers (Conduct & Discipline) Regulations 1993 and related service circulars which provide for the following:

- i. Declaration of Asset provisions for prosecutors in Regulation No. 10 the Public Officers (Conduct & Discipline) Regulations 1993 read in conjunction with Service Circular No.3 of 2002 (Pekeliling Perkhidmatan Bilangan 3 Tahun 2002) also applies. This circular is an extension of Regulation No. 10 of the Service Circular No.3 of 2002.
- ii. Conflict of interest provisions for prosecutors are stipulated within sub-regulations 4 (2) (a), (b), (c) and (d) of the Public Officers (Conduct & Discipline) Regulations 1993 (attached)

C. Guidelines for the role of Prosecutors

(Source of Information: Effective Administration of the Police and the Prosecution In Criminal Justice In Malaysia, by DPP Azmi Bin Ariffin).

1. In the exercise of their prosecutorial discretion Prosecutors are expected:
 - a. To act in the exercise of any prosecutorial function including the exercise of discretion, fairly and dispassionately;
 - b. To act in the spirit to seek justice, not merely to obtain a conviction and to present to the court in a firm and fair manner evidence that the lawyer considers to be credible and relevant;
 - c. Not to prevent or impede one charged with an offence or in peril of such a charge from being represented by counsel or from communicating at reasonable times with counsel;
 - d. To ensure that the right person is prosecuted for the right offence and that all relevant and admissible evidence is tendered in court.

- e. To be fair minded and independent. Decisions made must be free and not biased or tending on race, creed or religion nor affected by improper or undue pressure from any quarters.
- f. To review evidence and decisions from time to time, so that prosecutors can take into account any change in circumstances. Upon review prosecutors can advise on further investigations, if necessary or may decide to amend the charges or discontinue prosecution.
- g. To be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against an accused on a particular charge. They must consider what the defense case is/may be and how it is likely to affect the prosecution case.
- h. When deciding whether there is sufficient evidence to prosecute, to scrutinize the reliability and admissibility of such evidence. There may be instances in which the evidence may not be as strong as it first appears. In such instances, prosecutors must ask themselves the following questions:
- i. Can the evidence be used in court?
 - ii. Is it likely for the evidence to be excluded by the court?
 - iii. There are certain legal rules which disallows relevant evidence to be adduced at the trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against hearsay evidence?
 - iv. If so, is there other sufficient evidence for a realistic prospect of conviction? v. Is the evidence credible?
 - vi. Is it likely that a confession is unreliable?
 - vii. Is the witness background likely to weaken the prosecution case? This may involve treatment of evidence of an accomplice, hostile witnesses etc.
- i. Having satisfied that the evidence itself can justify criminal prosecution, the prosecutor must then consider whether public interest demands prosecution. The public interest criteria that can affect the decision to prosecute depend on the seriousness of the offence or the circumstances of the offender. Regard must be had to the effect the prosecution, would have upon public morale and order, and on other matters affecting public policy. Some factors may increase the need to prosecute but others may suggest that another course of action would be more appropriate. Such a course of action may include disciplinary action.
- j. To ensure sufficient copies of documents such as bank statements, resolutions, and other documents should be made available to be given to the opponents and the court as and when the originals are tendered in court. This step too will avoid unnecessary delay of a criminal trial.
- k. Not to initiate or indulge in unilateral communications with the court concerning the matter currently before the court without the consent of all other counsel involved or the accused, if unrepresented. Delivery of pre-trial memoranda or other material to the court without contemporaneously making reasonable efforts to forward it to other counsel or the accused, if unrepresented, is a violation of this duty.
- l. Not to negotiate and recommend a plea agreement if the defense, by such an agreement, is obliged to plead guilty to an offence or charge not reasonably supported by the facts.
- m. To take extra caution when engaging in discussions with defense counsel pertaining to the prosecution at hand. This will ensure that the prosecution is not jeopardized in any way.
- n. To conduct themselves professionally in all their undertakings. They are required to comply with the highest standards of morality and integrity. They must comply with all laws and regulations with regard to their conduct as a public officer.

2. Training of Prosecutors

Training on knowledge, skills and abilities for prosecution service officers is provided for by ILKAP as per response in Article 11 paragraph 1 above. The curriculum is inclusive of specific areas of judicial ethics.

3. Procedures on Case Management:

- a. Criminal Cases- as provided for under Chapter XVIII A of the Criminal Procedure Code entitled “Pre-Trial Processes”
- b. Civil Cases- as provided for under Rules of Court 2012 Order 34 (Pre-Trial Case Management).

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics/Cases of Corruption involving members of the Legal & Prosecutorial Service

1. 2001- *DPP Mohamed Razib bin Othman and anor* (Officer of ACA) were charged under Section 4 (a) of the Prevention of Corruption Act 1997.
2. 2016- *DPP Kamalia Yahdi and anor*, charged in Tawau, Sabah, for offence of Section 17 (a) MACCA 2009 (ongoing).

No reported cases against an Attorney-General.

(b) Observations on the implementation of the article

In addition to laws, regulations and directives governing the conduct of prosecutors and the manner and conduct of prosecutions in court, in respect of the applicable code of conduct, all officers in the Legal and Prosecutorial services (including those in the MACC) are public officers and are therefore subject to the Public Officers (Conduct & Discipline) Regulations 1993 and related service circulars which provide for declarations of assets (Regulation No. 10 read in conjunction with Service Circular No. 3 of 2002); conflict of interest provisions for prosecutors (sub-regulations 4 (2) (a), (b), (c) and (d) of the said Regulations 1993); and Guidelines for Prosecutors. Specialized training of prosecutors and procedures on case management are in place.

There are also measures on the appointment, function and powers of the Attorney General, as provided for under Article 145 of the Federal Constitution, and the recruitment of members of prosecution service. The Attorney General may be removed from office on the like grounds and in the like manner as a judge of the Supreme Court (Article 145, para. 6, Constitution).

Article 12. Private sector

Paragraph 1 of article 12

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with these provisions?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with these provisions of the Convention.

Anti-Corruption Standards in the Private Sector

The private sector in Malaysia includes the following:

- a. Companies registered under the Companies Act 2016 (Act 777);
- b. Sole proprietorships, businesses, traders registered under the Registration of Business Act 1956 (Act 197);
- c. Limited liability partnerships registered under the Limited Liability Partnerships Act 2012;
- d. Professional bodies, body of persons (Engineers, Architects, Legal, Company Secretaries, Accountants, Medical etc.);
- e. Corporatized Government Entities/GLCs.

In Malaysia, there are no specific laws on anti-corruption, per se, enacted to counter private sector corruption activities. Under the MACC Act 2009 and other penal legislation pertaining to corruption (or serious offence under Anti-Money Laundering, Anti-Terrorism and Proceeds of Unlawful Activities Act 2001 and the Penal Code), public sector agents are equally liable for offences of corruption with the same degree of punishments as the principal offender.

Private sector agents are equally be liable for active and passive corruption offences if they act as intermediaries, abettors or conspirators among themselves as well as with public sector actors.

Corporate Liability

Although the Malaysian Anti-Corruption Commission Act 2009 (Act 694) does not contain provision for liability for legal persons, nevertheless steps have been undertaken by Malaysia to amend Act 694 by introducing “corporate liability” provision in compliance with the requirements of UNCAC Article 26 in the near future. These measures were pending at the time of the country visit.

Statutory Bodies

The Companies Commission Malaysia (CCM) and Securities Commission Malaysia (SC) are the main statutory bodies that regulate private sector affairs in Malaysia, including relevant legislation, standards or procedures in preventing corruption.

Securities Commission Malaysia

1. Relevant legislations and guidelines under the Securities Commission Malaysia:
 - a. Capitals Markets and Services Act 2007 (CMSA)
 - b. Equity Guidelines 2013
 - c. Securities Commission Malaysia Guidelines on Prevention of Money Laundering and

- d. Securities Commission Act 1993
- e. Corporate Governance Code and relevant documents

2. Whilst the laws and regulations enforced by Securities Commission Malaysia do not directly deal with “corruption”, some of the provisions do take into consideration corruption. Furthermore, in their effort to promote good corporate governance, the Malaysia Corporate Governance Code (MCCG) advocates amongst other things for the board to promote an ethical culture within the corporation, a culture which amongst other things that does not condone corruption.

3. The provisions in the CMSA that maybe relevant are:

No	Provision	Elaboration
3.1	Section 317A (Prohibited conduct of director or officer of a listed corporations)	Section 317A allows for the SC to take action against the conduct of directors of listed corporations with the intention to cause wrongful loss. “Wrongful loss” here means loss of property by unlawful means to which the person losing is legally entitled. A person who contravenes this section commits an offence and is punishable upon conviction with imprisonment for a term which range between two to ten years and will be liable to a fine not exceeding ten million ringgit. This provision may be used for example: a director of a listed company causes the listed company to acquire a property at a higher price than what the listed company should have paid for on the grounds that the listed company director had received a bribe.
3.2	Sections 64 and 65 (Grounds for refusal for the grant of Capital Markets Services License and Grounds for refusal for the grant of Capital Markets Services Representative’s License)	Sections 64 and 65 are gatekeeping provisions that enable the SC to reject, revoke or suspend a license given to a capital market intermediary on the grounds that the intermediary is not fit and proper to hold a license. The grounds specified in the sections are wide and include engaging in business practice that reflects discredit on its or his method of conducting business.

3.3	Section 128 (Duties of Auditors)	Section 128 depicts the statutory duties of auditors in performing their duties. Auditors, once he becomes aware of the circumstances listed in section 128 (a)-(f) as below, must report the matter to relevant authorities including the SC. By reporting such irregular circumstances, this will ensure the integrity of the accounts and financial standing of the capital market institutions. (a) of any matter which in his opinion may constitute a breach of this Act or any securities laws; (b) of any irregularity that may have a material effect upon the accounts of the relevant person, including any irregularity that jeopardises or may jeopardise the funds or property of the clients of the relevant person, where applicable; (c) that losses have been incurred by the relevant person who is the holder of a Capital Markets Services License which renders the relevant person to be unable to meet the minimum financial requirements as may be prescribed in the regulations made under this Act; (d) that the auditor is unable to confirm that the claims of clients or creditors of the relevant person are covered by the assets of the relevant person; (e) that an offence in connection with the business of the relevant person has been committed; or (f) in the case of a relevant person who is a holder of a Capital Markets Services License, that there has been a contravention of the rules of a stock exchange, a derivatives exchange, an approved clearing house or a central depository.
3.4	Section 320A (False or misleading financial statements of a listed corporation)	Section 320A protects the integrity of financial statements by ensuring that preparers of the statements are not coerced to falsify the listed companies' financial statements.
3.5	Section 321 (Protection for persons against retaliation for reporting to authorities in specific circumstances)	Section 321 provides protection for the chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation for disclosing vital information of breach or non-performance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation.

4. Equity Guidelines

4.1. The SC, in giving its approval to list securities on the exchange in accordance to section 212 will take into consideration amongst others, the applicant's governance arrangements and also the promoters' and directors' fitness. If the promoter or director is convicted for the offence of corruption, this would be given due consideration by the SC as in Equity Guidelines Chapter 3.0.

5. Securities Commission Malaysia Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries 2014

5.1 The Guidelines are drawn up in accordance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) and the Financial Action Task Force (FATF) 40 Recommendations. These Guidelines are an indirect tool in preventing corruption as the Guidelines prevents capital market intermediaries from being a conduit for money laundering which may include proceeds from of corruption. If reporting institutions suspect that proceeds from corruption are being laundered through their organisations, they are required to report such suspicious transactions to the Financial Intelligence Unit.

6. Securities Commission Malaysia Act 1993

6.1 Cooperation by the SC with law enforcement authorities such as the MACC is provided for under section 149 of the SCMA:

“149. Assistance to police or other public officer.

Notwithstanding section 148, the Commission may, at its own initiative, or at the request of a public officer–

(a) supply to a police officer or any other public officer a copy of any book or other document seized, detained or taken possession of under section 128 or of any record of examination made under section 134, or of any statement made under subsection 134(3), or of any book or other document produced under subsection 128(2), or otherwise in the course of any examination under section 134, and such police officer or other public officer may make use of such copy of such book statement, record or other document as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person; or

(b) allow a police officer or any other public officer to have access to and inspect any property, book, other document, article or thing which had been produced before, or seized, detained or taken possession of by an Investigating Officer under the securities laws, and such police officer or other public officer may make such use of any knowledge gained by such access or inspection as may be necessary or expedient in relation to the exercise of his powers, the performance of his functions, or the discharge of his duties, in respect of any person.”

7. Corporate Governance Code and relevant documents

7.1 It should be noted that corporate governance manuals and measures in Malaysia are used to promote good governance in the capital market to engender trust and confidence in the capital markets and increases investors' willingness to commit capital.

7.2 Corporate Governance Blueprint 2011

7.2.1 The SC's five-year Corporate Governance Blueprint, which was launched on 8 July 2011, provides the action plan to raise the standards of corporate governance in Malaysia by strengthening self and market discipline and promoting greater internalisation of the culture of good governance.

7.2.2 The Blueprint reiterates that good boards and gatekeepers are critical safeguards against misconduct, mismanagement and fraudulent activities. The Blueprint describes the key role of the board is to establish a corporate culture which promotes ethical conduct that permeates

throughout the company. This can be achieved by formalising ethical values through a code of conduct, supported by internal systems to ensure its compliance. This code should also be actively communicated to all employees and stakeholders of the companies to ensure appreciation and effective implementation.

7.3 Malaysian Code on Corporate Governance 2012, 2017

7.3.1 In 2012, the SC released the Malaysian Code on Corporate Governance 2012 (MCCG 2012), the first major deliverable of the Corporate Governance Blueprint 2011. The MCCG 2012 supersedes the Malaysian Code on Corporate Governance 2007. It sets out broad principles and specific recommendations on structures and processes which companies should adopt in making good corporate governance an integral part of their business dealings and culture. MCCG 2012 advocates the adoption of standards that go beyond the minimum prescribed by regulation. While it is not mandatory for companies to observe the MCCG 2012, listed companies are required to explain in their annual reports how they have complied with the recommendations (Bursa Malaysia Listing Rules, Chapter 15: Corporate Governance, Part E, Para 15.25). Listed companies are further required to disclose information on their whistleblower protection policies.

7.3.2 The MCCG 2012 makes reference to formalizing ethical standards through a code of conduct and ensures its compliance (under Recommendation 1.3). The commentary of the Recommendation 1.3 recommends for the formalisation of such ethical values through a code of conduct that ensures the implementation of appropriate internal systems to support, promote and ensure its compliance including appropriate communication and feedback channels which facilitate whistleblowing.

7.3.3 Disclosure of compliance with the Code is mandatory under Bursa Listing Requirements Chapter 15, Part E: Corporate Governance, Para 15.25, where a listed company must ensure that its board of directors provides a narrative statement of corporate governance practices with reference to the 2012 Code. In the statement, the listed issue must include information on how the Recommendations in the Code have been applied and if not followed, the reasons for not following and the alternatives adopted. Failure to comply with this provision is considered to be a breach of Listing Requirements where the penalty can range from fines, reprimands to being delisted.

7.3.4 Amendments to the 2012 Code were approved in 2016 and released by the SC in April 2017. In the Public Consultation Paper of the 2016 Code, released in April 2016, the new Code gives more emphasis to the need to tackle corruption. The word “corruption” was specifically added to the elaboration in a practice that aims to urge the boards of companies to uphold good ethics and integrity.

7.4 The Malaysian Code for Institutional Investors (MCII)

7.4.1 The Malaysian Code for Institutional Investors (MCII) launched in 2014 was formulated and driven by the industry.

7.4.2 The anti-bribery principle in the MCII 2014 is stipulated in its fourth principle to address conflict of interest reads as follows - Institutional investors who signed up to the MCII should have robust policies to deal with inside information and to avoid market manipulation in their dealings. Broader ethical considerations such as policies on prevention of corruption, including anti-bribery and anti-money laundering and establishment of “Chinese wall” should also be incorporated (Guidance 4.3).

8. Role of Audit Oversight Board in enhancing accounting and auditing standards for the private sector

8.1 The Audit Oversight Board (AOB) was established in 2010 under Part IIIA of the Securities Commission Malaysia Act 1993 (SCMA). AOB's role is to oversee the auditors of public-interest entities (PIEs) and schedule funds, promote confidence in the quality and reliability in audited financial statements of PIEs and schedule funds in Malaysia; and ultimately protect the interest of investors. PIEs and schedule funds are currently specified under Schedule 1 of the SCMA. PIEs include public listed companies or corporations listed on the stock exchange, licensed banks, licensed insurance companies, licensed takaful operators, licensed Islamic banks, prescribed development financial institutions, and holders of a Capital Markets and Services Licence who carry on regulated activities of dealing in securities, dealing in derivatives or fund management. Schedule funds include private retirement schemes, unit trust schemes, and any other capital market funds.

8.2 Part of AOB's role is to conduct inspections and monitoring programmes on auditors to assess the degree of compliance of auditing and ethical standards, conduct inquiries and impose appropriate sanctions against auditors who fail to comply with auditing and ethical standards. One of the standards that AOB monitors compliance for is the ISA 250 Consideration of Laws and Regulations in an Audit of Financial Statements, that deals with the auditor's responsibility to consider laws and regulations in an audit of financial statements. If the auditor becomes aware of information concerning an instance of non-compliance or suspected non-compliance with laws and regulations, the auditor shall obtain:

(a) an understanding of the nature of the act and the circumstances in which it has occurred; and

(b) further information to evaluate the possible effect on the financial statements. For this standard, if non-compliance is suspected, the auditor shall communicate with those charged on governance or to a higher authority.

8.3 If the auditor concludes that the non-compliance has a material effect on the financial statements, and has not been adequately reflected in the financial statements, or has been precluded from getting sufficient audit evidence, the auditor shall, in accordance with ISA 705 Forming an Opinion and Reporting on Financial Statements, express a qualified opinion or an adverse opinion on the financial statements and/or to report the identified or suspected non-compliance to parties or higher authority outside the entity.

Companies Commission Malaysia (CCM)

1. Relevant legislations and guidelines under CCM

a. Disclosure of interest and prescription for duty to act diligently - legislation for directors of companies under Subdivisions 2 and 3 of Division 2 Part III and Subdivision 2 of Division 2 Part V of the Companies Act 2016 (Act 777), as amended;

b. Whistleblowing protection for Auditors - provisions under section 266 of the Companies Act 2016 (Act 777) as amended;

c. Disqualification for directors under the Companies Act 2016 (Act 777) (effective 31 January 2017). Section 198 states that a person is disqualified from acting as a director if he, amongst others, has been convicted of an offence involving bribery, fraud or dishonesty.

2. Corporate Governance Guidelines and Codes

Additionally and complementary to the above, Malaysia has in place other ethical business guidelines which are within the purview of the Ministry of Domestic Trade, Co-operatives and

Consumerism and Companies Commission of Malaysia; all of which are obligatory on the part of private sector entities, particularly private companies and public listed companies, to adhere with. These include as follows:

- a. Malaysian Code of Business Ethics (Ministry of Domestic Trade, Co-operatives and Consumerism) - as per attachment; and
- b. Code of Ethics for Company Directors and Company Secretaries (Companies Commission of Malaysia, Ministry of Domestic Trade, Co-operatives and Consumerism) - as per attachment.

Labuan Financial Services Authority (Labuan FSA)

Relevant legislation and guidelines under Labuan FSA

- a. Disclosure of interest and prescription for duty to act diligently - legislation for directors of companies under Division 2 Part V of the Labuan Companies Act 1990 (LCA);
- b. Whistleblowing protection for Auditors - provisions under section 117 of the LCA 1990;
- c. Disqualification for directors pursuant to section 90 of the Labuan Companies Act 1990, which states that a person is disqualified from acting as a director if he, amongst others, has been convicted of an offence involving bribery, fraud or dishonesty.

Accounting and Auditing Standards

The following bodies are involved in enhancing accounting and auditing standards in Malaysia:

1. Malaysian Institute of Accountants (MIA)

MIA was established under the Accountants Act 1967 as the main accounting body in the country. Overall, it functions as the core body in regulating the accounting profession. Other major functions of MIA as discussed in the Accountants Act 1967 are:

- i. to determine the qualification of persons for admission as member;
- ii. to provide training and education for practitioners or those who are interested in becoming accounting practitioners;
- iii. to regulate the practice of the profession of accountancy in Malaysia
- iv. to promote the interest of the profession of accountancy in Malaysia; and
- v. to protect the welfare of its members.

The Auditing and Assurance Standards Board (AASB), Ethics Standards Board (ESB) and Financial Reporting Standards Implementation Committee (FRSIC) are committees operating under the auspices of MIA.

AASB considers new or revised International Auditing and Assurance Standards and other pronouncements issued by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC) for adoption. AASB also reviews and considers any other issues and developments in other jurisdictions which relate to auditing practices in Malaysia.

In fulfilling this role, AASB issues auditing standards in Malaysia in the form of Malaysian Approved Quality Control, Auditing, Review, Other Assurance, and Related Services standards (Malaysian Approved Standards) which comprise:

- International Standards on Auditing (ISAs)
- International Standards on Review Engagements (ISREs)
- International Standards on Assurance Engagements (ISAEs)
- International Standards on Related Services (ISRSs)

- International Standards on Quality Control (ISQCs)

The Malaysian Approved Standards are based on the International Standards issued by IAASB of the International Federation of Accountants (IFAC). The International Standards are adopted in Malaysia as drafted with minimal amendments to localise the reference to the Malaysian context, with a note that if there is any matter that needs to be highlighted, the foreword to the standard would address it. Guidance is issued in the form of Recommended Practice Guides (RPGs) to assist in implementing the standards and to promote good practice.

In 2015, MIA adopted the New and Revised Auditor Reporting Standards which are effective for audits of financial statements with financial periods ending on or after 15 December 2016. The standards introduce substantial changes to the auditor's report which will have the benefit of increased transparency and enhanced informational value, including enhanced communications among investors, auditors and those charged with governance (TCWG), increased attention by management and TCWG to disclosures in financial statements, and renewed focus by auditors on matters to be communicated in the auditor's report. Implementation of these standards will help drive the flow of useful and relevant information to the capital market, reduce speculation and promote understanding of financial statements.

ESB serves the public interest by setting high quality ethics standards for professional accountants and to further the convergence of MIA's ethics standards with international standards. In 2010, the ESB incorporated substantially all of the requirements of the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants. The Malaysian requirements include modifications to the IESBA Code to ensure consistency with the Malaysian regulatory and legislative framework and to suit the Malaysian professional environment. MIA's ethical requirements are set out in Part I of the MIA by-laws (MIA's Code of Ethics). MIA's Council issued the revised MIA by-laws in 2010, based on the 2010 version of the IESBA Code of Ethics, which went into effective on January 1, 2011. MIA's Code of Ethics is subject to ongoing update processes following the revisions to the IESBA Code. It was last updated in July 2016.

FRSIC provides assistance on matters of common interest relating to accounting standards by way of providing implementation guidance to both preparers and auditors, e.g. in the form of FRSIC Consensus.

Penalties

MIA established the Financial Statements Review Committee (FSRC) to monitor the quality of financial statements and reports that are prepared by members of MIA for the purpose of determining compliance with statutory and other requirements, approved accounting standards and approved auditing standards in Malaysia, and imposed penalty tariffs on non-compliance issues.

Effective 2007, FSRC imposes penalty tariff when a member be found to be breached any by-laws and/or other statutory requirements in the preparation and reporting of financial statements. The tariff is divided into three (3) categories, which differentiate the severity of non-compliance:

Category 1 prescribes the minimum action. This category relates to housekeeping issues, which require tidying up of the financial statements. It requires members who are responsible for the preparation of the financial statements to take necessary action on the financial statements and members who are responsible for reporting on them to be informed of the action.

Category 2 applies when there are substantial numbers of non-compliances with disclosure requirements of the approved accounting standards. It requires members who are responsible for

the preparation of the financial statements or for reporting on the financial statements to take the necessary corrective action. Member may be given a warning letter and an offending company's financial statements could be put under Surveillance for up to two (2) consecutive years.

Category 3 applies when there is major non-compliance with the requirements of the approved accounting standards and auditing standards involving material reporting discrepancies and/or deficiencies, which caused by member's failure to discharge his/her professional responsibilities with diligence and due care and/or the firm's weaknesses in the system of quality control. Under category 3, action to be taken on members who are responsible for the preparation or for reporting on the financial statements could include referring the offenders to the Investigation Committee of MIA and/or other regulatory bodies for appropriate action or serving members with warning letters or reprimands, or other appropriate measures. The financial statements of the company concerned could be put under surveillance for up to four (4) consecutive years. The member firm could also be referred to the Practice Review Committee of MIA for action.

2. The Malaysian Institute of Certified Public Accountants (MICPA)

MICPA, formally known as "The Malayan Association of Certified Public Accountants", was established in 1958 under the Companies Ordinances. On 6 July 1964, the name was changed to "The Malaysian Association of Certified Public Accountants" to reflect the change of name from Malaya to Malaysia. Since February 2002, it is known as "The Malaysian Institute of Certified Public Accountants". Among the main objectives and functions of MICPA are:

- i. to advance the accounting theories and practices in all aspects;
- ii. to train and evaluate the competent members;
- iii. to ensure the independence of professional accountants; and
- iv. to oversee the practices and professional conducts of its members.

MICPA also approves and issues auditing and assurance standards such as ISA, ISQC, ISRE, ISAE, and ISRS for compliance by its members. Each ISA contains an explanatory foreword from the Council on the status and application of the ISA, and notes and exceptions where applicable. Additional guidance is also issued in the form of Auditing Technical Releases (ATR), which are regarded as current best practice.

3. Malaysian Accounting Standards Board (MASB)

MASB was established under the Financial Reporting Act 1997. Among the main functions of MASB are:

- i. to set and approve new accounting standards;
- ii. to revise or accept the usage of existing standards as approved accounting standards;
- iii. to amend, substitute, suspend, defer, withdraw or revoke any approved accounting standards in whole or in part;
- iv. to develop the conceptual accounting framework; and
- v. to monitor the operation of approved accounting standards to assess their continued relevance and their effectiveness.

Approved Accounting Standards by MASB

The Financial Reporting Act 1997 established the Malaysian Accounting Standards Board (MASB) as the authority to develop and issue accounting standards for Malaysia for the preparation of financial statements, which are required to be prepared or lodged under any law administered by the Securities Commission Malaysia, the Central Bank or the Registrar of

Companies. This includes any published accounts of a commercial, industrial or business enterprise in Malaysia and of overseas subsidiaries and associated corporations where those accounts are to be incorporated in consolidated accounts in Malaysia.

However, in areas where MASB standards have not been issued, the extant accounting standards issued by the accounting bodies are deemed as applicable standards in the preparation of financial statements.

The MASB has issued three sets of accounting standards as follows:

(a) Malaysian Financial Reporting Standards (MFRS)

These standards are mandatory for all entities other than private entities for annual periods beginning on or after January 1, 2012 with the exception of entities subject to the application of MFRS 141, Agriculture, and/or IC interpretation 15, Agreements for the Construction of Real Estate (“Transitioning Entities”). Public listed companies, their subsidiaries, associates, or companies jointly controlled by them are required to comply with MFRS in the preparation of their financial statements.

(b) Financial Reporting Standards (FRS)

These standards may be applied by Transitioning Entities that are within the scope of MFRS 141 and/ or IC Interpretation 15, including a parent, significant investor and venture of such entities. These entities will be required to comply with MFRS for annual periods beginning on or after January 1, 2018.

(c) Malaysian Private Entities Reporting Standard (MPERS)

The Malaysian Private Entities Reporting Standard (MPERS) is applicable only for private entities. A private entity is a private company incorporated under the Companies Act 2016 (Act 777) that:

- is not itself required to prepare or lodge any financial statements under any law administered by the Securities Commission Malaysia or Bank Negara Malaysia; and
- is not a subsidiary or associate of, or jointly controlled by, an entity which is required to prepare or lodge any financial statements under any law administered by the Securities Commission or Bank Negara Malaysia.

The Malaysian Private Entities Reporting Standard (MPERS) is word for word the IFRS for SMEs issued by IASB’s International Financial Reporting Standard in July 2009, except for the requirements on income tax and property development activities. These standards are effective for annual periods beginning on or after 1 January 2016, replacing the Private Entity Reporting Standards (PERS).

4. Financial Reporting Foundation (FRF)

FRF was established under the Financial Reporting Act 1997 together with MASB. Among the main functions of FRF are:

- (i) to provide opinion to MASB on matters to be implemented;
- (ii) to evaluate the performance of MASB; and
- (iii) to be responsible for the overall funding of the operation of MASB, including to approve its budget.

Criminal penalties provided under the Accountant Act 1967

Section 25: Fraudulent practices

Any person who-

- (a) procures or attempts to procure registration or a certificate of membership under this Act by knowingly making or producing or causing to be made any false or fraudulent declaration, certificate, application or representation, whether in writing or otherwise;
- (b) wilfully makes or causes to be made any falsification in the register of the Institute;
- (c) forges, alters or counterfeits any certificate of membership issued under this Act;
- (d) uses any forged, altered or counterfeit certificate of membership under this Act knowing the same to have been forged, altered or counterfeited; or
- (e) personates a member of the Institute or buys, sells or fraudulently obtains a certificate of membership issued under this Act, shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year.

Section 26: Penalty for certain offences

Any person contravening section 22 or 23 shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year and on a second or subsequent conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years.

Section 27: Penalty for misrepresentation by body corporate

Anybody corporate which, or any director, officer, or servant thereof who, does any act of such a nature and in such a manner as to hold out that the body corporate is a chartered accountant shall be guilty of an offence and the body corporate shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit and where the act is done by a director, officer or servant of the body corporate the director, officer or servant of it shall also, on conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding one year and on a second or subsequent conviction to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding two years.

Section 28: Offences by firms

Where any firm does any act which in the case of a person would be an offence under this Act, every member of the firm shall be deemed to have committed the offence unless he proves that he was unaware of the commission of that act.

Section 29: General penalty

Any person who commits an offence against this Act for which no penalty has been expressly provided shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Internal or external reports regarding the adoption and implementation in the private sector of guidelines, procedures or policies to prevent corruption promulgated by the government:

1. The Securities Commission Malaysia (SC) does not have specific internal or external reports on compliance by the private sector. However, there are other bodies who report on the private sector's compliance levels to good governance which include having anti-corruption policies in place. The relevant report to this is the Malaysian-ASEAN Corporate Governance Report 2015 published by the Malaysian Shareholders Watchdog Group (MSWG).

2. The Malaysian-ASEAN Corporate Governance Report 2015 Report (based on Annual Reports in 2014) highlighted amongst other things:

a. 192 listed companies (22%) of the 870 listed companies assessed disclosed. In this respect, 299 companies or 34% had procedures to deal with complaints by employees on any illegal or unethical conduct compared to 230 companies in the previous year's assessment.

b. 11%, or 98 of 870 companies conducted anti-corruption programmes and procedures to mitigate corrupt practices.

c. 120 companies put into place a policy on anti-corruption with detailed programmes and procedures to mitigate corrupt practices, as well as risk analysis on business units in assessing the potential incidence of such practices.

Statistics regarding the number of complaints received of corruption related to private sector including Investigation Papers opened, number of arrests and number of prosecution

Category	2013	2014	2015
Information/complaints related to corruption towards private sector	753	642	460
Investigation Papers opened pertaining corruption in private sector	297	235	195
Numbers of arrests which involved private sector	71	107	127
Numbers of prosecution cases which involved private sector	19	52	30

(Source: MACC)

Statistics and cases regarding the application of civil, administrative and/or criminal

penalties against private sector entities or their managers or officers for corruption and violations of accounting and auditing standards

Statistics of Accounting & Auditing Failure from 2013-2015 by Malaysian Institute of Accountants

No.	Description	2013	2014	2015
1.	Complaints under investigation brought forward from previous financial years	-	55	69
2.	Complaints received from the Registrar during the financial year	22	18	20
3.	Complaints dismissed by IC during the financial year	17	3	49
4.	Complaints referred by IC during the financial year	1	4	9
5.	Complaints under investigation carried forward	6	10	31

Type of Punishments Meted Out by the Disciplinary Committee

(Source: Malaysian Institute of Accountants Annual Report 2015, page 69)

Punishments Meted Out By the Disciplinary Committee	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Removal (includes Costs and/or Fine)	2	0	1	2	1

Suspension (includes Costs, Fine, and/or Attend Course	0	1	1	3	0
Reprimand/Attend Course/ Costs and/ or Fine	3	9	10	5	4
Fine and/ or Costs	0	0	5	23	34
Admonish/ Censure/ Reprimand Only	5	0	1	0	0

Case where Company Director was charged for Criminal Breach of Trust (BCT)

A former company director Datuk Ooi Kock Aun was charged with cheating the board of directors, making false declarations and committing criminal breach of trust (CBT) involving more than RM80 million. He allegedly cheated Protasco Bhd's board of directors and its officers by voluntarily hiding information that he had direct involvement with PT Anglo Slavic Utama, a company which was incorporated in Indonesia. His action had caused Protasco's board of directors and its officers to enter into an investment agreement on oil and gas in Indonesia with PT Anglo Slavic Utama, with Protasco buying 63% of PT Anglo Slavic Indonesia valued at US\$22mil (RM68,393,170).

Ooi, who is now a businessman, faces a second charge of making false declaration to the Commissioner for Oath that he did not have any link with PT Anglo Slavic Utama, any of its directors or shareholders when he knew that he actually had interest in the company. The offence allegedly took place at Wern Li Morsingh commissioner for oath's office in Fraser Business Park at 50-3A, Jalan Metro Pudu, Off Jalan Yew on July 25, 2014.

He claimed trial to a third charge of committing CBT on the PT Anglo Slavic Indonesia's property for RM16,250,000 at the CIMB Islamic Bank Berhad in Menara Southern Bank, No 83 Medan Setia 1, Plaza Damansara, Bukit Damansara on Feb 4, 2014.

Article 12, paragraph 2

2. Measures to achieve these ends may include, inter alia:

(a) Promoting cooperation between law enforcement agencies and relevant private entities;

(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;

(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;

(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Measures promoting cooperation between law enforcement agencies and relevant private entities:

Cooperation between law enforcement agencies and relevant private entities aimed at preventing corruption in the private sector are being promoted through the following legislation and mechanisms:

1. The Central Bank-Reporting Institution Cooperation

Cooperation between the Central Bank of Malaysia or Bank Negara Malaysia (in the National Language) and relevant reporting institutions as regards reporting obligations is governed by Part IV of the Anti-Money Laundering, Anti-Terrorism and Proceeds of Unlawful Activities Act 2009 (Act 613). The word "reporting institution" is defined under Section 3 of the same Act as any person, including branches and subsidiaries outside Malaysia of that person, who carries on any activity listed in the First Schedule [Please see Article 14 for the First Schedule]

2. Enactment of Laws and legal provisions to protect witnesses cooperating with law enforcement agencies

a. Witness Protection Act 2009

b. Whistle Blowers Protection Act 2010

c. Section 587 of the Companies Act 2016 (Act 777) (effective 31 January 2017) on protection afforded (against removal, demotion, discrimination, interference with lawful employment or livelihood) to certain officers who make disclosures.

3. Specific provisions in the Malaysian Anti-Corruption Commission (MACC) Act 2009 to promote private sector cooperation

a. Section 29 - Power to investigate reports and enquire into information

(1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission, and if made orally it shall be reduced into writing and read over to the person making the report; and every report, whether in writing or reduced into writing, shall be signed by the person making the report.

(2) ... (3)...

(4) A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commissioner and above.

b. Section 63- Examination of offenders

(1) Whenever two or more persons are charged with an offence under this Act the court may, on an application in writing by the Public Prosecutor, require one or more of them to give evidence as a witness or witnesses for the prosecution.

(2) Any person referred to in subsection (1) who refuses to be sworn or to be affirmed to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by the court.

(3) Every person required to give evidence under subsection (1) who, in the opinion of the court, makes a true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the seal of the court stating that he has made a true and full discovery of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things.

(4) An application by the Public Prosecutor under subsection (1) may be presented to the court by the officer conducting the prosecution

c. Section 65: Protection of informers and information

(1) Subject to subsection (2), where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described

or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand ringgit; and for the purposes of any investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.

4. Mechanism for internal reporting of corruption, whistle-blower protection etc. under the purview of Securities Commission Malaysia

- a. The Capital Markets and Services Act (CMSA 2007) provides protection for certain parties as under Section 321 (Protection for persons against retaliation for reporting to authorities in specific circumstances) where the provision provides protection for chief executive, any officer responsible for preparing or approving financial statements or financial information, an internal auditor or a secretary of a listed corporation for disclosing vital information of breach or non-performance of any requirement or provision of the securities laws or a breach of any of the rules of a stock exchange or any matter which may adversely affect to a material extent the financial position of the listed corporation.
- b. The Malaysian Code of Corporate Governance (MCCG 2012) makes reference to formalizing ethical standards through a code of conduct and ensures its compliance (under Recommendation 1.3). The commentary of the Recommendation 1.3 recommends for the formalisation of such ethical values through a code of conduct that ensures the implementation of appropriate internal systems to support, promote and ensure its compliance including appropriate communication and feedback channels which facilitate whistleblowing.
- c. The anti-bribery principle in the MCII 2014 as stipulated in its fourth principle to address conflict of interest reads as follows - Institutional investors should have robust policies to deal with inside information and to avoid market manipulation in their dealings. Broader ethical considerations such as policies on prevention of corruption, including anti-bribery and anti-money laundering and establishment of “Chinese wall” should also be incorporated (Guidance 4.3).
- d. Section 140 of the Securities Commission Malaysia Act (SCMA) provides legal protection to informers including that their identity shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings before any court, tribunal or other authority.
- e. As noted above, under section 149 of the SCMA, the SC does have the authority and mechanism to cooperate with other public and law enforcement bodies where necessary. In previous years, the SC has been cooperating with bodies such as the MACC in sharing common witnesses, documents and others where required. Section 150 of the SCMA allows the SC to provide assistance and cooperate with foreign supervisory bodies. One of the functions of the SC under the SCMA is “to promote and regulate corporate governance and approved accounting standards of listed corporations” (section 15(q)).
- f. Section 31ZD of the SCMA permits the Audit Oversight Board (AOB) to request for the assistance from a relevant foreign authority to conduct inspection or inquire into the conduct of a recognised auditor for the purposes of promoting confidence in the quality and reliability of audited financial statements.

5. The Corporate Integrity System™ Malaysia (CISM) - Malaysian Corporate Integrity Pledge (CIP) -

The Corporate Integrity System™ Malaysia (CISM) is a framework initiated by the Malaysian Institute of Integrity (IIM) and supported by the Stakeholders of the economic institutions, namely the Performance Management and Delivery Unit (PEMANDU) of the Prime Minister Department, Malaysian Anti-Corruption Commission (MACC), Securities Commission of Malaysia (SC), Bursa Malaysia Bhd, Companies Commission of Malaysia (CCM) and Transparency International Malaysia (TI-M).

The CISM framework is modelled to support the corporate integrity initiatives under the directions of the New Economic Model for Malaysia, Government Transformation Programme and Target 3 of the National Integrity Plan, namely to enhance corporate governance, business ethics and corporate social responsibility. Long-term commitments and sense of ownership from all stakeholders are the key contributing factors to fulfil its objectives.

The Corporate Integrity Pledge (CIP) is a tool used by CISM that allows a company to make a commitment to uphold the Anti-Corruption Principles for Corporations in Malaysia. By signing the pledge, a company is making a unilateral declaration that it will not commit corrupt acts, will work toward 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.

The CIP was launched on 31 March 2011 as a result of collaboration between the Bursa Malaysia Berhad, the Companies Commission of Malaysia, the Malaysian Institute of Integrity, the Malaysian Anti-Corruption Commission and NKRA Corruption Monitoring & Coordination Division, Securities Commission Malaysia, Transparency International Malaysia and the Performance Management and Delivery Unit (PEMANDU), Prime Minister's Office. It is made available through the MACC and the Malaysian Institute of Integrity, who is also maintaining the list of signatories. CISM can be accessed online at www.cism.my.

6. Integrity Pact in Government Procurement

The Treasury Instruction Letter dated 1 April 2010 (Surat Arahan Perbendaharaan bertarikh 1hb April 2010) stipulates the implementation of the Integrity Pact in Government Procurement. Pursuant to the Instruction letter, the "Guidelines on Implementation of Integrity Pact in Government Procurement" was circulated through Treasury Circular Letter No. 10 of 2010 (Surat Pekeliling Perbendaharaan Bil 10 Tahun 2010). The main objectives for the implementation are as follows:

- i. to avoid bidders from offering or giving bribes
- ii. to require bidders to report any bribery/act of corruption to the authorities
- iii. to ensure the Government does not incur "unnecessary costs" in carrying out Government Procurement.

The Integrity Pact implementation is also intended to increase awareness among civil servants and parties involved in government procurement on corruption offences and subsequently eradicate corrupt practices in government procurement. The Integrity Pact requires both public officials in procurement related committees and companies to sign declaration forms that incorporate clauses pledging abstinence from soliciting, offering, receiving or obtaining corruption at various stages of the government procurement process.

Integrity Pact Declaration by public officials:

- a) Upon reporting for duty involving government procurement;
- b) Upon appointment and completion of duties in procurement related committees (e.g. tender, evaluation, price negotiation)
- c) Upon appointment and completion of duties in procurement boards/committees

Integrity Pact Declaration by bidders:

- a) Upon being selected in the tender/quotation
- b) Upon being successfully awarded the tender/quotation.

Integrity Pact Declaration by consultants: Upon being appointed as consultant

7. Prevention of corruption programmes (community education) between the MACC and Private Entities - Chambers of Commerce, Companies

Private entities which are signatories to the CIP will be engaged by the MACC to conduct and host corruption prevention programmes in the form of face-to-face lectures and talks.

8. Training programmes

Malaysia Anti-Corruption Academy (MACA) provides training in anti-corruption capacity building for the Government Linked and Government Owned Companies, namely:

- a) DiGi (Telecommunication);
- b) Tenaga Nasional (National Electric);
- c) Malaysian Air Lines System (MAS) etc.

9. Certification of Corporate Integrity Officers (CeIOs)

Certification of Corporate Integrity Officers (CeIOs) for officials of government ministries/agencies, government-linked companies and private companies who are required to undergo a corporate integrity certification programme developed and conducted at the MACA.

10. Monitoring of Government Mega development Projects/ Public-Private Projects

Monitoring of Government Projects/Public-Private Projects is carried out by the MACC through the following mechanisms:

- a) Signing of MoU between MACC and Government owned Companies (to ensure implementation of anti-corruption plans and strategies, establishment of code of ethics); and
- b) Participation of MACC in the tender /procurement exercises of mega development projects, e.g. Mass Rapid Transport
- c) Compliance with NKRA Integrity PACTS pursuant to Treasury Circular Letter No.10 of 2010: Guideline on Implementation of Integrity Pact in Government Procurement.
- d) Inclusion of Offence of Corruption Clause in all contract documents pursuant to Ministry of Finance Letter S/K.KEW/PK/PP/1100/000000/10/31 Jld.26 SK.7 (3) dated 28 February 2009: Reminder regarding Corruption Offence in Government Procurement.

11. Participation and engagements of MACC in public sector-sponsored seminars and conferences. Briefings on corporate liability have been given to Chambers of Commerce and

Civil Societies to gather their support to amend the MACC Act by including a relevant provision. The measures were pending at the time of the country visit.

12. Membership of The Financial Reporting Foundation established under Section 3 of the Financial Reporting Act 1967 (Act 558)

Oversees the performance of the Malaysian Accounting Standards Board (MASB) are also made up of members of private sector entities.

Section 5 -Members of the Foundation

(1) The Foundation shall consist of the following members who shall be appointed by the Minister:

- (a) the Secretary General of the Treasury or his representative; (b) the Governor of the Central Bank or his representative;
- (c) the Chairman of the Securities Commission or his representative (d) the Registrar of Companies or his representative;
- (e) the Executive Chairman of the Kuala Lumpur Stock Exchange or his representative; (f) the President of the Malaysian Institute of Accountants;
- (g) the Chairman of the Board;
- (h) twelve other members of whom -
 - (i) five shall be principal officers of public listed companies;
 - (ii) four shall be public accountants each of whom shall be a partner with not less than ten years of experience in an accounting firm;
 - (iii) one shall be an advocate and solicitor who is a partner with not less than ten years of experience in a legal firm; and
 - (iv) two other persons with the relevant experience and background.

(2) The Minister shall appoint a Chairman of the Foundation from amongst the persons referred to in subsection (1).

13. Members and Advisors to the Malaysia Accounting Standards Board (MASB) established under Section 7 of the Financial Reporting Act 1967 (Act 558) representing the Securities Commission, the Central Bank and the Registrar of Companies are also made up of members of the private sector in accordance with Section 8 (2) and 8 (3) of Act 558.

Section 8 - Members of the Board

(1) Subject to subsection (2), the Board shall consist of the following members who shall be appointed by the Minister:

- (a) a Chairman;
- (b) the Accountant General; and
- (c) six other members who possess knowledge and experience in matters of financial accounting and reporting and in one or more of the following fields:
 - (i) accountancy;
 - (ii) law;
 - (iii) business;

(iv) finance.

(2) At least five of the members appointed under subsection (1) shall be members of the Malaysian Institute of Accountants.

(3) The Minister may appoint three advisors to the Board to represent-

(a) the Securities Commission;

(b) the Central Bank of Malaysia; and (c) the Registrar of Companies.

(4) The advisors to be appointed under subsection (3) shall be appointed from amongst persons who possess knowledge and experience in the field of accountancy, law, business or finance.

(5) An advisor appointed under subsection (3) shall, unless he sooner resigns or his appointment is sooner revoked, hold office for such term as the Minister may determine.

Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State

Measures implemented by Malaysia in compliance with the requirement of this article include as follows:

1. Private Entity Reporting Standards (PERS), which is a set of accounting standards issued or adopted by Malaysian Accounting Standards Board (MASB) for application by all private entities in Malaysia.

2. Malaysian Business Code of Ethics

The Malaysian Business Code of Ethics (Rukuniaga) is a code of business ethics based on religious values, philosophy and culture of the people in this country. Its formulation is based on the teachings of religion, philosophy and traditions of a plural society in Malaysia. It is an effort of the National Consumer Advisory Council (MPPN), Ministry of Domestic Trade, Cooperatives and Consumerism to boost the self-discipline or self-regulation "among the business community in Malaysia.

The objectives of Rukuniaga: The Business Code of Ethics was enacted to:

a. Provide principles that can be adopted, embraced and practiced by all traders for the benefit of consumers and dealers.

b. Help the traders to adopt high standards of business ethics among them to secure the interests of all parties to support economic growth.

c. Represent the universal values that result from a variety of religious beliefs and faith, philosophy and culture in Malaysia.

Malaysian Business Code of Ethics Principles

For that purpose, the Rukuniaga Malaysia has established six (6) Principles:

a. Honesty in Business Dealing

The business persons tendency towards honesty, including the intent and declaration of the business transaction as well as in his thoughts, action and speech.

For instance: The businessperson should not try to camouflage the defects found on products for

the sake of making a profit. Similarly he should not deliberately manipulate the supply of an item with undue profit as the motive.

b. Responsibility Towards Customers, Society and Environment: Responsibility towards customers, society and the environment for every action and decision made.

For instance: Offering products at fair prices and ensuring that services offered are commensurate with the quality of services provided. It is important that goods or services befittingly sold/offered must not be socially or environmentally detrimental.

c. Geniality Towards Fellow Humans: being compassionate and respectful towards other humans, courteous and generous with mutual cooperation. Actions and decisions taken must take into account the interest of all parties and not solely on the interest of the trader.

For instance: In instances when a customer had made an erroneous purchase and wishes to exchange it with other items or wants a refund in cash, the trader must accommodate the request to fulfil the social responsibility towards the society as a whole.

d. Moderation In Business Dealings: Adopt a humble, reserved, modest, moderate, charitable approach and be frugal in all areas of life.

For instance: A successful businessperson should be mindful and considerate as well as provide contribution and be supportive to those in need.

e. Fair Treatment of Customers: There should be no double standards and actions taken must not benefit one party only, and treatment that is equitable, irrespective of race, class or status and is not selective of any one side more than the other should be practised.

For instance: A businessperson should not practise discrimination amongst customers, regardless whether the customer is a dignitary or an ordinary person in business practices, as the value of the money is still the same.

f. Zeal in Making the Business a Success: Execute business with tenacity, diligence, and patience, as well as never giving up, having the courage to take risks and ready to put the utmost efforts to achieve the goals.

For instance: When entering a business field, the businessperson should not be intimidated by existing businesses, what is important is how the success of other businesses could be a motivation for success.

3. The adoption of the Anti-Corruption Principles for Corporations in Malaysia.

The Malaysian Anti-Corruption Commission (MACC) has issued five Anti-corruption Principles for corporations requiring companies to sign a pledge making a unilateral declaration that they will not commit corrupt acts, will work toward 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.

(a) Committing to promoting value of integrity, transparency and good governance.

- i. To prohibit bribery and corruption in any form, whether direct or indirect, in the line of business
- ii. To ensure full compliance with the code of ethics at all times; and
- iii. To create a positive culture that upholds integrity in order to create a clean business environment;

(b) Strengthening internal systems that support corruption prevention

- i. To develop an anti-corruption programme that articulates values, policies and procedures to be

used to prevent corruption from occurring

- ii. To improve existing systems and procedures to prevent corrupt practices
- iii. To create a secure and accessible channel through which employees and others may report violations in confidence and without risk of reprisal;

(c) Complying with laws, policies and procedures to fighting corruption

- i. To ensure that all laws and company policies and procedures relating to fighting corruption are strictly complied with
- ii. To ensure that good governance is practised, checks and balances put into place, and business is conducted with transparency and accountability to avoid conflict of interest, abuse of power, and misconduct

(d) Fighting any form of corrupt practice

- i. To take proportionate action against any employee, staff or other person involved in corruption in relation to the business, regardless of position or status
- ii. To report any corrupt practice that occurs in business place to the appropriate authorities

(e) Supporting corruption prevention initiatives by the Malaysian Government and the MACC

- i. To support anti-corruption efforts by the Government and by the MACC
- ii. To maintain relationships with the authorities, regulators and MACC and to provide full cooperation in relation to corruption detection, prevention and enforcement of laws against corruption.

4. The APEC Kuala Lumpur Principles Medical Device Sector Codes of Ethics (in short the "KL Principles") were developed by the APEC SME Working Group, namely the SME Corp. Malaysia in collaboration with the MACC, Companies Commission of Malaysia, Institute of Integrity Malaysia, Transparency International and Ministry of Domestic Trade Cooperatives and Consumerism. On 21 May 2011 the Small and Medium Enterprise Ministerial Meeting held in Montana USA endorsed the adoption and implementation of the KL Principles Medical Device Sector Code of Ethics, which aims to promote ethical interactions between medical device and diagnostics companies and Healthcare Professionals (HCPs) based upon the following principles:

- a. Appropriateness - means that arrangements conform to proper commercial standards and are accurate and free from corrupt practices
- b. Independence- an HCP's primary obligation is the care of patient. Interactions with industry should not skew the HCP's medical decision making from the best interests of the patient;
- d. Transparency - means that significant payment arrangements are made known to stake holders, including the patient.

5. The SME Pledge (or Code of Ethics and Integrity Pledge for Small and Medium Enterprises in Malaysia) - launched on 21 December 2011, is a follow-up action of the endorsement of the APEC KL Principles by SME Corp in collaboration with the MACC.

6. The Malaysian-ASEAN Corporate Governance Report 2015 highlighted that 419 companies disclosed details of the code of ethics or conduct. Furthermore, 184 companies disclosed how

they implemented and monitored compliance with the code of ethics or conduct. Company-wide ethical codes serve as a standard of conduct for the board, key executives and employees and other stakeholders in setting the framework for the exercise of judgment in dealing with varying, and often, conflicting circumstances.

7. Guidelines on Compliance Function for Fund Management Companies

a. The Guidelines on Compliance Function for Fund Management Companies are issued by the Securities Commission Malaysia pursuant to section 377 of the Capital Markets and Services Act 2000 (CMSA). These guidelines set out requirements to be complied with by any person intending to establish or carry out fund management activities in Malaysia.

b. Chapter 6 specifically states that a fund management company must not offer or accept any gifts or benefits which conflict with the interests of or the duties owed to clients. Throughout the Guidelines, there are some prescriptions to prevent conflicts of interest, such as establishing internal controls function (Chapter 4); establishing firewalls or information barriers in order to avoid conflicts between proprietary transactions and clients' transactions (Chapter 11).

8. Governance Training

Relevant training provided by the Securities Commission Malaysia (SC) to instil or promote governance is the Capital Markets Director Programme (CMDP) via SC's training arm, and the Securities Industry Development Centre, CMDP, which is targeted to directors and other strategic personalities of licensed intermediary institutions. CMDP is compulsory for all directors of Capital Markets Services Licence (CMSL) holders dealing in securities, dealing in derivatives and fund management in relation to portfolio management. It covers the essential governance knowledge and understanding all directors should possess or develop if they are to be effective board members. Some examples of the scope covered by the module include the core duties of directors, a discussion of how the application of selected principles and recommendations of the Malaysian Code on Corporate Governance can deliver sustainable values for licensed intermediaries and case studies on failure of governance and its implication on the license to operate

Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;

The following types of legal persons can be created in Malaysia:

- a. Companies - unlimited companies (onshore and offshore), limited companies, public limited companies;
- b. limited liability partnerships (offshore and onshore, domestic and foreign);
- c. societies; and
- d. Foundations (offshore).

Malaysia requires all Malaysian private and public limited companies to establish and maintain a registered office within Malaysia (for Labuan companies, within Labuan) and maintain a register of all shareholders, including their names (or for legal persons: business name, organisation number), date of birth and address.

Companies Commission of Malaysia (CCM) and Labuan Financial Services Authority (LFSA)

1. The CCM (Companies Commission of Malaysia) and LFSA (Labuan Financial Services Authority) websites include guides on the different types, forms and basic feature of legal persons and the formation of such legal persons under the statutes and administrative processes of each regulator. Together with the various AML/CFT guidelines these generally extend to how to obtain basic and beneficial ownership information of legal persons.
2. For both onshore (CCM) and offshore (LFSA) companies, there are registers recording the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors.
3. In the case of the CCM, this information is available to the public for a fee. In the case of Labuan, the name and formation agent TCSP (Trust and Company Service Provider) of IBCs (International Business Companies) is publicly available on the LFSA website. Information can be obtained from TCSPs via LFSA, so it technically publicly available. There is no list of Labuan Foundations available to the public. Malaysian businesses are required to register basic information with the CCM with the details available to the public.
4. For onshore companies, the Companies Act (CA) 2016 (Act 777), as amended, requires companies to maintain information relating to shareholders including directors' shareholdings, instruments and certificates of share transfer. The nature of the associated shareholder voting rights and categories of share are required to be kept by the company on its register.
5. Labuan Companies and foundations are required to maintain a resident secretary (trust company) and keep information relating to shareholders, transfers of shares, annual returns, etc at the office (s.93(3) Labuan Companies Act 1990 and s.44 of the Labuan Foundation Act 2010). The nature of the associated shareholder voting rights and categories of shares are required to be kept as part of the company register of members pursuant to section 105 of the Labuan Companies Act 1990 and are required to be kept at the registered office pursuant to section 106 of the Labuan Companies Act 1990.
6. Foreign companies registered in Malaysia and Labuan are required to keep branch registers of the shares of the company's members resident in Malaysia who apply to have the shares registered therein (s.568 CA 2016 as amended). Foreign companies' domestic share holdings, but not foreign share holdings are included in the branch registry under the CA 2016, as amended.
7. Malaysian partnerships and limited liability partnerships are not required to maintain the additional registration information as required FATF Recommendation 24.4. For Malaysian companies, the provisions under Division 8 Part II of the CA 2016, as amended, require categories of share, including voting rights, to be kept on registries with a company whose location is notified to the company registry. Under s. 54 read with s.58 CA 2016 the company must notify the registrar within 14 days of the company's incorporation where the company's register is kept. Under s.53 the registrar must be notified within 30 days if the company register is held at a place other than the registered office. The register may be closed under s.55 (4) for up to thirty days a year.
8. Labuan foundations are required to maintain the additional information in FATF Recommendation 24.4. Nevertheless, for Foundation, Section 8(2) of the Labuan Foundation Act 2010 requires a Labuan Foundation to inscribe on its Charter, i.e. the constituent document of a Foundation, particulars such as names and address of the Founder, list of identity of the beneficiaries, names of its secretary. Section 9(5) of the Labuan Limited Partnership and Limited Liability Partnership Act (LLPLPA) 2010 meets the additional registration requirements of FATF Recommendation 24.3 for limited partnerships regarding the number of units and the categories. Voting rights are covered at s.58 of the LLPLPA. For companies, the LCA (Labuan Companies Act) 1990 requires categories of shares, including voting rights, to be registered pursuant to s. 105 of the Labuan Companies Act 1990. Under s.106 the company must advise the registrar within one month of the company's incorporation where the company's register is kept.

9. Generally, companies are required to provide information to the registrar albeit with some delay and/or in the annual return. In other areas the requirements are less clear. The CCM and LFSA undertake outreach, compliance and enforcement Programmes, including offsite and onsite inspections aimed at ensuring the quality of information held on legal persons regulated by the CCM and LFSA is accurate and up to date.

Mechanism to identify beneficial ownership

Malaysia uses a combination of mechanisms to seek to ensure that beneficial ownership information is available: legal ownership information held by companies and beneficial ownership information to be collected and maintained by Reporting Institutions (RIs) in the course of company formation and ongoing Customer Due Diligence (CDD); information held by the Inland Revenue Board (IRB); and information disclosed by companies listed on the stock exchange relevant to beneficial ownership.

1. The Register of Companies maintained by the Companies Commission of Malaysia (CCM)

The CCM register for onshore companies contains publicly available information, including information on persons exercising control over the company (e.g. the board of directors, the general manager and company resolutions authorising persons to sign documents on behalf of the company). For the natural persons serving as directors, the register includes the national identity number of Malaysian. Under the Malaysian Companies Act 2016 (effective 31 January 2017), any company may issue a written notice to a shareholder to confirm whether he/she is holding the shares as the beneficial owner or as a trustee. Failure to submit a reply on the said notice or providing false or misleading information in the reply is a criminal offence.

a. Where only Malaysian companies with Malaysian ownership are involved, authorities are generally able to follow the chain of ownership to a natural person who has an identity in the national identify card database. There may be situations where this is not possible, for example where natural person is a trustee holding propriety rights for beneficiaries.

b. Where foreign legal persons or arrangements are involved in owning shares in Malaysian companies or registered foreign companies, beneficial ownership information is not contained in the register. Foreign companies registered in Malaysia do not hold beneficial ownership information on their own shareholders, but just maintain the ownership information of the direct shareholder. The public registers and the register of shareholders will reflect the name, registration number and address of the foreign company. Competent authorities accessing beneficial ownership information on Malaysian companies owned by foreign entities rely on the CDD undertaken by RIs.

2. Reporting Institution Guidelines

Competent authorities in Malaysia also have access to beneficial ownership information held by RIs. The Bank Negara Malaysia (BNM) 2013 Guidelines require RIs (Reporting Institutions) to identify and take reasonable measures to verify the identity of the beneficial owner, including through ongoing CDD (Customer Due Diligence). This includes Trust and Company Service Providers (TCSPs).

3. Annual Accounts under Provisions of Section 2 of Income Tax Act 1967 and Section 22 of Labuan Business Activity Tax Act 1990

a. Competent authorities also have access to the information that companies provide in their annual accounts and which is made available in the Register of Company Accounts. Onshore companies which meet the definition of 'controlled companies' under Section 2 of the Income

Tax Act (ITA) 1967 must submit annual tax returns which include some information relevant to beneficial ownership, including identity information of directors and shareholders. Controlled companies are those having not more than 50 members/shareholders and controlled (as defined Section 139 of the ITA 1967) by not more than five persons (Section 2 ITA 1967). More than 90% of private companies registered with CCM qualify as controlled companies.

b. For Labuan registered companies, the Inland Revenue Board (IRB) Director General may call for any information required by him (including information to beneficial ownership) from any person for compliance with: Section 22 of Labuan Business Activity Tax Act (LBATA 1990).

c. For Labuan listed companies, exchange rules and controls on issuing sponsor and issuers of listings provide only limited additional information relevant to beneficial ownership.

Nonetheless, pursuant to a circular issued by Labuan FSA on 3 September 2014 which is an addendum to the Guidelines on AML/CFT for Trust Company Sector issued on 30 December 2013; Directive on Accounts and Record Keeping Requirement for Labuan Entities issued on 6 June 2012; and Circular on Beneficial Ownership of an Entity Incorporated /Registered in Labuan 113FC issued on 12 March 2014 which is applicable to Labuan trust company and Labuan managed trust company, it is required:

a) to maintain an accurate and up to date data management information system ("MIS") which contains the relevant details of beneficial owners ("BO") of all Labuan entities that are required to be kept at their offices. The MIS shall include, at a minimum, the BO or PEP's information; and

b) to tag the information if the BO or shareholder is a PEP, as defined in the Guidelines on AML/CFT for Trust Company Sector

The MIS established should be commensurate with the nature, scale and complexity of the activities of respective Labuan entities and able to be:

a) timely extracted and analysed as well as provide sufficient information to its' management and board for effective decision making; and

b) made available in timely manner to Labuan FSA upon request.

4. Section 25(4) of Securities Industry (Central Depositories) Act 1991

With regards to beneficial ownership of a listed company, such information can be obtained from the central depository as every securities account open with a central depository shall be in the name of beneficial owner or authorised nominee. In addition, section 56(6) of the Companies Act 2016 (Act 777), as amended, enables the Securities Commission to issue a notice to a listed company to obtain information on the beneficial owners of the shares.

5. Beneficial ownership information held by RIs through CDD (customer due diligence) obligations under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) is required to be up to date and relevant.

a. Malaysia requires that DNFBP (designated non-financial businesses and professions) are accountable to competent authorities for providing all basic information and available beneficial ownership information, and giving further assistance to the authorities in relation to beneficial ownership information. All companies are required to have a company secretary who is a natural person. It is an offence for a company not to have a company secretary for a period of more than one month. Company secretaries must either be licensed by the CCM or be members of professional bodies, such as the MAICSA, MIA and the Malaysian Bar Council. For Labuan IBFCs, the DNFBP is licensed as a licensed Labuan trust company. In each case, as regulated entities, they have obligations for ongoing CDD and cooperation with authorities.

b. Under Malaysian Companies Act 2016 (effective 31 January 2017), all company secretaries who are in active practise must register themselves with the Companies Commission of Malaysia. This requirement is also applicable to members of professional bodies. Those who failed to register within the stipulated timeline would lose their qualification to practise and may be subjected to criminal proceedings.

c. AMLATFAPUAA and guidelines' record keeping requirements for company secretaries and trust companies are mostly in keeping with the standard.

d. Competent authorities, including LEAs, have the necessary powers under the AMLA and legislation governing the SC, Bursa Malaysia, LFSA and CCM to obtain timely access to the basic and beneficial ownership information held by the RIs.

6. Provisions of Companies Act 2016 (Act 777), as amended

Malaysian legal persons are able to have nominee shares and nominee directors. Authorities rely on the powers of the registrars (both CCM and LFSA) to require any company or person to furnish all necessary information and particulars of any share acquired or held directly or indirectly either for his own benefit or for any other person. Company's shares are held by a nominee on behalf of the company's directors and Section 253 of CA 2016 requires the identity of the beneficial owners to be disclosed with the balance sheets prepared by the company. Sections 59 and 219 of CA 2016 impose an obligation on all directors (including nominee directors) to disclose particulars of shares in which the directors has interest and the nature and extent of the interest.

Under the Malaysian Companies Act 2016 (Act 777) (effective 31 January 2017), any company may issue a written notice to a shareholder to confirm whether he/she is holding the shares as the beneficial owner or as a trustee. Failure to submit a reply on the said notice or providing a false or misleading information in the reply is a criminal offence. Reference can be made to Section 56 of the Malaysian Companies Act 2016 (Act 777) (effective 31 January 2017).

There are only limited fines for breaches of the requirements for reporting and updating the registrar of ownership and beneficial ownership information under the Companies Act and LCA. There are greater fines and other sanctions available for failure to respond to a regulatory instruction or hindering supervision by the regulator, but these are only available after supervisory action has commenced, and may still not be dissuasive. Sanctions in the AMLATPUAA for failure to conduct CDD, including on beneficial ownership, show some gaps with their persuasiveness.

7. Provisions of the Registration of Business Act (ROB) 1956 (Revised 1975)

In accordance with Section 5(2) the ROB Act an application made for registration of business under Section 5 (1) shall state:

- (a) the name of the business;
- (b) the nature of the business;
- (c) the date of commencement of the business;
- (d) the address of the place of business, and in the case of a business having more than one place of business, the addresses of the branches;
- (e) in the case of a partnership, the particulars of the partnership agreement, if any;
- (f) in respect of the associates of the business, their full names, positions held, and dates of entry into business; and
- (g) such other information as the Registrar may require.

The term “ associate of a business” under the Act includes-

- (a) any person who is in law the owner or a joint owner or part owner of any business;
- (b) every person who is a partner in any business which is the property of a partnership;
- (c) when the business is the property of what in any system of law prevailing in India is known as a Joint Hindu Family, every member of such Joint Hindu Family having an interest in such property other than mere right to maintenance; and
- (d) when the business is legally vested in, or is under the control of any executor, administrator or trustee, every such executor, administrator or trustee;

The term “business” includes every form of trade, commerce, craftsmanship, calling, profession, or other activity carried on for the purposes of gain, but does not include any office or employment or any charitable undertaking or any occupation specified in the Schedule.

Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities:

Malaysia implements a wide range of administrative “checks & balance” measures to prevent misuse of procedures regulating private entities regarding subsidies and licenses granted by public authorities for commercial activities. These include as follows:

1. The carrying out of inspection and consultation functions by the MACC (Inspection and Consultancy Division) on practices’ systems, and work procedures of public bodies which the Chief Commissioner is in the opinion may be conducive to corruption or abuse as provided for under Section 7 (c), (d) and (e) of the MACC Act 2009 (Act 694) cited in Article 5 paragraph 2 above.
2. The handling of public complaints by the Public Complaints Bureau;
3. The reviewing of governance and integrity issues pertaining to laws, regulations, procedures and practices by the Management Governance and Integrity Committees leading to continuous regulatory improvements which include issuance and usage of permits, licences and subsidies;
4. Joint MACC- Law Enforcement preventive activities with other government agencies at the national and state levels (on subsidies and licences) to detect corruption offences or unauthorised usage of permits, licences and leakages/theft/false claims/fraud from time to time;
5. The establishment of a one-stop centre to facilitate the application/approval of permits and licences through reduction of personal public-private interface, cutting bureaucratic red tapes and enhanced transparency. In 2008, Business Licensing Electronic Support System (BLESS) portal was launched for all application of licenses and permits that will be processed electronically. BLESS is a portal that provides information and facilities for companies to apply licences or permits to start operating business in Malaysia. It is a virtual One Stop Service Centre that assists companies to obtain business licences efficiently and in an organized manner.

BLESS facilitates company representative to select relevant licences, fill up the online application forms, submit online and track the progress of the application throughout the process until notification of approval or otherwise. At the same time, BLESS provides an online communication platform for the licensing agencies to communicate directly with the company for any clarification and justification on the licences applications which effectively save time and resources for both parties.

6. Inserting anti-corruption clauses- in particular section 18 of MACC Act in relation to all government contract or procurement documents, as well as the claim form for subsidies. On 28 February 2009 the Ministry of Finance issued Special Circular (Peringatan Mengenai Kesalahan

Rasuah Dalam Dockumen Perolehan) as per S/K. KEW/PK/PP/1100/000000/10/31 JLD.26 sk.7 (3) dated 28 February 2009 reminding all parties involved in government contracts not to commit any corrupt practices in any government procurement. In this connection, all agencies are required to include a corruption offence clause in government contract documents, at all levels of the process including document preparation, tender invitation / quotation / e-Bidding using the following wording:

(i) Any act or attempt to corruptly offer or give, solicit or receive any gratification to and from any person in connection with this procurement is a criminal offence under the Malaysian Anti-Corruption Commission Act 2009 (Act 694)

(ii) If any person offers or gives any gratification to any members of the public service, the latter shall at the earliest opportunity thereafter lodge a report at the nearest office of the Malaysian Anti-Corruption Commission or police station. Failure to do so is an offence under the Malaysian Anti-Corruption Commission Act 2009 (Act 694).

(iii) Without prejudice to any other actions, disciplinary action against a member of the public service and blacklisting of the contractor or supplier may be taken if the parties are involved with any act of corruption under the Malaysian Anti-Corruption Commission Act 2009 (Act 694).

(iv) Any contractor or supplier who makes a claim for payment in relation to this procurement although no work was carried out or no goods were supplied or no services rendered in accordance with the specifications and any member of the public service who certifies the claim commits an offence under the Malaysian Anti-Corruption Commission Act 2009 (Act 694).

Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;

Currently Malaysia has no regulation prohibiting former public officials from being employed in the private sector after their resignation or retirement.

Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

In Malaysia, the requirement for private enterprises, mainly publicly listed companies, to have internal auditing controls is based on legislation and code.

Companies Act 2016 (Act 777), section 246 (as amended) provides:

The directors of a public company shall have in place a system of internal control that will provide a reasonable assurance that-

(a) Assets of the company are safeguarded against loss from unauthorized use or disposition and to give a proper account of the assets; and

(b) all transactions are properly authorized and that the transactions are recorded as necessary to enable the preparation of true and view of the financial statements of the company.

Penalty: Imprisonment of three years or one million ringgit or both.

2. Principle 6 of the Malaysian Code on Corporate Governance 2012 by virtue of

Recommendation 6.1 which states that the board (of directors) should establish a sound risk management framework and internal control system. The said requirement is further mandated by an amendment to the Listing Requirements of Bursa Malaysia Berhad as per regulation below:

The Listing Requirements were amended to raise the corporate governance standards amongst listed issuers and enhance investor confidence. The key amendments are in the following aspects:

- a. Requiring all Audit Committee members to be non-executive directors
- b. Mandating the internal audit function in listed issuers and requiring the internal audit function of listed issuers to report directly to the Audit Committee
- c. Enhancing disclosure in the annual reports of listed issuers to include information pertaining to the internal audit function
- d. Expanding the functions of the Audit Committee to include the review of the adequacy of the competency of the internal audit function
- e. Setting out the rights of the Audit Committee to convene meetings with external auditors, internal auditors or both, excluding the attendance of other directors and employees of the listed issuer
- f. Clarifying that Bursa Securities may “approve” such other requirements relating to the financial-related qualifications or experience that must be fulfilled by at least one audit committee member and the signatory to the statutory declaration in relation to the accounts
- g. Requiring listed issuers to submit a copy of written representation or submission of external auditors’ resignation to Bursa Securities as provided under section 284 of the Companies Act 2016 (Act 777), as amended.

Please see Guidelines of Listed Issuers “Statement On Risk Management & Internal Control” (attached).

3. Please provide examples of the implementation of those measures

Statistics regarding the number of private entities registering with the State that disclose the identity of legal and natural persons involved in the establishment and management of the business

By virtue of section 58 of the Companies Act 2016 (Act 777), as amended, every company registered with Company Commission Malaysia (CCM) shall within 14 days after incorporation, submit a written form of particulars containing the identification of its directors, managers and secretaries to CCM . As of December 2015, there are 1,196,475 registered companies.

Cases and/or statistics regarding sanctions or penalties imposed by the government on private entities for the misuse of subsidies or licenses granted by the State

Case: Ops Ombak- MACC clamps down misappropriation of special aid to fisherman.

In 2012, the Malaysian Government had allocated MYR300 million to 15,000 fishermen for home renovation, construction of new houses and re-settlement of fishermen. In March 2014, MACC initiated an operation called “Ops Ombak” upon receiving 63 complaints made against 63 contractors allegedly to be involved in the misappropriation of the said aid. MACC’s investigation uncovered offences of fraud in the form of using low quality building materials, delays in the repair works, non-conformance to specifications and award of contract work to non-expert parties. The operation led to the arrest of 23 contractors, who were then charged on 17 November 2014 on 44 counts under section 18 of the MACC Act 2009. The charge carried a

punishment involving a fine five times the value of the false claim and imprisonment for up to a maximum of 20 years.

Statistics regarding the number of private entities adopting internal auditing controls in compliance with standards set by the State

According to Bursa Malaysia's website, there are 811 listed companies in the main market and 109 listed companies in the ACE market as of 2016. Adoption of internal audit control is one of the preconditions for listing under the Listing Requirements mentioned above.

(b) Observations on the implementation of the article

Apart from criminal standards, the Companies Commission Malaysia (CCM), Securities Commission Malaysia (SC) and Labuan Financial Services Authority (Labuan FSA) are the main statutory bodies that regulate private sector affairs in Malaysia, including the enforcement of relevant legislation, standards and procedures to prevent corruption. Furthermore, the Malaysia Code on Corporate Governance (MCCG) promotes sound business practices, including a culture of ethics that does not condone corruption. While it is not mandatory for companies to observe the MCCG, listed companies are required to explain in their annual reports how they have complied with the recommendations, as per Bursa Malaysia Listing Requirements adopted under the sustainability framework.

Additional corporate governance guidelines and codes complementary to the above are in place within the purview of the Ministry of Domestic Trade, Co-operatives and Consumerism, the Companies Commission of Malaysia, as well as relevant standards developed by MACC and the private sector.

The applicable laws and regulations also define accounting and auditing standards in the private sector, including the requirement for private enterprises, mainly publicly listed companies, to have internal auditing controls. The relevant supervisory institutions are: 1. Malaysian Institute of Accountants (MIA); 2. Malaysian Institute of Certified Public Accountants (MICPA); 3. Malaysian Accounting Standards Board (MASB); and 4. Financial Reporting Foundation (FRF). Criminal penalties are provided for under the Accountant Act 1967. Malaysia also provided statistics of accounting & auditing failures from 2013-2015, and disciplinary cases, by the Malaysian Institute of Accountants.

Malaysia has also adopted measures to promote cooperation between law enforcement agencies and relevant private entities, such as the Malaysian Corporate Integrity Pledge (CIP) and the Integrity Pact in Government Procurement. There are also measures to promote transparency among private entities, including regarding the identity of legal and natural persons involved in their establishment and management. Further, Malaysia implements a range of administrative "checks & balance" measures to prevent misuse of procedures regarding subsidies and licenses granted for commercial activities.

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

Paragraph 3 of article 12

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and

records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;*
- (b) The making of off-the-books or inadequately identified transactions;*
- (c) The recording of non-existent expenditure;*
- (d) The entry of liabilities with incorrect identification of their objects;*
- (e) The use of false documents;*
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia fulfils the requirements of this article under review by virtue of the following laws and regulations:

1. Companies Act 2016 (Act 777), Part III, Division 3 - Accounts and Audit
Sections 243 and 244 of the Companies Act 2016 (Act 777), as amended.
Section 245 of the Companies Act 2016 (Act 777), as amended.

243. Interpretation

For the purposes of this Division—

“approved accounting standards” has the meaning assigned to it in section 2 of the Financial Reporting Act 1997 [Act 558];

“subsidiary”, except for section 246 has the meaning assigned to it in the approved accounting standards issued by the Malaysian Accounting Standards Board established under the Financial Reporting Act 1997.

244. Compliance with approved accounting standards

(1) The approved accounting standards shall apply to the financial statements of a company or the consolidated financial statements of a holding company if, at the time when the financial statements or consolidated financial statements are made out, the approved accounting standards—

- (a) apply in relation to the financial year of the company or the holding company to which the financial statements or consolidated financial statements relate; and
- (b) are relevant to those financial statements or consolidated financial statements.

(2) Without prejudice to the generality of the provisions of this Subdivision, the directors of a

company shall ensure that the financial statements of the company and, if the company is a holding company for which consolidated financial statements are required, the consolidated financial statements of the company are made out in accordance with the applicable approved accounting standards and shall—

(a) in the case of a public company, be circulated to its members and laid before the company at its annual general meeting; or

(b) in the case of a private company, be circulated to its members or laid before the company at a meeting of members.

(3) Notwithstanding subsection (2), the directors of a company or holding company shall not be required to ensure that the financial statements or consolidated financial statements, as the case may be, are prepared in accordance with the approved accounting Companies standards if the directors are of the opinion that preparing the financial statements or consolidated financial statements in accordance with the approved accounting standard would not give a true and fair view—

(a) of the matters required under section 249 to be dealt with in the financial statements or consolidated financial statements; or

(b) of the results of the business and the state of affairs of the company and, if applicable, of all the companies the affairs of which are dealt with in the consolidated financial statements.

(4) If the financial statements of a company or consolidated financial statements of a holding company are not prepared in accordance with a particular approved accounting standard under subsection (3), the directors of the company shall—

(a) disclose by way of a note on the financial statements the reason for not making out the financial statements or consolidated financial statements in accordance with the approved accounting standards; and

(b) give particulars in the note of the quantified financial effect on the financial statements or consolidated financial statements if the relevant approved accounting standards was complied with.

(5) Notwithstanding anything in this Act, if financial statements are required to be prepared for or lodged with the authorities referred to in section 26D of the Financial Reporting Act 1997, those financial statements shall be prepared in accordance with the approved accounting standards subject to any specifications, guidelines or regulations as may be issued by the authorities.

(6) The information in the accounts or consolidated accounts of persons reporting to the authorities as referred to in section 26D of the Financial Reporting Act 1997 shall be deemed to have complied with the requirements of this Division if the financial statements are made out in accordance with that law.

(7) If a conflict or inconsistency arises between the provisions of an applicable approved accounting standard and this Act in their respective applications to the financial statements of a company or consolidated financial statements of a holding company, the provisions of the applicable approved accounting standard shall prevail.

Section 245. Accounts to be kept

245. (1) A company, the directors and managers of a company shall—

(a) cause to be kept the accounting and other records to sufficiently explain the transactions and financial position of the company and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared; and

(b) cause the accounting and other records to be kept in a manner as to enable the accounting and

other records to be conveniently and properly audited.

(2) A company, the directors and managers of a company shall cause appropriate entries to be made in the accounting and other records within sixty days of the completion of the transactions to which the entries relate.

(3) The company shall retain the records referred to in subsection (1) for seven years after the completion of the transactions or operations to which the entries relate.

(4) The records referred to in subsection (1) shall be kept at the registered office of the company or at such other place as the directors think fit, and shall at all times be open for inspection by the directors.

(5) Notwithstanding subsection (4), the accounting and other records of operations outside Malaysia may be kept by the company at a place outside Malaysia provided that such accounting and other records shall be sent to and kept at a place in Malaysia and be made available for inspection by the directors at all times.

(6) The accounting and other records referred to in subsection (5) shall include such statements and returns with respect to the business dealt with in the records so kept as to enable the preparation of true and fair financial statements and any documents required to be attached to the financial statements.

(7) If any accounting and other records are kept at a place outside Malaysia under subsection (4) or (5), the Registrar may require the company to produce those records at a place in Malaysia or determine the type and manner of the records to be kept in Malaysia.

(8) The Court may, in any particular case, order that the accounting and other records of a company be open to inspection by an approved company auditor acting for a director, subject to a written undertaking given to the Court that information acquired by the auditor during his inspection shall not be disclosed by him except to that director.

(9) The company and every officer who contravene this section commit an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

The offences and penalties under the Companies Act 2016 (Act 777), as amended, are provided: Sections 591 and 592.

Section 591. False and misleading statements

(1) Every corporation which advertises, circulates or publishes any return, report, certificate, financial statements or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing which makes the document misleading in a material respect and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction—

(a) in the case of a corporation, be liable to a fine not exceeding three million ringgit; and

(b) in the case of officer of the corporation, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

(2) Every person who in any return, report, certificate, financial statement or other document required by or for the purposes of this Act—

(a) makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false; or

(b) misleads or intentionally omits or authorizes the omission or accession of any matter or thing making the document misleading in a material respect, commits an offence and shall, on

conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

(3) If a person at a meeting votes in favour of the making of a statement referred to in this section knowing it to be false, he shall be deemed to have authorized the making of that statement.

Section 592 False reports

(1) An officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to—

(a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation;

(b) in the case of a corporation that is a subsidiary, an auditor of the holding company;

(c) a stock exchange whether in or outside Malaysia or an officer of the stock exchange; or

(d) the Securities Commission, relating to the affairs of the corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.

(2) In subsection (1), “officer”, in addition to the definition under section 2, includes a person who at the time the offence was committed is an officer of the corporation.

2. Malaysian Anti-Corruption Commission Act 2009:

Section 18 Offence of intending to deceive principal by agent

A person commits an offence if he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material particular and is intended to mislead the principal.

Sanction for section 18 is provided section under 24 (2):

Any person who commits an offence under Section 18 shall on conviction be liable to-

(a) imprisonment for a term not exceeding twenty years and;

(b) a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

3. Anti-Money Laundering, Anti-Terrorism Financing and Proceed of Unlawful Activities Act 2001

Section 89. Falsification, concealment and destruction of document

A person, with intent to deceive, in respect of a document to be produced or submitted under any provision of this Act, who makes or causes to be made a false entry, omits to make, or causes to be omitted, any entry, or alters, abstracts, conceals or destroys, or causes to be altered, abstracted, concealed or destroyed, any entry, forges a document, or makes use of or holds in his possession a false document, purporting to be a valid document, alters any entry made in any document, or issues or uses a document which is false or incorrect, wholly or partially, or misleading commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to a term of imprisonment not exceeding one year or to both, and, in the case of a continuing offence, to a further fine not exceeding one thousand ringgit for each day during which the offence

continues after conviction.

4. Penal Code

Section 463: Forgery

Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Punishment for offences of sections 463 and 464 are provided under section 465: Whoever commits forgery shall be punished with imprisonment for a term which may extend to two years or with fine or with both

Section 464: Making a false document

A person is said to make a false document-

(a) who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed or executed by, or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed or executed, or at a time at which he knows that it was not made, signed, sealed or executed;

(b) who without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

(c) who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration.

Section 467: Forgery of a valuable security or will

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property or valuable security, or any document purporting to be an acquaintance or receipt, acknowledging the payment of money, or an acquaintance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Section 468: Forgery for the purpose of cheating

Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine.

Section 471: Using as genuine a forged document

Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

Section 474: Having possession of a valuable security or will known to be forged, with intent to use it as genuine.

Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the descriptions mentioned in section 466, be punished with imprisonment for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the descriptions mentioned in section 467, shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to fine.

Section 477A: Falsification of accounts.

Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud, makes or abets the making of any false entry in, or omits or alters, or abets the omission or alteration of any material particular from or in any such book, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

5. Capital Markets and Services Act 2007 (CMSA)

Section 317A: Prohibited conduct of director or officer of a listed corporation

(1) A director or an officer of a listed corporation or any of its related corporations shall not do or cause anyone to do anything with the intention of causing wrongful loss to the listed corporation or any of its related corporations irrespective of whether the conduct causes actual wrongful loss.

(2) This section is in addition to and not in derogation of any law relating to the duties or liabilities of directors or officers of a listed corporation.

(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but not exceeding ten years and be liable to a fine not exceeding ten million ringgit

Section 319: Submission of information

(1) A listed corporation shall cause to be submitted to the Commission-

(a) a copy of its audited annual accounts; and

(b) its interim and periodic financial reports, at the same time such documents are submitted, announced or made available to the exchange.

(2) A listed corporation shall notify the Commission in writing-

(a) of any change in the registered or business address of the listed corporation;

(b) if the chief executive or any of the directors of the listed corporation ceases to hold office as a chief executive or director; and

(c) of the names and particulars of any new chief executive or director of the listed corporation, within two weeks of the occurrence of such a change or event.

(3) A listed corporation and its directors shall cause to be kept such accounting records and other records as will sufficiently explain the transactions and financial position of the listed corporation

and its related corporation and enable true and fair profit and loss accounts and balance sheets and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such a manner as to enable them to be conveniently and properly audited.

(4) A listed corporation shall ensure that the corporation shall retain the records referred to in subsection (3) for seven years after the completion of the transaction or operation to which they respectively relate.

(5) A person who contravenes this section commits an offence.

Section 320A: False or misleading financial statements of a listed corporation

(1) A person shall not influence, coerce, mislead or authorize any person engaged in-

(a) the preparation of the financial statements of a listed corporation or any of its related corporations; or

(b) the performance of an audit of the financial statements of a listed corporation or any of its related corporations, to do anything which he knows or ought reasonably to have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.

(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but not exceeding ten years and be liable to a fine not exceeding ten million ringgit.

Section 368: Falsification of records

(1) A person shall not, in any books in relation to the business of a stock exchange, derivatives exchange, an approved clearing house a holder of a Capital Markets Services Licence or a listed corporation or any of its related corporations whether or not kept under this Act or the regulations made under this Act-

(a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular;

(b) in any manner falsify or cause to be falsified, any matter that-

(i) is entered, recorded or stored;

(ii) has been prepared for the purpose of being entered, recorded or stored; or

(iii) has been prepared for use in compiling other matters to be entered, recorded or stored; or

(c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter.

(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding one million ringgit.

Section 369: False reports to Commission, exchange or approved clearing house A person who-

(a) with intent to deceive, makes furnishes or lodges; or

(b) knowingly causes, authorizes or permits the making, furnishing or lodging of, any statement, information or document that is false or misleading, to the Commission, a stock exchange, a derivatives exchange or an approved clearing house relating to-

(A) dealings in securities or derivatives;

- (B) the affairs of a listed corporation;
- (C) any matter or thing required by the Commission for the due administration of this Act;
- (D) any requirement imposed by the Commission under any guideline, practice note, written notice or term and condition; or
- (E) any requirement under the rules of a stock exchange commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.

Note: Pursuant to Section 372: General Penalty, where no penalty is expressly provided, a person who commits an offence under this Act shall be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or both.

6. Securities Industry (Compliance with Approved Accounting Standards) Regulations 1999

Regulation 4: Failure to comply with approved accounting standards an offence

- (1) Every listed corporation, its directors and chief executive shall prepare and present or cause to be prepared and presented the financial statements, and if the listed corporation is a holding corporation for which consolidated financial statements are required the consolidated financial statements, of the listed corporation in accordance with approved accounting standards.
- (2) Every director of a listed corporation shall ensure that the accounts, and if the listed corporation is a holding corporation for which consolidated accounts are required the consolidated accounts, of the listed corporation, when laid before the annual general meeting are made out in accordance with approved accounting standards.
- (3) Any person who contravenes subregulation (1) or (2) commits an offence.

Regulation 5: Commission may require rectification of financial statements and accounts

- (1) Where the Commission is of the opinion that the financial statements or consolidated financial statements that are prepared or presented or the accounts or consolidated accounts that are laid before an annual general meeting are not in compliance with approved accounting standards
 - (a) the Commission may direct the listed corporation, its directors or chief executive, as the case may be, whether or not any of them have been charged with an offence in respect of the contravention -
 - (i) to rectify the relevant financial statements or consolidated financial statements, or accounts or consolidated accounts, as the case may be, in order to ensure compliance with the approved accounting standards;
 - (ii) to provide relevant undertakings to the Commission with regard to compliance with the approved accounting standards; and
 - (iii) to make such announcement as the Commission deems fit in relation to any non-compliance or any rectification required; and
 - (b) the Commission may, with the consent of any relevant regulatory authority, take such administrative action as the Commission deems fits against the listed corporation, its directors or chief executive.
- (2) Upon rectification of the financial statements or consolidated financial statements, or accounts or consolidated accounts under subparagraph (1)(a)(i), the listed corporation, its directors or chief executive, as the case may be -

(a) shall submit the rectified financial statements or consolidated financial statements, or accounts or consolidated accounts to the Commission within such period as the Commission may direct, and

(b) may provide the rectified financial statements or consolidated financial statements or accounts or consolidated accounts to any person as the listed corporation, directors or chief executive deems fit.

(3) Any person who refuses or fails to comply with a direction of the Commission under paragraph (1)(a) or subregulation (2) or who breaches an undertaking provided under subparagraph (1)(a)(ii) commits an offence.

Note: In addition to the actions that may be taken under Regulation 5 above, pursuant to Section 354(3) of Capital Markets and Services Act 2007,

If a person has committed a breach and the Commission is satisfied that it is appropriate in all the circumstances to take action against that person, the Commission may take any one or more of the following actions:

(a) direct the person in breach to comply with, observe, enforce or give effect to such rules, provisions, written notice, direction, practice note, condition or guideline;

(b) impose a penalty in proportion to the severity or gravity of the breach on the person in breach, but in any event not exceeding one million;

(c) reprimand the person in breach;

(d) require the person in breach to take such steps as the Commission may direct to remedy the breach or to mitigate the effect of such breach, including making restitution to any other person aggrieved by such breach;

(e) in the case of a breach of Part VI or guidelines issued pursuant to Part VI, refuse to accept or consider any submission under Part VI;

(f) in the case of a promoter or a director of a corporation, in addition to the actions that may be taken under paragraphs (a) to (e) above, the following actions may be taken by the Commission:

(i) impose a moratorium on, or prohibit any trading of or any dealing in, the corporation's securities or in any other securities which the Commission thinks fit by the promoter or director or any persons connected with the promoter or director; or

(ii) issue a public statement to the effect that, in the Commission's opinion, the retention of office by the director is prejudicial to the public interest.

7. Securities Commission Act 1993

Section 135 - Destruction, concealment, mutilation and alteration of records Any person who-

(a) destroys, conceals, mutilates or alters;

(b) causes another person to destroy, conceal, mutilate or alter; or

(c) sends or attempts to send or conspires with any other person to remove from his premises or send out of Malaysia, any document, record or account with intent to defraud any person, or to prevent, delay or obstruct the carrying out of an examination, audit or investigation, or the exercise of any function or power under the securities laws shall be guilty of an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding ten million ringgit.

Please provide examples of the implementation of those measures, including related court

or other cases, available statistics etc.

Studies and/or statistics on levels of compliance by private entities with rules, regulations and procedures established by the State:

1. Analysis of Corporate Governance Disclosures in Annual Reports 2012-2013

A review was conducted by Bursa Malaysia on 300 listed issuers' 2012 and 2013 annual reports. The purpose of the review was to assess the level and quality of disclosure in relation to the Malaysian Code of Corporate Governance 2012 (MCCG) and Listing Requirements (LR), in the Corporate Governance Statement, Audit Committee Report and Internal Control Statement in particular relating to the Principles and Recommendations under Principles 1 to 6 of the MCCG. From the analysis, Bursa says that there is a high level of adherence to corporate governance, adding that Malaysian companies have gone beyond complying with just basic governance requirements. With reference of principle 6, i.e. Recognize and Manage Risks, the key findings showed:

- (a) 99% disclosed the main features of risk management and internal control systems. Only 28% made in-depth disclosure in this area
- (b) 95% disclosed that they had reviewed the adequacy and effectiveness of their risk management and internal control systems.
- (c) 92% disclosed that the risk management process had been in place for the year under review.
- (d) 97% disclosed a brief process for identifying, evaluating and managing risks. Only 13% made detailed disclosures.
- (e) 98% disclosed that the internal audit function reports directly to the audit committee.
- (f) 74% obtained assurance from CEO and CFO.

2. KPMG Malaysia: Fraud, Bribery and Corruption Survey 2013

Poor internal controls (68%) followed by lack of skill sets of the internal Audit team to detect fraud (39%) and the lack of fraud awareness training which consequently resulted in the inability by staff to recognize glaring "red flags" or early warning signals of fraud (39%) were the three most prominent factors contributing to major frauds.

Cases and/or statistics regarding the imposition of sanctions, penalties or offences the government has imposed on private entities for failure to comply with relevant rules, regulations and procedures, including any remedial action that was taken.

Convictions Obtained for Serious Corporate Governance Offences Under the Companies Act 1965, as amended (CA) from 2012-2014

No.	Serious Corporate Governance Offences under CA	2012	2013	2014
1.	S.7(11)(b): Failure to give notice of information in writing to Registrar and failure to supply information or in supplying information, and making statement known to be false	1	-	-
2.	S.69F: Substantial shareholder failed to notify company of change in his interests	-	3	-

3.	S.91(1): Issuing of interests without an approved deed	2	1	2
4.	S.94(1)(b): Failure to comply with a covenant contained in a deed	-	1	3
5.	S.125(1): Undischarged bankrupt acting as company director	2	1	-
6.	S.132 (1): Failure to exercise power as director of a company in the best interest of the company	2	2	1
7.	S.132(2)(a): use of company property without the consent of ratification of a general meeting	-	2	5
8.	S.133A(1): Prohibition of loans to persons connected with the directors	-	1	-
9.	S.139C(3): Disqualification of Company Secretaries	-	1	-
10.	S.167(2): Failure to retain records	1	-	-
11.	S.363(3): Offering shares for subscription or purchase to public	-	1	1
12.	S.363(5): Inciting any person to offer shares/debentures for subscription	2	-	-
13.	S.364(2): Persons who made or authorised the making of a statement false or misleading in any	7	4	6

	material particulars knowing it to be false or misleading			
14.	S.364A(1)(a): An officer knowingly and wilfully authorises the making of any false or misleading statements to members of the corporation	2	-	1
15.	S.366 (1)(a): Fraudulently inducing	-	3	-
16.	S. 366(3): Obtaining payment of money to company by false promise and with intent to defraud	3	-	-
17.	S.370(1): Default penalty proceedings for continuous default	15	-	-
	Total	37	20	19

(Source: Company Commission of Malaysia-CCM)

Cases for serious corporate governance offences and the penalties:

1. Under Section 364(2) of Companies Act 1965 - Making of false statements in relation to striking off application. The Kuala Lumpur Session Court convicted a director of Doxport E-Projects Sdn Bhd for making a false statement in relation to the application to strike off the company under section 308(1) of Companies Act. The accused was sentenced a fine of MYR 25,000.00 in 2014.

2. Under Sections 132(1) and 133A(1)(a) of the Companies Act 1965 - Authorisation of Illegal Loan to Company. In 2013, a director of company who is also the Managing Director of another company was convicted by the Petaling Jaya Sessions Court. A fine of MYR 27,000.00 was imposed for the offence under section 132(1), while a maximum fine of MYR 10,000.00 was imposed for the offence under section 133A(1)(a) CA 1965.

The first charge under section 132(1) CA 1965 was in relation to the act of authorizing a loan of MYR500,000.00 to the company without approval of the board of directors of the other company. Evidence revealed that the accused was also the majority shareholder in that other company at the material time. The second charge under section 133A(1)(a) CA 1965 was in relation to authorizing the making of a loan to a person connected with the accused as a director.

(b) Observations on the implementation of the article

The provision appears to be implemented.

Paragraph 4 of article 12

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

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. Various factors such as the taxpayer's source of income, the purpose of the expenditure, the proximity of the expenditure and income and how the expense is being treated in the account, are relevant considerations. (Refer to Inland Revenue Board of Malaysia Public Ruling on Entertainment dated 22 October 2008 (attached)).

Section 39 of ITA 1967 (Act 53): Deductions not allowed

(1) Subject to any express provision of this Act, in ascertaining the adjusted income of any person from any source for the basis period for a year of assessment no deduction from the gross income from that source for that period shall be allowed in respect of-

- (a) domestic or private expenses;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of producing the gross income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital;
- (d) any amount in respect of any payment to any pension, provident, savings, widows, widowers and orphans or other similar fund or society which is not an approved scheme;
- (e) any expenditure incurred in relation to a business, being expenditure which is-
 - (i) qualifying mining expenditure for the purposes of Schedule 2;
 - (ii) qualifying expenditure, qualifying agriculture expenditure or qualifying forest expenditure for the purposes of Schedule 3; or
 - (iii) qualifying prospecting expenditure for the purposes of Schedule 4, and which but for this

paragraph would be deductible in ascertaining the adjusted income from the business;

(f) interest or royalty derived from Malaysia from which tax is deductible under section 109, if tax has not been deducted therefrom and paid to the Director General in accordance with subsection (1) of that section:

Provided that-

(i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; and

(ii) where such tax is deducted or such amount is paid after the due date for the furnishing of a return for a year of assessment that relates to such payment, the tax or amount so paid shall not prejudice the imposition of penalty under subsection 113(2) if a deduction on such payment is made in such return or is claimed in the information given to the Director General in arriving at the adjusted income of the payer;

(g) any sum, by whatever name called, payable (otherwise than to a State Government or with the approval of the Minister, a statutory authority, or other body the capital or fund of which is wholly or substantially owned by a State Government or a statutory authority) for the use of a licence or permit to extract timber from a forest in Malaysia;

(h) (Deleted by Act 619);

(i) any contract payment from which tax is deductible under section 107A, if tax has not been deducted therefrom and paid to the Director General in accordance with subsection (1) of that section:

Provided that-

(i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; and

(ii) where such tax is deducted or such amount is paid after the due date for the furnishing of a return for a year of assessment that relates to such payment, the tax or amount so paid shall not prejudice the imposition of penalty under subsection 113(2) if a deduction on such payment is made in such return or is claimed in the information given to the Director General in arriving at the adjusted income of the payer;

(j) any payments from which tax is deductible under section 109B, or 109F if tax has not been deducted therefrom and paid to the Director General in accordance with subsection (1) of that section:

Provided that-

(i) this paragraph shall not apply if the payer has paid the amount referred to in subsection (2) of that section; and

(ii) where such tax is deducted or such amount is paid after the due date for the furnishing of a return for a year of assessment that relates to such payment, the tax or amount so paid shall not prejudice the imposition of penalty under subsection 113(2) if a deduction on such payment is made in such return or is claimed in the information given to the Director General in arriving at the adjusted income of the payer;

(k) any sum paid by way of rentals in respect of a motor vehicle, other than a motor vehicle licensed by the appropriate authority for commercial transportation of goods or passengers, in excess of fifty thousand ringgit:

Provided that if the motor vehicle has not been used by any person for any purpose prior to the rental and the total cost of the motor vehicle does not exceed one hundred and fifty thousand ringgit, any sum paid by way of rental in excess of one hundred thousand ringgit:

Provided further that the maximum amount of deduction in respect of the rentals of such motor vehicle in the year of assessment and subsequent years of assessment shall not in the aggregate

exceed fifty thousand ringgit or one hundred thousand ringgit, as the case may be, in respect of that motor vehicle;

(l) a sum equal to fifty percent of any expenses incurred in the provision of entertainment including any sums paid to an employee of that person for the purpose of defraying expenses incurred by that employee in the provision of entertainment:

Provided that this paragraph shall not apply to the following expenses:

(i) the provision of entertainment to his employees except where such provision is incidental to the provision of entertainment for others;

(ii) the provision of entertainment by a person who carries on a business which consists of or includes the provision for payment of entertainment to clients or customers of that business and that entertainment is provided for payment by the clients or customers in the ordinary course of that business;

(iii) the provision of promotional gifts at trade fairs or trade or industrial exhibitions held outside Malaysia for the promotion of exports from Malaysia;

(iv) the provision of promotional samples of products of the business of that person;

(v) the provision of entertainment for cultural or sporting events open to members of the public, wholly to promote the business of that person;

(vi) the provision of promotional gifts within Malaysia consisting of articles incorporating a conspicuous advertisement or logo of the business; or

(vii) the provision of entertainment which is related wholly to sales arising from the business of that person;

(viii) the provision of a benefit or amenity to an employee consisting of a leave passage to facilitate a yearly event within Malaysia which involves the employer, the employee and the immediate family members of that employee; or

(m) notwithstanding subparagraph (l)(i), and subject to subparagraph (l)(viii) any expenditure incurred in the provision of a benefit or amenity to an employee consisting of a leave passage within or outside Malaysia; or

(n) any remuneration or any similar payment paid to a partner of a limited liability partnership where such remuneration or payment is not specified or provided in the limited liability partnership agreement made in accordance with section 9 of the Limited Liability Partnerships Act 2012.

(1A) Notwithstanding any provision of this Act, where a person is required under section 81 to furnish to the Director General any information within the time specified in a notice or such other time as may be allowed by the Director General, and that information concerns wholly or in part a deduction claimed by that person in arriving at the adjusted income of that person from any source for the basis period for a year of assessment, no deduction from the gross income from that source for that period shall be allowed in respect of such claim if the person fails to provide such information within the time specified in that notice or such extended time as allowed by the Director General.

(2) It is hereby declared that section 33, except in so far as it relates to expenses of the kind specified in paragraphs (1)(a) to (d) thereof, is not an express provision of this Act within the meaning of this section.

(3) Paragraphs (1)(f), (i) and (j) shall not apply if for a year of assessment a person is exempt under paragraph 127(3)(b) or subsection 127(3A) or the Promotion of Investments Act 1986, in respect of all income of that person from all sources not being exemption on income equal to capital expenditure incurred.

In Malaysia, the deductibility of expenses is governed by Section 33 of ITA and the general rule

for deduction of an expense is contained in Subsection 1, which states:

"Subject to this Act, the adjusted income of a person from a source for the basis period of a year of assessment shall be an amount ascertained by deducting from the gross income of that person from that source for that period all outgoings and expenses wholly and exclusively incurred during that period by that person in the production of gross income from that source,"

Expenses wholly and exclusively incurred in the production of gross income

The phrase "expenses wholly and exclusively incurred... in the production of gross income" incorporates the basic rule which spells out the conditions for allowing a tax deduction. For an expense that is incurred in the course of operating a business to be allowed as a deduction from income of the business, it must be:

- (a) Incurred;
- (b) Wholly and exclusively; and
- (c) In the production of gross income (from the business).

Underlying each of these conditions is a comprehensive library of case laws, which defines the meaning of the words and delineates the boundaries for their applications. Some guiding principles established in cases brought before the courts include:

(a) Only "revenue" expenses are deductible while "capital" expenditures are not. The following statement from the case of Sun Newspapers Ltd and Associated Newspapers Ltd versus CIT (1938) 61 CLR 337 is often quoted to illustrate the distinction between revenue and capital expenditures:

"The distinction between expenditure and outgoings on revenue account and on capital account corresponds with the distinction between the business entity, structure, or organisation set up or established for the earning of profit and the process by which such an organisation operates to obtain regular returns by means of regular outlay..."

(b) In general, an expense has been "incurred" when a legal liability has arisen for the sum to be paid (for example, when goods have been delivered to the purchaser and an invoice issued for the price of the goods delivered). Hence, an expense is deductible even though the bill has not been paid, so long as the debt is due to be paid. But an expected expenditure, or one that is contingent on the occurrence of certain events in the future, is not deductible; no matter how certain one is that the money will have to be spent in time to come.

(c) An expense must be incurred for the sole purpose (exclusively) of producing income from the business. A dual-purpose expenditure is one which is incurred for more than one reason. Expenses incurred for both a business and private purpose would fail the 'exclusively incurred' test. However, if an incidental personal benefit arises as a result of an expense incurred to achieve a business objective, it does not mean that the expense is disallowed simply because of the personal benefit.

(d) "Wholly" refers to the quantum of the expense. If a definite proportion of an expense was laid out wholly and exclusively in the production of income from the business, that proportion should not be disallowed merely because the expense was not entirely laid out wholly and exclusively in producing income from that source.

(e) There must be a nexus between the expenditure and income which is assessed, so that the expenditure is "incidental and relevant" (Ronpibon Tin NL versus CIT(1949) 78 CLR 47) to producing the income that is assessed. In other words, it is not sufficient for the expense to be incurred for any business related purpose, but it must be incurred for the purpose of producing income from that business. A connection must be established between the expenditure and the

process of earning income.

Expenses necessarily incurred but not deductible

Section 33 of the ITA is essentially a replication of Section 14 of the repealed Income Tax Ordinance 1947, which applied to the States of Malaya before the formation of Malaysia. Therefore, the law relating to the deductibility of expenses in Malaysia has not changed for the last six decades. In a nutshell, while the Malaysian economy in the new millennium has progressed and developed beyond any resemblance to the structure that prevailed in the last century, the tax system, in particular its rules on tax deductibility, has changed little to cope with the increasing complexities in business operations within the changing economy.

The law that applied in an era when small businesses were probably the norm and the business operations were less complicated and less regulated than they are now, is likely to be outdated in its application to the present day business environment, which transcends national boundaries and are subjected to a host of statutory and other regulations, sometimes in more than one tax jurisdiction.

The application of the rules embodied in Section 33(1) means that many expenses that are incurred in operating a business will not be allowed for tax deduction even though these expenses may be compulsorily, or necessarily, incurred as a consequence of carrying on the business. Many kinds of business expenses, not envisaged when the law was enacted, may fail one or more of the deductibility tests. Included among non-deductible expenses are those which have to be incurred to comply with the law and regulations governing their operation. Some examples of such business expenses are:

- a. Expenses to comply with requirements under corporate law, such as audit and secretarial fees, including annual filing of accounts with the Companies Commission of Malaysia;
- b. Expenses on matters relating to shareholders (also in compliance with the law), such as cost of holding annual general meetings and related expenses including printing cost of annual financial statements, registrar's fees, and so on;
- c. Expenses related to complying with tax legislation (for example, fees for tax advisory services of tax consultants and tax agent's fees for annual tax filing).

Undoubtedly, these are expenses incurred in the course of carrying on the business of a company. However, they are not regarded as deductible expenses on the grounds that there is no nexus between the expense and the income-earning process. It has also been often and strenuously argued that these expenses are not incurred for the purpose of producing income, but are only incurred after the income has been earned.

Complex business regulations, tax laws, financing options and stakeholder protection have necessitated the appointment of lawyers, bankers, accountants and auditors, tax advisers and agents and incurrence of related expenses to ensure strict compliance. The deductibility of such expenses depends strictly on whether they meet the tests of deductibility listed above.

Sometimes, where the authorities have recognised that some such expense is a legitimate business expense that should be allowed as a tax deduction, special legislation had to be enacted to allow for its deduction because it does not fall within the narrow scope of section 33(1). For example, the law providing for deduction of fees for statutory audits was only gazetted in March 2006, although the requirement for statutory audits is as old as the Companies Act 1965.

Public rulings

The tax authorities have always adhered strictly to the rules of deductibility embodied in Section 33(1) of the ITA, as reflected in some of the public rulings issued by the Inland Revenue Board pertaining to deductibility of certain types of expenses. Some expenses that are treated as not allowable under these rulings include (just to name a few) cost of filing tax returns and tax

appeals, secretarial fees and annual general meeting expenses of companies, cost of obtaining a trading licence and premiums on professional indemnity insurance paid by professionals like lawyers, doctors and accountants. (The table sets out some of the more significant business expenses prescribed in the public rulings as non-deductible.)

Although all these expenses would have been incurred for the purpose of operating the business, they are disallowed on grounds that they do not meet the tests of deductibility under Section 33(1) of the ITA.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Not applicable

(b) Observations on the implementation of the article

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.

However, there is no specific provision disallowing tax deductibility of bribes in the Income Tax Act 1967 (Act 53). In light of this, it is recommended that Malaysia adopt an explicit provision disallowing the tax deductibility of expenses that constitute bribes, in accordance with the provision under review.

Article 13. Participation of society

Paragraph 1 of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or

is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia's measures in promoting the contribution of the public to decision-making process in compliance with the provision of this Article are as follows:

Consultation on National Budget

Budget Consultative Council Meetings organized by the Ministry of Finance to seek views from the public and private sectors as well as civil society regarding economic issues and proposals to be included in the annual budget strategy and measure.

Consultation on Anti-corruption legislation

MACC held a series of discussions with Bar Council/NGO/Chambers of Commerce/politicians on federal constitution and law reform as follows:

- a. The appointment of Chief Commissioner of MACC is guaranteed under Federal Constitution;
- b. The establishment of MACC Service Commission;
- c. The insertion of misconduct in Public Office into MACC Act or Penal Code; and
- d. The insertion of corporate liability provision into MACC Act.

Consultation on the effectiveness of MACC

There are five oversight bodies established to oversee MACC via legal provision and administration. These monitoring bodies are comprised of approximately 50 individuals (subject to appointment), who are selected based on exemplary services and expertise in their respective fields. They represent the public to ensure MACC to be an independent, transparent and professional commission. They are:

- a) Anti-Corruption Advisory Board;
- b) Special Committee on Corruption;
- c) Complaint Committee;
- d) Operation Review Panel; and
- e) Corruption Prevention and Consultancy Panel.

Institutionalisation of Open-Door Policies and Regular Communication between Government and Civil Society

- (a) Client's Charter in accordance with Development Administrative Circular 3 of 1993 (attached).

The Client's Charter is a written commitment by the Government agencies towards the provision of services to their clients. The Charter must be displayed in prominent places within the premises of the office. The information on the Charter has to be disseminated to ensure that the public are aware of their rights to the services. Consequently, public servants will have to be more sensitive, prepared and accountable in providing quality services. Ultimately, the implementation of the Client's Charter will not be confined to improving quality and productivity but will also contribute to changing the attitudes of public servants in becoming more disciplined, responsible and sensitive to customers' requirements.

Benefits to the Public:

- i. It enables the public to know specifically the quality of service to expect from the department/agency;
- ii. It enables the public to evaluate the performance of the services rendered;
- iii. It reduces uncertainties over the delivery of services;
- iv. It facilitates comparisons between agencies which offer similar services; and
- v. The public will be aware of the quality standards of each department/agency.

(b) The “A Day With The Client Programme” is one of the many efforts that give feedback directly to each Head of Department regarding the problems faced by their clients. Awareness programmes and pro-active actions in addressing problems of the people should be carried out extensively to enable the government to obtain feedback directly from the people about the level of satisfaction in order to improve the performance of the civil service.

Civil Service improvements to stamp out corruption with participation of private sector - The Setting up of PEMUDAH

On 7 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:

- a. 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;
- b. To benchmark best practices to improve the ease of doing business;
- c. To enhance collaboration among public and private sector agencies to improve Malaysia’s competitiveness;
- d. 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
- e. To take appropriate action to address issues in line with the National philosophy of One Malaysia, "People First, Performance Now".

Vision and Values of PEMUDAH:

To achieve a globally benchmarked, customer-centric, innovative, entrepreneurial and proactive public and private sector delivery service in support of a vibrant, resilient and competitive economy and society, driven by the following:

- i. A sense of urgency
- ii. Proactive public-private sector collaboration
- iii. Facilitation, not hampering
- iv. No more regulation than necessary
- v. Zero tolerance for corruption.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Relevant press releases, online information and other publications inviting individuals and groups outside the public sector to participate in government decision-making processes

a. Press Release by Bernama in Malaymail Online dated 16 June 2016

PUTRAJAYA, June 16 - Prime Minister Datuk Seri Najib Razak said more than 90 institutions have forwarded memorandums containing useful and pragmatic suggestions as input for the 2017 Budget preparation.

Speaking after chairing the Budget 2017 Consultative Council meeting at the Treasury here today, Najib, who is also the Finance Minister said the memorandums covered macro, sectoral and social issues.

He said the memorandums and discussions to follow will enable new ideas to be considered towards further accelerating efforts to transform Malaysia into a developed country and one that is inclusive and advanced by 2020.

“Every issue that is raised and proposal forwarded will be scrutinised and considered, and subsequently discussed at a meeting of the Focus Group to be held soon for the Budget 2017,” he added.

Also present at the meeting today was Second Finance Minister Datuk Seri Ahmad Husni Hanadzlah, and Deputy Finance Ministers Datuk Chua Tee Yong and Datuk Johari Ghani, as well as Treasury Secretary General Tan Sri Dr Mohd Irwan Serigar, Chief Secretary to the Government Tan Sri Dr Ali Hamsa and Bank Negara Malaysia Governor, Datuk Muhammad Ibrahim.

The 2017 Budget Consultative Council meeting, themed, Accelerating Growth, Ensuring Fiscal Prudence, Enhancing Well-being of the People, also saw the participation of more than 200 representatives from the private sector and non-governmental organisations (NGOs).

There were seven speakers during the half-day session, namely, Maybank Investment Bank Chief Economist Suhaimi Ilias, RAM Ratings Head of Research Kristina Fong, Malaysia Digital Economy Corporation Chief Executive Officer Datuk Yasmin Mahmood, Tourism and Culture Ministry Secretary-General Tan Sri Dr Ong Hong Peng, Federation of Malaysian Manufacturers President Tan Sri Saw Choo Boon, Universiti Kebangsaan Malaysia Vice-Chancellor Prof Datuk Dr Noor Azlan Ghazali and Khazanah Research Institute Managing Director Datuk Charon Wardini Mokhzani.

Najib said the consultation council was another platform in the government’s efforts to multiply engagement and discussions with the people, the private sector and NGOs to generate prosperity and wealth for the country. “In essence, it reflects the need to balance promoting growth with ensuring fiscal sustainability. “The ultimate purpose of this strategy is to protect the welfare and well-being of the people as well as empower them to realise their true potential,” he added. (Refer:<<http://www.themalaymailonline.com/malaysia/article/more-than-90-institutions-forward-input-for-budget-2017-preparation>>)

b. Open Budget Survey 2015

Malaysia has scored 46 out of 100 for the open budget index, slightly higher than the global average of 45.

c. Public Access to Information -The Idea Bank of PEMUDAH Website

The Idea Bank is a compilation of selected feedback by the public received through PEMUDAH Website which might be useful for information and reference purposes. The compilation includes complaints, inquiries and suggestions addressed to various Government Agencies which have

been appropriately edited for general viewing as follows:-

Enforcing Contracts Through:

- e-Perolehan <<http://www.pemudah.gov.my/web/guest/358>> (electronic procurement)
- Policy on Performance Bond
- Guidelines to Preparing a Disclosure Document (BAF1) and Franchise Agreement <<http://www.pemudah.gov.my/web/guest/gpreparing>>
- Contractual Dispute <<http://www.pemudah.gov.my/web/guest/cdispute>>

Trading Across Borders Through:

- Joint-venture <<http://www.pemudah.gov.my/web/guest/361>>
- Import and Export License <<http://www.pemudah.gov.my/web/guest/362>>
- Restriction on Hazardous Substance <<http://www.pemudah.gov.my/web/guest/363>>
- Export of Clinker and Cement <<http://www.pemudah.gov.my/web/guest/eccement>>
- Monitoring of International Law <<http://www.pemudah.gov.my/web/guest/359>>

Paying Taxes Through:

- Boosting Real Estate Transaction in the National Languages <<http://www.pemudah.gov.my/web/guest/brestate>>
- Stamp Duty <<http://www.pemudah.gov.my/web/guest/stampduty>>
- Tax Agent Licence <<http://www.pemudah.gov.my/web/guest/talicense>>
- Land Tax <<http://www.pemudah.gov.my/web/guest/landtax>>
- Double Deduction Incentive on Research Expenditure <<http://www.pemudah.gov.my/web/guest/double>>
- Synchronise Opening Hours <<http://www.pemudah.gov.my/web/guest/synchroniseopeninghoursof>>
- Service Tax for Club Membership <<http://www.pemudah.gov.my/web/guest/servicetaxforclubmembership>>
- Usage of English and CJP Form <<http://www.pemudah.gov.my/web/guest/uenglish>>
- IRB Counter Operating Hours <http://www.pemudah.gov.my/web/guest/irb_counter>
- Stamp Duty for Transfer of Securities <<http://www.pemudah.gov.my/web/guest/stampdutyfortransfer>>
- Land Matters Q1 <<http://www.pemudah.gov.my/web/guest/467>>
- Land Matters Q2 <<http://www.pemudah.gov.my/web/guest/340>>

Dealing With Licenses Through:

- Approved Permit <<http://www.pemudah.gov.my/web/guest/approvedpermit>>
- License for Budget Hotel <<http://www.pemudah.gov.my/web/guest/licenseforbudgethotel>>
- Premise Licensee <<http://www.pemudah.gov.my/web/guest/premiselincese>>
- Application of TOL <<http://www.pemudah.gov.my/web/guest/applicationoftol>>
- Inspection by Health Officers <<http://www.pemudah.gov.my/web/guest/inspectionbyhealthofficers>>
- Land Transport Policies <<http://www.pemudah.gov.my/web/guest/landtransportpolicies>>
- SSM e-Lodgement <<http://www.pemudah.gov.my/web/guest/ssme-lodgement>>
- Licensing and Accreditation and Private Ambulance Services <<http://www.pemudah.gov.my/web/guest/licensingandaccreditation>>

- License for Selling House with COF
- Renewal of Liquor License
<<http://www.pemudah.gov.my/web/guest/renewalofliquorlicense>>
- Online License Application System
<<http://www.pemudah.gov.my/web/guest/onlinelicenseapplicationsystem>>
- Companies Commission of Malaysia (CCM) <http://www.pemudah.gov.my/web/guest/471>
- Registering Property Through:
- Patent Registration of Logo
<<http://www.pemudah.gov.my/web/guest/patentregistrationoflogo>>
- Inquiry on Title Transfer on a Non-bumi Lots
<<http://www.pemudah.gov.my/web/guest/inquiryontitletransferonanon-bumilots>>
- Titles to One Property <<http://www.pemudah.gov.my/web/guest/titlestoneproperty>>
- Consent to Charge & Consent to Transfer
<<http://www.pemudah.gov.my/web/guest/consentoncharge>>
- Building Plan Approval <<http://www.pemudah.gov.my/web/guest/buildingplanapproval>>
- Patent and Trademark Acquisition
<<http://www.pemudah.gov.my/web/guest/patentandtrademarkacquisition>>

Starting A Business Through:

- Foreign Bank to Set Up a Representative Office in the National Languages
<http://www.pemudah.gov.my/web/guest/foreignbank>
- Gov.my and SSM e-Lodgement <http://www.pemudah.gov.my/web/guest/govmyandssm>
- Paid-up Capital Requirements for Knowledge Industry
<http://www.pemudah.gov.my/web/guest/paid-upcapital>
- Online Service Changes in Business Details <http://www.pemudah.gov.my/web/guest/on-lineservice>
- Business Accounts for Small Scale Entrepreneurs
<<http://www.pemudah.gov.my/web/guest/business-accounts>>
- Change of Company Name <http://www.pemudah.gov.my/web/guest/change-of-company>
- Compulsory Registration for Farmers
- Entrepreneur Support Q1 <<http://www.pemudah.gov.my/web/guest/465>>
- Entrepreneur Support Q2 <<http://www.pemudah.gov.my/web/guest/466>>
- Skim Pembiayaan Ekonomi Desa-I (SPED) - (Dana Kementerian Kemajuan Luar Bandar Dan Wilayah) <<http://www.pemudah.gov.my/web/guest/473>> (Rural Economic Funding Scheme-Ministry of Rural and Regional Development Fund)
- Bank Pembangunan Malaysia Berhad <<http://www.pemudah.gov.my/web/guest/474>> (Malaysia Development Bank)
- Perbadanan Nasional Berhad (PNS) <<http://www.pemudah.gov.my/web/guest/475>> (National Corporation Ltd)
- SME BANK <<http://www.pemudah.gov.my/web/guest/476>>
- MAJLIS AMANAH RAKYAT (MARA) <<http://www.pemudah.gov.my/web/guest/477>>

Facilitating A Business Through:

- EQA 1974 - Penyerahan Laporan <<http://www.pemudah.gov.my/web/guest/eqa-1974>> (Submission of Report)
- Legislation Updates <<http://www.pemudah.gov.my/web/guest/legislation-updates>>
- Updating Status of Incorporated Companies
<<http://www.pemudah.gov.my/web/guest/updating-status>>

Getting Credit Through:

- Distributor Business <http://www.pemudah.gov.my/web/guest/Distributor-business>
- Limit for Financing Projects <<http://www.pemudah.gov.my/web/guest/projects-limit>>
- Delay in Matching Grant Application <<http://www.pemudah.gov.my/web/guest/delay-in-matching>>

Public Service-Doing Business Through:

- Notification for Automated Payment <http://www.pemudah.gov.my/web/guest/notification-for-automated-payment>
- Inquiry on Tax Incentives for Breeding Arowana Fish <<http://www.pemudah.gov.my/web/guest/360>>
- Immigration Matters

Employing Workers Through:

- MIDA Application Form for Expatriate Posts <http://www.pemudah.gov.my/web/guest/mida-application-form>
- New Ruling for Work Permit for Spouses <http://www.pemudah.gov.my/web/guest/new-ruling-for-work-permit>
- SSM Legal Definition of Permanent Residential Address for Foreign Directors <http://www.pemudah.gov.my/web/guest/ssm-legal-definition>
- Approval of Calling Visa for Domestic Helper <http://www.pemudah.gov.my/web/guest/approval-of-calling-visa>
- Environmental Quality Act 2007 <http://www.pemudah.gov.my/web/guest/environmental-quality>
- Difficulties in Renewing Employment Pass <http://www.pemudah.gov.my/web/guest/difficulties-in-renewing>

Facilitating Investors Through:

- Cost of Setting Up a Solar or Crystal Puller Factory in Selangor <http://www.pemudah.gov.my/web/guest/cost-of-setting-up-a-solar>
- Info on Afta Hub for Minerals in Hutan Melintang, Perak <http://www.pemudah.gov.my/web/guest/info-on-afta-hub-for-minerals>
- Building and Common Property (Maintenance and Management) Act 2007 <http://www.pemudah.gov.my/web/guest/building-and-common>
- FIC <http://www.pemudah.gov.my/web/guest/fic>
- Permanent Residence <http://www.pemudah.gov.my/web/guest/permanent-residence> · PR for Investor <http://www.pemudah.gov.my/web/guest/pr-for-investor>
- Buy a Hotel Apartment <http://www.pemudah.gov.my/web/guest/buy-hotel-apartment>

(b) Observations on the implementation of the article

It was confirmed during the country visit that there is no mandatory procedure for government to consult with stakeholders in the review and revision of laws. See the observations under para. 3 of article 5.

Paragraph 1(b) of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(b) Ensuring that the public has effective access to information

1. Is your country in compliance with this provision?

Yes

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Please refer to response provided in Article 10.

3. Please provide examples of the implementation of those measures

Please see examples provided in Article 10.

(b) Observations on the implementation of the article

Please see the observations under Article 10.

Paragraph 1(c) of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has taken (or is planning to take) to implement this provision of the Convention

Information activities that contribute to non-tolerance of corruption:

A. MACC Community Education Efforts include:

(a) Awareness programmes (face-to-face) e.g. talks, seminars, lectures etc. The corruption awareness programmes are also carried out with the request and cooperation of the private sector;

- (b) Publication of anti-corruption messages in booklets, brochures, calendars etc. to be distributed to the public;
- (c) TV dramas based on the MACC success stories;
- (d) Special adoption programmes or outreach programmes in schools;
- (e) Anti-Corruption Awareness In Higher Education.

Students at Public Institutes of Higher Learning (IPTA) are among the main target group in need of exposure to corruption prevention. The reason being that they are 'professionals in-the-making' who will steer the nation's leadership in the future. As such, outreach to this group was through the Corruption Prevention Secretariat (SPR) at Public Institutes of Higher Learning (IPTA), Teacher Education Institutes (IPG) and MARA Education Institutions (IPMa).

In 2007, the Corruption Prevention Secretariat was first established at Public Institutes of Higher Learning (SPR IPTA), followed by the establishment of the Corruption Prevention Secretariat of Teacher Education Institutes (SPR IPG) and MARA Education Institutions (SPR IPMa) by 2013. In 2014, a total of 70 activities were organized by the 20 SPR IPTAs. Anti-corruption initiatives were carried out for SPR IPTA members and the university community such as lecturers, undergraduates, officers and university staff, while 51 activities were conducted by the 27 SPR IPG.

The SPR IPMa was founded in 55 institutions under the MARA education group, namely, Kuala Lumpur University (12), MARA Poly-Tech College (10), MARA Professional College (6), MARA College (4), MARA Skills Training Institute (13), MARA High Skills Institute (10) and the German-Malaysian Institute.

(f) The Anti-Corruption Hero (Wira Anti-Rasuah) Campaign was launched in 2015 to reach out to students and teachers in Chinese Vernacular schools. The campaign received overwhelming response where it was initiated in 7 schools nationwide and with increasing requests in store for 2015.

B. Malaysia Anti-Corruption Academy Courses

In addition to efforts above, the Malaysia Anti-Corruption Academy (MACA), besides being the training provider for government agencies on anti-corruption capacity building, also provides training for government-linked companies and private sector entities including the NGOs (e.g. Transparency International Malaysia on Forest governance). The MACA is also responsible for the training and certification of Integrity Officers (CeIO) of government department/agencies and soon-to-be private sector entities.

C. Malaysian Institute of Integrity (INTEGRITI) Efforts

The INTEGRITI was set up and tasked to implement the National Integrity Plan which was formulated in 2004 in line with the aspirations of the National Principles (Rukun Negara) 1970 and the Vision 2020.

The INTEGRITI's efforts to enhance integrity is based on a holistic and continuous approach with "synergy" of those from below with those from above. While the leadership should be exemplary and provide guidance those below should give support, feedback as well as checks-and-balances on the leadership.

The components of the National Integrity Plan consist of the following institutions:

1. Family
2. Community
3. Civil society (NGO)
4. Socio-culture
5. Religion
6. Politics
7. Administration

Initiatives by INTEGRITI

- a) Graduate Integrity Partnership or Rakan Integriti Mahasiswa (RIM): It was established among higher education institutes to enhance integrity and to create awareness in fighting corruption.
- b) Organise courses on integrity to members of state legislative assemblies and members of parliament.
- c) Cooperation with Malaysian Press Institute in organising forum and dialogue with media practitioners and bloggers
- d) As an implementer of Corporate Integrity System Malaysia (CISM) to promote and register corporate integrity pledges.

D. ANTI-CORRUPTION ELEMENTS IN SCHOOL

1. Directive from Cabinet Committee on Government Governance Management

Upon the proposal from MACC, a Professional Circular No. 17/1998 was issued by Director of Education, where anti-corruption elements will be incorporated in the curriculum of schools and institutions of higher learning as decided by the Cabinet Committee on Government Governance Management Meeting No.2/98. This initiative is one of the efforts to prevent the ever increasing and widespread scourge of corruption. In this regard, all schools are required to take immediate action to enhance and strengthen efforts to inculcate noble values among students in order to prevent corruption and related misconduct. Schools are required to take the following steps:

- a. To strengthen the inculcation of moral values across curriculum through teaching and learning in each subject
- b. To streamline and enhance Islamic and Moral Education subject
- c. To incorporate specific topics on the evils of corruption in the Malay Language subject (secondary level and above). Topics to be discussed may include as follows:
 - i) The definition and interpretation of corruption
 - ii) Typology and root cause of corruption
 - iii) The threat of corruption towards self, society and nation
 - iv) The ways to combat corruption
 - v) Offences and punishment of bribery.

These topics can be organized in various teaching and learning activities.

- d. To strengthen inculcation of moral values and fighting all forms of misconduct through co-curricular activities
- e. To ensure that each school teacher becomes role model by setting example of good experiences and behavior to students

2. Initiative of MACC and Ministry of Education

Incorporation of elements of corruption prevention in primary and secondary school textbooks
The initiative is a long-term effort to instil values of integrity and corruption prevention among school students. It follows the government's realisation that efforts in providing education in corruption prevention will be more effective if corruption prevention elements are included in the education system. The first batch of textbooks containing elements of corruption prevention is in the 2016 academic year, for standard 6. These textbooks are:

- a. Islamic Education
- b. Moral Education in Malay language
- c. Moral Education in Tamil language
- d. Moral Education in Chinese language

The elements, in the form of moral values and introduction to anti-corruption, aim to instil the feeling of detesting all forms of corruption.

E. PROGRAMMES AND ACTIVITIES BY NGOS/CSOS

NGO/CSO	Year	Programme
1. IDEAS	2014	1) IDEAS Dialogue Series on Improving Transparency in Government Procurement on 18 February 2014 2) MACC Roundtable with Bar Council on 3 September 2014 3) Roundtable Discussion on Enhancing the Effectiveness of Anti-Corruption Institution in Malaysia on 11 September 2014
	2015	1) Public Forum - MACC Reform Public Forum 4 March 2015 2) Public Forum - Open Budget Survey on 10 September 2015 3) Public Forum - "Reforming the Malaysian Anti-Corruption Commission" in Kuching on 16 December 2015. IDEAS working in collaboration with the Malaysian Bar, Transparency International Malaysia, Center to Combat Corruption and Cronyism (C4) and the Citizen's Network for a Better Malaysia have proposed a set of legal and institutional reforms to improve anti-corruption efforts in Malaysia. The proposals are as follows: (i) Creating the Independent Anti-Corruption Commission (IACC). A constitutional commission that has the full autonomy to determine strategy, policy, the recruitment and disciplining of staff in its investigative arm, the Anti-Corruption Agency (formerly the MACC). (ii) Expanding the definition of gratification and the power to investigate individuals living beyond his/her means by amending the Malaysian Anti-Corruption Commission (MACC) Act 2009. (iii) Amending other related legislation, namely the Official Secrets Act 1972 to allow for the declassification of documents that reveal corruption; enhancement of the Whistleblower Protection Act 2010, the Witness Protection Act 2009; adoption of a Freedom of Information Act and an Asset Declaration Law. (iv) Separating the offices of the Attorney General and the Public Prosecutor and a review of prosecution practices to ensure that a conflict of interest between the two roles can be prevented. 4) Roundtable on MACC Reform Document and Engagement Strategy on

		<p>27 January 2015</p> <p>5) MACC Reform Expert Consultation Forum on 12 February 2015</p> <p>6) Public Consultation on 14 February 2015</p> <p>7) Open Data Seminar on 18 August 2015</p>
	2016	<p>1) Public Forum - “Public Forum on Reforming the Malaysian Anti-Corruption Commission” in Kuantan on 28 January 2016.</p> <p>2) Public Forum - “Chasing Monkeys: Fighting corruption in Malaysia” in Ipoh on 24 February 2016</p> <p>3) Public Forum - “Should the Roles of the Attorney General (AG) and the Public Prosecutor (PP) be Separated?” in Kuala Lumpur, 4 June 2016</p> <p>4) Public Forum - “The Issues and Challenges of Tackling Corruption in Malaysia” in Kuching, 6 August 2016</p> <p>5) Public Forum - “The many faces of corruption in Malaysia: What are we going to do about it?” in Johor Bahru, 18 November 2016</p> <p>6) Strategic stakeholder roundtable - “The Roles and Responsibilities of the Attorney General and the Public Prosecutor: Time for A Separation?” (Kuala Lumpur, 3 June 2016)</p> <p>7) Strategic stakeholder roundtable - “The Roles and Responsibilities of the Attorney General and the Public Prosecutor: Time for A Separation?” (Kuching, 5 August 2016)</p> <p>8) Strategic stakeholder roundtable - “What needs to be done to effectively tackle corruption in Malaysia?” (Johor Bahru, 17 November 2016)</p> <p>9) Training workshop on open data and access to information with Selangor State Government (26 September 2016)</p> <p>10) Training workshop on open data and access to information with Penang State Government (28 September 2016)</p> <p>11) Conference on Open Government Partnership (Kuala Lumpur, 20 October 2016)</p>
2. TI-Malaysia	2014	<p>1) Public Launch at Publika - The Speak Up campaign was launched on 17 April 2014 and was attended by forty participants (media and invited attendees), the campaign and hotline was officially launched at Publika mall. Speeches were given by the Counsellor from the High Commission of Canada (who also co-funded the project) and Deputy Director of the Community Education Division from the MACC. The launch included an exhibition of TI-M’s public engagement work, the Speak Up.</p> <p>2) ‘Walk against Corruption 2014’ - An annual event joint by various sectors to raise anti-corruption awareness to the public. The event attracted close to 700 participants.</p>
	2015	<p>1) ‘Walk against Corruption 2015’ - The walk was a joint initiative with MACC KL and DBKL. The walk attracted about 200 participants.</p> <p>2) International Anti-Corruption Conference 2015 - TI-M co-organized the event with MACC & TI-Secretariat. Delegates from various parts of the world were invited to discuss issues on tackling corruption.</p>
	2016	<p>1) ‘Hari Anti-Rasuah Antarabangsa 2016’ - TI-M was part of the Walkabout, raising awareness to the public and introducing the role of TI-M in Malaysia on fighting corruption.</p> <p>2) ‘School Integrity Programme 2016’ - TI-M organized a three-day event</p>

		with SMK Damansara Damai 1 school to raise awareness and establish an 'Integrity Club' within the school. The students were taken for a visit to MACA during the 3 day seminar, exposing them the role of MACC in fighting corruption in the country. MACC was invited to officiate the programme and to support the activities that will be conducted in the coming years.
3. C4	2015&2016	Please see the C4's annual reports (attached).
4. Malaysian Institute of Corporate Governance (MICG)	2015	4th Annual National Procurement and Integrity Forum For Public & Private Sectors 2015 in Kuala Lumpur on 21 January 2015 This 1- Day forum provides an avenue for participants both from the private and public sector to know that clear and comprehensive regulations for the conduct of public procurement are the fundamental prerequisite for curbing corruption in public contracting

F. Publications by NGO/CSOS

NGO/CSO	Year	Publication
IDEAS	2014	1) Policy IDEAS No 10: Transparency in European public procurement: benefits and lessons for Malaysia 2) Policy IDEAS No 13: Generating best value for taxpayers' money: How to improve transparency and accountability in Malaysia's public contracting system
	2015	1) Memorandum for the Reform of the Malaysian Anti-Corruption Commission 2) Executive Summary: the Proposal for the Reform of the Malaysian Anti-Corruption Commission 3) Brief IDEAS No. 1 - How can Malaysia's Asset Declaration System be improved to help combat corruption?
	2016	1) Policy IDEAS No 33: Strengthening the Royal Malaysian Police by Enhancing Accountability 2) Policy IDEAS No 34: Separating the offices of the Attorney General and the Public Prosecutor 3) Policy IDEAS No 27: How Can Malaysia's Budget Documents Be Improved? 4) Policy Paper No. 36: A critical look into the Whistleblower Protection Act 2010 5) Having an Ombudsman for Good Governance
TI-M	2014	A citizen's handbook 'Speak Up Against Corruption' Produced, containing information on corruption, reporting channels, anti-corruption laws. The aim of the handbook is to help educate and empower citizens and improve their willingness to report corruption. The handbook is available in four different languages

G. Programmes and activities by the Private Sector

COMPANY	DATE/VENUE	PROGRAMME
PUSPAKOM (Pusat Pemeriksaan Kenderaan Berkomputer - Computerized Vehicle Inspection Centre)	Date: 2014 Venue: All Puspakom Offices	<p>PUSPAKOM Integrity Enhancement Programme Established in 1994, PUSPAKOM is a wholly-owned subsidiary of DRB-HICOM Bhd, a conglomerate that is listed on the Kuala Lumpur Stock Exchange. Puspakom is the only vehicle inspection company appointed by the Malaysian government to undertake all mandatory inspections for commercial and public vehicles, as well as private vehicles for hire-purchase financing, ownership transfer and insurance purposes. Throughout 2014, a total of 14 series of the Integrity Enhancement Programme was conducted nationwide for PUSPAKOM as an outcome of the MoU signed between PUSPAKOM and MACC on 10 January 2012. The main highlights of the programme were focused on corruption offences under the MACC Act 2009, consequences of corruption, preventive measures, integrity enhancement and current issues. The objective was aimed at enhancing the level of integrity among PUSPAKOM officers and staff, who are highly prone to corruption situations. The programme was catered for the entire PUSPAKOM workforce ranging from the top management to all levels.</p>
Felda Global Venture Holdings (FGVH)	Date: 2013-2014 Venue: Throughout Malaysia	<p>FGV is the world's largest Crude Palm Oil (CPO) producer and the second largest Malaysian palm oil refiner. With more than 19,000 people in the group from our subsidiaries as well as joint-venture companies and associates, we aspire to be one of the top 10 agri-business conglomerate in the world by 2020.</p> <p>(1.) FGVH/FELDA Integrity Tour The FGVH/FELDA Integrity Tour 2013-2014 Programme, a collaboration with Felda Global Venture Holdings (FGVH), covered 16 locations nationwide from 26 June 2013 and concluded in 2014. The programme was an outcome of the Corporate Integrity Pledge and the Integrity Pact by FELDA and FGVH Berhad that was signed on 9 April 2012. The purpose was to create awareness towards strengthening the level of integrity of the FGVH and FELDA personnel towards avoiding acts of corruption, abuse of power and malpractice. (2.) FGVH/FELDA Integrity Tour and Business Partner Excellence Programme FGVH continues its effort in enhancing integrity and combating corruption in 2015 through the Integrity Tour and Business Partner Excellence Programme. This awareness programme focuses on vendors and FGVH's business partners. In 2015, 17 programmes were carried out throughout Malaysia.</p>

Description of various means and technologies that have been used for the purposes of

undertaking public information activities

a. MACC.fm - My Anti-Corruption Channel

MACC Radio Streaming known as MACC.fm was launched on 9 December 2015 in conjunction with International Anti-Corruption Day. The objective of the radio broadcast is to strengthen anti-corruption efforts in enhance delivery of anti-corruption messages to the public through electronic medium continuously via advertisements, interviews, public discourse, songs, internal publications and others.

b. MACC Portal

The Official Portal of the MACC, accessible via <http://www.sprm.gov.my>, is the main communication medium for MACC in providing information to the media and the public. The portal displays the latest news, media statements, arrest statistics, the corruption offenders' 'Name and Shame' database for public view. A total of 11.09 million visitors have accessed the portal as of 31 December 2014.

The portal also provides an area for the public to forward any information on corruption offences. The public can lodge an official report in the Complaints Management Portal at <http://www.sprm.gov.my/cms.html>. Internal communication is carried out via e-mail in the dissemination of important and current information to MACC staff.

c. Official blog www.ourdifferentview.com

The official MACC blog was developed on 19 May 2010 and serves as a medium for the MACC to update on current issues to the community. A total of 176 articles have been uploaded to the blog and it has recorded 326,412 visits.

d. The MACC Facebook page

The Facebook account is used due to its popularity among the youth group. The Facebook page highlights the latest and updated news on activities and anti-corruption efforts by the MACC that can be accessed at <http://www.facebook.com/pages/SPRM/247689136935>. As of 31 December, the MACC Facebook has a total of 150,232 friends.

e. MACC Twitter

The Twitter account, SPRMMalaysia, can be accessed at <http://twitter.com/SPRMMalaysia>. Similar to the Facebook, this platform is used to deliver the latest information on activities and Programmes of the MACC. To date, it has recorded 13,602 tweets with 23,824 followers.

f. MACC Flickr

This photo gallery page was initiated on 19 May 2010 and contains pictures of activities and programmes of the MACC nationwide. MACC Flickr can be accessed at <http://www.flickr.com/photos/ourdifferentview/>. There are 18,072 pictures uploaded with about 1.93 million views.

g. MACC YouTube

This social channel was created on 19 May 2010, comprising video clips of MACC activities,

excerpts of speech related to corruption and anti-corruption ads. These materials can be viewed at <http://www.youtube.com/odvmacc>. A total of 458 videos were uploaded, with 370 registered members (subscribers) and viewed more than 173,021 times

h. E-newsletter

The e-newsletter 'MACCToday' was published in English to spread information on anti-corruption to the local and international community.

i. WhatsApp chat

This up-to-date application is utilised by the MACC for prompt communication with interested parties of the MACC. This application also serves as a main communication medium with the media group.

3. Please provide examples of the implementation of those measures

See attachments:

- a. Training courses conducted by MACA (refer MACA Prospectus 2013-2015)
- b. Integrity and anti-corruption posters,
- c. Integrity and anti-corruption flyers
- d. Survey on Effectiveness of MACC Educational Programme 2010
- e. Survey on Public Perception on the Effectiveness of MACC (2013-2015)

(b) Observations on the implementation of the article

The provision is implemented. Malaysia has undertaken a series of public information activities that contribute to non-tolerance of corruption, as well as public education programmes.

Paragraph 1(d) of article 13

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption. This participation should be strengthened by such measures as:

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

1. Is your country in compliance with this provision?

Yes.

2. Please describe (cite and summarize) the measures/steps your country has taken has

taken (or is planning to take) to implement this provision of the Convention

In Malaysia, the freedom of expression is guaranteed under Federal Constitution. However, the freedom is not absolute and restricted by the following legislation:

A. Malaysian Anti-Corruption Commission Act 2009 (Act 694)

A report made to the MACC shall be kept secret under Section 29 (4), Power to investigate reports and enquire into information:

(1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission, and if made orally it shall be reduced into writing and read over to the person making the report; and every report, whether in writing or reduced into writing, shall be signed by the person making the report.

(2) Every report, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour on which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under subsection (1) or information otherwise received by him, he shall cause an investigation to be carried out and for such purpose may exercise all the powers of investigation provided for under this Act and the Criminal Procedure Code.

(4) A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commissioner and above.

(5) A copy, which is certified by an officer of the Commission of the rank of Superintendent and above, of an entry under subsection (2) of a report under subsection (1) shall be admissible as evidence of the content of the original and of the time, place and manner in which the report was recorded.

B. Printing Presses and Publications Act 1984 (Act 301), Section 7 of Undesirable publications

(1) If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

(2) In the case of a publication originating in any country outside Malaysia, an order under subsection (1) may, if the order so provides-

(a) prohibit the importation of any or all publications whether before or after the date of the order, subject to such conditions as may be prescribed therein;

(b) in the case of a periodical publication, prohibit the importation of any past or future issue thereof;

(c) in the case of a publication which has been issued or appears or purports to have been issued from any publishing house, agency or other source specified in the order, prohibit the importation of any other publication which may at any time whether before or after the date of the order has

been, or appears or purports to have been, issued from the specified publishing house, agency or other source;

(d) require the publisher thereof to make such deposits of such amount and in such manner as may be prescribed therein before any such publication may be imported.

(3) Where the Minister is satisfied that the publisher of any publication has acted in contravention of the Act or any rules or order made thereunder or any condition of the licence or permit or any law relating to sedition or defamation, he may after giving such publisher an opportunity to show cause why the deposit made under paragraph 2(d) should not be forfeited, order the deposit or part thereof to be forfeited.

(4) Whether or not an order has been made under subsection (3) the court may order the deposit or any balance thereof, if any-

(a) to be forfeited where the publisher fails to appear in court to answer any criminal charge or civil action relating to any matter in connection with such publication; or

(b) to be paid out in settlement of any judgment obtained against the publisher arising out of any proceeding in connection with such publication.

(5) Where a deposit made under paragraph 2(d) is ordered to be forfeited or utilized in settlement of any damages under subsection (3) or (4), the order of prohibition under subsection (1) shall become absolute unless the publisher makes a further deposit as may be required by the Minister.

(6) A local or foreign publisher shall be responsible and liable for any action in respect of any material published in his publication.

Section 8 Offences

(1) Any person who without lawful excuse is found in possession of any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

(2) Any person who prints, imports, produces, reproduces, publishes, sells, issues, circulates, offers for sale, distributes or has in his possession for such purpose any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

Section 8A Offence to publish false news

(1) Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

(2) For the purposes of this section, malice shall be presumed in default of evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.

(3) No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

Section 8B Suppression of publication

Where any person has been found guilty of any offence by any court in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suppression of the publication for a period not exceeding six months of such publication.

Section 8C Suspension of publication

(1) Pending the determination of any proceedings for the prosecution of a printer, publisher, editor or writer before any court for any offence in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suspension of such publication.

(2) Where an appeal has been lodged against the order of acquittal of any person charged with an offence in respect of anything published in any publication, it shall be lawful for the court which will hear the appeal, on application by the Public Prosecutor, to order a further suspension of such publication pending the final disposal of the appeal.

(3) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand ringgit or to both.

Section 9 Undesirable publication may be refused importation

(1) Without prejudice to anything in this Act, the Minister may refuse the importation into Malaysia or withhold delivery or return to the sender thereof outside Malaysia any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest.

(2) Notwithstanding subsection (1), the Minister may allow the importation or delivery of any publication after any part of the publication which he considers objectionable under any of the grounds specified in subsection (1) has been, to his satisfaction, obliterated, deleted, erased or removed.

C. Sedition Act 1984 (Act 15)

Meaning of " seditious" under Section 2

“seditious” when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;

Meaning of "seditious tendency" under Section 3 A “seditious tendency” is a tendency-

(a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

(b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

(d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong (King) or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;

(e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia; or

(f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.

(2) Notwithstanding anything in subsection (1) an act, speech, words, publication or other thing

shall not be deemed to be seditious by reason only that it has a tendency-

(a) to show that any Ruler has been misled or mistaken in any of his measures;

(b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or

prerogative referred to in paragraph (1)(f) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

(c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)(f)-

(i) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will and enmity between different races or classes of the population of the Federation, if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.

(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

Offences under Section 4

(1) Any person who-

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

Section 9 Suspension of newspaper containing seditious matter

(1) Whenever any person is convicted of publishing in any newspaper any matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters:

(a) prohibiting, either absolutely or except on conditions to be specified in the order, for any

- period not exceeding one year from the date of the order, the future publication of that newspaper;
- (b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper or from publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise in the publication, editing, or production of any newspaper; and
 - (c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.
- (2) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.
- (3) Nothing in this Act shall affect the power of the court to punish any person contravening an order made under this section for contempt of court: Provided that no person shall be punished twice for the same offence.

D. Official Secrets Act 1972 (Act 88)

The Official Secrets Act was enacted in 1972 (OSA), the purpose of the Act enacted is to protect the interest and safety of Malaysia.

Meaning of "official secret" under Section 2

"official secret" means any document specified 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 appointed under section 2B;

Section 8. Wrongful communication, etc. of official secrets

- (1) If any person having in his possession or control any official secret or any secret official code word, countersign or password which-
- (a) relates to or is used in a prohibited place or relates to anything in such a place;
 - (b) relates to munitions of war and to other apparatus, equipment and machinery which are used in the maintenance of the safety and security of Malaysia;
 - (c) has been made or obtained in contravention of this Act;
 - (d) has been entrusted in confidence to him by any public officer; or
 - (e) he has made or obtained, or to which he has had access, owing to his position as a person who holds or has held office in the public service, or as a person who holds, or has held a contract made on behalf of the Government, or as a person who is or has been employed by or under a person who holds or has held such an office or contract, does any of the following:
 - (i) communicates directly or indirectly any such information or thing to any foreign country other than any foreign country to which he is duly authorized to communicate it, or any person other than a person to whom he is duly authorized to communicate it or to whom it is his duty to communicate it;
 - (ii) uses any such official secret or thing as aforesaid for the benefit of any foreign country other than any foreign country for whose benefit he is duly authorized to use it, or in any other manner prejudicial to the safety or interests of Malaysia;

(iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such official secret or thing, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

(2) If any person receives any official secret or any secret official code word, countersign or password knowing or having reasonable ground to believe at the time when he receives it, that the official secret, code word, countersign or password is communicated to him in contravention of this Act, he shall, unless he proves that the communication to him of the official secret, code word, countersign or password was contrary to his desire, be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

Public access to information on corruption

1. The Malaysian Anti-Corruption Commission's "Name and Shame" database is published on the MACC website (www.sprm.gov.my). Details of offenders under trial or convicted are made available for 3 years. This has been used as effective reference for employers, the Immigration Department, the banking fraternity and also embassies in application for employment, visa and also financial service matters.
2. Law journals of decided cases-Malaysian Law Journal, Current Law Journal etc.
3. Public survey/research results by institutions (TI, Universities, independent survey sponsored by NGOs, INTEGRITI, MACC)
4. MACC Publications-Annual Reports

3. Please provide examples of the implementation of those measures

Regarding information on corruption, this is available on the MACC website as follows:

Corruption Offenders or the "Name and Shame" Database

The Name and Shame Database is a public database, listing convicted offenders of corruption implemented as an additional deterrent against corrupt practices in Malaysia. By naming and shaming the offender, it will send a message to potential offenders that corruption does not pay. In addition, it could also stop habitual offenders from repeating such offence.

There is no easy way to check on corruption offenders, as before this, those who were convicted could only be checked through MLJ and CLJ. Currently, the database is made available to the public through MACC website <http://www.sprm.gov.my>.

This database was introduced on 4 March 2010, capturing new records of corruption offenders convicted from 1 January 2010 onwards. These information remains in the database for three years. Relevant information disclosed are the offender's photograph, name, identity card/passport no, conviction date and judge etc.

Currently, there are 726 offenders listed in the database (as at June 2015). This enables potential business partners, employers or other members of the public to have an easy reference base on those who have committed bribery and corruption while acting as a strong deterrent, by adopting a "name and shame" approach.

(b) Observations on the implementation of the article

The observations under article 10 in respect of review of the procedures for the application of national secrecy laws are referred to.

Paragraph 2 of article 13

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

MACC Publicity

Publicity of the MACC takes the form of media announcements or coverage of its operational (investigation), preventive, educational and prosecutorial activities. The MACC has a Corporate Communication Unit which is responsible for public relations matters on issues affecting the activities mentioned. Additionally the MACC's Community Education Division (CED) is tasked to carry out the following functions provided under Section 7 (f) and (g) of the Malaysian Anti-Corruption Commission Act 2009:

Section 7(f) to educate the public against corruption; and Section 7(g) to enlist and foster public support against corruption

In carrying out the above two functions the CED embarks on awareness campaigns to all levels of the community through its face-to-face educational programmes (seminars, lectures, talks and community-based activities, etc.) as well as print media (posters, brochures, booklets etc. containing messages on the need to report acts of corruption) and electronic media (TV and radio talk shows, live-interviews, TV dramas based on success stories of the MACC, etc.)

Accessibility of the MACC.

The Malaysian Anti-Corruption Commission Act 2009 provides as follows:

Section 9. Officer to be always on duty

Every officer of the Commission shall, for the purposes of this Act, be deemed to be always on duty when required to perform his duties or functions and may perform the duties or functions and exercise the powers conferred on him under this Act or under any other written law at any place within or outside Malaysia.

The MACC, with its headquarters in the Federal Administrative Centre in Putra Jaya, has branch offices in all the 13 States of Malaysia and 2 other Federal Territories and 20 Sub-branches within the larger States (in terms of geographical and/or population size).

Reporting to the MACC

Information on corruption by members of the public can be made to the MACC through numerous ways:

a	Making a report (in person) directly to officers of the MACC at the Headquarters and its branches/sub-branches
b	Telephone or Toll-free hotline 1-800-88-6000
c	Short Messaging Service (SMS) via 019-600 0696
d	Fax the information to 03-8888 9562
e	Letter via P.O Box 6000 (without postage stamp)
f	MACC email at info@MACC.gov.my
g	Lodging a report via the Complaints Management Portal at the MACC website: www.sprm.gov.my

Anonymity of Reports, Informers and Information is legally protected.

Under Section 29(4) of the Malaysian Anti-Corruption Commission Act 2009 a report made to the MACC is kept secret.

Section 29 (4):

A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commission and above.

Protection for Reporting Persons

1. Protection under the MACC Act 2009 (Act 694)

Both the identities of informers and their information pertaining to corruption offences received by officers of the Commission from informers are protected under Section 65 of Act 694:

Section 65. Protection of informers and information

(1) Subject to subsection (2), where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand ringgit; and for the purposes of any investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.

2. Protection under the AMLATFAPUAA 2001 (Act 613)

Section 5 of AMLATFAPUAA- Protection of informers and information

(1) Where a person discloses to an enforcement agency his knowledge or belief that any property is derived from or used in connection with a money laundering offence or any matter on which such knowledge or belief is based

a. if he does any act in contravention of subsection 4(1) and the disclosure relates to the arrangement concerned, he does not commit an offence under that subsection if the disclosure is made-

i. before he does the act concerned, being an act done with the consent of the enforcement agency; or

ii. after he does the act, but the disclosure is made on his initiative and as soon as it is reasonable for him to make it;

b. notwithstanding any other written law, the disclosure shall not be treated as a breach of any restriction on the disclosure of information imposed by any law, contract or rules of professional conduct; and

c. he shall not be liable for damages for any loss arising out of-

i. the disclosure; or

ii. any act done or omitted to be done in relation to the property in consequence of the disclosure.

(2) Where any information relating to an offence under this Act is received by an officer of the competent authority or reporting institution, the information and the identity of the person giving the information shall be secret between the officer and that person and everything contained in such information, the identity of that person and all other circumstances relating to the information, including the place where it was given, shall not be disclosed except for the purposes of subsection 8(1) or section 14.

(3) Any person who knowingly discloses any false information under this section commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one million ringgit.

Section 6 of AMLATFAPUAA- Restriction on revealing disclosure under section 5 (1)

No person shall, subject to subsection (2)-

a. reveal that a disclosure was made under section 5;

b. reveal the identity of any person as the person making the disclosure; or

c. answer any question if the answer would lead, or would tend to lead, to the revealing of any fact or matter referred to in paragraph (a) or (b).

(2) Subsection (1) shall not apply to a witness in any civil or criminal proceedings-

a. for an offence under subsection 4(1) or subsection (3) of this section; or

b. where the court is of the opinion that justice cannot fully be done between the parties without revealing the disclosure or the identity of any person as the person making the disclosure.

(3) No person shall publish in writing or broadcast any information, including a report of any

civil or criminal proceedings but excluding information published for statistical purposes by a competent authority or the Government, so as to reveal or suggest-

- a. that a disclosure was made under section 5; or
- b. the identity of any person as the person making the disclosure.

(4) Subsection (3) shall not apply in respect of proceedings against the person making the disclosure for an offence under subsection 4(1) or subsection (1).

(5) If information is published or broadcast in contravention of subsection (3), each of the following persons, namely-

- a. in the case of publication as part of a newspaper or periodical publication, any proprietor, editor, publisher and distributor of the newspaper or periodical publication
- b. in the case of a publication otherwise than as part of a newspaper or periodical publication, any person who publishes it and any person who distributes it
- c. in the case of a broadcast, any person who broadcasts the information and, if the information is contained in a programme, any person who transmits or provides the programme and any person having functions in relation to the programme corresponding to those of the editor of a newspaper or periodical publication commits an offence and shall on conviction be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding three years or to both, and, in the case of a continuing offence, shall in addition be liable to a fine not exceeding three thousand ringgit for each day or part thereof during which the offence continues to be committed.

(6) In this section, "broadcast" includes any broadcast by radio, film, videotape, television or electronic

Protection and/or incentives for members of the public to report acts of corruption, including physical protection as well as protection from workplace or other retaliation.

a. The Whistle Blowers Protection Act 2010 (Act 711)

Section 7- Whistleblower protection

(1) A whistleblower shall, upon receipt of the disclosure of improper conduct by any enforcement agency under section 6, be conferred with whistleblower protection under this Act as follows:

- (a) protection of confidential information;
- (b) immunity from civil and criminal action; and
- (c) protection against detrimental action, and for the purpose of paragraph (c), the protection shall be extended to any person related to or associated with the whistleblower.

(2) A whistleblower protection conferred under this section is not limited or affected in the event that the disclosure of improper conduct does not lead to any disciplinary action or prosecution of the person against whom the disclosure of improper conduct has been made.

(3) This Act does not limit the protection conferred by any other written law to any person in relation to information given in respect of the commission of an offence.

Currently, the Malaysian government plans to review the Whistleblower Protection Act 2010 to make it more effective in combating corruption. Minister in the Prime Minister's Department Datuk Paul Low Seng Kuan said the ministry would review the legislation to ensure that whistleblowers were adequately protected.

Please see <http://www.themalaymailonline.com/malaysia/article/government-plans-review-of-whistleblower-protection-act>

b. The Witness Protection Act 2009 (Act 696)

Section 13 - Action where a witness is included in the programme

(1) The Director General shall take such actions, as he considers necessary and reasonable, to protect the safety and welfare of a participant.

(2) The action may include-

- (a) providing accommodation for the participant;
- (b) relocating the participant;
- (c) applying for any document necessary to allow the participant to establish a new identity;
- (d) providing transport for the transfer of the property of the participant;
- (e) providing payment equivalent to the remuneration that the participant was receiving before being included in the Programme including any increment to the remuneration which the participant would have been entitled to, if he was not included in the Programme;
- (f) where the participant is unemployed before being included in the Programme, providing payments to the participant for the purpose of meeting the reasonable living expenses of the participant including, where appropriate, living expenses of the family of the participant and providing, whether directly or indirectly, other reasonable financial assistance;
- (g) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (h) providing assistance to the participant in obtaining employment or access to education;
- (i) providing other assistance to the participant with a view to ensuring that the participant becomes self-supporting; and
- (j) any other action that the Director General considers necessary.

(3) Notwithstanding any written law to the contrary, there shall be no relocation of any participant by the Director General under paragraph (2)(b)-

- (a) to the State of Sabah from any place outside the State of Sabah; and
- (b) to the State of Sarawak from any place outside the State of Sarawak.

(4) Where the Director General makes a request to any person, having the power or duty under any other written law to issue birth certificate, identity card, marriage certificate or any other document relating to the identity of a participant, to issue a new document necessary to allow the participant to establish a new identity, such person shall comply with the request.

(5) The Director General shall not apply for any document to allow a participant to establish a new identity under paragraph (2)(c) unless he has obtained a written consent from the participant.

(6) The Director General may permit his officer to use assumed names in carrying out their duties in relation to the Programme and to carry documentation supporting those assumed names.

c. The Penal Code:-Section 503 read with Section 506

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment

for a term which may extend to two years or with fine or with both; if the threat is to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment, or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

d. Abduction and Criminal Intimidation of Witness Act 1947 (Act 191)

Section 5. Whoever commits criminal intimidation—

(a) with intent to impede the course of justice; or

(b) so that the course of justice is thereby impeded,

shall be punished with imprisonment which may extend to ten years and shall also be liable to fine.

Reporting obligation is provided for under Section 25 of MACC Act.

Section 25 (3) makes it a legal obligation for the public to report any gratification from whom any gratification has been solicited or obtained in contravention of the MACC Act.

Section 25 (4) makes it an offence for any failure to comply with section 25 (3) and punishable upon conviction a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Incentive to report-

The Government of Malaysia and the MACC Act 2009 do not provide for any monetary incentive for the public to report corruption.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Statistics on the number and substance of reports of acts of corruption made by members of the public from 2013-2015

Type of Offences Under MACC Act 2009	2013	2014	2015
Section 16(a) corruptly soliciting/receiving/agreeing to receive gratification	83	51	117
Section 16(b) corruptly giving/promising/offering Gratification	30	14	14
Section 17 (a) corruptly accepting gratification	172	273	291
Section 17(b) corruptly offering gratification	133	144	141
Section 18- Offence of intending to deceive principal	323	278	246
Section 20- Corruptly procuring withdrawal of tender	-	-	-
Section 21- Bribery of officer of public body	-	-	-
Section 22- Bribery of foreign public officials	-	-	-

Section 23- Offence of using office or position for gratification	135	69	68
Other	84	79	58
Penal Code Offences	-	-	-
Section 161- Public officer taking a gratification, other than legal remuneration in respect of an official act	-	-	-
Section 162- Taking gratification in order, by corrupt or illegal means, to influence a public servant	-	-	-
Section 163- Taking gratification, for the personal influence with a public servant	-	-	-
Section 164- Abetment by public servant of offences under s.162 and s.163	-	-	-
Section 165- Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant	1	2	-
Other	15	9	59
TOTAL	976	919	98

(Source: Statistic Unit, MACC)

Statistics on the number of resultant investigations and their outcomes from 2013-2015

Year/Outcomes	IP Opened	Charged	Conviction	Disciplinary Action
2013	976	289	265	279
2014	919	317	245	188
2015	982	161	186	102

(Source: MACC Annual Report)

Statistics on protection to whistleblowers in 2011, 2012, 2013 and 2014

Year	Total whistleblowers seeking protection	Total whistleblowers being protected
2011	6	6
2012	35	29
2013	6	4
2014	15	10

(Source: MACC Annual Report)

Statistics on protection to witnesses of corruption case via Witness Protection Programme from 2013-2015

Year	2013	2014	2015
Number of Witnesses	2	4	0

(Source: Witness Protection Unit, Prime Minister Department)

Malaysian Corruption Barometer

The Malaysian Corruption Barometer 2014 found that 49% (995) of the interviewed 2032 participants do not wish to report corruption even if it occurs. Out of the 49%, 27% (268) claim that they do not know where to report corruption.

By comparison, the Malaysian Corruption Barometer 2017 found that 23% (229) of the interviewed 1009 participants have paid bribes to the public services. Out of the 23% (229) who paid bribes, 32% (72) reported to the authorities; and 10% (100) of the interviewed 1009 participants do not know where to report corruption.

Only 7% (70) of the interviewed 1009 participants never heard of MACC.

(b) Observations on the implementation of the article

The provision is implemented. However, during the country visit some of the non-governmental counterparts expressed their view that a review and revision of the Whistleblower Protection Act 2010 is necessary, to expand the scope of protected disclosures and the institutions to which reports could be made, as well as to adopt mechanisms for reporting persons to follow-up on and track claims. The Malaysian government plans to review the Whistleblower Protection Act 2010 to make it more effective in combating corruption.

Article 14. Measures to prevent money-laundering

Subparagraph 1 (a) of article 14

1. Each State Party shall:

(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;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Anti-Money Laundering Regulatory and Supervisory Regimes

Banks and non-bank financial institutions that provide services for the transmission of money or value are subject to comprehensive domestic regulatory and supervisory regimes. The following regulatory and supervisory authorities administer the relevant laws which provide for the regulation and supervision of financial institutions in Malaysia:

- (1) Bank Negara Malaysia (BNM) administers, among others, the Financial Services Act 2013 (FSA), Islamic Financial Institutions Act 2013 (IFSA), Development Financial Institutions Act 2002 (DFIA) and Money Services Business Act 2011 (MSBA);
- (2) Securities Commission of Malaysia (BNM) administers, among others, the Capital Markets and Services Act 2007, Securities Industry (Central Depositories) Act 1991; and
- (3) Labuan Financial Services Authority administers, among others, the Labuan Financial Services and Securities Act 2010 and the Labuan Islamic Financial Services and Securities Act 2010.

The applicable domestic laws prohibit transmission of money or value without licence or approvals, thus provision of such services informally tantamount to criminal offences under the relevant laws.

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) is the primary legislation 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 AMLATFAPUAA imposes a number of AML measures on the financial and non-financial institutions aiming to prevent and detect, among others, money laundering.

Institutions subject to the regimes

The AMLATFAPUAA covers the following reporting institutions, financial as well as designated non-financial businesses and professions (DNFBPs) as provided under its "First Schedule":

FIRST SCHEDULE

[Section 3, definition of "reporting institution"]

PART I

1. Activities carried out by-

- (a) a licensed bank;
- (b) a licensed investment bank;
- (c) a licensed insurer carrying on life business;
- (d) an approved financial adviser in relation to life business;
- (e) 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 197].

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 Values, 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].

Supervision powers under AMLATFAPUAA

The AMLATFAPUAA as well as the relevant regulatory laws confer sufficient examination powers on Bank Negara Malaysia as the competent authority (financial intelligence unit/FIU) and the relevant supervisory authorities which include BNM, Securities Commission of Malaysia and Labuan Financial Services Authority to check compliance of the relevant reporting institutions with their obligations under the AMLATFAPUAA.

Anti-Money Laundering Requirements

The full range of Financial Institutions and DNFbps are subject to AML/CFT preventive measures under the AMLATFAPUAA and subsidiary instruments. The competent authority's three main financial regulators: BNM, Security Commission (SC) and Labuan Financial Service Authority ("LFSA") have issued almost identical enforceable guidelines between September 2013 and January 2014 to specify in detail the requirements contained in the AMLATFAPUAA, prior to the AMLATFAPUAA amended Act in 2014. [source: Mutual Evaluation Report 2015 for Malaysia].

The standards and enforceable instruments issued by the regulatory bodies are based on the legal provisions below:

Issuing Authority	Legal Provisions
BNM	<ul style="list-style-type: none">• Sections 13, 14, 15, 16, 17, 18, 19, 20, 66E and 83 of the AMLATFAPUAA which set out the obligations of reporting institutions under AMLATFAPUAA• Section 47(1) in particular section 47(2)(h) of the FSA, section 57(1), in particular section 57(2)(h) of the IFSA and section 41(1) in particular, section 41(2)(c) DFIA which enable Bank Negara Malaysia to issue standards relating to prevention of financial institutions for being used either intentionally or unintentionally for criminal activities.• Section 74 of the Money Services Business Act 2011 (MSBA)
SC	<ul style="list-style-type: none">• Section 83 and section 66E of AMLATFAPUAA• Section 377 of the Capital Markets and Services Act 2007 (CMSA)
LFSA	<ul style="list-style-type: none">• Sections 13, 14, 15, 16, 17, 18, 19, 20, 66E and 83 of the AMLATFAPUAA• Sections 4A and 4B of the Labuan Financial Services Authority Act 1996 (LFSAA)

The standards and enforceable instruments issued by the FIU and relevant authorities set out the detailed requirements including on the following matters:

- Customer Due Diligence (CDD) on individual customer and beneficial owner, legal

- persons, legal arrangements and politically exposed person
- Record keeping, including any accounts, files, business correspondences and documents relating to transactions, in particular, those obtained during the CDD process.
- Prompt submission of suspicious transaction report to the Financial Intelligence Unit (FIU) which resides in the Financial Intelligence and Enforcement Department of BNM.

Reporting Institutions' obligations are also detailed out in the following Regulation, in addition to the relevant sections (section 13 to 19) of the AMLATFAPUAA:

Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007.

Part I PRELIMINARY

1. Citation.

These regulations may be cited as the Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007.

Part II: REPORT BY REPORTING INSTITUTIONS

2. Invocation of paragraph 14(b).

This part shall apply upon invocation of provision of paragraph 14(b) of the Act in respect of a reporting institution.

3. Suspicious transaction report.

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.

Part III: IDENTIFICATION OF ACCOUNT HOLDERS

4. Invocation of section 16

This part shall apply upon invocation of provision of section 16 of the Act in respect of a reporting institution.

5. Customer due diligence

(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 : and

(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 institutions 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 sub-regulation (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.

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Cash and Negotiable Bearer Instruments Declaration) Order 2014

In exercise of the powers conferred by subsections 28B(1), 28C(1) and 28E(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 [Act 613], the competent authority makes the following order:

Citation and commencement

1. (1) This order may be cited as the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities (Cash and Bearer Negotiable Instruments Declaration) Order 2014.

(2) This Order comes into operation on 1 October 2014.

Declaration under subsection 28B(1)

2. Any person leaving or entering Malaysia with an amount in cash, bearer negotiable instruments or both exceeding an amount equivalent to ten thousand United States dollars (USD10,000) shall declare such amount to the competent authority in the Form Customs No. 22 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977 [P.U. (A) 162/1977].

Declaration under subsection 28C(1)

3. (1) Any person who moves into Malaysia through the postal, courier or freight forwarding services, or by any other means, any cash, bearer negotiable instruments or both exceeding an amount equivalent to ten thousand United States dollars (USD10,000) shall declare such amount to the competent authority in the Form Customs No. 1 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977.

(2) Any person who moves out of Malaysia through the postal, courier or freight forwarding services, or by any other means, any cash, bearer negotiable instruments or both exceeding an

amount equivalent to ten thousand United States dollars (USD10,000) shall declare such amount to the competent authority in the Form Customs No. 2 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977.

Declaration under subsection 28E(1)

4. Any person who receives cash or bearer negotiable instruments or both which is moved to the person from outside Malaysia exceeding an amount equivalent to ten thousand United States dollars (USD10,000) shall declare such amount to the competent authority in the form as the competent authority may specify.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Training conducted (including for monitoring transactions and detecting suspicious ones);

Section 19 of AMLATFAPUAA: Compliance Programme

- (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.

The above provisions require the reporting institutions to institute compliance programme and carry out training functions for their employees.

Section 8(3)(a) of AMLATFAPUAA: Provision relating to Competent Authority:

The competent Authority may create training requirements and provide training for any reporting institutions in respect of their transactions and reporting and record-keeping under Part IV.

The main supervisors have also carried out extensive outreach and awareness programmes for respective reporting institutions. The National Risk Assessment (NRA) has been conducted twice in 2012 and 2013, to help financial institutions and DNFBPs to better understand the ML/CFT risks that their respective sectors are facing. The results were disseminated and various awareness

programmes and conferences were held from mid-2014 onwards.

BNM has conducted regular supervisory offsite and onsite engagements with the FIs to promote a clear understanding of ML/TF risks and AML/CFT obligations. This includes annual AML/CFT Conference and International Conference of Financial Crime and Terrorist Financing (in collaboration with Compliance Officers Networking Group (CONG) and Asian Institute of Finance), regular engagement with CONG and focused group meetings to discuss and sort out regulatory issues.

Various guidance, technical notes and circulars are also issued regularly through Financial Intelligence Systems (FINS) (accessible by authorisation only) and BNM's internet platforms (please see link <http://amlcft.bnm.gov.my>).

Over the period 2011 to 2016, BNM undertook a wide range of supervisory outreach activities to DNFBP industry associations and directly including over 1500 DNFBPs in total.

2011	2012	2013	2014	2015	2016
<p>§ 1 session with 260 lawyers (with MBC)</p> <p>§ 1 session with 50 company secretaries (with MAICSA)</p>	<p>§ 1 session: 281 lawyers (with MBC)</p> <p>§ 1 session: 305 company secretaries (with MAICSA)</p> <p>§ 5 sessions: 187 precious metals/stones dealers (with FGJAM)</p> <p>§ 1 session: 4 estate agents (with BVAEA)</p> <p>§ 1 session: Lembaga Tabung Haji</p> <p>§ 4 sessions: 293 money lenders</p>	<p>§ Focus group sessions with selected SROs/industry associations ahead of the issuance of revised Sector 5 guidelines</p> <p>§ 1 session with Malaysian Building Society Berhad</p> <p>§ 1 session: 36 Labuan TCSPs (via LFSA)</p>	<p>§ 1 session: 300+ estate agents (with BVAEA)</p> <p>§ 1 session: 120 lawyers (via MBC)</p> <p>§ 1 session: 120 accountants (via MIA)</p> <p>§ 1 session: 120 company secretaries (via CCM, MAICSA, MACS)</p> <p>1 session-30 Labuan TCSPs (via LFSA)</p>	<p>§ 9 sessions with company secretaries (via Jalanan Strategik, COMTRAC and SSM conference)</p> <p>§ 1 session with accountants</p> <p>§ 1 session with lawyer</p>	<p>§ 6 sessions with company secretaries (350 participations)</p> <p>§ 5 sessions with lawyers (210 participations)</p> <p>§ 1 session with accountants (200 participations)</p> <p>§ 1 session with dealers in precious metal and/or stones (120 participations)</p>

SC regularly updates information on electronics platforms and has issued publications for enhancing AML/CFT understanding of the regulated sector. In addition to regular offsite/onsite engagements with the industry, SC conducted a series of engagement session between 2010-2014 as follows:

- a. Dialogue with CEOs and/or compliance officers on AML/CFT;
- b. Engagement with Association of Stockbroking Banking Association (ASCM) on compliance and AML/CFT
- c. Engagement with Malaysian Investment Banking Association (MIBA) on compliance and AML/CFT; and

d. Sharing AML/CFT examination findings/updates with compliance officers

LFSA has arranged yearly engagement session for compliance officers since 2012. In addition, engagement sessions were conducted throughout 2014 with the Association for Labuan International Insurance Association (LIIA), Labuan Investment Banks Group (LIBG), Associations of Labuan Banks (ALB), and also Association of Labuan Trust Companies (ALTC). From 2012 to 2017, there were ten sessions held with ALB, fifteen with LIIA, ten sessions with ALTC and ten with LIBG. These awareness sessions were in addition to regular supervisory reviews and follow up engagement.

[source: Mutual Evaluation Report 2015 for Malaysia, updated]

Sanctions issued for non-compliance (statistics for the past 6 years).

a) Fines issued to Financial Institutions via compounding of offences

Sector	Item	2011-2012	2013	2014	2015	2016
Banking and Insurance - AMLA	No of institutions	3	2	11	5	2
	No of cases	4	2	31	31	4
	No of offences	104	2	270	153	15
	Value of compound (RM)	1.04m (USD310.69m)	625k (USD186.72k)	4.37m (USD 1.31m)	66.80m (USD16.21m)	RM 3.26m
MSBs - AMLA	No of institutions	7	8	2	3	-
	No of cases	7	8	2	3	-
	No of offences	110	106	223	3	-
	Value of compound (RM)	110k (USD32.86k)	106k (USD31.67k)	62k (USD18.52k)	82.5k (USD20.4k)	-
MSBs -MCA and MBSA	No of cases	14	49	60	2	3

	No of offences	14	50	60	2	3
	Value of compound (RM)	169.5k (USD50.64k)	628k (USD187.61k)	94k (USD28.08)	27k (USD6.43k)	RM 39k
	TOTAL BNM (RM)	1.32m (USD394k)	1.36m (USD406k)	4.53m (USD1.35m)	67.9m (USD16.1m)	

The vast majority of breaches compounded in banking and insurance related to submission of CTRs, implementation of CDD obligations, risk profiling and processes for identifying and reporting suspicion. Among the uncommon breaches was one case of tipping-off. For, MSBs (MVTS and Money Changers) the breaches related to record keeping and failure to report audited reports.

[source: Mutual Evaluation Report 2015 for Malaysia, updated]

Remedial actions and sanction for DNFBPs

	2011	2012	2013	2014	2015	2016
Supervisory letter	5 (trust company) 1 (casino)	3 (trust company) 5 (jewellers)	-	1 (casino) 14 (Labuan TCSPs)	-	13 (to law firms) 1 (to MBSB)
Directive	-	-	-	-	-	-
Compound	2 (law firms)	-	-	-	-	-

As explained in the preceding paragraph, BNM has focused more on corrective actions where irregularities were not of a serious nature. However, serious violations/offences were dealt with compounding of fines. For the most serious breaches, BNM has prosecuted offences and/or revoked licences. This has been confined to the MSB (MVTS and money changers) sector.

SC has imposed some fines for violations of AML/CFT requirements. The fine imposed by SC has not been less than RM150,000 (USD44812) and more than RM275000 (USD82156).

[source: Mutual Evaluation Report 2015 for Malaysia, updated]

Compliance reviews (scope and frequency)

The scope of compliance review as provided in AML/CFT Sectoral Guidelines, Banking and

Deposit Taking Institution (Sector 1), paragraph 28.4.8 (similar provisions under paragraph 23.4.8 Sectoral Guidelines for Sector 2 - Insurance and Takaful, paragraph 23.4.6 Sectoral Guidelines for Sector 3 - Money Services Business):

The Compliance Officer has a duty to ensure the following:

- a) the reporting institution's compliance with the AML/CFT requirements;
- b) proper implementation of the AML/CFT policies;
- c) that the appropriate AML/CFT procedures, including CDD, record keeping, on-going due diligence, reporting of suspicious transactions and combating the financing of terrorism, are implemented effectively;
- d) that the AML/CFT mechanism is regularly assessed to ensure that it is effective and sufficient to address any change in ML/TF trends;
- e) that the channel of communication from the respective employees to the branch or subsidiary compliance officer and subsequently to the Compliance Officer is secured and that information is kept confidential;
- f) that all employees are aware of the reporting institutions AML/CFT measures, including policies, control mechanism and the channel of reporting;
- g) that internally generated suspicious transaction reports by the branch or subsidiary compliance officers are appropriately evaluated before submission to the Financial Intelligence and Enforcement Department, Bank Negara Malaysia; and
- h) the identification of ML/TF risks associated with new products or services or arising from the reporting institution's operational changes, including the introduction of new technology and processes

The frequency, scope and intensity of BNM and SC supervision is guided by risk considerations, in particular the findings of the NRA and sectoral assessments and other inputs from LEAs and supervisors. The process of supervisors assessing ML/TF risk generates a classification of their RIs which helps to guide the frequency, scope and intensity of supervisory treatment. This includes a consideration of elements of risks associated with products, services, customers, delivery channels, geographic locations etc. Thematic inspections by supervisors have focused on key preventive measures, including CDD, processes for identifying and reporting suspicion, implementation of targeted financial sanctions and identification of beneficial ownership.

[source: Mutual Evaluation Report 2015 for Malaysia, updated]

Financial Institutions onsite examinations and supervisory reviews

	2011	2012	2013	2014	2015	2016	Total
BNM sectors							
Banking	65	62	110	76	43	74	430
Investments banks	14	13	20	14	11	13	85
DFIs	7	7	19	12	6	0	51
Insurance/ takaful	36	19	26	25	13	37	156
MSBs	89	681	157	212	135	348	1,622
SC financial institutions							
Stockbroking/ Derivative broking	15	16	20	26	32	31	140
Fund management/ Unit Trust Management	7	28	29	43	46	29	182

LFSA FIs (with BNM)	12	10	11	10	11	9	63
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DNFBP Supervisory activity

	2011	2012	2013	2014	2015	2016	2017
Full scope onsite inspections	1 (Onshore TCPs) 1 Casino) 6 Labuan TCPs)	3 (Onshore TCSPs) 1 (Labuan TCSPs)	5 (Onshore TCSPs) 6 (Labuan TCSPs)	1 (Casino) 14 (Labuan TCSPs)	13 (Legal firms)	6 (Follow up visits were conducted in 2014 – 4 (TCSPs) 1 (MBSB) 1 Casino)	9 Follow up visits were conducted in in Q1 (TCSPs)
Internal Audit for AML/CFT	1 Casino) 1 (LTH)	1 (Casino) 1 (LTH)	1 (Casino) 1 (LTH) 35(Labuan TCSPs)	1 (Casino) 1 (LTH) 36 (Labuan TCSPs)	1 (Casino) 1 (LTH) 1 (MBSB)	2 (MBSB) 1 Casino)	-
AML/CFT Compliance Survey	2 groups: - Lawyers - Onshore TCSP	3 groups: - Lawyers - Jewellers - Labuan TCSPs	1 group: - Lawyers	1 group: - Lawyers	1 group: - Lawyers	4 Groups: (lawyers, accountants, company secretaries, real estate agents)	-

Corruption Related Money-Laundering: Data on Investigations, Prosecutions and Convictions.

Corruption Related Money-Laundering cases from 2009 to 2013

	2009	2010	2011	2012	2013	Total
Investigations	5	5	30	49	50	139
Prosecutions	1	0	2	2	1	6
Conviction	1	0	1	0	0	2

On-going Prosecution	4	4
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(Source: FATF Mutual Evaluation Report of Malaysia 2015, p.56-67)

**NON-COMPLIANCE WITH AML/CFT POLICIES
(STATISTICS FROM BANK NEGARA MALAYSIA (BNM))**

Year	Offence	Amount (RM)
2015	2 Islamic banks were compounded for failure to comply with AMLA Orders under Sections 48 and 50	1.05 million
	Compound against 1 insurance company for failure relating to reporting obligations and compliance program under Sections 14(1)(b) and 19(1) of AMLA	530,000
	Compound against 3 MSB operators for failures relating to compliance programs under Section 19(1) of AMLA	82,500
	Administrative monetary penalties against 3 banks for failure to comply with standards prescribed under Section 48(1) of FSA and Section 58(1) of IFSA	57.6 million
2016	Compound imposed on 1 bank for failure to comply with reporting obligations and record-keeping requirements under Section 14(1)(b) and Section 17(1) of AMLA	1.7 Million
	Compound imposed on 1 bank for failure to comply with reporting obligations under Section 14(1)(b) and AMLA Orders Section 50	1.6 Million

(b) Observations on the implementation of the article

Banks and non-bank financial institutions as well as designated non-financial businesses and professions (DNFBPs) are subject to comprehensive domestic regulatory and supervisory regimes administered by the three main regulatory and supervisory authorities in Malaysia, namely (1) Bank Negara Malaysia (BNM); (2) Securities Commission of Malaysia (SC); and (3) Labuan Financial Services Authority. These regulators have issued almost identical enforceable guidelines between September 2013 and January 2014 to specify in detail the requirements

contained in the AMLATFAPUAA, prior to the AMLATFAPUAA amended Act in 2014. These relevant rules, in particular the Anti-Money Laundering and Anti-Terrorism Financing (Reporting Obligations) Regulations 2007, emphasize requirements for customer and beneficial owner identification (Customer Due Diligence (CDD) on individual customers and beneficial owners, legal persons, legal arrangements and politically exposed persons), record-keeping and the prompt reporting of suspicious transactions to the Financial Intelligence Unit (FIU) which resides in the Financial Intelligence and Enforcement Department of BNM.

Malaysian authorities confirm that these requirements apply equally to entities that provide money transfer services (remitters and money changers), which are considered high risk under the National Risk Assessment (NRA) and have been included as reporting entities since 2002/2003. A dedicated unit of approximately 50 staff in BNM conduct regular inspections and examinations of remitters and money changers, and more than 20 cases have been prosecuted since 2010. Overall, there are over 43,000 reporting institutions in Malaysia, including all DNFBPs (designated non-financial businesses and professions). Provisions in AMLATFAPUAA further require the reporting institutions to institute compliance programmes and carry out training functions for their employees (including for monitoring transactions and detecting suspicious ones). The main supervisors have also carried out outreach and awareness programmes for respective reporting institutions. BNM and SC have conducted numerous supervisory offsite and onsite engagements with the covered institutions to promote a clear understanding of ML/TF risks and AML/CFT obligations. Various guidance, technical notes and circulars are also issued regularly, in particular through BNM's internet platforms and Financial Intelligence Systems (FINS) (accessible by authorisation only).

Malaysia also provided statistics on sanctions issued for non-compliance (for the past 5 years), which mostly related to submission of CTRs, implementation of CDD obligations, risk profiling and processes for identifying and reporting suspicion. The scope of compliance review is provided principally in AML/CFT Sectoral Guidelines.

The 2015 FATF/APG Mutual Evaluation report (MER) concluded that Malaysia has a strong legal and regulatory framework for preventive measures, which demonstrated a high degree of technical compliance with the FATF standards. Interagency coordination and policy frameworks, BNM's supervision, the FIU and the Special Taskforce achieve significant outcomes and are the key strengths within Malaysia's AML/CFT system.

However, Malaysia is encouraged to continue efforts to address the remaining issues identified in the FATF review in respect of money-laundering enforcement and confiscation, and the reviewers welcome steps being taken in this regard (as described below):

- Enforcement of Money laundering offence: Largely compliant. The review found that greatest improvements are required in Malaysia's investigation and prosecution of money laundering and terrorist financing (ML and TF). ML conviction numbers are low and Malaysia is not adequately targeting high-risk offences or foreign sourced threats. The sanctions imposed for ML have been low and Malaysia has had a preference for pursuing other criminal justice measures rather than ML prosecutions, particularly confiscation.
- Weaknesses in Malaysia's AML/CFT system relate to low levels of confiscation in high-risk areas (fraud, drugs and corruption) and in international matters, and minimal results produced by the cross border regime.

In respect of enforcement, it was reported that the sub-working group on law enforcement/prosecution of the National Coordination Committee to Counter Money Laundering (NCC) (see below) has agreed on enforcement parameters for each relevant agency at the national level. In addition to AML investigations, priority was given to enforcing the cross-border regime for the declaration of cash and negotiable instruments. According to the national officials, although the number of AML prosecutions was low, some prosecutions were in the pipeline: at the time of review more than 10 cases were in court with convictions expected. Law

enforcement agencies are required to report on the outcomes of such cases to the NCC sub-working group on law enforcement/prosecution, which monitors such cases.

In terms of outcomes, in addition to the statistics included above, and the statistics on seizure and confiscation (2012-2017) under article 51, the following was reported by the FIU during the country visit:

AML: 2016: 306 money-laundering cases opened, 22 ongoing prosecutions, 17 convictions, and 23 forfeiture cases (non-conviction based).

CFT: 2016: 11 prosecutions, 5 convictions.

In respect of the implementation of the recommendations issued in the 2015 MER (see para. 4 of the article below), Malaysia reported that out of the 40 FATF recommendations Malaysia was found to be partially compliant on only 3: 1) proliferation financing (Recommendation #7), 2) legal persons (Recommendation #24), legal arrangements (Recommendation #25). While the first area has been addressed, the second is covered through amendments to the Companies Act (which now requires beneficial owner identification), and the adoption of legal amendments in respect of trusts, which are in progress and expected to be effective by the end of 2018/2019.

The Malaysian authorities reported that they worked together with the FATF to develop a national strategic plan to address the outcomes of the 2014 National Risk Assessment (NRA) and gaps identified in the FATF evaluation. 3 areas were highlighted in particular: 1) National risk policy and institutional/international coordination, 2) sectoral/prevention measures, and 3) enforcement. More detail is provided under article 52 below.

More generally in regards to the national AML/CFT framework, the domestic authorities reported that the National Coordination Committee to Counter Money Laundering (NCC) was established, before the 2001 AML Law came into effect, as the central committee coordinating the AML/CFT regime in Malaysia. The members of the Committee are represented by various Law Enforcement Agencies and Ministries. Under NCC, policy frameworks and strategic planning to strengthen the regime are formulated via sub-working groups. This includes improvement on ML/TF risk assessment, capacity building, data collection, and enforcement effectiveness. There are 6 difference sub-working groups: 1) capacity-building, 2) sub-working group on non-profit organizations, 3) financial sector, 4) law enforcement/prosecution sub-working group, 5) risk sub-working group, 6) DNFBP (designated non-financial businesses and professions) sub-working group.

Additional observations/recommendations to address the FATF recommendations are included under article 52.

Subparagraph 1 (b) of article 14

1. Each State Party shall: ...

(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 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 centre for the collection, analysis and dissemination of information regarding potential money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The Financial Intelligence Unit

The functions of the competent authority are carried out by the Financial Intelligence Unit, set up within the Financial Intelligence and Enforcement Department (FIED) of BNM. The FIU's functions include to:

- a. receive suspicious transaction reports (STR) from the reporting institutions;
- b. receive cash threshold reports (CTR) from relevant reporting institutions;
- c. analyse the STRs and CTRs;
- d. disseminate information on suspected offences derived from the STRs and CTRs analysis to the appropriate law enforcement agencies for investigation;
- e. compile statistics and records;
- f. give instructions to reporting institutions pertaining to any report or information received;
- g. make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising from any report or information received; and
- h. create training requirements and provide training for any reporting institutions in respect of the reporting institutions' obligations under Part IV of the AMLATFAPUAA.

Domestic Cooperation

The AMLATFAPUAA is enforced by various agencies depending on the nature of the crime under their respective purviews. The main LEAs responsible for investigating money laundering offences and associated predicate offences are: Royal Malaysian Police (RMP), Malaysian Anti-Corruption Commission (MACC), Royal Malaysian Customs (RMCD), Inland Revenue Board (IRBM), Bank Negara Malaysia (BNM), Securities Commission (SC), Companies Commission of Malaysia (CCM), Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) and Labuan Financial Services Authority (Labuan FSA).

Most of the main LEAs are members of the National Coordination Committee to Counter Money Laundering (NCC). The NCC is the central committee coordinating the AML/CFT regime in Malaysia. The members of the Committee are represented by various LEAs and Ministries. Under NCC, policy frameworks and strategic planning to strengthen the regime are formulated via sub-working groups. This includes improvement on ML/TF risk assessment, capacity building, data collection, and enforcement effectiveness.

The powers of the FIU to share information with the above mentioned enforcement agencies are provided for under Section 9 of AMLATFAPUAA (cited below in subparagraph 3)

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 FATF, Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units provides Malaysia with a platform to cooperate on various AML/CFT issues, including in the areas of training and sharing of information as provided for under Section 9(3) and Section 10 of AMLATFAPUAA (cited below):

a. BNM as the FIU to coordinate and cooperate with enforcement agencies in and outside Malaysia

Section 29(3) of the AMLATFAPUAA contains clear powers for the FIU to coordinate and cooperate with other law enforcement agency in and outside Malaysia with respect to investigation on offences including serious offences, foreign serious offences and structuring offences.

b. BNM to cooperate and coordinate with other supervisory authorities

Section 40 of the Central Bank of Malaysia Act 2009 (CBA) empowers BNM to enter into arrangements to coordinate and cooperate on financial stability measures including AML measures with other supervisory authorities (both domestic and foreign supervisory authorities).

Section 153 of the Financial Services Act 2013 (FSA) and section 165 of the Islamic Financial Institutions Act 2013 (IFSA) empower the Bank as the supervisory authority in respect of financial institutions subject to those laws to disclose information pertaining to the financial institutions and their affairs to the foreign supervisory authorities.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Domestic coordination mechanism

The implementation of the AML/CFT regime is coordinated by the NCC, a body established in 2000. NCC's main functions are AML/CFT policy formulation, strategic direction setting for Malaysia's AML/CFT regime and operational issues.

There are two levels of coordination:

(a) NCC High Level

Focuses on formulation of policy and strategic direction for Malaysia's AML/CFT regime. This level comprises of the Heads or Deputies of the member Ministries or agencies.

(b) NCC Working Group

Focuses on operational issues pertaining to the implementation and effectiveness of initiatives approved by the NCC. Monitors the implementation and effectiveness of AML/CFT measures, and reporting them to NCC. This level comprises of Director or Deputy of relevant departments under Ministries/ Agencies. At the operational level, sub-committees and task forces are established to discuss specific issues that require participation of various members.

Members of the NCC:

The NCC is 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:

- i. Attorney General's Chambers;
- ii. Bank Negara Malaysia;
- iii. Companies Commission of Malaysia;
- iv. Immigration Department of Malaysia;
- v. Inland Revenue Board of Malaysia;
- vi. Labuan Financial Services Authority;
- vii. Malaysian Anti-Corruption Commission;
- viii. Ministry of Domestic Trade, Co-operatives and Consumerism;
- ix. Ministry of Finance;
- x. Ministry of Foreign Affairs;
- xi. Ministry of Home Affairs;
- xii. Ministry of International Trade and Industry;
- xiii. Registrar of Societies;
- xiv. Royal Malaysia Police;
- xv. Royal Malaysian Customs Department; and
- xvi. Securities Commission Malaysia.

Mandates of the NCC are to:

- a. foster cooperation, consultation and the necessary flows of information among the AML/CFT Stakeholders in the development of AML/CFT policies, legislation, law enforcement and supporting infrastructures, including conducting regular review of the policy framework;
- b. facilitate the production, analysis and dissemination of the relevant information and statistics as may be necessary to assess:
 - i. the risks of money-laundering and terrorism financing, including proliferation financing, in order to give advice and make decisions on AML/CFT requirements and the risk-based implementation of those requirements; and
 - ii. the effectiveness and efficiency of the National AML/CFT Framework;
- c. facilitate consistent good practices and coordinated approaches among the AML/CFT stakeholders with regard to the development, dissemination and implementation of AML/CFT-
 - i. regulations and guidelines,
 - ii. supervision and enforcement actions,
 - iii. and to foster greater awareness through training initiatives and outreach programmes;
- d. provide a forum for examining any operational or policy issues that have implications on the implementation, effectiveness and efficiency of the National AML/CFT and, where necessary, to make recommendations to the Government in order to address the issues.

The relevant sections of AMLATFAPUAA 2001 in respect of the powers of the Competent Authority (FIU) are as follows:

Section 8. Provisions relating to the competent authority

- (1) The Minister of Finance may, upon the recommendation of the competent authority, who shall consult the relevant supervisory authority of a reporting institution, by order published

in the Gazette,

*invoke any or all of the provisions of Part IV in respect of that reporting institution.

- (2) For the avoidance of doubt, it is declared that a competent authority may exercise its powers under this section in respect of reporting institutions carrying on any or all of the activities listed in the First Schedule, and shall-
 - (a) receive and analyze information and reports from any person, including reports issued by reporting institutions under section 14;
 - (b) send any report received under paragraph (a) or any information derived from any such report to an enforcement agency if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed; and
 - (c) send any information derived from an examination carried out under Part IV to an enforcement agency if it has reason to suspect that a transaction involves proceeds of an unlawful activity or a serious offence is being, has been or is about to be committed.
- (3) The competent authority may-
 - (a) compile statistics and records;
 - (b) give instructions to a reporting institution in relation to any report or information received under section 14;
 - (c) make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising out of any report or information received under subsection(2); and
 - (d) create training requirements and provide training for any reporting institutions in respect of their transactions and reporting and record-keeping obligations under Part IV.

Section 9. Authorization to release information

- (1) Subject to subsection (2), the competent authority may, in writing, authorize any enforcement agency or its designated officers to have access to such information as the competent authority may specify for the purposes of performing the enforcement agency's functions.
- (2) In respect of any information received from a reporting institution carrying on any business activity listed under Part II of the First Schedule, the competent authority shall authorize Labuan Financial Services Authority or its designated officers to have access to that information.
- (3) The competent authority may, in writing, authorize the Attorney General or his designated officer to have access to such information as the competent authority may specify for the purpose of dealing with a foreign State's request in relation to mutual assistance in criminal matters.

Section 10. Disclosure to corresponding authority of foreign State

- (1) The Minister may enter into an agreement or arrangement, in writing, with the government of a foreign State regarding the exchange, between the competent authority and any corresponding authority of that foreign State, of information that the competent authority or the corresponding authority has reasonable grounds to suspect would be relevant to the investigation or the prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence.
- (2) The competent authority may enter into an agreement or arrangement, in writing, with a corresponding authority of a foreign State regarding the exchange, between the competent

authority and that corresponding authority, of information that the competent authority or the corresponding authority has reasonable grounds to suspect would be relevant to the investigation or the prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence.

- (3) Notwithstanding any other written law or rule of law, the competent authority may communicate any information reported to it under section 14 to a corresponding authority of a foreign State if-
- (a) the competent authority has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence; and
 - (b) either-
 - (i) the Minister has, in accordance with subsection (1), entered into an agreement or arrangement with that foreign State regarding the exchange of such information; or
 - (ii) the competent authority has, in accordance with subsection (2), entered into an agreement or arrangement with that corresponding authority regarding the exchange of such information, under which the corresponding authority of the foreign State has agreed to communicate to the competent authority, upon the competent authority's request, information received by the corresponding authority that corresponds to any information required to be reported to the competent authority under section 14; and
 - (c) the competent authority is satisfied that the corresponding authority has given appropriate undertakings-
 - (i) for protecting the confidentiality of anything communicated to it; and
 - (ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any other proceedings.
- (4) The competent authority shall record in writing the reasons for all decisions made under paragraph (3)(a) to communicate any information.
- (5) In this section, "corresponding authority", in relation to a foreign State, means the authority of that foreign State responsible for receiving information that corresponds to any information required to be reported to a competent authority under section 14.

Section 12. Permitted disclosure

- (1) Nothing in section 11 shall prevent the communication of the competent authority's information under this Part with respect to a prosecution or legal proceedings in connection with the commission of a serious offence, a foreign serious offence, an offence under subsection 4(1) or a terrorism financing offence.
- (2) Nothing in section 11 shall prevent the communication of the competent authority's information under this Part in respect of the affairs of a person by the person authorized under section 9 to-
- (a) if the person is not a company, that person;
 - (b) if the person is a company-
 - (i) any person who is, or has been, a director or an officer of the company; or
 - (ii) any person who is, or has been directly involved in, or responsible for, the preparation of information furnished on behalf of the company; or
 - (c) the person who furnished the information to the competent authority.
- (3) No person to whom the competent authority or person authorized under section 9 communicates any information under this Part and the information does not relate to the affairs

of the person shall make a record of the information or disclose, or communicate the information to any person in any circumstances.

(4) Any person who contravenes subsection (3) commits an offence 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

(5) Except where it is necessary to do so for the purposes of carrying into effect the provisions of this Act, a person who obtains information from the competent authority under this Part shall not be required to produce in court any document containing any of the information or to disclose or communicate to any court such information.

Information exchange protocol

Pursuant to Section 8 of the AMLATFAPUAA, FIU has the authority to disseminate any report received by it under the AMLA to an enforcement agency.

In addition, Section 9(1) of the AMLATFAPUAA states that the FIU may authorise any enforcement agency or its officers to have access to information specified by FIU in assisting the enforcement agency in performing its functions. All relevant law enforcement agencies have been given access to the Financial Intelligence System (FINS) that comprises the STRs and CTRs submitted by the reporting institutions.

Disclosure will be guided by the confidentiality requirement as set out in FIU's standard operating procedures, namely the Framework for Analysis and Dissemination of Financial Intelligence issued in October 2011. The dissemination shall only be addressed to the designated officer of the enforcement agency and shall be hand delivered or collected or if necessary, to be sent via the appointed courier service provider.

For disclosure to foreign FIUs, the disclosure is made through the Egmont Secure Website (ESW) for all Egmont members and registered mail (by appointed courier) for non-Egmont members.

Additional statistics of cooperation on corruption and money-laundering matters through mutual legal assistance are provided under paragraph 5 of this article.

Statistics on requests for intelligence received from foreign FIUs and proactive sharing of intelligence to foreign FIUs are also provided under paragraph 5 of this article.

(b) Observations on the implementation of the article

The provision appears to be effectively implemented. The statistics included under paragraph 5 demonstrate that Malaysia receives far more requests for law enforcement cooperation than it makes. They also tend to show effective application of the legal and institutional framework in practice and confirm that supervisors/regulators and the FIU cooperate well with their foreign counterparts and are utilising international cooperation to enhance their functions and results, as also stated in the APG report.

Paragraph 2 of article 14

2. States 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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysian legislative measure to comply with this provision are set out under PART IVA of AMLATFAPUAA.

A. Cross Border Movements of Cash and Bearer Negotiable Instruments

Interpretation in relation to this Part, provided under section 28A

(1) In this Part, unless the context otherwise requires-

“business day” means-

- (a) in States where Sunday is observed as the weekly holiday, a day other than a Saturday, Sunday or public holiday; or
- (b) in States where Friday is observed as the weekly holiday, a day other than a Friday, Saturday or public holiday;

“bearer negotiable instrument” includes-

- (a) a traveller’s cheque;
- (b) any negotiable instrument in bearer form, endorsed without any restriction, made out to a fictitious payee or otherwise in such form that title of such instrument passes upon delivery; and
- (c) any negotiable instrument that is signed but the name of the payee is omitted;

“authorised officer” means an officer of customs or an officer authorised by the competent authority to perform or assist in the performance of its functions under this Part;

“officer of customs” has the same meaning as in the Customs Act 1967 [Act 235];

“commercial goods carrier” means a person who, in the normal course of a business, carries goods or mail for reward, and includes his employee;

“commercial passenger carrier” means a person who, in the normal course of a business, carries passengers for reward, and includes his employee;

“cash” means coin and printed money (whether of Malaysia or of a foreign state) that-

- (a) is designated as legal tender; and
- (b) circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;

“printed money” means money comprising a note printed, written or otherwise made on polymer, paper or any other material.

(2) In determining whether an amount of cash or bearer negotiable instruments exceeds the value

prescribed by the competent authority under this Part, such amount shall be converted to the currency prescribed by the competent authority at the rate of exchange applicable at the relevant time.

Section 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.

Section 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.

Section 28D: Exceptions to requirement to make declaration

(1) Section 28B shall not apply if-

(a) the person is a commercial passenger carrier; and

(b) the cash or bearer negotiable instrument is in the possession of the commercial passenger carrier's passenger.

(2) Section 28C shall not apply if-

(a) the person is a commercial goods carrier;

(b) the cash or bearer negotiable instrument is carried on behalf of another person;

(c) the other person has not disclosed to the commercial goods carrier that the goods carried on his behalf include cash or bearer negotiable instruments; and

(d) the commercial goods carrier does not know and has no reasonable ground to believe that the goods carried on behalf of the other person include cash or bearer negotiable instruments.

(3) The burden of proving the matters referred to in subsection (1) or (2) lies with the person who wishes to rely on that subsection.

Section 28E: Declaration about receipts of cash or bearer negotiable instruments from outside Malaysia

(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.

Section 28F: Declaration to competent authority

(1) A declaration to the competent authority under this Part shall-

(a) be made in such form as the competent authority may specify; and

(b) contain full and accurate information relating to the matter being declared as is specified in the form.

(2) A declaration under this Part, except under section 28E, shall be made to the competent authority through an authorised officer.

(3) An authorised officer shall make available to the competent authority, upon the request of the competent authority, within a reasonable time-

(a) any declaration submitted to the authorised officer; or

(b) any information about suspicious cross border movements of cash or bearer negotiable instruments.

(4) Any person who makes a declaration which is false, inaccurate or incomplete 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.

Section 28G: Structuring to avoid declaration under this Part

(1) No person shall structure, or direct, assist or participate in structuring any cross border transportation or movements of cash or bearer negotiable instruments to avoid making a declaration under this Part.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be liable to a fine of not more than five times the aggregate sum or value of the amount of cash or bearer negotiable instruments at the time the offence was committed or to imprisonment for a term not exceeding seven years or to both.

Section 28H: Questioning and search powers in relation to cash or bearer negotiable instruments

(1) Any person leaving or entering Malaysia shall if required to do so by an authorised officer do all or any of the following:

(a) declare whether or not the person has with him any cash or bearer negotiable instrument;

(b) declare the total value of any cash or bearer negotiable instruments that the person has with him;

(c) declare whether or not a declaration under section 28B has been made in respect of any cash or bearer negotiable instruments that the person has with him;

(d) produce to the authorised officer any cash or bearer negotiable instruments that the person has with him;

(e) answer any question that the authorised officer may have with respect to the cash or bearer negotiable instruments.

(2) An authorised officer may, with such assistance as is reasonable and necessary-

- (a) search a person or examine any article, baggage or property which the person has with him for the purpose of finding out whether a person has with him any cash or bearer negotiable instruments in respect of which a declaration under section 28B is required to be made;
 - (b) enter any premises and examine or search the premises for the purposes of ascertaining whether there is at or in the premises any cash or bearer negotiable instruments in respect of which a declaration under section 28B or 28C is required to be made;
 - (c) board any conveyance and examine or search the conveyance for the purpose of ascertaining whether there is on board the conveyance any cash or bearer negotiable instruments in respect of which a declaration under section 28B or 28C is required to be made;
 - (d) open, examine or search any article, container, package, receptacle or any thing found at or in the premises or on the conveyance for the purpose of ascertaining whether or not there is any cash or bearer negotiable instrument in respect of which a declaration under section 28B or 28C is required to be made;
 - (e) detain any cash, bearer negotiable instruments or any other thing found in the course of an examination or search under paragraph (a), (b), (c) or (d) if an authorised officer has reason to suspect that such cash, bearer negotiable instruments or other thing may afford evidence relating to the commission of an offence under this Part; or
 - (f) take possession of, and remove from the premises or conveyance, any cash, bearer negotiable instruments or other thing so detained.
- (3) No person shall be searched under this Part except by an authorised officer of the same gender and such search shall be carried out with strict regard to decency.
- (4) Any person who, without reasonable excuse, fails to comply with a requirement under subsection (1), or pursuant to any such requirement knowingly or recklessly makes a declaration or gives an answer that is false in a material particular, 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, and, in the case of a continuing offence, shall in addition be liable to a fine not exceeding three thousand ringgit for each day or part thereof during which the offence continues to be committed.
- (5) Any person who fails to comply with any lawful demands of any authorised officer in the exercise of his powers under this Part 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, and, in the case of a continuing offence, shall in addition be liable to a fine not exceeding three thousand ringgit for each day or part thereof during which the offence continues to be committed.

Section 28I: Power of arrest without warrant

An authorised officer investigating an offence under this Part may arrest without warrant any person whom he reasonably believes has committed or is attempting to commit an offence under section 28B or 28C.

Section 28J: Submission of information to competent authority

Notwithstanding the Central Bank of Malaysia Act 2009, the Financial Services Act 2013 and the Islamic Financial Services Act 2013, the Bank may submit to the competent authority information received under section 214 of the Financial Services Act 2013 and section 225 of the Islamic Financial Services Act 2013.

Section 28K: Declaration under this Part deemed to be a declaration in a matter relating to customs

Any declaration required to be made under this Part, except under section 28E, shall for the purposes of the Customs Act 1967 be deemed to be a declaration in a matter relating to customs.

Section 28L: Forfeiture of detained cash or bearer negotiable instruments

(1) Subject to section 61, in any prosecution for an offence under this Part, the court shall make an order for the forfeiture of the cash, bearer negotiable instruments or any other thing which is proved to be the subject-matter or evidence relating to the commission of the offence as it considers appropriate notwithstanding that no person may have been convicted of such offence.

(2) Subject to section 61, where in respect of any cash, bearer negotiable instrument or any thing used in the commission of an offence seized under this Part there is no prosecution or conviction for an offence under this Part, the Public Prosecutor shall, before the expiration of twelve months from the date of the seizure, apply to a judge of the High Court for an order of forfeiture of the cash, bearer negotiable instrument or thing, as the case may be, if he is satisfied that the cash, bearer negotiable instrument or thing is the subject-matter or evidence relating to the commission of such offence.

(3) The judge to whom an application is made under subsection (2) shall make an order for the forfeiture of the cash, bearer negotiable instrument or any other thing used in the commission of an offence if he is satisfied that the cash, bearer negotiable instrument or thing is the subject-matter or evidence relating to the commission of an offence under this Part.

B. 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) 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 Customs No. 22 as prescribed in Part I of the Second Schedule of the Customs Regulations 1977.

Reporting Threshold

Sections 28B and 28C of the AMLATFAPUAA require residents and non-residents to declare incoming and outgoing cross border movement of currency and bearer negotiable instruments (BNIs) exceeding USD 10,000 or its equivalent. This covers passenger, postal and cargo streams. The declaration is to be made to Royal Malaysian Customs Department (RMC) officers using a prescribed form (Customs Form Number 1, 2 and 22) at all points of entry and exit in Malaysia. Notices are placed at all entry and exit points to give prior warning to travellers of their obligation

to make a declaration

Declarations are required to be truthful and made in the respective prescribed form to RMC, the competent authority under Section 28B, Section 28C and Section 28H of the AMLATFAPUAA and Section 87 of the Customs Act 1967. RMC officers have the authority to obtain further information from the carrier with regard to the origin of the currency or BNIs and their intended use.

Persons who make a false declaration or disclosure are subject to proportionate and dissuasive sanctions. AMLATFAPUAA imposes a criminal penalty upon conviction of a fine not exceeding RM3 million (USD 896,240) or imprisonment for a term not exceeding five years or both for the offence of failure to make such declaration. AMLATFAPUAA also provides for compounding of a sum not exceeding fifty percent of the amount of the maximum fine for that offence. The offence of making a false declaration is also an offence under Section 135(1)(a) of the Customs Act 1967 with a sanction (if it is a first offence) of a fine between ten times and twenty times the value of the currency or BNI, or imprisonment for a term not exceeding three years or both. For a subsequent offence the fine is between twenty and forty times the value of the currency or BNI or imprisonment for a term not exceeding five years or both. The court can forfeit currency or BNI seized under the Customs Act. The offence of making an incorrect declaration of currency or BNI in the prescribed form is also punishable under Section 133(1)(a) of the Customs Act. The criminal sanction for a person convicted for this offence is a fine not exceeding RM 500,000 or imprisonment for a term not exceeding five years or both.

[source: Mutual Evaluation Report 2015 for Malaysia]

Measures to detect and monitor declarations

This is provided for under subparagraphs (1) and (2) of Section 28H AMLATFAPUAA cited above.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Cross border declarations and enforcement action from 2011-2015 (incoming/outgoing):

	2011	2012	2013	2014	2015
Number of declarations	2,541	4,545	3,716	4,406	4,090
Value of amounts declared (6 key currencies only)	RM2.2m USD310.3m EU39.6m UKP52.9m AUD34.8m	RM22.7 USD316m EU107.3m UKP46.5m AUD47.6m SGD2.4b	RM3.9m USD218.6m EU35.2m UKP45.2m AUD41.1m SGD 5.8b	RM24.2m USD1.1b EU63.9m UKP41.5m AUD36.7m SGD2.8b	RM16.9m USD297.8m EU323.0m UKP16.75m AUD207.46m SGD504.51m
Number of cash seizure cases	27	9	8	3	5
Amount seized	RM9m	RM1.6m	RM2.3m	RM1.8m	RM0.51m
Forfeitures	RM531.82 (3 cases)	RM400k (1 case)	(2 cases pending)	RM318.95k (1 case)	RM0.22m (1 case)
Court Fines	RM 1.89m (4 cases)	RM 5m (2 cases)	-	-	-

Administrative fines	RM247.5k (16 cases)	RM 10k (1 case)	RM 5k (1 case)	-	RM 4k (2 cases)
Investigations	44	16	14	2	5
Prosecutions	11	4	2	1	1

(b) Observations on the implementation of the article

Malaysia has implemented the provision, and the statistics provided demonstrate the application of the legal measures in practice. The reporting threshold of US\$10,000 is in line with FATF standards.

In terms of sanctions for non-compliance, it was further clarified that AMLATFAPUAA imposes a criminal penalty upon conviction for the offence of failure to make a declaration of a fine not exceeding RM3 million (USD 896,240) or imprisonment for a term not exceeding five years or both. The same penalty is also applied for false or incorrect declarations (section 28B), in addition to penalties available under the Customs Act.

The reviewers noted that Section 28I of AMLATFAPUAA confers powers of arrest without a warrant and gives the authorized officer power to take immediate action to arrest, without a warrant, any person whom he reasonably believes has committed or is attempting to commit an offence.

Paragraph 3 of article 14

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

- (a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;*
- (b) To maintain such information throughout the payment chain; and*
- (c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.*

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia fulfils the provisions of this Article under the Electronic Commerce Act 2006 (Act 658); Electronic Government Activities Act 2007 (Act 680); Digital Signature Act 1997 (Act 562); and Sections 13, 14, 15, 16, and 17 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceed of Unlawful Activity Act 2009 (AMLATFAPUAA) which provide for reporting obligations by reporting institutions, as well as Central Bank of Malaysia (Bank Negara

Malaysia) and Sectoral Guidelines No. 1, No. 3 and No. 4 mentioned below:

A. The Electronic Commerce Act 2006

Section 13: Retention of document

Where any law requires any document to be retained, the requirement of the law is fulfilled by retaining the document in the form of an electronic message if the electronic message-

- (a) is retained in the format in which it is generated, sent or received, or in a format that does not materially change the information contained in the electronic message that was originally generated, sent or received;
- (b) is accessible and intelligible so as to be usable for subsequent reference; and
- (c) identifies the origin and destination of the electronic message and the date and time it is sent or received.

Section 14: Copy

Where any law requires any document to be retained, served, sent or delivered in more than one copy, the requirement of the law is fulfilled, if the document is in the form of an electronic message, by retention, service, sending or delivery of the document in one copy.

Section 15: Prescribed form

Where any law requires any document to be in a prescribed form, the requirement of the law is fulfilled by a document in the form of an electronic message if the electronic message is-

- (a) formatted in the same or substantially the same way as the prescribed form; (b) accessible and intelligible so as to be usable for subsequent reference; and (c) capable of being retained by the other person.

Section 17: Attribution of electronic message

(1) An electronic message is that of the originator if it is sent by the originator himself. (2) As between the originator and the addressee, an electronic message is deemed to be that of the originator if it is sent by-

- (a) a person who has the authority to act on behalf of the originator in respect of that electronic message; or
- (b) an information processing system programmed by, or on behalf of, the originator to operate automatically.

(3) As between the originator and the addressee, the addressee is entitled to regard an electronic message as being that of the originator, and to act on that presumption, if-

- (a) the addressee properly applies an authentication method agreed between the originator and the addressee for ascertaining whether the electronic message was that of the originator; or
- (b) the electronic message as received by the addressee resulted from the actions of a person whose relationship with the originator or any agent of the originator enabled that person to gain access to an authentication method used by the originator to identify electronic message as its own.

(4) Subsection (3) does not apply if-

- (a) the addressee has received a notice from the originator that the electronic message is not that of the originator and has reasonable time to act accordingly; or

(b) the addressee knew or should have known that the electronic message was not that of the originator had he exercised reasonable care or used any authentication method agreed between the originator and the addressee.

Section 18: Contents of electronic message

Where an addressee receives an electronic message, the addressee is entitled to regard the electronic message as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic message as received.

B. Electronic Government Activities Act 2007

Section 22: Retention of document

Where any law requires any document to be retained, the requirement of the law is fulfilled by retaining the document in the form of an electronic message if the electronic message -

- (a) is retained in the format in which it was generated, sent or received, or in a format that does not materially change the information contained in the electronic message that was originally generated, sent or received;
- (b) is accessible and intelligible so as to be usable for subsequent reference; and
- (c) Identifies the origin and destination of the electronic message and the date and time it was sent or received.

Section 28: Attribution of electronic message

- (1) An electronic message is that of the originator if it is sent by the originator himself.
- (2) As between the originator and the addressee, an electronic message is deemed to be that of the originator if it is sent by -
 - (a) a person who has the authority to act on behalf of the originator in respect of that electronic message; or
 - (b) an information processing system programmed by, or on behalf of, the originator to operate automatically.
- (3) As between the originator and the addressee, an addressee is entitled to regard an electronic message as being that of the originator, and to act on that presumption, if -
 - (a) the addressee properly applies an authentication method agreed between the originator and the addressee for ascertaining whether the electronic message was that of the originator; or
 - (b) the electronic message as received by the addressee resulted from the actions of a person whose relationship with the originator or any agent of the originator enabled that person to gain access to an authentication method used by the originator to identify electronic message as its own.
- (4) Subsection (3) does not apply if -
 - (a) the addressee has received a notice from the originator that the electronic message is not that of the originator and has reasonable time to act accordingly; or
 - (b) the addressee knew or should have known that the electronic message was not that of the originator had he exercised reasonable care or used any authentication method agreed between the originator and the addressee.

Section 29: Contents of electronic message

Where an addressee receives an electronic message, the addressee is entitled to regard the electronic message as being what the originator intended to send, and to act on that presumption, unless the addressee knew or should have known, had he exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic message as received.

C. Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001

The enforceable instruments issued under the AMLATFAPUAA and the respective regulatory laws such as FSA, IFSA and MSBA impose specific obligations on the reporting institutions to include accurate and meaningful information on originator on the forms and related messages for electronic transfer of funds.

For cross border wire transfers equivalent to or exceeding RM3,000, the enforceable instruments require the relevant reporting institutions to ensure that the wire transfers are accompanied by full originator information including beneficiary information. For cross border wire transfers below RM3,000, originator information (name of the originator and account number which permits traceability of the transaction) and beneficiary information (name and account number which permits traceability of transaction) is required. For domestic wire transfers, ordering institutions are required to ensure that the information accompanying the wire transfers includes originator information as indicated for cross-border wire transfers unless such information can be made available to the beneficiary institutions and relevant authorities by other means.

Money or Value Transfer Services (MVTs) are required to comply with the similar requirements as in relation to wire transfers.

For cross-border wire transfers, intermediary reporting institutions are required to retain all originator and beneficiary information that accompanies a wire transfer.

Relevant provisions of the AMLATFAPUAA are as follows:

Section 13: Record-keeping by reporting institutions

- (1) A reporting institution shall keep a record of any transaction involving the domestic currency or any foreign currency exceeding such amount as the competent authority may specify.
- (2) The record referred to in subsection (1) shall be in such form as the competent authority may specify.
- (3) The record referred to in subsection (1) shall include the following information for each transaction:
 - (a) the identity and address of the person in whose name the transaction is conducted;
 - (b) the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, where applicable;
 - (c) the identity of the accounts affected by the transaction, if any;
 - (d) the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's cheques or money orders or other payment or transfer by, through, or to such reporting institution;
 - (e) the identity of the reporting institution where the transaction occurred; and
 - (f) the date, time and amount of the transaction, and shall also include such other information as the competent authority may specify in writing.
- (4) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency

which, in aggregate, exceeds the amount specified by the competent authority pursuant to subsection (1) shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or such other period as the competent authority may specify.

Section 14: Report by reporting institutions

A reporting institution shall promptly report to the competent authority any transaction-

- (a) exceeding such amount as the competent authority may specify; and
- (b) 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.

Section 15: Centralization of information

A reporting institution shall provide for the centralization of the information collected pursuant to this Part.

Section 16: Identification of account holder

(1) A reporting institution-

- (a) shall maintain accounts in the name of the account holder; and
- (b) shall not open, operate or maintain any anonymous account or any account which is in a fictitious, false or incorrect name.

(2) A reporting institution shall-

- (a) verify, by reliable means, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, as well as other identifying information on that person, whether he be an occasional or usual client, through the use of documents such as identity card, passport, birth certificate, driver's licence and constituent document, or any other official or private document, when establishing or conducting business relations, particularly when opening new accounts or passbooks, entering into any fiduciary transaction, renting of a safe deposit box, or performing any cash transaction exceeding such amount as the competent authority may specify; and

(b) include such details in a record.

(3) A reporting institution shall take reasonable measures to obtain and record information about the true identity of the person on whose behalf an account is opened or a transaction is conducted if there are any doubts that any person is not acting on his own behalf, particularly in the case of a person who is not conducting any commercial, financial, or industrial operations in the foreign State where it has its headquarters or domicile.

(4) For purposes of this section, "person" shall include any person who is a nominee, agent, beneficiary or principal in relation to a transaction.

Section 17: Retention of records

(1) Notwithstanding any provision of any written law pertaining to the retention of documents, a reporting institution shall maintain any record under this Part for a period of not less than six years from the date an account has been closed or the transaction has been completed or terminated.

(2) A reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify, for a period of not

less than six years from the date the transaction has been completed or terminated.

(3) Subsections (1) and (2) will not apply where a reporting institution has transmitted the record to the competent authority or an enforcement agency.

(4) Any reporting institution which contravenes subsection (1) or (2) commits an offence 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.

D. Digital Signature Act 1997 (Act 562) - read together with Digital Signature Regulations 1998 Regulation

78. Record-keeping.

(1) A licensed certification authority shall keep and maintain detailed written records documenting -

(a) the security measures taken to comply with the Act and these Regulations;

(b) if the licensed certification authority generates a key pair for a subscriber, the relevant time at which and the manner in which the private key is distributed or transmitted to the subscriber;

(c) the relevant time at which and the manner in which a certificate is issued and distributed or transmitted to the subscriber;

(d) the certificates issued by it in such a way that the data and its unfalsified condition may be verified at any time; and

(e) all other measures taken to comply with the Act and these Regulations.

(2) The records required under subregulation (1) shall include evidence demonstrating that the licensed certification authority has -

(a) confirmed the identification of the person named in a certificate that the licensed certification authority has issued;

(b) confirmed the identification of the person requesting revocation of each certificate that the licensed certification authority has revoked;

(c) confirmed all other facts listed as confirmed in a certificate that the licensed certification authority has issued; and

(d) complied with the Act and these Regulations in issuing, publishing, suspending and revoking a certificate.

(3) A licensed certification authority may require a subscriber or the agent of a subscriber to submit documentation and other evidence reasonably sufficient to enable the licensed certification authority to comply with this regulation.

(4) A recognised repository and a recognised date/time stamp service shall keep and maintain detailed written records documenting -

(a) the security measures; and

(b) all other measures taken to comply with the Act and these Regulations.

(5) Records kept in digital form shall be digitally signed.

Compliance guidance issued by regulatory/supervisory authorities, including on enhanced scrutiny measures when complete originator information is not included

Sectoral Guidelines

Paragraph 18 of AML/CFT-Banking and Deposit Taking Institutions (Sector 1) (which is

identical to paragraph 16 of AML/CFT Money Services Business (Sector 3) and AML/CFT Electronic Money and Non-Bank Affiliated Charge & Credit Card (Sector 4) provides:

18.1 General

18.1.1 The requirements under this Paragraph are applicable to cross-border wire transfers and domestic wire transfers including serial payments and cover payments.

18.1.2 Reporting institutions must comply with the requirements on combating the financing of terrorism under Paragraph 31 in carrying out wire transfer.

18.1.3 Reporting institutions shall not execute the wire transfer if it does not comply with the requirements specified in this Paragraph

18.1.4 Reporting institutions are required to maintain all originator and beneficiary information collected in accordance with record keeping requirements under Paragraph 27

18.2 Ordering Institutions

Cross-border wire transfers

18.2.1 Reporting institutions which are ordering institutions are required to ensure that the message or payment instruction for all cross-border wire transfers involving an amount equivalent to RM3,000 and above are accompanied by the following:

(a) Required and accurate originator information pertaining to:

(i) name;

(ii) account number (or a unique reference number if there is no account number) which permits traceability of the transaction; and

(iii) address (or in lieu of the address, date and place of birth)

(b) Required beneficiary information pertaining to:

(i) name; and

(ii) account number (or a unique reference number if there is no account number), which permits traceability of the transaction.

18.2.2 Where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, the batch file shall contain required and accurate originator information, and full beneficiary information, that is fully traceable within the beneficiary country; and ordering institutions are required to include the originator's account number or unique transaction reference number.

18.2.3 Ordering institutions are required to ensure that the message or payment instruction for all cross-border wire transfers below RM3,000 are accompanied by the following:

(a) Required originator information pertaining to:

(i) the name of the originator; and

(ii) account number (or a unique reference number if there is no account number), which permits traceability of the transaction.

(b) Required beneficiary information pertaining to:

(i) the name of the beneficiary; and

(ii) account number (or a unique reference number if there is no account number), which permits traceability of the transaction.

18.2.4 The information required under Paragraph 18.2.3 need not be verified for accuracy except when there is a suspicion of ML/TF.

Domestic wire transfers

18.2.5 Ordering institutions are required to ensure that the information accompanying the wire transfer includes originator information as indicated for cross-border wire transfers, unless this information can be made available to the beneficiary institution and relevant authorities by other means.

18.2.6 Where the information accompanying the domestic wire transfer can be made available to the beneficiary institution and relevant authorities by other means, the ordering institution shall include only the originator's account number or if there is no account number, a unique identifier, within the message or payment form, provided that this account number or unique identifier will permit the transaction to be traced back to the originator or the beneficiary. Ordering Institutions are required to provide the information within three working days of receiving the request either from the beneficiary institution or from the relevant authorities and must provide the information to law enforcement agencies immediately upon request.

18.3 Intermediary Institutions

18.3.1 For cross-border wire transfers, intermediary institutions are required to retain all originator and beneficiary information that accompanies a wire transfer.

18.3.2 Where the required originator or beneficiary information accompanying a cross-border wire transfer cannot be transmitted due to technical limitations, intermediary institutions are required to keep a record in accordance with record keeping requirements under Paragraph 27.

18.3.3 Intermediary institutions are required to take reasonable measures, which are consistent with straight-through processing, to identify cross-border wire transfers that lack the required originator information or required beneficiary information.

18.3.4 Intermediary institutions are required to have effective risk-based policies and procedures for determining:

- (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information; and
- (b) the appropriate follow-up action.

18.4 Beneficiary Institutions

18.4.1 Beneficiary institutions are required to take reasonable measures, including post-event or real-time monitoring where feasible, to identify cross-border wire transfers that lack the required originator information or required beneficiary information.

18.4.2 For cross-border wire transfers of an amount equivalent to RM3,000 and above, beneficiary institutions are required to verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with record keeping requirements under Paragraph 27.

18.4.3 Beneficiary institutions are required to have effective risk-based policies and procedures for determining:

- (a) when to execute, reject, or suspend a wire transfer lacking the required originator or required beneficiary information; and
- (b) the appropriate follow-up action.

Please provide examples of the implementation of those measures, including related court

or other cases, available statistics etc.

Measures for supervisors to ensure compliance with those requirements and observations on compliance:

The respective supervisors have included review on wire transfer in their ongoing monitoring of reporting institutions' compliance to the laws and guidelines.

For Banks, supervisors note that:

- a. CDD is conducted on all customers conducting remittance transactions or wire transfer.
- b. For some banking institutions, (i.e. financial conglomerates, foreign banks), walk-in customers are not allowed to perform wire transfer as it is only limited to existing customers. However, for banks who accept walk-in customers, CDD is conducted i.e. obtaining information and supporting documents on the remitter/beneficiary as well as the transaction.
- c. In addition, these banks also undertake additional measure above CDD requirements which includes obtaining information on source of funds, expected account activity level, countries to/from where remittance is anticipated, reason of transfer from other FI, secondary documentation for address verification are required.

For Money Services Businesses, supervisors note that:

- a. Most of remittance service providers (RSPs) have complied with specific requirements to conduct remittance business such as customers' fund management, use of robust remittance system and other operational requirements.
- b. In addition, RSPs have undertaken additional measures to mitigate the ML/TF risk amongst others:
 - i. Lower internal remittance limit from limits specified by the regulator
 - ii. Perform remittance transaction with preregistered beneficiaries
 - iii. Conducted comprehensive due-diligence on correspondent agents
 - iv. Collected other relevant information on the customers and beneficiaries such as employment details (salary, designation, sector etc), relationship with beneficiaries to enhance the quality of customers profiling.
- c. With regard to providing international money transfer operators services, the RSPs have undertaken enhanced measures while ensuring the corresponding parties have complied with the AML/CFT requirements. In addition, the RSPs have ensured that their MIS is capable to support International Money Transfer Operator operations.

For Labuan banks, supervisors note that:

- a. Labuan banks conduct CDD for all inward and outward remittances or wire transfers regardless of the amount involved. The following details are the minimum key CDD information collated:
 - i. Authentication or verification of payment instruction (the sender)
 - ii. Screen the related banks (beneficiary bank) and beneficiary's information against the blacklisted, sanctions, OFAC list and etc.
 - iii. Check on the amount, purpose of payment and frequency of payment
- b. Based on review conducted during examination, most Labuan banks undertake dual checking in verifying and confirming of remittance transactions.

Statistics reflecting the level of compliance with those requirements

Not available. The level of compliance is reflected in the observations by supervisors stated above.

(b) Observations on the implementation of the article

Malaysia's legislation, in particular the AMLATFAPUAA, requires financial institutions, including money remitters, to obtain accurate information on the originators of funds transfers and to retain such records for a period of not less than six years from the date an account has been closed or the transaction has been completed or terminated (section 17). The supervisory authorities have also included reviews of wire transfers in their ongoing monitoring of reporting institutions' compliance with the laws and guidelines.

Regarding the enhanced scrutiny of accounts and transactions, Section 16 of AMLATFAPUAA requires reporting institutions to exercise enhanced scrutiny where there is reason to believe that the person is not acting on his own behalf. Additionally, enhanced scrutiny of funds transfers that do not contain complete information on the originator, as required by the paragraph under review, is required under the BNM Sectoral Guidelines and BNM Guidelines for CDD (including Identification of Beneficial Owners), in particular paragraph 13.4 (Specific CDD Measures) and paragraph 10.2 (Customer Risk Factors). Please see paragraph 1 of article 52 below for further detail on CDD and Beneficial ownership.

Paragraph 4 of article 14

4. In establishing a domestic regulatory regime and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia's regulatory and supervisory framework is structurally based on international standards, especially the FATF 40 Recommendations. The effectiveness of the framework has been continuously assessed and improved to ensure that it evolves in line with developments in international standards and global environment.

Malaysia has been assessed jointly by FATF and APG in 2014 on the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Malaysia's AML/CFT system as per attached FATF Mutual Evaluation Report 2015.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

Guidelines issued by the main regulators are as follows:

BNM AML/CFT Guidelines

- a. Banks and deposit-taking institutions (effective date: 15 September 2013) - Sector 1
- b. Insurance and takaful (effective date: 15 September 2013) - Sector 2
- c. Money services business (effective date: 15 September 2013) - Sector 3
- d. Electronic money and non-bank affiliated charge and credit card business (effective date: 15 September 2013) - Sector 4
- e. DNFBPs and other non-financial sectors (effective date: 1 November 2013) - Sector 5

LFSA AML/CFT Guidelines

- a. Banking sector (effective date: 30 December 2013)
- b. Capital markets and other business (effective date: 30 December 2013)
- c. Insurance and takaful (effective date: 30 December 2013)
- d. Trust Company Sector (effective date: 30 December 2013)

SC AML/CFT Guidelines

Capital market intermediaries (issued: 15 January 2014)

[source: Mutual Evaluation Report 2015 for Malaysia]

These guidelines are formulated in accordance with the provision of the AMLATFAPUAA and the FATF 40 Recommendations. With the introduction by the FATF recommendations of countries' obligation to adopt a risk-based approach in identifying, assessing and understanding the country's money laundering/terrorist financing risks, these guidelines imposed on reporting institutions an obligation to implement a comprehensive risk-based approach in managing money laundering/terrorist financing risks.

Level of Compliance

The FATF and APG joint assessment (as of September 2015) on Malaysia's compliance with the FATF 40 Recommendations is as follows:

Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	<ul style="list-style-type: none"> • There are gaps with requirements on FIs and DNFBPs to take enhanced measures to manage and mitigate risks identified in the NRA. • There is insufficient detail available to non-government stakeholders in the assessment of TF risk.
2. National cooperation and coordination	C	The Recommendation is fully met.

3. Money laundering offence	LC	<ul style="list-style-type: none"> • Predicates of environmental crime (illegal fishing), and counterfeiting and piracy of products (industrial designs) are not adequately covered.
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • Property of corresponding value to instrumentalities for predicate offences can only be confiscated with an ML or TF prosecution. • Mechanisms for managing and, when necessary, disposing of property frozen, seized or confiscated have gaps.
5. Terrorist financing offence	C	The Recommendation is fully met.
6. Targeted financial sanctions related to terrorism & TF	C	The Recommendation is fully met.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • There is a significant delay in transposing UN designations to domestic freezing obligations and prohibitions. • Freezing and prohibitions are only enforceable in respect of the citizens of Malaysia and bodies incorporated in Malaysia. • Further implementation guidance is needed.
8. Non-profit organisations	LC	<ul style="list-style-type: none"> • There are gaps in administrative sanctions for compliance failures with obligations on NPOs • There are gaps in explicit record keeping requirements.
9. Financial institution secrecy laws	LC	<ul style="list-style-type: none"> • There are gaps in a narrow range of circumstances with LFSA's ability to share all necessary information.
10. Customer due diligence	C	The Recommendation is fully met.
11. Record keeping	LC	<ul style="list-style-type: none"> • A threshold to be applied to certain record keeping requirements results in a minor gap.
12. Politically exposed persons	LC	<ul style="list-style-type: none"> • Directions to treat foreign PEPs as 'high risk' are only implicit, which results in a minor gap
13. Correspondent banking	LC	<ul style="list-style-type: none"> • Obligations only apply to correspondent banks rather than 'respondent institutions'.
14. Money value transfer services	C	The Recommendation is fully met.
15. New technologies	C	The Recommendation is fully met.
16. Wire transfers	C	The Recommendation is fully met.
17. Reliance on third parties	LC	<ul style="list-style-type: none"> • RIs relying on third parties are not required to immediately obtain the necessary CDD information
18. Internal controls and foreign branches and subsidiaries	C	The Recommendation is fully met.
19. Higher-risk countries	C	The Recommendation is fully met.
20. Reporting STRs met.	C	The Recommendation is fully met
21. Tipping-off, confidentiality	C	The Recommendation is fully met.

22. DNFBPs: Customer due diligence	LC	<ul style="list-style-type: none"> • Scope issue: sole trader jewellers in East Malaysia are not covered. • Gaps with record keeping and with reliance on 3rd parties.
23. DNFBPs: Other measures.	LC	<ul style="list-style-type: none"> • Scope issue: sole trader jewellers in East Malaysia are not covered
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> • Weaknesses with the assessment of risk with legal persons. • Some weaknesses in measures to ensure basic ownership information is accurate and up to date. • Reliance on CDD by RIs may mean that beneficial ownership information is not always available when foreign ownership is involved. • Share warrants are not suitably controlled for Labuan companies. • Available fines for breaches of various obligations on legal persons are not proportionate or dissuasive.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • Reliance on CDD by RIs may mean that beneficial ownership information is not always available when foreign ownership is involved. □ • AMLA obligations to identify and verify parties to the trust or other legal arrangements do not apply to trustees who do not otherwise meet the definition of FI or DNFBP. • Available fines for breaches of various obligations on legal arrangements are not proportionate or dissuasive.
26. FIs Regulation / supervision	C	The Recommendation is fully met.
27. Powers of supervisors	C	The Recommendation is fully met.
28. Regulation and supervision of DNFBPs	LC	<ul style="list-style-type: none"> • Scope issue: sole trader jewellers in East Malaysia are not covered. • Gaps with the scope of market entry fit and proper controls over some DNFBPs.
29. Financial intelligence unit	C	The Recommendation is fully met.
30. Responsibilities of investigative authorities	C	The Recommendation is fully met.
31. Powers of investigative authorities	C	The Recommendation is fully met.
32. Cash couriers	LC	<ul style="list-style-type: none"> • Minor deficiency with the extent of cooperation between RMP and RMC to support implementation.
33. Statistics	C	The Recommendation is fully met.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> • Gaps in detailed guidance and 'red flags' to support implementation of preventative measures and STR reporting.
35. Sanctions	LC	<ul style="list-style-type: none"> • Gaps in relation to sanctions for NPOs. • Some administrative fines may not be dissuasive for certain preventive measures and registration of legal persons.

36. International instruments	LC	<ul style="list-style-type: none"> • Gaps in relevant recommendations prevent full compliance with R.36 (including R.3, R.4, R.11, R.28, R.37, R.39)
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • Dual criminality is a mandatory ground for refusal in non-coercive actions and mandatory dual criminality requirements may affect Malaysia providing assistance in ML cases where the predicate offence is illegal fishing or piracy of products (industrial designs). • The ground for refusal regarding 'insufficient importance' is unreasonable or unduly restrictive • MACMA does not authorise the search of a person.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • It is not clear that Malaysia is able to comprehensively cooperate under MACMA for restraint /confiscation of instrumentalities and in non-conviction based matters, however in most circumstances a treaty, AMLA or DDFOPA provide for this. • The concerns regarding dual criminality in R.37 also apply to R.38. • Asset management guidelines are not comprehensive for MLA.
39. Extradition	LC	<ul style="list-style-type: none"> • Deficiencies with respect to dual criminality (where the predicate offence is missing) and prosecution in lieu.
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • The LFSA has some minor limitations with sharing information related to supervisory materials outside an investigation or in cases not involving a home supervisor or those supervisors who are party to an existing MOU

[source: FATF Mutual Evaluation Report 2015 for Malaysia]

Definition of rating:

Compliant (C) - There are no shortcomings.

Largely compliant (LC) - There are only minor shortcomings.

Partially compliant (PC) - There are moderate shortcomings.

Non-compliant (NC) - There are major shortcomings.

Not applicable (NA) - A requirement does not apply, due to the structural, legal or institutional features of a country

(b) Observations on the implementation of the article

Further to the update on the implementation of the recommendations of the FATF evaluation included under para. 1 of this article, Malaysia has implemented the provision. Additional observations/recommendations to address the FATF recommendations are included under article 52.

Paragraph 5 of article 14

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

No additional information.

Please provide examples of the implementation of those measures, including related court or other cases, available statistics etc.

MoUs of BNM/FIU with other Financial Authorities

As of April 2016, the BNM/FIU had signed 39 MoUs on the sharing of financial intelligence with the FIUs of the following countries:

1. Australia
2. Republic of Indonesia
3. Republic of Philippines
4. Kingdom of Thailand
5. People's Republic of China
6. The Republic of Korea
7. Japan
8. United Kingdom
9. Sweden
10. United States of America
11. Republic of Chile
12. Sri Lanka
13. Brunei Darussalam
14. Republic of Peru
15. Bangladesh
16. Canada
17. India
18. Cambodia
19. New Zealand
20. Hong Kong
21. Singapore

22. Cook Islands
23. Vietnam
24. France
25. Mauritius
26. Mongolia
27. Fiji
28. Qatar
29. Solomon Islands
30. Nigeria
31. UAE
32. Nepal
33. Macao
34. Papua New Guinea
35. Turkey
36. South Africa
37. St. Christopher and Nevis
38. Russia
39. Germany

MOUs on Training and Exchange of Expertise, Information on Anti-Corruption

The Malaysian Anti-Corruption Commission (MACC) had together with 9 other anti-corruption and law enforcement agencies of Southeast Asia formed the South-East Asian Parties Against Corruption (SEA-PAC). The South-East Asia Parties against Corruption (SEA-PAC), which was a multilateral MoU on Preventing and Combating Corruption among the anti-corruption agencies and law enforcement authorities of the 10 ASEAN member countries, was established in year 2004. The two main objectives of SEA-PAC are (i) to establish and strengthen collaborative efforts against corruption among the parties, and (ii) to increase capacity and institutional building among the parties in preventing and combating corruption.

In addition to SEA-PAC, the MACC has also signed bilateral MoUs in the areas of information exchange and training with the following anti-corruption authorities and international bodies:

1. Anti-Corruption Bureau Brunei
2. Administrative Control Authority of Egypt
3. National Anti-Corruption Commission (NACC) Thailand
4. Anti-Corruption Commission of Timor-Leste
5. Commission on Combating Corruption (CCC) Azerbaijan
6. INTERPOL
7. Austria Federal Bureau of Anti-Corruption
8. Government Inspectorate of Vietnam
9. Corrupt Practice Investigation Bureau Singapore
10. Independent Commission Against Corruption Hong Kong
11. International Anti-Corruption Academy (IACA)
12. Corruption Eradication Commission Indonesia

13. Anti-Corruption Commission Bhutan
14. Anti-Corruption Commission Maldives

Other initiatives for promoting cooperation in which Malaysia (MACC) is involved include the following:

1. ADB/OECD Anti-Corruption Initiative for Asia and Pacific
2. International Association of Anti-Corruption Authorities (IAACA)
3. Anti-Corruption Agency Forum Members (Hong Kong, Korea, Australia, Philippines and Indonesia)
4. Anti-Corruption and Transparency Working Group in APEC.

International Anti-Corruption Training/Courses

1. International Anti-Corruption Academy (IACA), Austria- The Malaysia Anti-Corruption Academy (MACA) is one of the partner institutions for the Master's in Anti-Corruption Studies (MACS) programme offered by IACA.
2. Malaysia Anti-Corruption Academy (MACA) is the recognized training provider for anti-corruption capacity and capability building for countries in the Asia-Pacific region under the Malaysia Technical Cooperation Programme (MTCP) of the Ministry of Foreign Affairs. The MTCP programme is conducted twice a year and is open to all anti-corruption and law enforcement authorities in the Asia-Pacific region.

Promoting Global Cooperation Among Judicial, Law Enforcement and Financial Regulatory Authorities

- (a) International Conference on Financial Crime and Terrorism Financing (7-8 October 2015)

The IFCTF is an annual conference held in Malaysia. The 2015 IFCTF was organised by the Asian Institute of Finance and Malaysia's Compliance Officers' Networking Group (CONG) in collaboration with the Asian Institute of Chartered Bankers, Islamic Banking and Finance Institute Malaysia, Malaysian Insurance Institute, Securities Industry Development Corporation and a local university. The event was supported by Bank Negara Malaysia and Securities Commission Malaysia and attended by more 400 participants from local and regional participants. Themed "Changing Regulatory Landscape", it covered topics such as beneficial ownership, PEPs, TF and IS threats, translating understanding of NRA into the reporting institutions risk assessments and other compliance issues.

- (b) The Combating Financial Fraud Conference 2015 (6-7 October 2015)

The organisers are LFSA, Association of Labuan Trust Companies and Association of Labuan Investment Banks and the 2015 conference was the third installation. The conference was attended by approximately 160 participants consisting of local compliance officers and regional participants. The conference focused on the latest trends and developments in monitoring, surveillance, investigation and reporting to mitigate those risks. Key headlines include learning from recent incidents and strategies for accounting and finance professionals to bolster their existing AML/CFT regime.

Courses or Training on AML/CFT

International courses or training on AML/CFT laws, regulations etc. are offered by the following

institutions:

- a) Bank Negara Malaysia
- b) Institute of Bankers Malaysia
- c) SEACEN (South East Asian Central Banks) Research and Training Center
- d) Banking and Financial Law School

Major International Conferences and Events organized/hosted by Malaysia:

2001	4th APG Annual Meeting
2012	6th IAACA Annual Conference and General Meeting
2013	APG Typologies Workshop
2013	UNODC/UNDP Anti-Corruption Strategies Workshop
2015	16th International Anti-Corruption Conference –Workshop

Statistics of cooperation on corruption and money-laundering matters:

- a) MLA and extradition requests (ML, TF and predicates) from 2009 to 2016².

Type of requests	MLA		Extradition	
	No. of requests received	No. of requests made	No. of requests received	No. of requests made
Requests related to ML	22	12	5	0
Request fulfilled	17	3	5	0
Request denied	0	0	0	0
Requests related to predicate offences	223	44	56	4
Request fulfilled	170	34	49	0
Request denied	0	1	1	0
Requests related to TF	4	1	1	0
Request fulfilled	3	0	0	0
Request denied	0	0	0	0

² A further breakdown of the aggregate statistics by year and offence was provided during the course of the review.

b) Detail on International legal assistance requests received and made (included in the table above)

MLA 2009-2016		
Type of Crimes	No. of requests received	No. of requests made
Fraud	149	17
Theft	8	5
Murder	8	6
Corruption	11	13
Drugs	17	0

Extradition (2009-2016)		
Type of Crime	No. of requests received	No. of requests made
'Export Control' related offences	5	0
Drug	5	0
Criminal breach of trust	3	0
Theft	2	0
Money Laundering	2	0

c) Statistics on requests for intelligence received from foreign FIUs and proactive sharing of intelligence to foreign FIUs

	2011	2012	2013	2014	2015
Requests received from foreign FIUs	71	68	76	108	167
Proactive sharing to foreign FIUs	5	10	11	45	25

(b) Observations on the implementation of the article

The provision appears to be implemented. The observations under article 14(1)(a) are also referred to.

IV. Implementation of the Convention

V. Asset recovery

Article 51. General provision

Article 51

1. 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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention, including identifying both any legal authorities/procedures for accepting requests for asset recovery and assessing that these requests are reasonably substantiated and supplemented as well as any time frame established under domestic laws and procedures for their execution, taking into account requests received from countries with similar or different legal systems and any challenges faced in this context.

Malaysia's efforts in ensuring that no unaccounted money of foreign origin is deposited in banks and financial institutions, and to ensure that criminal proceeds are not diverted outside the country, are implemented through a well-coordinated and integrated AML/CFT regime and inter-agency strategy. A number of related policy objectives have complemented the AML/CFT strategy, including enhanced financial inclusion and contributions to regional and global AML/CFT efforts (through networks such as the APG, ASEAN, the Egmont Group and the World Bank).

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ("AMLATFAPUAA") is the primary legislation for 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 AMLATFAPUAA imposes a number of AML measures on the financial and non-financial institutions aiming to prevent and detect, among others, money laundering as follows:

Identification of Beneficial Ownership Requirement

Section 16 of the AMLATFAPUAA sets out the Customer due diligence (CDD) measures that must be undertaken by the reporting institutions and the circumstances under which the CDD measures, which include identification and verification of the identity of the persons involved, must be performed. Section 16(7) of the AMLATFAPUAA stipulates that CDD measures stipulated in section 16 of the AMLA must be applied to, among others, the beneficial owner in relation to a transaction or activity.

Section 16(4) of the AMLATFAPUAA requires reporting institutions to conduct ongoing due diligence on all accounts, business relationships, transactions and activities. This in effect means CDD measures must be applied in respect of beneficial owners. The enforceable instruments issued pursuant to the AMLATFAPUAA and the applicable regulatory laws require specific measures to be taken in respect of certain categories of customers and products, which include PEPs and private banking. For example, reporting institutions must conduct enhanced due diligence in respect of a customer or beneficial owner who is a foreign Politically Exposed Person (PEP) and domestic PEPs who are assessed as high risk.

See article 52 below for more details.

Domestic and International Cooperation

The AMLATFAPUAA is enforced by various agencies depending on the nature of the crime under their respective purviews.

The main LEAs responsible for investigating money laundering offences and associated predicate offences are: Royal Malaysian Police (RMP), Malaysian Anti-Corruption Commission (MACC), Royal Malaysian Customs (RMCD), Inland Revenue Board (IRBM), Bank Negara Malaysia (BNM), Securities Commission (SC), Companies Commission of Malaysia (CCM), Ministry of Domestic Trade, Co-operatives and Consumerism (MDTCC) and Labuan Financial Services Authority (Labuan FSA). Most of the main LEAs are members of the National Coordination Committee to Counter Money Laundering (NCC).

The NCC is the central committee coordinating the AML/CFT regime in Malaysia. The members of the Committee are represented by various LEAs and Ministries. Under NCC, policy frameworks and strategic planning to strengthen the regime are formulated via sub-working groups. This includes improvement on ML/TF risk assessment, capacity building, data collections, and enforcement effectiveness.

The Financial Intelligence Unit (FIU) is set up within the Financial Intelligence and Enforcement Department (FIED) of BNM. The FIU's functions include to:

- a. receive suspicious transaction reports (STR) from the reporting institutions;
- b. receive cash threshold reports (CTR) from relevant reporting institutions;
- c. analyse the STRs and CTRs;
- d. disseminate information on suspected offences derived from the STRs and CTRs analysis to the appropriate law enforcement agencies for investigation;
- e. compile statistics and records;
- f. give instructions to reporting institutions pertaining to any report or information received;
- g. make recommendations to the relevant supervisory authority, enforcement agency and reporting institutions arising from any report or information received; and
- h. create training requirements and provide training for any reporting institutions in respect of the reporting institutions' obligations under Part IV of the AMLATFAPUAA.

Section 9(1) of the AMLATFAPUAA states that the FIU may authorise any enforcement agency or its officers to have access to information specified by the FIU in assisting the enforcement agency in performing its functions.

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 FATF, Asia/Pacific Group on Money Laundering and the Egmont Group of Financial Intelligence Units provides Malaysia with a platform to cooperate on various AML/CFT issues, including in the areas of training and sharing of information as provided for under Section 9(3) and Section 10 of AMLATFAPUAA.

a. BNM as the FIU to coordinate and cooperate with enforcement agencies in and outside Malaysia

Section 29(3) of the AMLATFAPUAA contains clear powers for the FIU to coordinate and cooperate with other law enforcement agency in and outside Malaysia with respect to investigation on offences including serious offences, foreign serious offences and structuring offences.

b. BNM to cooperate and coordinate with other supervisory authorities

Section 40 of the Central Bank of Malaysia Act 2009 (CBA) empowers BNM to enter into arrangements to coordinate and cooperate on financial stability measures including AML measures with other supervisory authorities (both domestic and foreign supervisory authorities).

Section 153 of the Financial Services Act 2013 (FSA) and section 165 of the Islamic Financial Institutions Act 2013 (IFSA) empower the Bank as the supervisory authority in respect of financial institutions subject to those laws to disclose information pertaining to the financial institutions and their affairs to the foreign supervisory authorities.

Authorities/procedures for accepting requests for asset recovery by Malaysia

The legal basis and procedure of giving effect to an order of confiscation issued by a court of another State Party are provided under Mutual Assistance in Criminal Matters Act (MACMA 2002)

Under MACMA 2002, the term "foreign forfeiture order" means an order made by a court in a prescribed foreign State for the recovery, forfeiture or confiscation of-

- (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property.

that is made on or after the date of the order under subsection 17 (1) declaring a foreign State as a prescribed foreign State comes into force or on or after the date of the special direction given by the Minister in respect of a foreign State under section 18.

Procedures regarding enforcement of foreign forfeiture order

Requests for enforcement of foreign forfeiture orders are regulated under sections 31 and 32 of

the Mutual Assistance in Criminal Matters Act 2002, read in conjunction with Part III Division 4 of the Mutual Assistance in Criminal Matters Regulations 2003.

Malaysia also gives effect to its international obligations through special directions under the Mutual Assistance in Criminal Matters Act 2002 for States parties to the Convention that do not have bilateral treaties on mutual legal assistance (MLATs) with Malaysia. Section 18 of MACMA 2002 provides for a special direction of the Minister in writing for foreign requests from multilateral States parties, e.g. under UNCAC.

See articles 54-55 below for more details.

TREATIES CONCLUDED:

Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Members Countries) dated 29 November 2004:

Article 22 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.
- (2) Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.
- (3) A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.
- (4) Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.
- (5) The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order

Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters dated 28 December 2006:

Article 20 - Instruments and Proceeds of Crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds may be located in its jurisdiction.
- (2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested Party, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds by a court of the Requesting Party.
- (3) The Requested Party shall, to the extent permitted by its laws, give effect to a final order

forfeiting the instruments or proceeds of crime, or a declaration that such instruments or proceeds of crime have been forfeited or a final order for the recovery of pecuniary penalties made by a court of the Requesting Party. The Requested Party shall assist the Requesting Party in any related proceedings arising from the enforcement of such final order or declaration in the Requested Party.

- (4) In the application of this Article, the rights of bona fide third parties shall be respected under the laws of the Requested Party.
- (5) The Requested Party shall deal with the forfeited instruments or proceeds of crime or the recovered pecuniary penalties in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited proceeds or instruments of crime or the value thereof or recovered pecuniary penalties to the Requesting Party upon such terms as it deems appropriate.
- (6) In this Treaty “proceeds of crime” includes any property derived or realised, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property and other benefits derived from the commission of an offence.
- (7) In this Treaty “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People’s Republic of China concerning Mutual Legal Assistance in Criminal Matters dated 1 February 2008:

Article 19 - Proceeds and Instrumentalities of Crime

- (1) The Requested Party shall, upon request, use its best endeavours to identify or locate any proceeds or instrumentalities of crime located within its jurisdiction or to ascertain whether any such proceeds or instrumentalities are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instrumentalities may be located in its jurisdiction.
- (2) Where pursuant to paragraph (1) suspected proceeds or instrumentalities of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.
- (3) Where a request is made for assistance in securing the forfeiture or confiscation of proceeds or instrumentalities of crime, such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party.
- (4) Proceeds or instrumentalities of crime forfeited or confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.
- (5) In the application of this Article, the rights of bona fide third parties shall be respected to the extent permitted by the law of the Requested Party.
- (6) For the purposes of this Agreement-“proceeds of crime” includes-
 - (a) property derived or realised directly or indirectly from the commission of an offence; and
 - (b) property which represents the equivalent value of the property and other benefits derived from the commission of an offence; “instrumentalities of crime” means property

used or intended to be used in connection with the commission of an offence or the equivalent value of such property.

Treaty between the Government of Malaysia and the Government of the United States of America on Mutual Assistance in Criminal Matters dated 21 January 2009:

Article 17 - Assistance in Forfeiture Proceedings

- (1) The requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime or recover pecuniary penalties.
- (2) A Party in control of forfeited or confiscated property or assets or pecuniary penalties recovered shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale or the pecuniary penalties recovered to the other Party upon mutually acceptable terms.
- (3) In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters dated 16 December 2011:

Article 17 - Restraint, Forfeiture and Confiscation

- (1) The Parties shall assist each other in relation to criminal matters involving the identification, location, restraint, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime in accordance with the domestic law of the Requested Party.
- (2) Where an offence has been committed and a conviction has been obtained in the Requesting Party, the property which has been seized by the Requested Party may be returned, in accordance with the domestic law of the Requested Party, to the Requesting Party for the purpose of forfeiture or confiscation.
- (3) The rights claimed by bona-fide third parties over such property shall be respected.
- (4) Where a Party has forfeited or confiscated property as a result of cooperation provided by the other Party, it may at its discretion and to the extent permitted by its domestic law, share such property with the other Party.

Treaty between the Government of Malaysia and the Government of the Republic of Korea on Mutual Assistance in Criminal Matters dated 27 September 2013:

Article 17 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds of crime may be located in its jurisdiction.
- (2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested State, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds of crime by a court of the Requesting State.

- (3) The Requested Party shall deal with the forfeited instruments or proceeds of crime in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited instruments or proceeds of crime or the value thereof to the Requesting Party upon such terms as it deems appropriate.
- (4) In the application of this Article, the rights of a bona fide third party shall be respected under the laws of the Requested State.
- (5) In this Treaty, “proceeds of crime” includes-
 - (a) any property derived or realized, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property;
 - (b) other benefits derived from the commission of an offence;
 - (c) any other sum imposed based on the equivalent sum of the benefit received from the commission of the offence.

Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters dated 12 November 2012:

Article 21 - Assistance Regarding Proceeds and Instruments of Crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party the result of its inquiries.
- (2) When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of a crime are found, the Requested Party shall, upon request, take such measures as are permitted by and in accordance with its laws to restrain and forfeit those proceeds or instruments.
- (3) Proceeds or instruments forfeited or confiscated pursuant to the Treaty shall accrue to the Requested Party, unless and otherwise agreed.

Treaty between the Government of Malaysia and the Government of the People’s Republic of China on Mutual Legal Assistance in Criminal Matters signed on 23 November 2015, in force as of 19 February 2017.

Article 20 - Proceeds and Instrumentalities of Crime

- (1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavour to locate, trace, restrain, freeze, seize and forfeit proceeds and instrumentalities of crime.
- (2) The Requested Party shall assist the Requesting Party, to the extent permitted by its laws, in proceedings relating to the forfeiture of proceeds and instrumentalities of crime. This may include action to freeze or seize the proceeds or instrumentalities of crime pending further proceedings.
- (3) Where the Requesting Party seeks assistance in the enforcement of an order which restrains, freezes, seizes and forfeits the property or assets, the request shall be accompanied by the original order or a certified copy of it.
- (4) The Requested Party in control of property or assets dealt with in accordance with this Article shall dispose of them according to its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of such property or assets, or the proceeds of its sale, to the Requesting Party upon mutually acceptable terms.
- (5) In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and Ukraine on Mutual Legal Assistance in Criminal Matters signed on 4 August 2016 but yet to enter into force.

Article 17 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime.
- (2) A Party in control of forfeited or confiscated property or assets shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale to the other Party upon mutually acceptable terms.
- (3) The Requested Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect bona fide third party interests in the property to be transferred.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

MACC SEIZURE AND FORFEITURE STATISTICS FOR THE YEAR 2012-2017

MACC ASSET SEIZURE AND FORFEITURE STATISTICS FOR THE YEAR 2012 – 2017*

YEAR	VALUE OF ASSETS SEIZED			VALUE OF ASSETS FORFEITED		
	MACCA 2009	AMLATFAP UAA 2001	TOTAL (MACCA 2009 + AMLATFAPU AA 2001)	MACCA 2009 + CPC	AMLATFA PUA 2001	TOTAL (MACCA 2009 + AMLATFAPU AA 2001 + CPC)
2012	RM 35,012,704.39	RM 8,359,167.39	RM 43,371,871.78	RM 20,543,382.86	RM 190,149.20	RM 20,733,532.06
2013	RM 32,343,839.05	RM 20,979,423.60	RM 53,323,262.65	RM 1,422,132.00	RM 3,025,510.00	RM 4,447,642.00
2014	RM 2,073,416.50	RM 19,316,518.44	RM 21,389,934.94	RM 2,828,672.63	RM 1,000,000.00	RM 3,828,672.63
2015	RM 12,938,824.00	RM 9,331,769.51	RM 22,270,593.51	RM 1,436,135.00	RM 2,500,900.00	RM 3,937,035.00
2016	RM 121,778,504.83	RM 85,877,708.02	RM 207,656,212.85	RM 4,947,124.22	RM 3,000.00	RM 4,950,124.22
2017*	RM 13,078,689.35	RM 34,282,863.29	RM 47,361,552.64	RM 1,547,333.38	-	RM 1,547,333.38
TOTAL VALUE	RM 217,225,978.12	RM 178,147,450.25	RM 395,373,428.37	RM 32,724,780.09	RM 6,719,559.20	RM 39,444,339.29

*as at 30.6.2017

MACCA 2009 - Malaysian Anti-Corruption Commission Act 2009 (Act 694)

AMLATFAPUAA 2001 - Anti-Money laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613)

CPC - Criminal Procedure Code (Act 593)

Additional statistics of cooperation on corruption and money-laundering matters through mutual legal assistance are provided under paragraph 5 of article 14.

Statistics on requests for intelligence received from foreign FIUs and proactive sharing of intelligence to foreign FIUs are also provided under paragraph 5 of article 14.

(b) Observations on the implementation of the article

The Government of Malaysia has adopted a comprehensive approach in respect of this article. On the one hand, it has bilateral treaties or agreements with a number of countries to facilitate the enforcement of recovery, forfeiture or confiscation orders issued by foreign States. On the other hand, there is a process in terms of which Malaysia may provide mutual legal assistance to those countries with which the country has no treaties or agreements. This process is provided for by the Mutual Assistance in Criminal Matters Act.

Section 18 of the Mutual Assistance in Criminal Matters Act provides for the process by which those countries with which Malaysia has no treaties or agreements may receive mutual legal assistance from Malaysia. If a requesting State falls under this section the Minister may give a special direction in writing that the Act shall apply to that requesting State. This occurs on the recommendation of the Attorney General. Malaysian procedure requires that any recovery, forfeiture or confiscation orders are to be dated after the issuance of a special direction by the Minister. However, it is noted that orders received from foreign countries are usually already dated, which implies that in practice the said foreign country will have to issue a new order dated after the date of the special direction.

It is noted that the treaty with the Ukraine is not yet in force.

The mandatory dual criminality requirements, including for non-coercive actions, under the Mutual Assistance in Criminal Matters Act may affect Malaysia providing assistance for certain offences, not in relation to offences under this Convention. It was reported by the national authorities that Malaysia follows a conduct-based approach in examining dual criminality requirements by looking at the underlying conduct, not the strict designation or terminology of the offence. Moreover, there are no obstacles to providing assistance in respect of offences involving legal persons, so long as the authorities can identify the natural person/s involved in the offence.

It was confirmed by the authorities that none of the MLA requests received by Malaysia have been denied; Malaysia has fulfilled all requests it has received related to money-laundering and its predicate offences as well as terrorist financing to-date (see article 54, para. 1 below).

Based on the information provided, Malaysia has a strong legal and regulatory framework for asset recovery, and demonstrates strong inter-agency coordination leading to effective

international cooperation on asset recovery.

Nonetheless, it is recommended that Malaysia consider whether a more streamlined procedure to providing assistance to countries with which Malaysia has no treaties or agreements – instead of the current process whereby the Minister issues a special direction – would facilitate cooperation on asset recovery, in particular since most requests are received from countries with which Malaysia has no treaty or arrangement (see article 54, para. 1 below). Malaysia is further encouraged to develop an asset recovery guide, which would clarify procedural requirements for requesting countries.

Article 52. Prevention and detection of transfers of proceeds of crime

Paragraph 1 of article 52

1. Without prejudice to article 14 of this Convention, each State Party shall take such measures as may be necessary, in accordance with its domestic law, to require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates. Such enhanced scrutiny shall be reasonably designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to discourage or prohibit financial institutions from doing business with any legitimate customer.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The requirements of this paragraph under review are implemented via Sections 13, 14 and 16 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA) as well as the Central Bank of Malaysia, Bank Negara Malaysia (BNM) Sectoral Guidelines as follows:

IDENTIFICATION OF BENEFICIAL OWNERSHIP REQUIREMENT

Section 16 of the AMLATFAPUAA sets out the Customer due diligence (CDD) measures that must be undertaken by the reporting institutions and the circumstances under which the CDD measures, which include identification and verification of the identity of the persons involved, must be performed. Section 16(7) of the AMLATFAPUAA stipulates that CDD measures stipulated in section 16 of the AMLA must be applied to, among others, the beneficial owner in relation to a transaction or activity.

Section 16(4) of the AMLATFAPUAA requires reporting institutions to conduct ongoing due diligence on all accounts, business relationships, transactions and activities. This in effect means CDD measures must be applied in respect of beneficial owners. The enforceable instruments issued pursuant to the AMLATFAPUAA and the applicable regulatory laws require specific measures to be taken in respect of certain categories of customers and products, which include PEPs and private banking. For example, reporting institutions must conduct enhanced due diligence in respect of a customer or beneficial owner who is a foreign Politically Exposed Person (PEP) and domestic PEPs who are assessed as high risk.

Types of institutions that are subject to CDD requirements

The term “reporting institutions” in the Guidelines on AML/CFT means Reporting institutions carrying on specified activities listed in the First Schedule of the AMLATFAPUAA (refer to Article 14).

Section 13 of AMLATFAPUAA - Record-keeping by reporting institutions

- (1) A reporting institution shall keep a record of any transaction involving the domestic currency or any foreign currency exceeding such amount as the competent authority may specify.
- (2) The record referred to in subsection (1) shall be in such form as the competent authority may specify.
- (3) The record referred to in subsection (1) shall include the following information for each transaction:
 - (a) the identity and address of the person in whose name the transaction is conducted;
 - (b) the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, where applicable;
 - (c) the identity of the accounts affected by the transaction, if any;
 - (d) the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier’s cheques or money orders or other payment or transfer by, through, or to such reporting institution;
 - (e) the identity of the reporting institution where the transaction occurred; and
 - (f) the date, time and amount of the transaction, and shall also include such other information as the competent authority may specify in writing.
- (4) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency which, in aggregate, exceeds the amount specified by the competent authority pursuant to subsection (1) shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or such other period as the competent authority may specify.

Section 16 of AMLATFAPUAA - Customer due diligence (CDD)

- (1) A reporting institution-
 - (a) shall not open or operate any anonymous account or any account which is in a fictitious, false or incorrect name;
 - (b) shall not establish or conduct any business relationship, transaction or activity involving a fictitious, false or incorrect name; and

- (c) shall maintain-
 - (i) accounts in the name of an account holder;
 - (ii) records or information of any business relationship, transaction or activity in the name of a customer.
- (2) A reporting institution shall undertake customer due diligence measures in all or any of the following circumstances:
 - (a) establishing or conducting a business relationship, conducting any transaction with a customer or carrying out any activity for or on behalf of a customer, whether the customer is an occasional or usual customer, including when opening a new account or passbook, entering into any fiduciary transaction, renting of a safe deposit box, performing any other transaction or activity as the competent authority may specify;
 - (b) the transaction or activity to be carried out exceeds such amount as the competent authority may specify;
 - (c) there is reasonable suspicion of the commission of a money laundering offence or a terrorism financing offence;
 - (d) there is reasonable doubt about the veracity or adequacy of previously obtained customer identification data.
- (3) A reporting institution, in undertaking customer due diligence measures, shall-
 - (a) ascertain the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, whether he is an occasional or usual customer;
 - (b) verify, by reliable means or from an independent source, or from any document, data or information, the identity, representative capacity, domicile, legal capacity, occupation or business purpose of any person, through the use of documents which include identity card, passport, birth certificate, driver's licence, constituent document or any other official or private document as well as other identifying information relating to that person, whether he is an occasional or usual customer;
 - (c) verify the identity and authority of any person purporting to act on behalf of a customer in the opening of an account, the conduct of any transaction or the carrying out of any activity;
 - (d) take reasonable steps to obtain and record information about the true identity of any person on whose behalf an account is opened or a transaction or activity is conducted if there is reasonable doubt that the person is not acting on his own behalf, particularly where the person is not conducting any commercial, financial or industrial operations in a foreign State where the person has his headquarters or domicile; and
 - (e) take reasonable steps to verify the identity of natural persons who own or exercise effective control over a customer who is not a natural person.
- (4) A reporting institution shall conduct ongoing due diligence on all accounts, business relationships, transactions and activities.
- (5) The competent authority shall, upon consultation with the relevant supervisory authority of a reporting institution (if any), issue such directions or guidelines to a reporting institution on the undertaking of customer due diligence measures as it considers necessary-
 - (a) to give full effect to internationally accepted standards for the detection or prevention of a money laundering offence or terrorism financing offence; and
 - (b) to specify additional customer due diligence measures to be undertaken by a reporting institution.

- (6) A reporting institution shall record any information, data or details obtained under this section and shall, upon request in writing, provide a copy of such record to the competent authority.
- (7) For the purposes of this Part-
- (a) “transaction” and “activity” includes a single transaction or activity or a series of transactions or activities, as the case may be; and
 - (b) “person” includes any person who is a nominee, agent, beneficiary, beneficial owner or principal and any other person specified by the competent authority in relation to a transaction or activity.

The term “reporting institution” in the Section 16 means “any person, including branches and subsidiaries outside Malaysia of that person, who carries on any activity listed in the First Schedule (see Article 14).

BNM Guidelines for CDD (including Identification of Beneficial Owners)

13.1 When CDD is required

13.1.1 Reporting institutions are required to conduct CDD on the customer and the person conducting the transaction, when:

- (a) establishing business relations;
- (b) providing money changing and wholesale currency business for transactions involving an amount equivalent to RM3,000 and above;
- (c) providing wire transfer services;
- (d) carrying out occasional transactions involving an amount equivalent to RM50,000 and above, including in situations where the transaction is carried out in a single transaction or several transactions in a day that appear to be linked;
- (e) carrying out cash transactions involving an amount equivalent to RM50,000 and above;
- (f) it has any suspicion of ML/TF, regardless of amount; or
- (g) it has any doubt about the veracity or adequacy of previously obtained information.

13.2 What is required

13.2.1 Reporting institutions are required to:

- (a) identify the customer and verify that customer’s identity using reliable, independent source documents, data or information;
- (b) verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person;
- (c) identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owner, using the relevant information or data obtained from a reliable source, such that the reporting institution is satisfied that it knows who the beneficial owner is; and
- (d) understand and, where relevant, obtain information on, the purpose and intended nature of the business relationship.

13.2.2 In conducting CDD, reporting institutions are required to comply with the requirements on combating the financing of terrorism under Paragraph 31.

13.2.3 In the case of money changing and wholesale currency exchange, reporting institutions shall

verify the identity of its customer and beneficial owners for transactions involving an amount equivalent to RM10,000 and above.

13.3 Timing of Verification

13.3.1 Reporting institutions are required to verify the identity of the customer and beneficial owner before, or during, the course of establishing a business relationship or conducting a transaction for an occasional customer.

13.3.2 In certain circumstances where the ML/TF risks are assessed as low and verification is not possible at the point of establishing the business relationship, the reporting institution may complete verification after the establishment of the business relationship to allow some flexibilities for its customer and beneficial owner to furnish the relevant documents.

13.3.3 Where delayed verification applies, the following conditions must be satisfied: (a) this occurs as soon as reasonably practicable;

(b) the delay is essential so as not to interrupt the reporting institution's normal conduct of business;

(c) the ML/TF risks are effectively managed; and

(d) there is no suspicion of ML/TF risks.

13.3.4 The term "reasonably practicable" under Paragraph 13.3.3(a) shall not be later than ten working days or any other period as may be specified by Bank Negara Malaysia.

13.3.5 Reporting institutions are required to adopt risk management procedures relating to the conditions under which the customer may utilise the business relationship prior to verification, and procedures to mitigate or address the risk of delayed verification.

13.3.6 The measures that reporting institutions may take to manage such risks of delayed verification may include limiting the number, types and/or amount of transactions that can be performed.

13.4 Specific CDD Measures

Individual Customer and Beneficial Owner

13.4.1 In conducting CDD on an individual customer and beneficial owner, the reporting institution is required to obtain at least the following information:

(a) full name;

(b) National Registration Identity Card (NRIC) number or passport number or reference number of any other official documents bearing the photograph of the customer or beneficial owner;

(c) residential and mailing address;

(d) date of birth;

(e) Nationality;

(f) occupation type;

(g) name of employer or nature of self-employment/nature of business;

(h) contact number (home, office or mobile); and

(i) purpose of transaction.

13.4.2 Reporting institutions can accept any other official documents bearing the photograph of the customer or beneficial owner, as the case may be, under Paragraph 13.4.1(b) provided that the

reporting institution can be satisfied with the authenticity of the documents which contain the necessary required information.

13.4.3 Reporting institutions shall verify the documents referred to under Paragraph 13.4.1(b) by requiring the customer or beneficial owner, as the case may be, to furnish the original document and make a copy of the said document. However, where biometric identification method is used, verification is deemed to be satisfied.

13.4.4 Where there is any doubt, reporting institutions are required to request the customer and beneficial owner, as the case may be, to produce other supporting official identification documents bearing their photographs, issued by an official authority or an international organisation, to enable their identity to be ascertained and verified.

Legal Persons

13.4.5 For customers that are legal persons, reporting institutions are required to understand the nature of the customer's business, its ownership and control structure.

13.4.6 Reporting institutions are required to identify the customer and verify its identity through the following information:

- (a) name, legal form and proof of existence, such as Memorandum/Article/Certificate of Incorporation/ Partnership (certified true copies/duly notarised copies, may be accepted) or any other reliable references to verify the identity of the customer;
- (b) the powers that regulate and bind the customer such as directors' resolution, as well as the names of relevant persons having a senior management position; and
- (c) the address of the registered office and, if different, a principal place of business.

13.4.7 Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information:

- (a) the identity of the natural person(s) (if any) who ultimately has a controlling ownership interest in a legal person. At a minimum, this includes the following:
 - (i) identification document of Directors/ Shareholders with equity interest of more than twenty five percent/Partners (certified true copy/duly notarised copies or the latest Form 24 and 49 as prescribed by the Companies Commission of Malaysia or Form 13 and Form 25 as prescribed by Labuan FSA , or any other equivalent documents for other types of legal person are acceptable);
 - (ii) authorisation for any person to represent the company or business either by means of a letter of authority or directors' resolution; and
 - (iii) relevant documents such as NRIC for Malaysian/permanent resident or passport for foreigner, to identify the identity of the person authorised to represent the company or business in its dealings with the reporting institution;
- (b) to the extent that there is doubt as to whether the person(s) with the controlling ownership interest is the beneficial owner(s) referred to in Paragraph 13.4.7(a) or where no natural person(s) exert control through ownership interests, the identity of the natural person (if any) exercising control of the legal person through other means; and
- (c) where no natural person is identified under Paragraphs 13.4.7(a) or (b) above, the identity of the relevant natural person who holds the position of senior management.

13.4.8 Where there is any doubt as to the identity of persons referred to under Paragraphs 13.4.6 and 13.4.7, the reporting institution shall:

- (a) conduct a basic search or enquiry on the background of such person to ensure that the person has not been or is not in the process of being dissolved or liquidated, or is a bankrupt;
- (b) verify the authenticity of the information provided by such person with the Companies Commission of Malaysia, Labuan Financial Services Authority or any other relevant agencies.

13.4.9 Reporting institutions are exempted from obtaining a copy of the Memorandum and Articles of Association or certificate of incorporation and from identifying and verifying the directors and shareholders of the legal person which fall under the following categories:

- (a) public listed companies or corporations listed in Bursa Malaysia;
- (b) foreign public listed companies: listed in recognised exchanges; and not listed in higher risk countries;
- (c) foreign financial institutions that are not from higher risk countries;
- (d) government-linked companies in Malaysia;
- (e) state-owned corporations and companies in Malaysia;
- (f) an authorised person, an operator of a designated payment system, a registered person, as the case may be, under the FSA and the IFSA;
- (g) persons licensed or registered under the Capital Markets and Services Act 2007;
- (h) licensed entities under the Labuan Financial Services and Securities Act 2010 and Labuan Islamic Financial Services and Securities Act 2010; or
- (i) prescribed institutions under the Development Financial Institutions Act 2002.

13.4.10 Reporting institutions may refer to the Directives in relation to Recognised Stock Exchanges (R/R6 of 2012) issued by Bursa Malaysia in determining foreign exchanges that are recognised.

Legal Arrangements

13.4.11 For customers that are legal arrangements, reporting institutions are required to understand the nature of the customer's business, its ownership and control structure.

13.4.12 Reporting institutions are required to identify the customer and verify its identity through the following information:

- (a) name, legal form and proof of existence, or any reliable references to verify the identity of the customer;
- (b) the powers that regulate and bind the customer, as well as the names of relevant persons having a senior management position; and
- (c) the address of the registered office, and if different, a principal place of business.

13.4.13 Reporting institutions are required to identify and take reasonable measures to verify the identity of beneficial owners through the following information: (a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiary or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through the chain of control/ownership); or (b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.

13.4.14 Reporting institutions may rely on a third party to verify the identity of the beneficiaries when it is not practical to identify every beneficiary.

13.4.15 Where reliance is placed on third parties under Paragraph 13.4.14, reporting institutions are required to comply with Paragraph 21 on Reliance on Third Parties.

Clubs, Societies and Charities

13.4.16 For customers that are clubs, societies or charities, reporting institutions shall conduct CDD and require the customers to furnish the relevant identification and constituent documents (or other similar documents) including certificate of registration and the identification and verification of the office bearer or any person authorised to represent the club, society or charity, as the case may be.

13.4.17 Reporting institutions are required to take reasonable measures to identify and verify the beneficial owners of the customers.

Counter-party

13.4.18 Where the reporting institution establishes a relationship with a counter-party, the reporting institution must be satisfied that the counter-party is properly regulated and supervised.

13.4.19 Reporting institutions are required to ensure that the counter-party's CDD process is adequate and the mechanism to identify and verify its customers is reliable.

Beneficiary account

13.4.20 In the case of beneficiary accounts, reporting institutions are required to perform CDD on the beneficiary and the person acting on behalf of the beneficiary, on an individual basis.

13.4.21 In the event that identification on an individual basis cannot be performed, for example where the interests of a group of beneficiaries are pooled together without specific allocation to known individuals, the reporting institution is required to satisfy itself that the funds in the account are not maintained in the interest of other parties which have no relationship with the account.

13.4.22 Reporting institutions may rely on a third party when they are unable to conduct CDD on the clients of professionals, such as legal firms or accountants acting on behalf of their clients.

13.4.23 Where reliance is placed on third party under Paragraph 13.4.22, reporting institutions are required to comply with Paragraph 21 on Reliance on Third Parties.

13.4.24 In the event where the person acting on behalf of the beneficiary is unable or refuses to provide the information on the identity of the beneficiaries or written undertaking (where applicable), reporting institutions are to comply with the requirements under Paragraph 24 on Failure to Satisfactorily Complete CDD.

BNM Sectoral Guidelines on PEPs - Definition and CDD

Paragraph 10.2 - Definition:

(a) foreign PEPs - individuals who are or who have been entrusted with prominent public functions by a foreign country. For example, Heads of State or Government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations and important political party officials;

(b) domestic PEPs - individuals who are or have been entrusted domestically with prominent public functions. For example, Heads of State or Government, senior politicians, senior government, judiciary or military officials, senior executives of state owned corporations and important political party officials; or

(c) persons who are or have been entrusted with a prominent function by an international organisation which refers to members of senior management. For example, directors, deputy directors and members of the board or equivalent functions.

The definition of PEPs is not intended to cover middle ranking or more junior individuals in the foregoing categories.

Paragraph 13.5 - Enhanced CDD

13.5.1 Reporting institutions are required to perform enhanced CDD where the ML/TF risks are assessed as higher risk. An enhanced CDD, shall include at least, the following:

- (a) obtaining CDD information under Paragraph 13.4;
- (b) obtaining additional information on the customer and beneficial owner (e.g. volume of assets and other information from public database);
- (c) inquiring on the source of wealth or source of funds. In the case of PEPs, both sources must be obtained; and
- (d) obtaining approval from the Senior Management of the reporting institution before establishing (or continuing, for existing customer) such business relationship with the customer. In the case of PEPs, Senior Management refers to Senior Management at the head office.

13.5.2 In addition to Paragraph 13.5.1, reporting institutions may also consider the following enhanced CDD measures in line with the ML/TF risks identified:

- (a) obtaining additional information on the intended level and nature of the business relationship;
- (b) updating more regularly the identification data of customer and beneficial owner;
- (c) inquiring on the reasons for intended or performed transactions; and
- (d) requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

Paragraph 13.6 On-Going Due Diligence

13.6.1 Reporting institutions are required to conduct on-going due diligence on the business relationship with its customers. Such measures shall include:

- (a) scrutinising transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the reporting institution's knowledge of the customer, their business and risk profile, including where necessary, the source of funds; and
- (b) ensuring that documents, data or information collected under the CDD process is kept up-to-date and relevant, by undertaking reviews of existing records particularly for higher risk customers.

13.6.2 In conducting on-going due diligence, reporting institutions may take into consideration the economic background and purpose of any transaction or business relationship which:

- (a) appears unusual;
- (b) is inconsistent with the expected type of activity and business model when compared to the volume of transaction;
- (c) does not have any apparent economic purpose; or
- (d) casts doubt on the legality of such transactions, especially with regard to complex and large transactions or involving higher risk customers.

13.6.3 The frequency of the on-going due diligence or enhanced on-going due diligence, as the case may be, shall commensurate with the level of ML/TF risks posed by the customer based on the risk profiles and nature of transactions.

13.6.4 Reporting institutions are required to increase the number and timing of controls applied, and

to select patterns of transactions that need further examination, when conducting enhanced on-going due diligence.

Paragraph 13.7 Existing Customer - Materiality and Risk

13.7.1 Reporting institutions are required to apply CDD requirements to existing customers on the basis of materiality and risk.

13.7.2 Reporting institutions are required to conduct CDD on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.

13.7.3 In assessing materiality and risk of the existing customer under Paragraph 13.7.1, reporting institutions may consider the following circumstances:

(a) the nature and circumstances surrounding the transaction including the significance of the transaction;

(b) any material change in the way the account or business relationship is operated; or (c) insufficient information held on the customer or change in customer's information.

Paragraph 14 - Politically Exposed Persons

14.1 General

14.1.1 The requirements set out under this Paragraph are applicable to family members or close associates of all types of PEPs.

14.2 Foreign PEPs

14.2.1 Reporting institutions are required to put in place a risk management system to determine whether a customer or a beneficial owner is a foreign PEP.

14.2.2 Upon determination that a customer or a beneficial owner is a foreign PEP, the requirements of enhanced CDD as set out under Paragraph 13.5 must be conducted.

14.3 Domestic PEPs or person entrusted with a prominent function by an international organisation

14.3.1 Reporting institutions are required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person entrusted with a prominent function by an international organisation.

14.3.2 If the customer or beneficial owner is assessed as a domestic PEP or a person entrusted with a prominent function by an international organisation, reporting institutions are required to assess the level of ML/TF risks posed by the business relationship with the domestic PEP or person entrusted with a prominent function by an international organisation.

14.3.3 The assessment of the ML/TF risks, as specified under Paragraph 14.3.2, shall take into account the profile of the customer under Paragraph 12.4.2 on Risk Profiling.

14.3.4 The requirements of enhanced CDD as set out under Paragraph 13.5 must be conducted in respect of domestic PEPs or person entrusted with a prominent function by an international organisation who are assessed as higher risk.

14.3.5 Reporting institutions may apply CDD measures similar to other customers for domestic PEPs or persons entrusted with a prominent function by an international organisation if the reporting institution is satisfied that the domestic PEPs or persons entrusted with a prominent function by an international organisation are not assessed as higher risk.

Other relevant legislation in compliance with this article under review:

- a) Guidelines on Prevention of Money Laundering and Terrorism Financing For Capital Market Intermediaries - paragraph 8 (attached).
- b) Labuan Financial Services Authority Guidelines on AMLCFT - Trust Company Sector, Capital Market and Other Business Sector, Insurance and Takaful Sector and Banking Sector - paragraphs 13 and 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See FATF Mutual Evaluation Report 2015

(b) Observations on the implementation of the article

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act of 2001 (AMLATFAPUAA), supplemented by the BNM Guidelines for CDD (including Identification of Beneficial Owners), BNM Sectoral Guidelines on PEPs (Definition and CDD), Guidelines on the Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries and Labuan Financial Services Authority Guidelines, have broad CDD provisions. The Guidelines contain some important provisions relating to this article. Provisions relating to enhanced CDD measures and Politically Exposed Persons (PEPs), including their family members and close associates, are found in the Guidelines. In respect of sanctions for violations of the Guidelines, it was explained that there are two sets of penalties: 1) administrative/monetary sanctions issued by BNM for violations of the Guidelines issued under Section 48 of the Financial Services Act 2013 (FSA) for entities licensed under the FSA; and 2) sanctions for breach of Guidelines issued under section 86 of the AMLATFAPUAA, in respect of which the general penalties in the Act are applied. The following statistics on penalties imposed were reported:

2016: Over MR 3.3 million in administrative/monetary sanctions for breach of Guidelines (actions under both sets of laws described above).

2015: Over MR 60 million in administrative/monetary sanctions.

Guidelines issued by the Securities Commission (SC) pursuant to the Securities Commission Act also attract penalties of up to MR 1 million in administrative/monetary sanctions by the SC, against both legal and natural persons.

The AMLATFAPUAA has some provisions to encourage compliance with the Act. Reference is made to the provisions relating to the overriding of secrecy and protection of reporting persons. The Guidelines contain some important provisions relating to CDD requirements for legal persons and legal arrangements, risk-based approach in conducting CDD and enhanced CDD measures. The period of at least six (6) years of retention of records under section 17 of the AMLATFAPUAA and the Guidelines (seven (7) years under the SC Guidelines) is also worthy of mention.

Malaysia is encouraged to continue efforts to strengthen transparency and beneficial ownership requirements for legal persons and arrangements, and to ensure that information on beneficial ownership of legal persons and arrangements can be obtained in a timely manner, as the FATF review found some weaknesses in these areas³. As noted above under article 14, steps are already

³ - Malaysia has assessed elements of ML/TF risk and vulnerabilities involving legal persons through the NRA and other processes but assessments of risk need to be deepened. No detailed risk assessment of legal arrangements has been undertaken. Non-professional trustees may operate in Malaysia with very few obligations (although authorities assume that this is not a large sector in Malaysia).

being taken to address these deficiencies, through amendments to the Companies Act (which now requires beneficial owner identification) and legal amendments in respect of trusts, which are expected to be effective by the end of 2018/2019.

It was further clarified that the minor gap identified in the FATF review with respect to foreign PEPs, which had only implicitly been designated as ‘high risk’ under Malaysian Directions, has been addressed and that enhanced scrutiny in respect of foreign PEPs is now an explicit requirement.

Moreover, the minor gap identified in the FATF review in the area of CDD requirements in the case of intermediaries has been addressed in Guidelines issued by the SC pursuant to the Securities Commission Act. The following statistics in respect of intermediaries were reported: 2015: 2 intermediaries fined between MR 200,000 and 250,000

2016: 2 intermediaries fined up to MR 420,000.

Subparagraph 2 (a) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

(a) Issue advisories regarding the types of natural or legal person to whose accounts financial institutions within its jurisdiction will be expected to apply enhanced scrutiny, the types of accounts and transactions to which to pay particular attention and appropriate account-opening, maintenance and record-keeping measures to take concerning such accounts

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The enforceable instruments issued pursuant to the AMLATFAPUAA and the relevant regulatory laws contain detailed requirements on enhanced due diligence measures that must be applied in respect of certain categories of customers and products. For example, it is mandatory to conduct enhanced due diligence in respect of high risk customers.

Reporting Institutions are required to implement a risk-based approach in relation to their customers, countries or geographical areas and products, services, transactions or delivery channel, according to Paragraph 12 of the **BNM AML/CFT Guidelines** as stated below:

12.1 Risk Management Functions

12.1.1 In the context of “Risk-Based Approach”, the intensity and extensiveness of risk management functions shall be proportionate to the nature, scale and complexity of the reporting

- The mechanism Malaysia uses to ensure that information on beneficial ownership of legal persons and arrangements can be obtained in a timely manner is through the use of CDD and related information obtained by RIs. While the obligations are generally compliant, the awareness and implementation of CDD is mixed and the supervision and enforcement across all sectors, including onshore trust and company service providers is not assured.

institution's activities and ML/TF risk profile.

12.1.2 The reporting institution's AML/CFT risk management function must be aligned and integrated with their overall risk management control function.

12.2 Risk Assessment

12.2.1 Reporting institutions are required to take appropriate steps to identify, assess and understand their ML/TF risks in relation to their customers, countries or geographical areas and products, services, transactions or delivery channels.

12.2.2 In assessing ML/TF risks, reporting institutions are required to have the following processes in place:

- (a) documenting their risk assessments and findings;
- (b) considering all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied;
- (c) keeping the assessment up-to-date through a periodic review; and
- (d) having appropriate mechanisms to provide risk assessment information to the supervisory authority.

12.2.3 Reporting institutions are required to conduct additional assessment as and when required by the supervisory authority.

12.2.4 Reporting institutions may be guided by the results of the National Risk Assessment issued by Bank Negara Malaysia in conducting their own risk assessments.

12.3 Risk Control and Mitigation

12.3.1 Reporting institutions are required to:

- (a) have policies, controls and procedures to manage and mitigate ML/TF risks that have been identified;
- (b) monitor the implementation of those policies, controls, procedures and to enhance them if necessary; and
- (c) take enhanced measures to manage and mitigate the risks where higher risks are identified.

12.3.2 Reporting institutions shall conduct independent control testing on their policies, controls and procedures for the purpose of monitoring the implementation thereof under Paragraph 12.3.1(b).

12.4 Risk Profiling

12.4.1 Reporting institutions are required to conduct risk profiling on their customers.

12.4.2 A risk profile must consider the following factors:

- (a) customer risk (e.g. resident or non-resident, type of customers, occasional or one-off, legal person structure, types of PEP, types of occupation);
- (b) geographical location of business or country of origin of customers;
- (c) products, services, transactions or delivery channels (e.g. cash-based, face-to-face or non-face-to-face, cross-border); and
- (d) any other information suggesting that the customer is of higher risk.

12.4.3 The risk control and mitigation measures implemented by reporting institutions shall commensurate with the risk profile of a particular customer or type of customer.

12.4.4 Upon the initial acceptance of the customer, reporting institutions are required to regularly review and update the customer's risk profile based on their level of ML/TF risks.

12.5 AML/CFT Risk Reporting

12.5.1 Reporting institutions shall provide timely reporting of the risk assessment, ML/TF risk profile and the effectiveness of risk control and mitigation measures to the Board and Senior Management. The frequency of reporting shall commensurate with the level of risks involved and the reporting institution's operating environment.

12.5.2 The report referred to under Paragraph 12.5.1 may include the following:

- (a) results of AML/CFT monitoring activities carried out by the reporting institution such as level of the reporting institution's exposure to ML/TF risks, break-down of ML/TF risk exposures based on key activities or customer segments, trends of suspicious transaction reports and cash threshold reports, trends of orders received from law enforcement agencies;
- (b) details of recent significant risk events, that occur either internally or externally, modus operandi and its impact or potential impact to the reporting institution; and
- (c) recent developments in AML/CFT laws and regulations, and its implications to the reporting institution.

Reference is also made to Paragraph 13.4 (Specific CDD Measures) of the BNM AML/CFT Guidelines, in relation to individual customers and beneficial owners, legal persons, legal arrangements and other categories of accounts/transactions. The BNM Sectoral Guidelines on PEPs (Definition and CDD) are also referred to.

For further detail on record-keeping measures, see paragraph 3 of this article below.

BNM has published a Frequently Asked Questions to provide clarification to the provisions under the AML/CFT Policies.

Further clarification on the risk-based approach (RBA) is as follows:

The Reporting Institutions (RIs) are expected to conduct risk assessments on a periodic basis and to increase the frequency when there is change in the level of risks that they face. RIs may refer to guidance documents issued by the Financial Action Task Force (FATF) on the RBA, which are available on the FATF website.

In profiling customers, RIs are required to consider only relevant factors under Paragraph 12.4.2. In cases where some of the criteria are irrelevant to the RI's business, those criteria need not be taken into consideration in profiling and assessing the risks of the customers.

Similar provisions for the risk-based approach to identify and manage money-laundering risks relating to customers and transactions are also provided under:

- a) Guidelines on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) Banking Sector issued by Labuan Finance Services Authority (LFSA) in paragraph 12; and
- b) Guidelines on Prevention of Money Laundering and Terrorism Financing For Capital Market Intermediaries issued by Securities Commission in paragraph 8.3

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Supervisors take a graduated approach to promoting and enforcing remedial actions to address deficiencies identified through offsite and onsite inspection. This focus on remedial measures through engagement with the supervised sectors, followed by sanctions in cases of persistent failures or inattention to remedial actions, is sound. The cross section of remedial interventions leads to improvements with risk-based implementation from RIs.

[source: Mutual Evaluation Report 2015 for Malaysia]

Supervisory letters issued - Remedial actions and sanctions for AML/CFT - to respective RIs are as follows:

Date	2011-2012				2013			
	BNM bank/ insurance	BNM-MSB	SC	LFSA	BNM bank/ insurance	BNM-MSB	SC	LFSA
Supervisory letters	37	0	33	4	45	132	25	17
Reprimand/ warning		2						
Directive	10		1				1	
Compound	3	27	-	-	2	55	-	-
Administrative Fines/ Penalties	NA	NA	2	-	-		3	-
Show Cause for revocation	-	97	-	-	-	4	-	-
Revocation of license	-	72	-	-	-	4	-	-
Removal of Director	-	-	-	-	-	-	-	2
Prosecution	-	36	-	-	-	11	-	-

Date	2014				2015				2016			
	BNM bank/ insurance	BNM - MSB	S C	LFS A	BNM bank/ insurance	BNM - MSB	S C	LF SA	BNM bank/ insurance	BNM - MSB	S C	LFS A
Supervisory letters	13	299	14	18	35	252	36	18	35	218	15	1
Reprimand/ warning					1	-	3		-	-	1	-
Directive			-	11	2	-	4		-	-	1	
Compound	11	62	-	-	5	3	-		2	-	-	-
Administrative Fines/ Penalties	-	-	-	-	3	-	2		-	-	2	5
Show Cause for revocation	-	22		8	-	-			-	-	-	-
Revocation of license	-	22	-	1	-	-			-	-	-	-
Removal of Director	-	-	-	-	-	-			-	-	-	-
Prosecution	-	17	-	-	-	-			-	-	-	-

(b) Observations on the implementation of the article

Malaysia has implemented a risk-based approach in accordance with FATF standards, and there are sufficient measures in relation to risk control and mitigation. Further, reporting institutions are obligated to give reports of risk assessment, ML/TF risk profile and the effectiveness of risk control and mitigation.

It was further clarified that Malaysia has taken steps to address the recommendations of the FATF review in terms of assessing and applying a risk-based approach and supervision of the DNFBP sectors. As noted under article 14 above, Malaysia's national strategic plan includes among its 10 focus areas the national risk policy (i.e., enhancing understanding of AML risk among the institutions) and sectoral/prevention measures (i.e., providing guidance on the RBA, so the NRA framework can be translated into institutional assessments, and in areas such as PEPs and beneficial ownership identification).

Malaysia's enforceable instruments issued pursuant to the AMLATFAPUAA and the applicable regulatory laws further cover the requirements of the provision under review regarding enhanced scrutiny of accounts and transactions and appropriate account-opening procedures.

For further detail on record-keeping measures, please see paragraph 3 of this article below. The provision is implemented.

Subparagraph 2 (b) of article 52

2. In order to facilitate implementation of the measures provided for in paragraph 1 of this article, each State Party, in accordance with its domestic law and inspired by relevant initiatives of regional, interregional and multilateral organizations against money-laundering, shall:

...

(b) Where appropriate, notify financial institutions within its jurisdiction, at the request of another State Party or on its own initiative, of the identity of particular natural or legal persons to whose accounts such institutions will be expected to apply enhanced scrutiny, in addition to those whom the financial institutions may otherwise identify.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Legal provisions to implement the paragraph:

Section 16 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFAPUAA)

Enhanced scrutiny by reporting institutions provided by virtue of Section 16(5) of AMLATFAPUAA is to be carried out in accordance with **BNM AML/CFT Guidelines** paragraph 13.5 (cited below).

13.5 Enhanced CDD Guidelines

13.5.1 Reporting institutions are required to perform enhanced CDD where the ML/TF risks are assessed as higher risk. An enhanced CDD shall include, at least, the following:

(a) obtaining CDD information under Paragraph 13.4;

- (b) obtaining additional information on the customer and beneficial owner (e.g. volume of assets and other information from public database);
- (c) inquiring on the source of wealth or source of funds. In the case of PEPs, both sources must be obtained; and
- (d) obtaining approval from the Senior Management of the reporting institution before establishing (or continuing, for existing customer) such business relationship with the customer. In the case of PEPs, Senior Management refers to Senior Management at the head office.

13.5.2 In addition to Paragraph 13.5.1, reporting institutions may also consider the following enhanced CDD measures in line with the ML/TF risks identified:

- (a) obtaining additional information on the intended level and nature of the business relationship;
- (b) updating more regularly the identification data of customer and beneficial owner;
- (c) inquiring on the reasons for intended or performed transactions; and
- (d) requiring the first payment to be carried out through an account in the customer's name with a bank subject to similar CDD standards.

Criteria for Enhanced CDD

FIs are required to take reasonable measures to determine if a customer is a domestic PEP or holds a prominent function in an international organization, and where higher risk is assessed, to take enhanced measures as established under para. 13.5 of the AML/CFT Guidelines.

This paragraph requires enhanced CDD similar to foreign PEPs including obtaining senior management approval for business relationships, establishing the source of wealth/funds, and enhanced ongoing monitoring (Guidelines: para. 14). The same deficiency that applies to foreign PEPs with respect to enhanced monitoring applies to domestic PEPs, that is, the enhanced CDD and monitoring provisions under para. 13.6 are not referenced in para. 14 for domestic PEPs, unless higher risk scenarios are identified.

BNM and LFSA guidelines require enhanced CDD for business relationships and transactions with any person from countries identified by the FATF or the Government of Malaysia as having ongoing or substantial ML/TF risks. SC has issued guidelines that require supervised entities to conduct enhanced CDD when there is a 'Public Statement' from the FATF or when FATF calls on its members to apply counter measures.

[source: Mutual Evaluation Report 2015 for Malaysia]

The term "higher-risk", in accordance with **BNM AML/CFT Guidelines** (paragraph 10.2), refers to the following circumstances taking into consideration, and not limited to the following factors:

- (a) Customer Risk factors
 - the business relationship is conducted in unusual circumstances (e.g. significant unexplained geographic distance between the reporting institution and the customer);
 - non-resident customer; legal persons or arrangements that are personal asset-holding vehicles; companies that have nominee shareholders or shares in bearer form;
 - businesses that are cash-intensive;
 - the ownership structure of the company appears unusual or excessively complex given the nature of the company's business;
 - high net worth individuals; persons from locations known for their high rates of crime (e.g. drug producing, trafficking, smuggling);

- businesses or activities identified by the FATF as having higher risk for ML/TF; legal arrangements that are complex (e.g. trust, nominee); and
- persons who match the red flag criteria of the reporting institutions.

(b) Country risk factors:

- countries having inadequate AML/CFT systems; countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations;
- countries having significant levels of corruption or other criminal activities; and
- countries or geographic areas identified as providing funding or support for terrorist activities, or that have designated terrorist organizations operating within their country.

(c) Product, service, transaction or delivery channel risk factors:

- anonymous transactions (which may include cash);
- non face-to-face business relationships or transactions;
- payment received from multiple persons and/or countries that do not fit into the person's nature of business and risk profile; and
- payment received from unknown or un-associated third parties.

Such scrutiny shall be recorded by reporting institutions and shall, upon request in writing, be reported to the competent authority (BNM) pursuant to Section 16 (6) of AMLATFAPUAA.

Exchange of information with another State Party

Section 10 of AMLATFAPUAA enables the exchange of information with a foreign State:

Section 10 of AMLA - Disclosure to corresponding authority of foreign State

(1) The Minister of Finance may enter into an agreement or arrangement, in writing, with the government of a foreign State regarding the exchange, between the competent authority and any corresponding authority of that foreign State, of information that the competent authority or the corresponding authority has reasonable grounds to suspect would be relevant to the investigation or the prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence.

(2) The competent authority may enter into an agreement or arrangement, in writing, with a corresponding authority of a foreign State regarding the exchange, between the competent authority and that corresponding authority, of information that the competent authority or the corresponding authority has reasonable grounds to suspect would be relevant to the investigation or the prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence.

(3) Notwithstanding any other written law or rule of law, the competent authority may communicate any information reported to it under section 14 or any other information received by it or disclosed to it by any person under this Act to a corresponding authority of a foreign State if-

(a) the competent authority has reasonable grounds to suspect that the information would be relevant to the investigation or prosecution of a money laundering offence or a terrorism financing offence or an offence that is substantially similar to either offence; and

(b) either-

(i) the Minister of Finance has, in accordance with subsection (1), entered into an agreement or arrangement with that foreign State regarding the exchange of such information; or

(ii) the competent authority has, in accordance with subsection (2), entered into an agreement or

arrangement with that corresponding authority regarding the exchange of such information, under which the corresponding authority of the foreign State has agreed to communicate to the competent authority, upon the competent authority's request, information received by the corresponding authority that corresponds to any information required to be reported to the competent authority under section 14 or any other information received by or disclosed to the competent authority under this Act; and

(c) the competent authority is satisfied that the corresponding authority has given appropriate undertakings-

(i) for protecting the confidentiality of anything communicated to it; and

(ii) for controlling the use that will be made of it, including an undertaking that it will not be used as evidence in any other proceedings.

(4) The competent authority shall record in writing the reasons for all decisions made under paragraph (3)(a) to communicate any information.

(5) In this section, "corresponding authority", in relation to a foreign State, means the authority of that foreign State responsible for receiving information that corresponds to any information required to be reported to a competent authority under section 14.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

BNM has established Standard Operating Procedures (SoP) on Receipt, Analysis and Dissemination of Financial Intelligence. The SoP states that to ensure that confidential information received are protected and safeguarded, response must be channelled through Egmont Secure Web (for sharing with Egmont members) or registered mail (for sharing with non-Egmont members where the FIU has a MoU with).

In prioritising requests, BNM requires that the requesting party provide the justification for such request for financial intelligence information, which includes the reason for the request, the purpose for which the information will be used, and the law enforcement agency which will be given access to the information.

(b) Observations on the implementation of the article

Although there is no specific provision which obligates any agency of the Government of Malaysia to notify financial institutions within its jurisdiction, at the request of another State party, of the identity of accounts/transactions requiring enhanced scrutiny, there is a system of sharing financial intelligence with other States.

Section 10 of the AMLATFAPUAA relates to disclosure of information to a foreign State where there are reasonable grounds to suspect that the requested information would be relevant to the investigation or prosecution of a money laundering or terrorism financing offence or an offence that is substantially similar to either offence. As a matter of practice, Malaysian law enforcement authorities, in particular the FIU, police and MACC, indicated that they regularly transmit information relating to criminal matters informally to their counterparts in other countries, including through channels like inter-agency MoUs, INTERPOL, ASEANAPOL and the Egmont Group.

It is noted that supervised entities in Malaysia are required to conduct enhanced CDD when there is a 'Public Statement' from the FATF or when FATF or the Government of Malaysia calls on its members to apply enhanced measures. This was the case, for example, with the automatic

enhanced due diligence requirements concerning North Korea, based on FATF statements. Malaysia has also issued advisories notifying institutions of the identity of specific persons and accounts to which to apply enhanced scrutiny, such as a guide for verification of the usage of automatic teller machines (ATMs) and advisories of terrorism financing risks based on developments and reports from other countries. Some examples were discussed in the country visit.

The provisions relating to Malaysia disclosing information to foreign States are comprehensive and further examples of information sharing by the Malaysian FIU are included under paragraph 5 of article 14.

(c) Successes and good practices

The BNM Standard Operating Procedures (SoP) on Receipt, Analysis and Dissemination of Financial Intelligence with foreign States appear to be a good practice.

Paragraph 3 of article 52

3. In the context of paragraph 2 (a) of this article, each State Party shall implement measures to ensure that its financial institutions maintain adequate records, over an appropriate period of time, of accounts and transactions involving the persons mentioned in paragraph 1 of this article, which should, as a minimum, contain information relating to the identity of the customer as well as, as far as possible, of the beneficial owner.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The AMLATFAPUAA imposes record keeping requirements through sections 13 and 17. Section 13 of the AMLATFAPUAA specifically requires reporting institutions to keep records of transactions involving domestic or foreign currency and stipulates the list of information that must be maintained for each transaction.

Section 17 of the AMLATFAPUAA requires retention of comprehensive records comprising of account, record, business correspondence and documents relating to an account, business relationship, transaction or activity with a customer or any person including the results of any analysis for a minimum period of at least 6 years. Section 17 of the AMLATFAPUAA also requires the maintenance of records that enable the reconstruction of any transactions.

The detailed record keeping requirements are set out in the instruments issued pursuant to the AMLATFAPUAA and the relevant regulatory laws by BNM, SC and LFSA.

Section 13 of AMLATFAPUAA - Record-keeping by reporting institutions.

(1) A reporting institution shall keep a record of any transaction involving the domestic currency

or any foreign currency exceeding such amount as the competent authority may specify.

(2) The record referred to in subsection (1) shall be in such form as the competent authority may specify.

(3) The record referred to in subsection (1) shall include the following information for each transaction:

(a) the identity and address of the person in whose name the transaction is conducted;

(b) the identity and address of the beneficiary or the person on whose behalf the transaction is conducted, where applicable;

(c) the identity of the accounts affected by the transaction, if any;

(d) the type of transaction involved, such as deposit, withdrawal, exchange of currency, cheque cashing, purchase of cashier's cheques or money orders or other payment or transfer by, through, or to such reporting institution;

(e) the identity of the reporting institution where the transaction occurred; and

(f) the date, time and amount of the transaction, and shall also include such other information as the competent authority may specify in writing.

(4) For the purposes of this Part, multiple cash transactions in the domestic or foreign currency which, in aggregate, exceeds the amount specified by the competent authority pursuant to subsection (1) shall be treated as a single transaction if they are undertaken by or on behalf of any one person during any one day or such other period as the competent authority may specify.

Section 17 of AMLATFAPUAA - Retention of records.

(1) Notwithstanding any provision of any written law pertaining to the retention of documents, a reporting institution shall maintain any account, record, business correspondence and document relating to an account, business relationship, transaction or activity with a customer or any person as well as the results of any analysis undertaken, as the case may be, for a period of at least six years from the date the account is closed or the business relationship, transaction or activity is completed or terminated.

(2) A reporting institution shall also maintain records to enable the reconstruction of any transaction in excess of such amount as the competent authority may specify under section 14, for a period of at least six years from the date the transaction is completed or terminated.

(3) Subsections (1) and (2) will not apply where a reporting institution has transmitted the account, record, business correspondence and document to the competent authority or an enforcement agency.

(4) Any reporting institution which contravenes subsection (1) or (2) 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.

BNM's Guidelines on Record Keeping:

(i) AML/CFT Banking and Deposit Taking (Sector 1), paragraph 27

(ii) AML/CFT Insurance and Takaful (Sector 2), paragraph 22*

(iii) AML/CFT- Money Service Business (Sector 3), paragraph 22*

*Record keeping guidelines in (ii) and (iii) are pari materia with paragraph 27 of (i)

- 27.1 Reporting institutions are required to keep the relevant records including any accounts, files, business correspondence and documents relating to transactions, in particular, those obtained during the CDD process. This includes documents used to verify the identity of customers and beneficial owners, and results of any analysis undertaken. The records maintained must remain up-to-date and relevant.
- 27.2 Reporting institutions are required to keep the records for at least six years following the completion of the transaction, the termination of the business relationship or after the date of the occasional transaction.
- 27.3 In situations where the records are subjected to on-going investigation or prosecution in court, they shall be retained beyond the stipulated retention period until such time reporting institutions are informed by the relevant law enforcement agency that such records are no longer required.
- 27.4 Reporting institutions are required to retain the relevant records in a form that is admissible as evidence in court and make such available to the supervisory authorities and law enforcement agencies in a timely manner.

BNM Guidelines on AML/CFT

6. Record-Keeping

6.1. Retention Period

6.1.1. The reporting institution should keep all records and documents of transactions, in particular, those obtained during customer due diligence procedures, for at least six years after the transaction has been completed or after the business relations with the customer have ended.

6.1.2. In situations where the records are subject to ongoing investigations or prosecution in court, they shall be retained beyond the stipulated retention period until it is confirmed by the Financial Intelligence Unit in Bank Negara Malaysia, that such records are no longer needed.

6.2. Audit trail

6.2.1. The reporting institution must ensure that the retained documents and records are able to create an audit trail on individual transactions that are traceable by Bank Negara Malaysia, the relevant supervisory and law enforcement agencies.

6.2.2. In addition, the records kept must enable the reporting institution to establish the history, circumstances and reconstruction of each transaction. The records shall include at least:

- the identity of the customer;
- the identity of the beneficiary;
- the type of transaction (for example, deposit or withdrawal);
- the form of transaction (for example, by cash or by cheque);
- the instruction and the origin and destination of fund transfers; and
- the amount and type of currency.

6.3. Format

6.3.1. The reporting institution should retain the relevant document in the form that is acceptable under Section 3 of the Evidence Act 1950, secure and retrievable, upon request, in a timely manner.

Securities Commission's Guidelines on Prevention of Money Laundering and Terrorism Financing for Capital Market Intermediaries:

PART IV: RETENTION OF RECORDS 10. RECORD KEEPING

10.1 A reporting institution must keep record of all transactions and ensure they are up to-date and relevant. The records must at least include the following information for each transaction:

- (a) documents relating to the identification of the customer in whose name the account is opened or transaction is executed;
- (b) the identification of the beneficial owner or the person on whose behalf the account is opened or transaction is executed;
- (c) records of the relevant account pertaining to the transaction executed;
- (d) the type and details of transaction involved;
- (e) the origin and the destination of the funds, where applicable; and
- (f) such other information as the SC and BNM may specify in writing.

10.2 A reporting institution is required to maintain records for a period of at least seven (7) years from:

- (a) in the case of record obtained through the CDD and enhanced CDD process, the date the account is closed; or
- (b) in the case of transaction records, the date the transaction is completed or terminated.

10.3 A reporting institution must retain a record beyond the retention period provided in Paragraph 10.2 above, if the record is in relation to:

- (a) a STR that has been lodged to FIED;
- (b) a transaction that is subject to an ongoing investigation by any law enforcement agency; or
- (c) a transaction that is subject to prosecution in court, until it is confirmed that the case is closed or records are no longer required.

10.4 A reporting institution must retain, maintain and update the relevant records (including CDD records) in such a way that:

- (a) the relevant law enforcement agencies, and internal and external auditors of the reporting institution will be able to judge reliably the reporting institution's transactions and its compliance with the AMLATFA;
- (b) any transaction effected via the reporting institution can be reconstructed; and
- (c) the reporting institution can satisfy within a reasonable time any enquiry or order from the relevant law enforcement agencies as to the disclosure of such relevant record.

Labuan Financial Services Authority (LFSA) Guidelines on AMLCFT - Banking Sector

26.1 Reporting institutions are required to keep the relevant records including any accounts, files and business correspondence and documents relating to transactions, in particular, those obtained during the CDD process. This includes documents used to verify the identity of customers and beneficial owners, and results of any analysis undertaken. The records maintained must remain up-to-date and relevant.

26.2 Reporting institutions are required to keep the records for at least six years following the completion of the transaction, the termination of business relationship or after the date of occasional transaction.

26.3 In situations where the records are subject to ongoing investigations or prosecution in court, they shall be retained beyond the stipulated retention period until such time reporting institutions are informed by the relevant law enforcement agency that such records are no longer required.

26.4 Reporting institutions are required to retain the relevant records in the form that is admissible as evidence in court and make available to the supervisory authorities and law enforcement agencies in a timely manner.

Further, section 110 of the Labuan Companies Act 1990 requires that Labuan companies keep accounting and other records that will sufficiently explain the transactions and financial position of the Labuan company. The Directive On Accounts And Record-Keeping Requirement For Labuan Entities issued by Labuan FSA on 06 June 2012 requires Labuan companies to maintain any such record for a period of not less than six years from the date an account transaction has been completed, in line with Section 17 of Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

Section 245 of the **Companies Act 2016** (Act 777), as amended (quoted under article 12(3) above), requires companies to keep accounting and other records that will sufficiently explain, among others, the transactions of the company for at least 7 years.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See FATF Mutual Evaluation Report on Malaysia, 2015 at pp.169-170.

Based on the report, Malaysia is rated largely compliant with FATF Recommendation 11 (Record Keeping).

(b) Observations on the implementation of the article

The AMLATFAPUAA and the Guidelines have detailed provisions on record keeping and the applicable retention periods. Moreover, reporting institutions are required to retain records beyond the minimum period of six (6) years (seven (7) years in the case of the SC Guidelines) if the record is subject to an ongoing investigation or a prosecution in court or relates to an STR that has been lodged.

In respect of the minor gap identified in the FATF review in the area of recordkeeping, Malaysian authorities clarified that, although section 13 of AMLATFAPUAA requires reporting institutions to keep records of transactions “exceeding such amount as the competent authority may specify”, it was confirmed that no threshold has been imposed by the competent authorities, and that no such threshold is contained in the applicable Guidelines.

Paragraph 4 of article 52

4. With the aim of preventing and detecting transfers of proceeds of offences established in accordance with this Convention, each State Party shall implement appropriate and effective measures to prevent, with the help of its regulatory and oversight bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group. Moreover, States Parties may consider requiring their financial institutions to refuse to enter into or continue a correspondent banking relationship with such institutions and to guard against establishing relations with foreign financial institutions that permit their accounts to be used by banks that have no physical presence and that are not affiliated with a regulated financial group.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The regulatory framework under the FSA and IFSA prohibits establishment of any shell banks in Malaysia. The conduct of regulated business such as banking and Islamic banking must not be done without a licence, as prohibited under section 8 of the FSA and the IFSA respectively, and is tantamount to a criminal offence.

Section 139 of the FSA and section 151 of the IFSA also prohibit the use of the words such as “bank” or “Islamic bank” by persons other than those authorized to conduct the banking and Islamic banking business respectively.

Section 20(1)(b) of the FSA and section 18(1) of the IFSA empower the Minister to revoke a licence granted to carry on banking business or Islamic banking business, among others, if an entity to which licence was granted has not commenced business within a stipulated period.

Supervisors through examinations pursuant to section 146 of the FSA and section 158 of the IFSA also ensure that authorized institutions maintain physical presence and that they in fact carry on authorized business, thus prohibiting the operation of shell banks in Malaysia. Further, instruments issued pursuant to the AMLATFAPUAA and the relevant regulatory laws prohibit reporting institutions from establishing relationships with shell banks.

Licensing and form of incorporation of banks

Pursuant to section 8 of the Financial Services Act 2013 (FSA 2013), a person is prohibited from carrying on banking business in Malaysia, unless the person is granted a licence by the Minister of Finance under section 10 of the FSA. In assessing an application for a banking licence, the Bank is required to have regard to “prudential and best interest of Malaysia” criteria. Under prudential criteria, if the applicant is a financial institution or financial group established outside Malaysia, the Bank would require a confirmation from the home supervisor on certain matters which are as follows:

- a. the applicant is of good financial standing, meets the prudential regulatory requirements in the home jurisdiction, and, to the best of knowledge of the home supervisor, has no record of material breaches of statutory or other administrative or regulatory enactments;
- b. the home supervisor practices prudential supervision in accordance to the Core Principles for Effective Banking Supervision promulgated by the Basel Committee on Banking Supervision; and
- c. the home supervisor performs consolidated supervision over the applicant and its related entities (which will include the proposed licensed person) and agrees to share information and co-operate with the Bank to facilitate the Bank’s supervision of the proposed licensed person.

In addition, pursuant to section 24 of the FSA 2013, an entity to be licensed as a bank must be a public company.

Oversight over Representative Office

The Bank also approves the establishment of representative offices by foreign banks in Malaysia under section 19 of the FSA. However, an approved representative office of a foreign bank is prohibited from carrying on any banking business in Malaysia and is only allowed to carry on certain

activities which are specified in the policy document “Establishment and Operations of Representative Offices in Malaysia”. These activities are mainly for purposes of carrying on liaison activities with clients in Malaysia and to conduct studies of the Malaysian market for purposes of advising its clients.

In assessing an application by a foreign bank to establish a representative office in Malaysia, the Bank also requires a written confirmation from the applicant’s home supervisory authority stating that:

- (a) the applicant is of good standing and meets the prudential and market conduct requirements in its home country;
- (b) to the best of the knowledge of the home supervisor, the applicant has not contravened any provisions of the law or regulations, or any requirements or standards of a regulatory body, government or its agencies; and
- (c) it does not object to the applicant establishing a representative office in Malaysia.

Below are relevant provisions of the FSA, which prohibit the establishment of shell banks in the country:

Section 8 of FSA- Authorized business to be carried out by authorized person.

- (1) No person shall carry on any authorized business unless it is
 - (a) licensed by the Minister, on the recommendation of the Bank, under Section 10 to carry on banking business, insurance business or investment banking business; or
 - (b) approved by the Bank under section 11 to carry on any the business set out in Division 1 of Part 1 of Schedule 1,
- (2)...
- (3) Any person who contravenes subsection (1) commits an offence and shall on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or both.

The approved businesses which require approval under Schedule 1, Part 1 of Division 1 are as follows:

PART 1 Approved business

Division 1 Businesses which require approval

- 1. Operation of a payment system which-
 - (a) enables the transfer of funds from one banking account to another, which includes any debit transfer, credit transfer or standing instructions but does not include the operation of a remittance system approved under section 40 of the Money Services Business Act 2011; or
 - (b) provides payment instrument network operation which enables payments to be made through the use of a payment instrument.
- 2. Issuance of a designated payment instrument.
- 3. Insurance broking business.

4. Money-broking business.
5. Financial advisory business.

Section 17 of FSA - Registered business to be carried out by registered person

- (1) No person shall carry on registered business unless it has-
 - (a) fulfilled such requirements and submitted such documents or information as may be prescribed by the Bank; and
 - (b) notified the Bank in writing of the date of commencement of its business.
- (2)
- (3) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.

Section 18 of FSA - Registered person to comply with standards

- (1) A person is a registered person if such person has complied with subsection 17(1) and has commenced its registered business.
- (2) The Bank may specify standards for registered persons and a registered person shall at all times comply with such standards.

Section 19 of FSA- Requirements for representative office

- (1) No foreign institution shall-
 - (a) establish a representative office in Malaysia unless it has obtained the prior written approval of the Bank; or
 - (b) through its approved representative office, carry on any authorized or registered business in Malaysia.
- (2) Subject to the prohibition under paragraph (1)(b), a foreign institution may carry on, through its approved representative office, only such activities as may be specified by the Bank.
- (3) An application to establish a representative office shall be made in writing to the Bank together with such documents or information as may be specified by the Bank.
- (4) The Bank may on an application having been duly made in accordance with subsection (3) approve the application, with or without conditions, or reject the application.
- (5) The Bank may at any time in writing amend or revoke any existing conditions of an approval granted under subsection (4) or impose any new condition thereto.
- (6) The Bank may revoke an approval granted under subsection (4) if-
 - (a) the approved representative office has- Act 701. (i) breached or contravened any provision of this Act or the Central Bank of Malaysia Act 2009; or (ii) failed to comply with any condition imposed pursuant to the approval, regardless that there has been no prosecution or other action in respect of such breach, contravention or non-compliance;
 - (b) the approved representative office has contravened any law in or outside Malaysia; or
 - (c) it is in the interest of consumers of financial services and products in Malaysia to do so.
- (7) The Bank may, with the approval of the Minister, revoke an approval granted under subsection

(4) if it is in the national interest to do so.

(8) Any person who contravenes subsection (1) or (2) or fails to comply with any condition imposed under subsection (4) or (5) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty million ringgit or to both.

Section 20 of FSA-Grounds for revocation of authorization

(1) The Minister may, on the recommendation of the Bank, revoke the license of a licensed person, and the Bank may revoke the approval of an approved person, on the grounds that-

- (a) the Bank has, in connection with the application under section 9, been provided with false, misleading, inaccurate or incomplete information;
- (b) the person has not commenced the business in respect of which it is licensed or approved within the period specified by the Minister under subsection 10(6) or by the Bank under subsection 11(5);
- (c) the person has ceased to carry on business for which it is licensed or approved;
- (d) the person has-
 - (i) breached or contravened any provision of this Act or the Central Bank of Malaysia Act 2009;
 - (ii) failed to comply with any condition of its license or approval; or Act 701.
 - (iii) failed to comply with any direction issued by the Bank under section 156 or an order under the Central Bank of Malaysia Act 2009, regardless that there has been no prosecution or other action in respect of such breach, contravention or non-compliance;
- (e) the person has ceased to be viable in the opinion of the Bank;
- (f) the Bank, pursuant to the exercise of its powers under Part XIII relating to such person, has substantially completed all the transfer of business, assets or liabilities of the person;
- (g) the person has been wound-up or otherwise dissolved; or
- (h) it is in the interest of consumers of financial services and products to do so.

(2) The Minister may, on the recommendation of the Bank, revoke the license of a licensed person, and the Bank may with the concurrence of the Minister revoke an approval of an approved person, if it is in the interest of the public to do so.

(3) In addition to subsections (1) and (2), the Bank may revoke the approval of an approved person on the grounds that-

- (a) in the opinion of the Bank the person is committing or is about to commit an act, or is pursuing or is about to pursue any course of conduct, that is unsafe or unsound or has failed to commit an act or pursue a course of conduct that is necessary to maintain the safety and soundness of the person;
- (b) in the opinion of the Bank, the person is carrying on business in a manner detrimental to the interests of its customers, creditors, participants, users or the public generally;
- (c) a receiver or manager of the property of the person has been appointed; or
- (d) possession of the property of the person has been taken by or on behalf of a debenture holder pursuant to a charge on the property.

(4) The Bank-

- (a) shall publish in the Gazette, as soon as practicable, a notice of a revocation of a license under

subsection (1) or (2); or

- (b) may publish a notice of a revocation of an approval under subsection (1), (2) or (3) in such form as the Bank deems appropriate.

Section 22 of FSA - Surrender of licence or notification on cessation of business or operations

(1) A licensed person may surrender its licence to the Bank and upon surrendering, the licensed person shall provide a written notice of its surrender to the Bank.

(2) An approved person or a registered person, as the case may be, shall submit a written notice to the Bank if it ceases to carry on its business.

(3) An approved representative office shall submit a written notice to the Bank if it ceases operations.

(4) The surrender under subsection (1) or the notification under subsection (2) or (3) shall take effect on the date the Bank receives such notice or where a later date is specified in the notice, on that date.

(5) The Bank-

- (a) shall publish in the Gazette, as soon as practicable, a notice of a surrender of a licence under subsection (1); or

- (b) may publish a notice of cessation of business under subsection (2) or cessation of operations under subsection (3) in such form as the Bank deems appropriate.

(6) Any person who contravenes subsection (1), (2) or (3) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding one year or to a fine not exceeding five million ringgit or to both.

Section 25 of FSA- Establishment or relocation of office of authorized persons.

(1) Unless otherwise specified by the Bank, no licensed person shall establish or relocate an office in or outside Malaysia without the prior written approval of the Bank.

(2) Where an approved person establishes or relocates an office in or outside Malaysia, such approved person shall notify the Bank in writing within such period as may be specified by the Bank.

Section 85 of FSA Establishment or acquisition of subsidiaries and acquisition or holding of material interest in corporation.

(1) No authorized person shall-

- (a) establish or acquire a subsidiary in or outside Malaysia; or

- (b) acquire or hold any material interest in any corporation, without the prior written approval of the Bank.

(2) The Bank may specify what constitutes “material interest” for the purposes of paragraph (1)(b).

Section 87 of FSA- Interest in shares of licensed person Acquisition of interest in shares requiring approval

(1) Subject to section 92 and except with the prior written approval of the Bank, no person-

- (a) shall enter into an agreement or arrangement, to acquire any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, he would hold (together with any interest in shares of that licensed person which are already held by such person) an aggregate interest of five per cent or more in the shares of the licensed person; or
- (b) who has obtained an approval of the Bank under paragraph 90 (3)(a), or the Minister under subsection 90(6) in respect of the prohibition under subsection (2), as the case may be, shall enter into any subsequent agreement or arrangement, by which, if the agreement or arrangement is carried out, he would hold an aggregate interest in shares of a licensed person of, or exceeding-
 - (i) any multiple of five per cent; or
 - (ii) the percentage holding for a mandatory offer under the Malaysian Code on Take-Overs and Mergers prescribed under section 217 of the Capital Markets and Services Act 2007.

(2) Notwithstanding subsection (1), no person shall enter into an agreement or arrangement to acquire any interest in shares of a licensed person by which, if the agreement or arrangement is carried out, he would hold (together with any interest in shares of that licensed person which are already held by such person) an aggregate of more than fifty per cent of the interest in shares of the licensed person, without obtaining the prior written approval of the Minister, on the recommendation of the Bank.

(3) For the avoidance of doubt, a person shall not be required to obtain-

(a) the approval of the Bank-

- (i) under subsection (1), for any subsequent acquisition of interests in the shares of a licensed person, if-
 - (A) such person has already obtained the approval of the Bank under that subsection; and
 - (B) such acquisition will result in the person holding interest in shares which is less than any multiple of five per cent; or
- (ii) under subparagraph (1)(b)(i), if the approval of the Minister under subsection (2) is also required for such acquisition; or

(b) the approval of the Minister under subsection (2) for any subsequent acquisition of interests in the shares of a licensed person if such person has already obtained the approval of the Minister under subsection 90(6) to hold an aggregate of more than fifty per cent of interest in shares of the licensed person.

Section 97 of FSA - Acquisition of interest in shares of approved person

(1) Where a person enters into an agreement or arrangement to acquire any interest in shares of an approved person, by which, if the agreement or arrangement is carried out, he would hold, together with any interest in shares of the approved person which were then already held by him, an aggregate interest in shares of not less than five per cent of the shares of the approved person, such person shall notify the Bank of such fact upon entering into such agreement or arrangement within the period as may be specified by the Bank.

(2) In addition to subsection (1), no person shall enter into any agreement or arrangement for the purpose of acquiring interest in shares pursuant to subsection (1), if such acquisition will result in a change in the control of an approved person, unless such person obtains the prior written approval of the Bank upon entering into such agreement or arrangement.

(3) The Bank may specify standards on shareholder suitability to give full effect to subsections (1) and (2).

(4) Any person who has notified the Bank under subsection (1) or obtained the approval of the Bank under subsection (2), shall at all times comply with the standards specified by the Bank under subsection (3) to the satisfaction of the Bank.

(5) For the purposes of this section, the Bank may, at any time by notice in writing, require a person who has notified the Bank under subsection (1) or obtained the approval of the Bank under subsection (2) to submit any information or particulars of any share acquired or held directly or indirectly either for his own benefit or any other person.

(6) Any person who has been served with a notice under subsection (5) shall submit to the Bank such information and particulars as may be specified by the Bank.

Section 99 of FSA - Approval required for reconstruction or amalgamation of licensed person

No person shall enter into an agreement or arrangement for the reconstruction or amalgamation under the Companies Act 1965 of a licensed person except with the prior written approval of the Minister, on the recommendation of the Bank.

Section 110 of FSA- Application to be financial holding company.

(1) Any company which has to obtain the prior written approval of the Minister under section 87 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall submit an application to the Bank for it to be approved as a financial holding company.

(2) A company referred to in subsection (1) may propose another company within its corporate group to be approved as a financial holding company if it can be shown that the proposed company is in a position to have control over the licensed person and its proposed financial group.

(3) A person, other than a foreign institution or a company referred to in subsections (1) and (2), which is required to obtain the prior written approval of the Minister under section 87 to hold an aggregate interest in shares of more than fifty per cent in a licensed person shall propose a company within its corporate group which will have control over a licensed person and such proposed company shall submit to the Bank an application to be approved as a financial holding company.

Labuan Financial Services and Securities Act (LFSS)

Pursuant to paragraph 5 of the Guidelines on Entry Criteria of Labuan Bank issued by Labuan FSA on 1 May 2001, Labuan banks are required to maintain a physical presence in Labuan, i.e. their principal place of business.

Paragraph 2 of the said Guidelines states that an applicant for Labuan banking licence should meet the following minimum criteria:

- a) Must be a bank or financial institution;
- b) Possess sound track record;
- c) Accorded a good credit rating by acceptable rating agencies;
- d) Supervised by a competent regulatory authority; and
- e) Conform to generally accepted standards of international banking practices or BIS, as the case may be.

Section 88 of LFSSAA 2010- Application for licence to carry on Labuan banking business.

(1) An application for a licence to carry on Labuan banking business shall be made in writing by or on behalf of the applicant to the Authority.

- (2) An application for a licence to carry on Labuan banking business by a Labuan company shall be accompanied by the following:
- (a) the applicant's constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority; and
 - (b) a statement on the following:
 - (i) the name, place and date of establishment of the applicant;
 - (ii) the principal business and the principal place of business of the applicant; and
 - (iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;
 - (c) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business;
 - (d) a proposed amendment to the applicant's constituent documents to the effect that the sole and exclusive object of the Labuan company shall be the carrying on of Labuan banking business;
 - (e) where the applicant-
 - (i) is a Labuan company which is a subsidiary of a holding company, a copy of the audited balance sheet of its holding company's business for each of the three financial years immediately preceding the date of application;
 - (ii) is a Labuan company which is not a subsidiary of any corporation, a copy of the audited balance sheet of the business of its participants who each holds ten per centum or more of the paid-up capital of the applicant for each of the three financial years immediately preceding the date of application;
 - (f) a guarantee secured and an undertaking given by the applicant in respect of its Labuan banking business, in such manner and such form as may be acceptable to the Authority, and such guarantee and undertaking shall provide, inter alia, that-
 - (i) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan banking business;
 - (ii) no participant of the applicant who holds ten per centum or more of the paid-up capital of the applicant shall be changed without the prior written approval of the Authority;
 - (iii) every director or the principal officer of the applicant responsible for the management of its Labuan banking business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.
- (3) An application for a licence to carry Labuan banking business by a proposed Labuan company to be incorporated under the Labuan Companies Act 1990 ("proposed Labuan company") shall be accompanied by the following:
- (a) its proposed constituent documents duly authenticated in such manner as may be acceptable to the Authority by any of its officers;
 - (b) a statement on the following:
 - (i) the name, place and date of the proposed establishment of the applicant;
 - (ii) the proposed principal business and the proposed principal place of business of the applicant; and
 - (iii) the names and addresses of the proposed directors of the applicant and the proposed participants who each holds ten per centum or more of the paid-up capital of the applicant;

- (c) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business;
 - (d) a copy of the audited balance sheet of the business of the proposed participants who would each hold ten per centum or more of its paid-up capital for each of the three financial years immediately preceding the date of its application; and
 - (e) a statement on a guarantee secured and an undertaking given by its proposed participants that they would cause the proposed Labuan company, upon being incorporated, to secure a guarantee and give an undertaking as are referred to in paragraph (2)(f).
- (4) An application for a licence to carry on Labuan banking business by a foreign Labuan company shall be accompanied by the following:
- (a) its constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority;
 - (b) a statement on the following:
 - (i) the name, place and date of establishment of the applicant;
 - (ii) the principal business and the principal place of business of the applicant; and
 - (iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;
 - (c) a proposed amendment to the applicant's constituent documents to the effect that the sole and exclusive object of the foreign Labuan company shall be the carrying on of Labuan banking business;
 - (d) a copy of the audited balance sheet of the applicant's business for each of the three financial years immediately preceding the date of the application;
 - (e) an undertaking given by the applicant in respect of its Labuan banking business, in such manner and such form as may be acceptable to the Authority, and such undertaking shall provide, inter alia that-
 - (i) the applicant shall comply with the financial obligations and requirements imposed under this Act and shall meet the applicant's liabilities in respect of its Labuan banking business;
 - (ii) where the applicant is a foreign Labuan company, that it shall promptly notify the Authority of any change in its participants who hold ten per centum or more of its paid-up capital;
 - (iii) every director or the principal officer of the applicant responsible for the management of its Labuan banking business shall be a fit and proper person and the appointment of such director or principal officer shall only be made after consultation with the Authority.
- (5) An application for a licence to carry on Labuan banking business by a foreign company which is seeking registration as a foreign Labuan company under the Labuan Companies Act 1990 ("proposed foreign Labuan company") shall be accompanied by the following:
- (a) the constituent documents under which it is to be established, duly authenticated by any of its proposed officers in such manner as may be acceptable to the Authority;
 - (b) a copy of the audited balance sheet of the business for each of the three financial years immediately preceding the date of the application;
 - (c) a statement on-
 - (i) the name, place and date of the establishment of the foreign company;
 - (ii) the principal business and the principal place of business of the foreign company;

- (iii) the names and addresses of the directors of the foreign company;
 - (iv) the names and addresses of the participants of the foreign company who each holds ten per centum or more of the paid-up capital of the foreign company;
 - (v) the names, addresses, qualifications, working experience and proposed positions of all proposed officers of the proposed foreign Labuan company who would be responsible for the management of its Labuan banking business; and
- (d) an undertaking given by the foreign company as is referred to in paragraph (4)(e).
- (6) An application for a licence to carry on Labuan banking business by a Malaysian bank shall be accompanied by the following:
- (a) the applicant's constituent documents duly authenticated by an officer of the applicant in such manner as may be acceptable to the Authority; and
 - (b) a copy of the audited balance sheet of the applicant's business for each of the three financial years immediately preceding the date of the application;
 - (c) a statement on the following:
 - (i) the name, place and date of establishment of the applicant;
 - (ii) the principal business and the principal place of business of the applicant; and
 - (iii) the names and addresses of the directors of the applicant and the participants who each holds ten per centum or more of the paid-up capital of the applicant;
 - (d) a statement on the names, addresses, qualifications, working experience and proposed positions of all officers who would be responsible for the management of the applicant's Labuan banking business

Section 89 of LFSS- Application for licence to carry on Labuan investment banking business.

An application for a licence to carry on Labuan investment banking business shall be made in writing by or on behalf of the applicant to the Authority and the provisions of section 88 relating to Labuan banking business shall apply similarly save that "Labuan banking business" shall be read as "Labuan investment banking business".

BNM AML/CFT Guidelines for Banking and Deposit-Taking Institutions (Sector 1) to prevent establishment of shell banks

The term "shell bank" refers to a bank that has no physical presence in the country in which it is incorporated and licensed, and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision.

Physical presence means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.

- Paragraph 17.1: Reporting institutions shall not establish or have any business relationship with shell banks.
- Paragraph 20.1: Reporting institutions providing correspondent banking services to respondent banks are required to take the necessary measures to ensure that it is not exposed to the threat of ML/TF through the accounts of the respondent banks such as being used by shell banks.
- Paragraph 20.4: Reporting institutions shall not enter into, or continue, correspondent banking relationships with shell banks. Reporting institutions are required to satisfy themselves that respondent banks do not permit their accounts to be used by shell banks

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There have been no case examples involving banks not being allowed to establish any relationship with “shell banks”.

(b) Observations on the implementation of the article

The provisions relating to the establishment of banks are detailed and place an enormous burden on any person intending to establish a bank in Malaysia. A person is prohibited from operating a bank unless such person is licenced to do so. To be granted a licence, an applicant has to comply with certain criteria and if the applicant is a financial institution or financial group established outside Malaysia, the Central Bank requires confirmation of certain matters from the home supervisor. Beyond that, a person to be licenced as a bank must be a public company.

It is also noted that Malaysia permits the establishment of representative offices by foreign banks. However, such are prohibited from carrying on banking business in Malaysia. Before the establishment of a representative office is authorised, the Central Bank requires written confirmation from the applicant’s home supervisory authority on certain matters.

“Shell banks” are specifically prohibited by the BNM Guidelines for Banking and Deposit-Taking Institutions. Also, banks operating in Malaysia are prohibited from establishing or having any business relationship with “shell banks” and are required to take measures to ensure that they are not used by “shell banks”.

The provision is implemented.

Paragraph 5 of article 52

5. Each State Party shall consider establishing, in accordance with its domestic law, effective financial disclosure systems for appropriate public officials and shall provide for appropriate sanctions for non-compliance. Each State Party shall also consider taking such measures as may be necessary to permit its competent authorities to share that information with the competent authorities in other States Parties when necessary to investigate, claim and recover proceeds of offences established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(P) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provision of this article under review is implemented through Regulation 10 of the **Public**

Officers (Conduct & Discipline) Regulations P.U.(A) 395 of 1993 read in conjunction with **Service Circular No. 3 of 2002: Property Ownership and Declaration by Public Officer** (Pekeliling Perkhidmatan Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam). The latter is circulated by the Government as an elaboration and guidelines as to the provisions of Regulation 10 of the Public Officers (Conduct & Discipline) Regulations 1993.

The above mentioned Regulation 10 is one of the conditions of service issued by the Yang Di Pertuan Agong (or the King) in the exercise of powers conferred by Clause (2) of Article 132 of the Federal Constitution, which requires all categories of public officers to declare properties owned by a public officer upon being appointed to the civil service.

Regulation 10 of the Public Officers (Conduct & Discipline) Regulations 1993 reads as follows:

- (1) An officer shall, on his appointment to the public service or at any time thereafter as may be required by the Government, declare in writing to his Head of Department all properties owned by him or by his spouse or child or held by any person on his behalf or on behalf of his spouse or child.
- (2) An officer who does not own any property shall make a declaration in writing to that effect;
- (3) Where, after making a declaration under subregulation(1), an officer or his spouse or child acquires any property , either directly or indirectly , or any property acquired by him or by his spouse or child is disposed of, that officer shall immediately declare such acquisition or disposal of property to his Head of Department.
- (4) Where an officer or his spouse or child intends to acquire any property, and the acquisition is inconsistent with regulation 4, the acquisition shall not be made without the prior written permission of the Secretary General of the Ministry.
- (5) In deciding whether or not to grant permission under subregulation (4), the Secretary General of the Ministry shall have regard to the following matters:
 - (a) the size, amount or value of the property in relation to the officer's emolument and any legitimate private means;
 - (b) whether the acquisition or holding of such property will or is likely to conflict with the interests of the public service or with the officer's position as a public servant;
 - (c) any other factor which he may consider necessary for upholding the integrity and efficiency of the public service.
- (6) The Head of Department shall, if he is satisfied with the declaration of property made by the officer, direct that it be recorded in the officer's records of service that the declaration has been made.
- (7) Every declaration under subregulation (1) shall be categorized as classified and every person who gains information under this regulation of any such declaration shall comply with the procedures and regulations pertaining to the management of Government classified documents.
- (8) In this regulation, 'property' includes property of any description, whether movable or immovable, as may be prescribed by the Director General of Public Service from time to time.

The list of property prescribed by the Director General of Public Service vide Service Circular No. 3 of 2002: Property Ownership and Declaration by Public Officer (Pekeliling Perkhidmatan Bilangan 3 Tahun 2002: Pemilikan dan Perisytiharan Harta Oleh Pegawai Awam) include as follows:

- (a) immovable property-
 - (i) land, including land under temporary occupation licence;

- (ii) all types of accommodation such as house, flat, apartment or condominium;
 - (iii) buildings, inclusive of shop lots or shop spaces, office spaces or stall and
- (b) movable property-
- (i) any form of cash in any deposit or savings
 - (ii) shares, stock, debentures, bonds or other securities;
 - (iii) any form of trade, business or commercial licence or permit;
 - (iv) any other form of movable property, including any type of motor vehicles, jewellery, club memberships, household furniture, and sports equipment with a purchase value of more than 6 months of his emolument for each individual item or RM 10,000 whichever is the higher.

Under paragraph 4 of the **Service Circular 3 of 2002**, the obligation to declare ownership of property is carried out when an officer is:

- (i) appointed to the civil service;
- (ii) required to do by the Government;
- (iii) in possession of additional property and
- (iv) disposing any property.

Confidentiality of asset declaration

Declarations of property made by public officials under the Public Officers (Conduct & Discipline) Regulations 1993 P.U. (A) are classified "Confidential" documents under the Official Secret Act 1972 as provided for under Regulation 10 (7) read in conjunction with paragraph 28 of Service Circular 3/2002 and therefore are not made public.

An asset declaration (or statement) made pursuant to Section 36 of Malaysian Anti-Corruption Commission Act 2009 (MACCA) is also a classified document as Government "Secret" under the Official Secret Act 1972 by virtue of a Standing Order of the Chief Commissioner made in pursuant to section 12 of MACCA.

Authorities having access to such financial disclosures include:

- 1) the heads of the Departments/Ministries of the public official concerned pursuant to Regulation 10 (1) and (2) of P.U.(A) 395
- 2) The appropriate disciplinary board of the government services pursuant to Regulation 10 (3) of P.U.(A) 395
- 3) The MACC is also given powers under Section 36 (1) of Act 694 to obtain information from the official of financial interests belonging to the public official and any relative or associate of the official within or outside of Malaysia.
- 4) Royal Malaysia Police
- 5) The Director of General of Inland Revenue Board under Income Tax Act 1967,

Section 138 of Income Tax Act 1967

(1) Subject to this section, every classified person shall regard and deal with classified material as confidential; and, if he is an official, he shall make and subscribe before the prescribed authority a

declaration in the prescribed form that he will do so.

(2) No classified material shall be produced or used in court or otherwise except-

- (a) for the purposes of this Act or another tax law;
- (b) in order to institute or assist in the course of a prosecution for any offence committed in relation to tax or in relation to any tax or duty imposed by another tax law; or
- (c) with the written authority of the Minister or of the person or partnership to whose affairs it relates.

(3) No official shall be required by any court-

- (a) to produce or disclose classified material which has been supplied to him or another official otherwise than by or on behalf of the person or partnership to whose affairs it relates; or
- (b) to identify the person who supplied that material.

(4) Nothing in this section shall prevent-

- (a) the production or disclosure of classified material to the Auditor-General (or to public officers under his direction and control) or the use of classified material by the Auditor-General, to such an extent as is necessary or expedient for the proper exercise of the functions of his office;
- (b) the Director General from publicizing, from time to time in any manner as he may deem fit, the following particulars in respect of a person who has been found guilty or convicted of any offence under this Act or dealt with under subsection 113(2) or section 124-
 - (i) the name, address and occupation or other description of the person;
 - (ii) such particulars of the offence or evasion as the Director General may think fit;
 - (iii) the year or years of assessment to which the offence or evasion relates;
 - (iv) the amount of the income not disclosed;
 - (v) the aggregate of the amount of the tax evaded and penalty (if any) charged or imposed;
 - (vi) the sentence imposed or other order made: Provided that the Director General may refrain from publicizing any particulars of any person to whom this paragraph applies if the Director General is satisfied that, before any investigation or inquiry has been commenced in respect of any offence or evasion falling under section 113 or 114, that person has voluntarily disclosed to the Director General or to any authorized officer complete information and full particulars relating to such offence or evasion.

(5) In this section- “another tax law” means any Ordinance wholly repealed by this Act, any written law relating to estate duty, film hire duty, payroll tax or turnover tax and any other written law declared by the Minister by statutory order to be another tax law for the purposes of this section; “classified material” means any return or other document made for the purposes of this Act and relating to the income of any person or partnership and any information or other matter or thing which comes to the notice of a classified person in his capacity as such; “classified person” means-

- (a) an official;
- (b) the Auditor-General and public officers under his direction and control;
- (c) any person advising or acting for a person who is or may be chargeable to tax, and any employee of a person so acting or advising if he is an employee who in his capacity as such has access to classified material; or
- (d) any employee of the Inland Revenue Board of Malaysia; “official” means a person having an official duty under or employed in carrying out the provisions of this Act.

Sanctions for non-compliance

No.	Type of Non-Compliance	P.U.(A) 395 of 1993 / Service Circular No. 3 of 2002	MACCA	Penal Code
1.	Failure	Disciplinary Action under paragraph 29 of Service Circular No. 3/2002	<u>Failure to comply with terms of the notice issued under Section 36 (1) within such time as specified therein-</u> Section 36 (2) imprisonment for a term not exceeding 5 years and to a fine not exceeding MYR 100,000.00 <u>Failure to comply with notice issued in pursuant to Section 36 (3) within such time as may be specified</u> - Section 36(4) Imprisonment for a term not exceeding 20 years and fine which is not less than 5 times the value of the excess, if the excess is capable of being valued, or MYR10,000 whichever is higher	
2.	False	-	Section 27- a fine not exceeding MYR100,000 or imprisonment for a term not exceeding 10 years or to both	Section 181- imprisonment for a term which may extend to 3 years, and shall also be liable to fine.
3.	Incomplete	-	-	-
4.	Unsatisfactory explanation	Disciplinary Action under paragraph 11 of P.U.(A) 395 of 1993	Section 36(3) Imprisonment for a term not exceeding 20 years and fine which is not less than 5 times the value of the excess, if the excess is capable of being valued, or MYR10,000 whichever is higher	-

The accessibility of asset declarations by other States Parties to investigate, claim and recover proceeds of offences established in accordance with this Convention.

In order for a foreign State to access the asset declarations of public officials, the following must be met:

- (i) the said foreign State shall be a prescribed foreign state under Section 17 of the Mutual Assistance in Criminal Matters Act (MACMA) 2002 or in the case of a non- prescribed foreign state, a special direction of the Minister pursuant to Section 18 of MACMA 2002 shall apply to that foreign state.
- (ii) the request relates to the investigation, prosecution or punishment in respect of an act or omission that if it had occurred in Malaysia, would have constituted an offence against the laws of Malaysia; and
- (iii) other conditions/provisions set out under Section 20 and Section 21 of MACMA 2002 are met.

A formal request shall be made in compliance with section 19 of the MACMA, as follows:

- (1) A request by a prescribed foreign State to Malaysia for assistance in a criminal matter under this Part shall be made to the Attorney General.
- (2) A request under subsection (1) shall be made through the diplomatic channel.
- (3) Every request shall-
 - (a) specify the purpose of the request and the nature of the assistance being sought;
 - (b) identify the person or authority that initiated the request; and
 - (c) be accompanied by-
 - (i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;
 - (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
 - (iii) where the request relates to-
 - (A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or
 - (B) the tracing of property that is suspected to be connected with a foreign serious offence, Mutual Assistance in Criminal Matters 19 the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subsubparagraph (A) or (B);
 - (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
 - (v) details of the procedure which that prescribed foreign State wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;
 - (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
 - (vii) a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;
 - (viii) details of the period within which that prescribed foreign State wishes the request to be met;
 - (ix) if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;
 - (x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and
 - (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.
- (4) Failure to comply with subsection (3) shall not be a ground for refusing assistance

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Statistical information on compliance of public officials with financial disclosure requirements

Key Performance Index For HRMIS On Asset Declarations

No.	Ministry/ State Secretary Office/ Agency	2013	2014	2015
1	Accountant General's Department (Jabatan Akauntan Negara)	94.92	91.02	97.04
2	National Audit Department (Jabatan Audit Negara)	95.14	96.22	99.14
3	Royal Malaysian Customs Department (Jabatan Kastam Diraja Malaysia)	95.59	96.58	94.89
4	Syariah Judiciary Department Malaysia (Jabatan Kehakiman Syariah Malaysia)	97.14	99.82	100.00
5	Public Works Department (Jabatan Kerja Raya)	94.48	95.66	96.70
6	Attorney General's Chamber (Jabatan Peguam Negara)	100.00	100.00	100.00
7	Department of Irrigation and Drainage (Jabatan Pengairan dan Saliran Malaysia)	99.61	98.15	96.64
8	Higher Education Department (Jabatan Pengajian Tinggi)	N/A	100.00	100.00
9	Ministry of Youth and Sports (Kementerian Belia dan Sukan)	99.46	97.48	99.77
10	Ministry of Home Affairs (Kementerian Dalam Negeri)	97.48	95.94	95.70
11	Ministry of Rural and Regional Development (Kementerian Kemajuan Luar Bandar dan Wilayah)	98.55	96.82	94.55

12	Ministry of Works (Kementerian Kerja Raya)	94.64	93.86	96.54
13	Ministry of Urban Wellbeing, Housing and Local Government (Kementerian Kesejahteraan Bandar, Perumahan dan Kerajaan Tempatan)	93.64	93.87	95.03
14	Ministry of Health (Kementerian Kesihatan Malaysia)	N/A	91.65	95.23
15	Ministry of Finance (Kementerian Kewangan)	95.88	94.69	93.88
16	Ministry of Communications and Multimedia (Kementerian Komunikasi dan Multimedia)	99.35	98.58	99.96
17	Ministry of Foreign Affairs (Kementerian Luar Negeri)	94.39	99.93	99.93
18	Ministry of Tourism and Culture (Kementerian Pelancongan dan Kebudayaan)	90.60	88.73	99.41
19	Ministry of Women, Family and Community Development (Kementerian Pembangunan Wanita, Keluarga dan Masyarakat)	92.14	93.87	91.50
20	Ministry of Education, Malaysia (Kementerian Pendidikan Malaysia)	N/A	99.75	99.47
21	Ministry of Higher Education (Kementerian Pendidikan Tinggi)	N/A	97.64	97.88
22	Ministry of Transport (Kementerian Pengangkutan)	99.04	98.72	98.78
23	Ministry of International Trade and Industry (Kementerian Perdagangan Antarabangsa dan Industri)	93.53	83.82	97.56

24	Ministry of Domestic Trade , Cooperatives and Consumerism (Kementerian Perdagangan Dalam Negeri, Koperasi dan Kepenggunaan)	94.90	90.25	96.14
25	Ministry of Defence (Kementerian Pertahanan)	85.00	92.07	93.46
26	Ministry of Agriculture and Agro-Industry (Kementerian Pertanian dan Industri Asas Tani)	96.77	94.97	95.36
27	Ministry of Plantation Industry and Commodity (Kementerian Perusahaan Perladangan dan Komoditi)	98.25	88.72	91.47
28	Ministry of Science, Technology and Innovation (Kementerian Sains, Teknologi dan Inovasi)	95.60	98.60	99.65
29	Ministry of Natural Resources and Environment (Kementerian Sumber Asli dan Alam Sekitar)	99.11	98.72	99.59
30	Ministry of Human Resources (Kementerian Sumber Manusia)	97.91	97.18	95.55
31	Ministry of Energy, Green Technology and Water (Kementerian Tenaga, Teknologi Hijau dan Air)	94.52	92.30	99.72
32	Ministry of Federal Territory (Kementerian Wilayah Persekutuan)	94.08	100.00	100.00
33	Director General of Health (Ketua Pengarah Kesihatan)	N/A	91.65	95.23
34	Director General of Education (Ketua Pengarah Pelajaran)	N/A	99.99	99.47
35	Johor Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Johor)	N/A	37.77	89.89

36	Kedah Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Kedah)	N/A	88.94	97.05
37	Kelantan Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Kelantan)	N/A	17.07	100.00
38	Melaka Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Melaka)	94.73	96.26	97.58
39	Pahang Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Pahang)	93.48	97.57	98.59
40	Perak Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Perak)	89.12	98.82	98.75
41	Perlis Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Perlis)	98.35	99.02	100.00
42	Pulau Pinang Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Pulau Pinang)	93.12	95.94	96.90
43	Selangor Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Selangor)	96.87	91.67	99.66
44	Negeri Sembilan Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Sembilan)	98.70	98.69	100.00
45	Terengganu Government State Secretary's Office (Pejabat Setiausaha Kerajaan Negeri Terengganu)	N/A	47.14	100.00
46	Federal Secretary Sabah (Setiausaha Persekutuan Sabah)	N/A	100.00	100.00
47	Federal Secretary Sarawak (Setiausaha Persekutuan Sarawak)	N/A	94.59	100.00

48	Malaysian Anti-Corruption Commission (Suruhanjaya Pencegahan Rasuah Malaysia)	99.70	99.83	99.65
49	Deputy Secretary General of Prime Minister's Department (Timbalan Ketua Setiausaha Kanan Jabatan Perdana Menteri)	95.54	100.00	100.00
50	Public Private Partnership Unit (Unit Kerjasama Awam Swasta)	94.37	97.30	100.00
51	Malaysian Administrative Modernisation and Management Planning Unit (Unit Pemodenan Tadbiran dan Perancangan Pengurusan Malaysia)	95.31	96.35	97.51
52	Implementation Coordination Unit (Unit Penyelarasan Pelaksanaan)	99.08	99.46	100.00
53	Economic Planning Unit (Unit Perancang Ekonomi)	99.80	100.00	99.79

N/A: Agency not involved in Declaration of Asset Criteria KPI HRMIS

(Source: Public Service Department)

The statistics provided under article 8, paragraph 6 of the Convention on disciplinary cases 2011-2015 for failure to declare property are also referred to.

Statistics on Disciplinary Cases 2011-2015

No	Offence	2011	2012	2013	2014	2015	Total
3.	Failure to declare property/ Ownership property	113 (3.71%)	222 (8.59%)	126 (5.56%)	0 (0%)	0 (0%)	461 (4.14%)

(b) Observations on the implementation of the article

There is a requirement for public officials to make written declarations of all properties owned by them, a spouse or child or held by any person on their behalf or on behalf of a spouse or child, and sanctions are provided for non-compliance. Such declarations are classified as confidential

or secret and, as such, cannot be used in court unless they relate to a violation of the Income Tax Act. Though that is the case, foreign States may have access to the declarations by public officials in accordance with the Mutual Assistance in Criminal Matters Act, and domestic authorities may also access them for investigative or disciplinary purposes.

Judges are also required to declare their assets under the Judges' Code of Ethics 2009 P.U.(B) 201 (paragraph 9) and the Public Officers (Conduct & Discipline) Regulations 1993 for Subordinate Court magistrates and judges, respectively. See article 11 above.

Based on the statistics provided, there appears to be a high level of compliance with asset declaration requirements by public officials. The observations and recommendation under article 8(5) are referred to.

Paragraph 6 of article 52

6. Each State Party shall consider taking such measures as may be necessary, in accordance with its domestic law, to require appropriate public officials having an interest in or signature or other authority over a financial account in a foreign country to report that relationship to appropriate authorities and to maintain appropriate records related to such accounts. Such measures shall also provide for appropriate sanctions for non-compliance.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The same laws and regulations cited in article 52(5) above apply to the requirements of this article under review for ALL properties which belong to all categories of public officials irrespective of the geographical location in which they are held or deposited.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See article 52(5) above in relation to disciplinary case for failure to declare property generally.

(b) Observations on the implementation of the article

Malaysia indicates that the asset disclosure requirements apply equally to all properties, including financial interests, belonging to all categories of public officials irrespective of the geographical location in which they are held or deposited.

Due to the similarity of provisions the observations made under article 52(5) also apply to this paragraph of the article.

Article 53. Measures for direct recovery of property

Subparagraph (a) of article 53

Each State Party shall, in accordance with its domestic law:

(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;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The avenues for foreign states to initiate civil action in the courts of Malaysia to establish title to or ownership of property acquired through the commission of an offence established in accordance with the Convention are implemented through:

- a) Civil litigation under the English common law
- b) The Reciprocal Enforcement of Judgments Act 1958 (REJA 1958)

If a foreign judgment is involved, the parties are entitled to reciprocally enforce the judgment as provided under The Reciprocal Enforcement of Judgement Act 1958 (hereinafter referred to as REJA 1958). The enforcement of foreign judgments concerns the sphere of private international law.

Certain types of foreign judgments are enforceable in Malaysia by virtue of the REJA. The First Schedule of REJA provides for their enforcement by way of registration in the High Court of Malaya and / or the High Court of Sabah and Sarawak provided that the conditions stated in the Act are satisfied. The conditions are:

- 1) the country must have a reciprocal enforcement of judgment arrangement with Malaysia; these countries are the United Kingdom, Singapore, Hong Kong Special Administrative Region of the People's Republic of China, New Zealand, Republic of Sri Lanka (Ceylon) and India (excluding the State of Jammu and Kashmir, the State of Manipur, tribal areas of State of Assam and scheduled areas of the States of Madras and Andhra) and Brunei Darussalam;
- 2) there must be a final judgment (notwithstanding that an appeal may be pending against it or that it may still be subject to appeal) in a superior court in that country and for a definite sum of money;
- 3) the enforcement is carried out within six (6) years from the date of judgment; and
- 4) the judgment should not be one relating to matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding-up of companies, lunacy or guardianship of infants, taxes, fines or penalties.

Section 5 of Reciprocal Enforcement of Judgement Act 1958 (REJA 1958).

Cases in which registered judgments must, or may, be set aside.

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment -

(a) shall be set aside if the registering court is satisfied -

- (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of this Act;
- (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
- (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- (iv) that the judgment was obtained by fraud;
- (v) that the enforcement of the judgment would be contrary to public policy in Malaysia; or
- (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; and

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to subsection (3), be deemed to have had jurisdiction -

(a) in the case of a judgment given in an action in personam -

- (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;
- (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;
- (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings to submit to the jurisdiction of that court or of the courts of the country of that court;
- (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
- (v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court; and

(c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), if the jurisdiction of the original court is recognized by the law of Malaysia.

(3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction -

- (a) if the subject matter of the proceedings was immovable property outside the country of the original court;
- (b) except in the cases mentioned in subparagraph (2) (a)(i), (ii), (iii) and paragraph (c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
- (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Example of cases - Case 1:

A good case example to showcase the willingness of the Malaysian courts to give effect to foreign judgements is the case of *Aspinall Curzon Ltd v Khoo Teng Hock* [1991] 2 Malayan Law Journal 484.

This was a case on enforceability in Malaysia of a foreign judgment based on gambling debts. The plaintiff had taken out an action against the defendant in the English High courts for unpaid gambling debts and obtained a judgment. The plaintiff then applied to proceed to registration of the judgment pursuant to Section 4 of the Reciprocal Enforcement of Judgments Act 1958, when was resisted by the defendant on the grounds that gambling debts are not recoverable under Malaysian contract law.

The Court still proceeded to enforce the English judgment under Section 4 of the REJA and did not entertain the argument of the Defendant in its attempts to argue that such recognition and enforcement of the English judgment was the public policy of Malaysia in that the contract was in contravention of some essential principles of justice or morality including sections of the Malaysian Contracts Act.

Case 2:

In the case of *The Ritz Hotel Casino Ltd. v. Datuk Seri Osu Haji Sukam* [2005] 6 Malayan Law Journal 760, the issue affecting the enforcement of foreign monetary judgments in Malaysia was in regard to an attempt by a foreign jurisdiction to enforce a significant gambling debt (RM7.14 million, or approximately US\$1.84 million). The High Court in Malaysia had rejected a foreign judgment on the premise that the enforcement of such a judgment would be contrary to the country's public policy. On 5 July 2005, Justice Datuk Ian HC Chin took the unprecedented step of using the Rukun Negara pledge to prevent the enforcement of a UK judgment in Malaysia. The British judgment required the repayment of the debt to the UK's Ritz Hotel Casino by Datuk Seri Osu Haji Sukam, one of the state's most powerful politicians. The 5 July 2005 Kota Kinabalu judgment was a refusal to allow this UK judgment to be registered in Malaysia under the terms of the Malaysian Reciprocal Enforcement of Judgments Act 1958, which allows a ruling by a higher court in any one of seven Commonwealth countries and territories including the UK and Singapore to count as a judgment made in Malaysia once registered.

There have been no case examples of a foreign State initiating civil proceedings in Malaysian courts.

(b) Observations on the implementation of the article

Article 53 (a) concerns measures for direct recovery of assets through civil action. This provision complements the recovery of proceeds from corruption by way of confiscation and obliges States to recognise in their legal systems the right of harmed States to seek direct recovery through private civil actions of property, compensation or damages. Such civil litigation could be asset-based (claims in rem) or tort-based.

In Malaysia, elaborate provisions exist for the enforcement of judgments of foreign courts, but there are no provisions that explicitly permit a foreign State to initiate civil proceedings in Malaysian courts (provisions of civil litigation under English common law are only referred to). Also, the foreign judgments enforced are those of countries with which Malaysia has a reciprocal judgment arrangement.

It was clarified by the national authorities that the hierarchy of domestic laws in Malaysia is that statutory laws takes priority over common law, which is applicable where there is not statute or the law is silent on a matter. In the absence of a legal provision that explicitly permits a foreign State to initiate civil proceedings in Malaysian courts, the common law is applied.

The authorities further confirmed that there is nothing in the domestic law that would preclude a foreign country from initiating a domestic suit, subject to Malaysian legal principles and due process of law.

There have been no relevant case examples of a foreign State initiating civil proceedings in Malaysian courts.

This subparagraph of the article has been partly implemented. It is recommended that Malaysia specify in the law recovery mechanisms for injured parties to establish title or ownership of property, through domestic proceedings, to fully align its legislation with this part of the Convention.

Subparagraph (b) of article 53

Each State Party shall, in accordance with its domestic law: ...

(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; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

This paragraph under review is implemented through the following legislation:

§ Section 183 of the Criminal Procedure Code

"Victim's impact statement"

(1) Before the Court passes sentence according to law under Section 183, the Court shall, upon the request of the victim of the offence or the victim's family, call upon the victim or a member of the victim's family to make a statement on the impact of the offence on the victim or his family.

(2) Where the victim or a member of the victim's family is for any reason unable to attend the proceedings after being called by the Court under subsection (1), the Court may at its discretion admit a written statement of the victim or of the victim's family

§ Section 426 of the Criminal Procedure Code

Order for payment of costs of prosecution and compensation

426. (1) The Court before which an accused is convicted of an offence-

(a) in its discretion, may make an order for the payment by the convicted accused of the cost of his prosecution or any part thereof as may be agreed by the Public Prosecutor; or

(b) where-

(i) the prosecution of the convicted accused involves evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [Act 621]; or

(ii) the accused has obtained pecuniary gain, upon the application of the Public Prosecutor, shall make an order for the payment by the convicted accused of the cost of his prosecution or any part thereof, the sum of which is to be fixed by the Court as may be agreed by the Public Prosecutor.

(1A) Without prejudice to subsection (1), the Court before which an accused is convicted of an offence shall, upon the application of the Public Prosecutor, make an order against the convicted accused for the payment by him, or where the convicted accused is a child, by his parent or guardian, of a sum to be fixed by the Court as compensation to a person who is the victim of the offence committed by the convicted accused in respect of the injury to his person or character, or loss of his income or property, as a result of the offence committed.

(1B) Where the person who is the victim of the offence is deceased, the order of compensation shall be made to a representative of the deceased person.

(1C) The Court shall, in making an order under subsection (1A), take into consideration the following factors:

(a) the nature of the offence;

(b) the injury sustained by the victim;

(c) the expenses incurred by the victim;

(d) the damage to, or loss of, property suffered by the victim;

(e) the loss of income incurred by the victim;

(f) the ability of the convicted accused to pay; and

(g) any other factors which the Court deems relevant

(1D) For the purpose of making an order under subsection (1A), the Court may hold an inquiry as it thinks fit.

(2) The Court shall specify the person to whom any sum in respect of costs or compensation as aforesaid is to be paid, and section 432 [except paragraph (1)(d)] shall be applicable to any order made under this section.

(3) The Court may direct that an order for payment of costs, or an order for payment of compensation, shall have priority, and, if no direction is given, an order for payment of costs shall have priority over an order for payment of compensation.

(4) To the extent of the amount which has been paid to a person, or to the representatives of a person, under an order for compensation, any claim of such person or representatives for damages sustained by reason of the offence shall be deemed to have been satisfied, but the order for payment shall not prejudice any right to a civil remedy for the recovery of any property or for the recovery of damages beyond the amount of compensation paid under the order.

(5) Every order made under this section by a Magistrate shall be appealable to the High Court.

Other relevant legislation

See Reciprocal Enforcement of Judgement Act 1958 above cited.

In accordance with REJA 1958 term “judgment “means “ a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, and, except in relation to a country or territory outside the Commonwealth, includes an award in proceedings in an arbitration if the award has, pursuant to the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place; and a judgment given in any court on appeal from a judgment given in the High Court shall be deemed to be a judgment given in the High Court.”

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. Malaysian laws allow the court to order the accused/convicted person to pay compensation to the victim of the offence be it citizens or non-citizens.
2. In the case of *Raja Izzuddin Shah v. Public Prosecutor* [1978] 1 LNS 165, the High Court ordered the accused to pay compensation in the sum of \$200 to the complainant within one month from the date of the order.
3. In another case of *PP lwn. Shahrin Ahmad* [2013] 5 LNS 39 the Sessions Court ordered the accused to pay compensation in the sum of RM 250,000.00 to the victim of the offence.

(b) Observations on the implementation of the article

There are measures in place to enable victims of crime to be compensated by the person convicted of a crime. However, there are no provisions permitting another State Party to claim compensation or damages for being harmed by an offence established in accordance with the Convention.

While Malaysian law allows the court to order accused/convicted persons to pay compensation to the victim of an offence, be it citizens or non-citizens (section 426 of the Criminal Procedure Code), there is no provision in the law permitting a foreign State to claim compensation or damages. It was

clarified during the country visit that section 426 of the Criminal Procedure Code is a general provision; in addition, the DPP can apply for restitution to a victim, and in several cases victims have been so compensated. In addition, it is possible for a victim to file a claim for compensation as a private plaintiff, as the civil and criminal cases run in parallel.

It was further confirmed that Malaysian law does not distinguish between natural and legal persons in terms of legal standing to file a claim or obtain an order of compensation, as the term “person” in Malaysian law includes both natural and legal persons. Thus, a foreign State would also fall under the definition of “person”, as any other entity.

However, there have been no relevant cases where an offender was ordered to pay compensation to a foreign State.

This subparagraph of the article has not been implemented. It is recommended that Malaysia specify in the law recovery mechanisms for injured parties to be awarded compensation or damages for injuries, through domestic proceedings, to incorporate this part of the Convention.

Subparagraph (c) of article 53

Each State Party shall, in accordance with its domestic law: ...

(c) Take such measures as may be necessary to permit its courts or competent authorities, when having to decide on confiscation, to recognize another State Party’s claim as a legitimate owner of property acquired through the commission of an offence established in accordance with this Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia complies with the requirements of this article under review through the measures under Sections 41(2) of Malaysian Anti-Corruption Commission Act 2009, Act 694 and sections 413(3) and 407 of the Criminal Procedure Code:

§ Section 41 of Malaysian Anti-Corruption Commission Act 2009

Forfeiture of property where there is no prosecution for an offence

(1) Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Public Prosecutor may, before the expiration of eighteen months from the date of the seizure, apply to a Sessions Court Judge for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under this Act.

(2) The Judge to whom an application is made under subsection (1) shall cause to be published a

notice in the Gazette calling upon any person who claims to have an interest in the property to attend before the Court on a date specified in the notice, to show cause as to why the property should not be forfeited.

§ Section 413 of Criminal Procedure Code

Procedure by police on seizure of property

(1) The seizure or finding by any police officer of property taken under section 20 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be immediately reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of the property to the person entitled to the possession of it, or, if that person cannot be ascertained, respecting the custody and production of the property.

(2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall in that case cause a notice to be served on that person informing him of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than forty-eight hours) as the Magistrate may in the notice prescribe.

(3) If that person is unknown the Magistrate may direct that the property be detained in police custody, and the Chief Police Officer shall, in that case, issue a public notification specifying the articles of which the property consists and requiring any person who has any claim to it to appear before him and establish his claim within six months from the date of the public notification: Provided that, where it is shown to the satisfaction of the Magistrate that the property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate, to render impractical the sale, as hereinafter provided, of the property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate may order the property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of notification above referred to as he may determine or immediately as he thinks fit.

(4) Every notification under subsection (3) shall, if the value of the property amounts to fifty ringgit, be published in the Gazette.

(5) Notwithstanding the preceding subsections, where the property is required for the investigation of a case and it is necessary for the property to be detained, the property shall be kept in a safe and proper place by the Officer in charge of a Police District where the offence was committed.

Section 407 of Criminal Procedure Code

Order for disposal of property regarding which offence committed

(1) Any Court may if it thinks fit impound any property or document produced before it under this Code.

(2) During or at the conclusion of any inquiry or trial in any criminal Court the Court may make such order as it thinks fit for the custody or disposal of any property or document whatsoever produced before it or in its custody or the custody of the police or of any public servant regarding which any offence appears to have been committed or which has been used for the commission of any offence. The power herein conferred upon the Court shall include the power to make an order for the forfeiture or confiscation or for the destruction or for the delivery to any person of such property, but shall be exercised subject to any special provisions relating to forfeiture, confiscation, destruction or delivery contained in the written law under which the conviction was had.

- (3) When a Judge makes such order, and cannot through his own officers conveniently deliver the property to the person entitled to it, he may direct that the order be carried into effect by a Magistrate.
- (4) A Court making an order under this section in respect of any property or document shall direct whether the order is to take effect immediately or at any future date or on the happening of any future contingency and shall, except when the property is livestock or subject to speedy and natural decay, include in that order all necessary directions and conditions to ensure that the property or document will be produced as and when required for the purposes of the inquiry or trial during or at the conclusion of which such order is made or for the purposes of any appeal or further criminal proceedings resulting from such inquiry or trial.
- (5) In this section the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Bona fide third party interests are protected under the following legislation/regulation:

Section 61 of AMLTFAPUAA- Bona fide third parties

- (1) The provisions in this Part shall apply without prejudice to the rights of bona fide third parties.
- (2) The court making the order of forfeiture under subsection 28L (1) or section 55 or the judge to whom an application is made under subsection 28L (2) or 56(1) shall cause to be published a notice in the Gazette calling upon any third party who claims to have any interest in the property to attend before the court on the date specified in the notice to show cause as to why the property shall not be forfeited.
- (3) A third party’s lack of good faith may be inferred, by the court or an enforcement agency, from the objective circumstances of the case.
- (4) The court or enforcement agency shall return the property to the claimant when it is satisfied that-
- (a) the claimant has a legitimate legal interest in the property;
 - (b) no participation, collusion or involvement with respect to the offence under subsection 4(1) or Part IVA, or a terrorism financing offence which is the object of the proceedings can be imputed to the claimant;
 - (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;
 - (d) the claimant did not acquire any right in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property; and
 - (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. Malaysian laws allow the court, before making the forfeiture order, to call upon any third party who claims to have any interests in the property to attend before the court, to show cause as to

why the property should not be forfeited.

2. This third party may include legitimate owner of property.

3. Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

The paragraph requires States parties to provide legal standing (civil or criminal) to other States parties to claim, as legitimate owner in a confiscation procedure, ownership over assets acquired through the commission of a Convention offence.

In Malaysia, there are no measures that mandate the recognition of a foreign State as a legitimate owner when domestic courts/competent authorities have to decide on the confiscation of property acquired through an offence. However, the rights of bona fide third parties are sufficiently protected. In any given proceedings a State party could be a bona fide third party.

Notice of proceedings for forfeiture of property is given, e.g., under section 41 of MACC Act and Section 61 of AMLTFAPUAA. Thus, Malaysian law allows the court, before making a forfeiture order, to call upon any third party who claims to have an interest in the property, including a legitimate owner or legal person (domestic/foreign), to appear before the court, to show cause or establish a claim to the property to be forfeited.

The case study is an illustration of compensation to a third party-legal person as a result of domestic consent forfeiture proceedings. The provision is implemented.

Article 54. Mechanisms for recovery of property through international cooperation in confiscation

Subparagraph 1 (a) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

(a) Take such measures as may be necessary to permit its competent authorities to give effect to an order of confiscation issued by a court of another State Party;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legal basis and procedure of giving effect to an order of confiscation issued by a court of another State Party are provided under Mutual Assistance in Criminal Matters Act (MACMA 2002).

The term “foreign forfeiture order” means an order made by a court in a prescribed foreign State for the recovery, forfeiture or confiscation of-

- (a) payments or other rewards received in connection with an offence against the law of that foreign State that is a foreign serious offence, or the value of such payments or rewards; or
- (b) property derived or realised, directly or indirectly, from payments or other rewards received in connection with such an offence, or the value of such property.

that is made on or after the date of the order under subsection 17 (1) declaring a foreign State as a prescribed foreign State comes into force or on or after the date of the special direction given by the Minister in respect of a foreign State under section 18.

Procedures regarding enforcement of foreign forfeiture order

Requests for enforcement of foreign forfeiture orders are regulated under sections 31 and 32 of Mutual Assistance in Criminal Matters Act 2002, read in conjunction with Part III Division 4 of the Mutual Assistance in Criminal Matters Regulations 2003.

Section 31 of MACMA 2002- Request for enforcement of foreign forfeiture order

- (1) The appropriate authority of a prescribed foreign State may request the Attorney General-
 - (a) to assist in the enforcement and satisfaction of a foreign forfeiture order made in any judicial proceedings instituted in that prescribed foreign State against property that is reasonably believed to be located in Malaysia; or
 - (b) where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that prescribed foreign State, to assist in the restraining of dealing in any property that is reasonably believed to be located in Malaysia and against which the order may be enforced or which may be available to satisfy the order.
- (2) On receipt of a request referred to in subsection (1), the Attorney General may-
 - (a) in the case of paragraph (1)(a), act or authorize the taking of action under section 32 and the

regulations made pursuant to section 44; or

(b) in the case of paragraph (1)(b), act or authorize the taking of action under the regulations made pursuant to section 44, and in that event section 32 and the regulations made pursuant to section 44 shall apply accordingly.

Section 32 of MACMA 2002 - Registration of foreign forfeiture order

(1) The Attorney General or a person authorized by him may apply to the High Court for the registration of a foreign forfeiture order.

(2) The High Court may, on an application referred to in subsection (1), register the foreign forfeiture order if it is satisfied-

(a) that the order is in force and not subject to further appeal in the prescribed foreign State;

(b) where a person affected by the order did not appear in the proceedings in the prescribed foreign State, that the person had received notice of such proceedings in sufficient time to enable him to defend those proceedings; and

(c) that enforcing the order in Malaysia would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the High Court shall take into consideration a certificate referred to in section 34 if tendered.

(4) The High Court shall revoke the registration of a foreign forfeiture order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by other means.

(5) Where an amount of money, if any, payable or remaining to be paid under a foreign forfeiture order registered in the High Court under this section is expressed in a currency other than that of Malaysia, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Malaysia on the basis of the Bank's exchange rate prevailing on the date of registration of the order.

(6) For the purposes of subsection (5), a certificate issued by the Bank and stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, "appeal" includes-

(a) any proceedings by way of discharging or setting aside a judgment; and (b) an application for a new trial or a stay of execution.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the years 2013-2015, the total numbers of MLA requests received and successfully executed in accordance with Sections 31 and 32 of MACMA 2002 (Registration and enforcement of foreign forfeiture orders) for all crimes, not limited to corruption is as follows:

2013 - 7

2014 - 8

2015 - 9

2016 - 0

It was reported that the low number of cases is due to the need for a special designation from the Minister before a foreign forfeiture order can be executed and that most requests are received from countries with which Malaysia has no treaty or arrangement. No incoming requests have been refused by Malaysia.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence)- FATF MER Report 2015 for Malaysia, p.p. 66:

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

See FATF Mutual Evaluation Report 2015 for Malaysia p.132

Paragraph 8.10 mentioned 6 requests were received by Malaysia in order to recover property.

(b) Observations on the implementation of the article

The Mutual Assistance in Criminal Matters Act has sufficient provisions to give effect to an order of confiscation issued by a court of another State party.

As per the definition of a foreign forfeiture order under Section 2 of MACMA 2002, an order of confiscation issued by a court of another State party must relate to a "foreign serious offence", i.e. an offence that would have constituted a serious offence if it had occurred in Malaysia:

The term "foreign serious offence" means an offence—

- (a) against the law of a prescribed foreign State stated in a certificate purporting to be issued by or on behalf of the government of that prescribed foreign State; and
- (b) that consists of or includes activity which, if it had occurred in Malaysia, would have constituted a serious offence.

"serious offence" means—

- (a) an offence as defined under the Anti-Money Laundering Act 2001 [Act 613];
- (b) an offence against the laws of Malaysia where—
 - (i) the maximum penalty for the offence is death; or
 - (ii) the minimum term of imprisonment is not less than one year; or
- (c) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraph (b).

Insofar as the offences under this Convention satisfy the above requirements, this subparagraph

of the article has been implemented.

(c) Successes and good practices

Section 34 of the above stated Act stands out as a good practice. It provides that a certificate issued by or on behalf of the appropriate authority of the prescribed foreign State stating a number of matters appearing under the section shall be received in evidence before a court without further proof. The matters referred to in the section include stating that a foreign forfeiture order is in force and is not subject to appeal. This section is read together with section 32 which states the circumstances in which the High Court will register a foreign forfeiture order.

Subparagraph 1 (b) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(b) Take such measures as may be necessary to permit its competent authorities, where they have jurisdiction, to order the confiscation of such property of foreign origin by adjudication of an offence of money-laundering or such other offence as may be within its jurisdiction or by other procedures authorized under its domestic law; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The offence of money-laundering also falls squarely within the meaning of “serious offence” under Section 2 of MACMA 2002 as:

- (a) an offence as defined under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (Act 613);
- (b) an offence against the laws of Malaysia where-
 - (i) the maximum penalty for the offence is death; or
 - (ii) the minimum term of imprisonment is not less than one year or
- (c) any attempt, abetment or conspiracy to commit any of the offences referred to in paragraph (b);

The term “foreign serious offence” under both the MACMA 2002 (and AMLATFPUAA) means an offence-

- (a) against the law of a prescribed foreign State stated in a certificate purporting to be issued by or on behalf of the government of that prescribed foreign State; and
- (b) that consists of or includes activity which, if it had occurred in Malaysia, would have constituted a serious offence;

The power to confiscate property of foreign origin by adjudication of an offence of money-laundering is provided for under PART VI (Freezing, Seizure and Forfeiture) of AMLTFAPUAA and section 41 of MACC Act 2009 (quoted above).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the years 2013-2015 the total numbers of MLA requests received and considered in accordance with Sections 31 and 32 of MACMA 2002 for confiscation based on foreign corruption related money-laundering offences is as follows:

2013 - 2

2014 - 2

2015 - 1

(b) Observations on the implementation of the article

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

This subparagraph of the article has been implemented.

Subparagraph 1 (c) of article 54

1. Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law:

...

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia will give effect to a foreign forfeiture order in the event of the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases under the following provisions of MACMA 2002:

Section 41 of MACC Act 2009

Forfeiture of property where there is no prosecution for an offence

(1) Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Public Prosecutor may, before the expiration of eighteen months from the date of the seizure, apply to a Sessions Court Judge for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under this Act.

(2) The Judge to whom an application is made under subsection (1) shall cause to be published a notice in the Gazette calling upon any person who claims to have an interest in the property to attend before the Court on a date specified in the notice, to show cause as to why the property should not be forfeited.

(3) Where the Judge to whom an application is made under subsection (1) is satisfied-

(a) that the property is the subject matter of or was used in the commission of an offence under this Act; and

(b) there is no purchase in good faith for valuable consideration in respect of the property, he shall make an order for the forfeiture of the property.

(4) Property in respect of which no application is made under subsection (1) shall, at the expiration of eighteen months from the date of its seizure, be released to the person from whom it was seized.

Section 56 of AMLATFPUAA

Forfeiture of property where there is no prosecution

(1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of the seizure, or where there is a freezing order, twelve months from the date of the freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is-

(a) the subject-matter or evidence relating to the commission of such offence; (b) terrorist property;

(c) the proceeds of an unlawful activity; or

(d) the instrumentalities of an offence.

(2) The judge to whom an application is made under subsection (1) shall make an order for the forfeiture of the property if he is satisfied-

(a) that the property is-

(i) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;

- (ii) terrorist property;
- (iii) the proceeds of an unlawful activity; or (iv) the instrumentalities of an offence; and
- (b) that there is no purchaser in good faith for valuable consideration in respect of the property.
- (3) Any property that has been seized and in respect of which no application is made under subsection (1) shall, at the expiration of twelve months from the date of its seizure, be released to the person from whom it was seized.
- (4) In determining whether the property is-
 - (a) the subject-matter or evidence relating to the commission of an offence under subsection 4(1) or a terrorism financing offence;
 - (b) terrorist property;
 - (c) the proceeds of an unlawful activity; or
 - (d) the instrumentalities of an offence,
 the court shall apply the standard of proof required in civil proceedings.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

The following statistics were provided during the country visit.

Forfeitures by the Attorney General's chambers:

January-June 2017: Section 56 of AMLATFPUAA: 17 cases filed in court, value of MR 19 million forfeited without a conviction.

2001-June 2017: MR 92 million forfeited through 56 cases of non-conviction based (NCB) forfeiture.

Forfeitures of Assets by the MACC from 2015 to 30 June 2017:

	2015	2016	2017 (as of June)	Total
MACC Act	1,436,135.00	4,947,124.22	1,547,333.38	7,930,592.00
AMLATFAPUAA	2,500,900.00	3,000.00	-	2,503,900.00

(b) Observations on the implementation of the article

There are sufficient provisions under the MACC Act 2009 and the AMLATFPUAA which provide for the forfeiture of property where there is no prosecution. The AMLATFPUAA takes the matter further in terms of section 56A by providing that even an acquittal will not affect the issue of a forfeiture order. Statistics on assets seized and forfeited without a conviction were provided.

This subparagraph of the article has been implemented.

Subparagraph 2 (a) of article 54

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:

(a) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a freezing or seizure order issued by a court or competent authority of a requesting State Party that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant legal provisions in compliance with the provision of this paragraph are Section 31(1)(b) of the Mutual Assistance in Criminal Matters Act 2002 (Act 621) read with Regulation 23(1)(c)(ii) MACMA 2003.

Section 31(1)(b) of Mutual Assistance in Criminal Matters Act 2002

Request for enforcement of foreign forfeiture order

(1) The appropriate authority of a prescribed foreign State may request the Attorney General- ...

(b) where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that prescribed foreign State, to assist in the restraining of dealing in any property that is reasonably believed to be located in Malaysia and against which the order may be enforced or which may be available to satisfy the order.

Regulation 23(1)(c)(ii) MACMA 2003

Cases in which constraint order may be made

(1) The powers conferred on the High Court by regulation 24 to make a constraint order are exercisable where -

(c)(ii) it appears to the High Court that there are reasonable grounds for believing that a foreign forfeiture order may be made in the judicial proceedings.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the years 2013-2015 the total numbers of MLA requests received and considered in accordance with Sections 31 and 32 of MACMA 2002 for restraining of dealings in property is as follows:

2013 - 6

2014 - 7

2015 - 8

(b) Observations on the implementation of the article

There are sufficient provisions under the Mutual Assistance in Criminal Matters Act which provide for the restraining of property located within Malaysia which may be the subject of a foreign forfeiture order made in judicial proceedings which have been or are to be instituted. Malaysian authorities confirmed that freezing or seizure could be done temporarily through direct law enforcement channels as a restraint measure, pending the submission of a formal MLA request.

This subparagraph of the article has been implemented.

Subparagraph 2 (b) of article 54

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:

...

(b) Take such measures as may be necessary to permit its competent authorities to freeze or seize property upon a request that provides a reasonable basis for the requested State Party to believe that there are sufficient grounds for taking such actions and that the property would eventually be subject to an order of confiscation for purposes of paragraph 1 (a) of this article; and

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia complies with the measures of the article under review through the provisions of Sections 31(1)(b) and 35-37 of the Mutual Assistance in Criminal Matters Act 2002 (Act 621) read with Regulation 23(1)(c)(ii) MACMA 2003 as follows:

Section 31(1)(b) of Mutual Assistance in Criminal Matters Act 2002

Request for enforcement of foreign forfeiture order

(1) The appropriate authority of a prescribed foreign State may request the Attorney General- ...

(b) where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that prescribed foreign State, to assist in the restraining of dealing in any property that is reasonably believed to be located in Malaysia and against which the order may be enforced or which may be available to satisfy the order.

Request for search and seizure

35. (1) The Attorney General may, on the request of the appropriate authority of a prescribed foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that—

(a) the request relates to a criminal matter in that prescribed foreign State in respect of a foreign serious offence; and

(b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Malaysia,

the Attorney General, or an authorized officer directed by him, may apply to the court for a warrant under section 36 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 36 in respect of any thing in the possession of a financial institution shall be made to the High Court.

(4) An application for a warrant referred to in section 36 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

36. (1) On an application referred to in section 35, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that—

(a) an order made under section 23 in relation to any thing on the premises has not been complied with; or

(b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are—

(a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;

(b) that there are reasonable grounds for believing that the thing to which the application relates—

(i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant, etc.

37. (1) Where an authorized officer has entered premises in the execution of a warrant issued under section 36, he may seize and retain any thing that is specified in the warrant, other than items subject

to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, he shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the appropriate authority of the prescribed foreign State concerned.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Regulation 23(1)(c)(ii) MACMA 2003

Cases in which constraint order may be made

(1) The powers conferred on the High Court by regulation 24 to make a constraint order are exercisable where -

(c)(ii) it appears to the High Court that there are reasonable grounds for believing that a foreign forfeiture order may be made in the judicial proceedings.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the years 2013-2015 the total numbers of MLA requests received and considered in accordance with Sections 31 and 32 of MACMA 2002 for restraining of dealings in property is as follows:

2013 - 6

2014 - 7

2015 - 8

(b) Observations on the implementation of the article

There are sufficient provisions in place to allow the authorities to freeze or seize property upon a request that provides a reasonable basis for believing that property located in Malaysia will be the subject of a forfeiture order made in judicial proceedings which have been or are to be instituted.

This subparagraph of the article has been implemented.

Subparagraph 2 (c) of article 54

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:

...

(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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

There is no central asset management office in Malaysia. Each law enforcement agency handles the management and preservation of seized assets in accordance with its asset management guidelines.

Separate provision is made under the AMLATFPUAA (section 62), which provides that, once assets are forfeited by judicial order, the agencies may sell the assets or use them for their operations:

62. Disposition of forfeited property.

Whenever property that is not required to be destroyed and that is not harmful to the public is forfeited under section 28L or 55 or 56, the court or an enforcement agency may, in accordance with the law—

- (a) retain it for official use, or transfer it to the Federal Government; or
- (b) sell it and transfer the proceeds from such sale to the Federal Government.

Section 60 of AMLATFAPUAA further provides:

60. Release of property seized.

(1) Where property has been seized under this Act, an investigating officer other than the investigating officer who effected the seizure, may at any time before it is forfeited under this Act, with the consent of the Public Prosecutor release such property to such person as the Public Prosecutor determines to be lawfully entitled to the property if the Public Prosecutor is satisfied that such property is not liable to forfeiture under this Act or otherwise required for the purpose of proceedings under the Act, or for the purpose of any prosecution under any other law, and in such event neither the officer effecting the seizure, nor the Federal Government, or any person acting on behalf of the Federal Government, shall be liable to any proceedings by any person if the seizure and release had been effected in good faith.

(2) The officer effecting any release of any property under subsection (1) shall make a record in writing in respect of such release, specifying in the record in detail the circumstances of, and the reason for, such release, and he shall send a copy of such record to the Public Prosecutor.

(3) For the purpose of subsection (1), the Public Prosecutor may give any direction of an ancillary or consequential nature, or which may be necessary, for giving effect to, or for the carrying out of, such release of property.

See also, regulation 28 (4) to (6) of the Mutual Assistance in Criminal Matters Regulations 2003,

which addresses the management of property (see art. 57(4)) below).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

According to the FATF MER,

“LEAs consider disposing of assets by sale prior to forfeiture on a case by case basis and otherwise using ‘substitute bonds’ where possible to preserve the values of property, although there is a strong preference to only sell property where the owner consents. As noted at R.4, where such consent is not forthcoming this may be prohibitive to selling property when necessary. At this stage assets are generally being well managed by each LEA individually, although some LEAs noted the current regime is not comprehensive. As noted in R.4 the asset management guidelines are not particularly detailed and therefore authorities are responding to asset management challenges on a case by case basis – however, this does not appear to have had a significant impact to date.”

(b) Observations on the implementation of the article

It was reported during the country visit that a special sub-working group of the National Coordination Committee to Counter Money Laundering (NCC) has been considering procedures to streamline the process of asset management by each agency, and that consideration is being given to establishing a central asset management office.

It is recommended that Malaysia strengthen mechanisms for the preservation of property pending confiscation, including through the establishment of a central asset management office, and consider adopting comprehensive asset management guidelines in this respect.

Article 55. International cooperation for purposes of confiscation

Subparagraph 1 (a) of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance

with this provision of the Convention.

The Malaysian MACMA 2002 currently allows the competent authority to act in matters of confiscation on the request of requesting States parties only if they have obtained a foreign forfeiture order issued by their court.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

There is no input on Article 55, subparagraph 1 (a), as for Malaysia Article 55, subparagraph 1 (b) is applicable.

(b) Observations on the implementation of the article

The provisions are clear that in terms of the Mutual Assistance in Criminal Matters Act Malaysia acts on requests for confiscation by requesting States only if they have obtained a foreign forfeiture order issued by their court. An MLA request can only be enforced if the request is supported by an enforceable, authenticated copy of a foreign forfeiture order issued by the court of the requesting State Party in compliance with Sections 31 and 32 of MACMA 2002 read together with Division 4 of the Mutual Assistance in Criminal Matters Regulations 2003.

Although the mechanism foreseen by the provision under review to allow for the issuance of a confiscation order by the competent authorities on the basis of a foreign request is not available, the Malaysian authorities, upon receipt of a request from another State party, are able to proceed under subparagraph 1(b) of article 55 to submit the foreign confiscation order to the domestic authorities for enforcement.

Subparagraph 1 (b) of article 55

1. A State Party that has received a request from another State Party having jurisdiction over an offence established in accordance with this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with articles 31, paragraph 1, and 54, paragraph 1 (a), of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, situated in the territory of the requested State Party.

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken (or is planning to take) to implement this provision of the Convention

Malaysia complies with this paragraph under review through the following:

a) Sections 19(3), 31(1)(a), 32, 33 and 34 of MACMA 2002

Section 19 of MACMA 2002

Request to be made to Attorney General

(3) Every request shall-

(a) specify the purpose of the request and the nature of the assistance being sought;

(b) identify the person or authority that initiated the request; and

(c) be accompanied by-

(i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;

(ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(iii) where the request relates to-

(A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or

(B) the tracing of property that is suspected to be connected with a foreign serious offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subsubparagraph (A) or (B);

(iv) a description of the offence to which the criminal matter relates, including its maximum penalty;

(v) details of the procedure which that prescribed foreign State wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;

(vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;

(vii) a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;

(viii) details of the period within which that prescribed foreign State wishes the request to be met;

(ix) if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;

(x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and

(xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.

Section 31(1)(a) of MACMA 2002

Request for enforcement of foreign forfeiture order

(1) The appropriate authority of a prescribed foreign State may request the Attorney General-
(a) to assist in the enforcement and satisfaction of a foreign forfeiture order made in any judicial proceedings instituted in that prescribed foreign State against property that is reasonably believed to be located in Malaysia;

Section 32 of MACMA 2002

Registration of foreign forfeiture order

(1) The Attorney General or a person authorized by him may apply to the High Court for the registration of a foreign forfeiture order.

(2) The High Court may, on an application referred to in subsection (1), register the foreign forfeiture order if it is satisfied-

(a) that the order is in force and not subject to further appeal in the prescribed foreign State;

(b) where a person affected by the order did not appear in the proceedings in the prescribed foreign State, that the person had received notice of such proceedings in sufficient time to enable him to defend those proceedings; and

(c) that enforcing the order in Malaysia would not be contrary to the interests of justice.

(3) For the purpose of subsection (2), the High Court shall take into consideration a certificate referred to in section 34 if tendered.

(4) The High Court shall revoke the registration of a foreign forfeiture order if it appears to the High Court that the order has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by other means.

(5) Where an amount of money, if any, payable or remaining to be paid under a foreign forfeiture order registered in the High Court under this section is expressed in a currency other than that of Malaysia, the amount shall, for the purpose of any action taken in relation to that order, be converted into the currency of Malaysia on the basis of the Bank's exchange rate prevailing on the date of registration of the order.

(6) For the purposes of subsection (5), a certificate issued by the Bank and stating the exchange rate prevailing on a specified date shall be admissible in any judicial proceedings as evidence of the facts so stated.

(7) In this section, "appeal" includes-

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution

Section 33 of MACMA 2002

Proof of orders, etc., of prescribed foreign State

(1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44-

(a) any order made or judgment given by a court of a prescribed foreign State purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to

have been signed by that person, as the case may be; and

(b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a prescribed foreign State shall be deemed without further proof to be a true copy.

(2) A document is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that prescribed foreign State.

Section 34 of MACMA 2002

Evidence in relation to proceedings and orders in prescribed foreign State

(1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44, a certificate purporting to be issued by or on behalf of the appropriate authority of a prescribed foreign State stating that-

(a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that prescribed foreign State;

(b) a foreign forfeiture order is in force and is not subject to appeal;

(c) all or a certain amount of the sum payable under a foreign forfeiture order remains unpaid in that prescribed foreign State, or that other property recoverable under a foreign forfeiture order remains unrecovered in that prescribed foreign State;

(d) a person has been notified of any judicial proceedings in accordance with the law of that prescribed foreign State; or

(e) an order, however described, made by a court of that prescribed foreign State has the purpose of-

(i) recovering, forfeiting or confiscating-

(A) payments or other rewards received in connection with an offence against the law of that prescribed foreign State that is a foreign serious offence, or the value of the payments or rewards; or

(B) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or

(ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that prescribed foreign State has been committed, or which was used in connection with the commission of such an offence, shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a prescribed foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the prescribed foreign State, or by or on behalf of an appropriate authority of that prescribed foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this

section.

b) The enforcement of foreign forfeiture orders is regulated under the provisions of Part III Division 4 of the Mutual Assistance in Criminal Matters Regulations 2003 (as per attachment).

Please provide examples of the implementation of those measures

In the years 2013-2015 the total numbers of MLA requests received and considered in accordance with Sections 31 and 32 of MACMA 2002 for giving effect to a foreign confiscation order is:

2013 - 7

2014 - 8

2015 - 9

(b) Observations on the implementation of the article

Based on the information provided and the discussion during the country visit, the provision is implemented.

Paragraph 2 of article 55

2. Following a request made by another State Party having jurisdiction over an offence established in accordance with this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 31, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The object of MACMA 2002 is provided in section 3 of the Act:

The object of this Act is for Malaysia to provide and obtain international assistance in criminal matters, including-

- (a) providing and obtaining of evidence and things;
- (b) the making of arrangements for persons to give evidence, or to assist in criminal investigations;
- (c) the recovery, forfeiture or confiscation of property in respect of a serious offence or a foreign serious offence;
- (d) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
- (e) the execution of requests for search and seizure;
- (f) the location and identification of witnesses and suspects;
- (g) the service of process;
- (h) the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence;
- (i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and
- (j) the examination of things and premises.

In order to obtain assistance in the restraining of dealing in property reasonably believed to be located in Malaysia and against which a foreign forfeiture order may be enforced, the requesting State Party may request the Attorney General of Malaysia to assist under section 31(1)(b) of MACMA 2002. Action taken in pursuance of Article 55 paragraph 2- request for identifying, tracing and freezing proceeds of crime - will be made in accordance with Sections 35, 36 and 37 of MACMA 2002 once the requirements of MACMA 2002 have been met with.

Section 31(1)(b) of Mutual Assistance in Criminal Matters Act 2002

Request for enforcement of foreign forfeiture order

The appropriate authority of a prescribed foreign State may request the Attorney General-

- (b) where a foreign forfeiture order may be made in judicial proceedings which have been or are to be instituted in that prescribed foreign State, to assist in the restraining of dealing in any property that is reasonably believed to be located in Malaysia and against which the order may be enforced or which may be available to satisfy the order.

Request for search and seizure

35. (1) The Attorney General may, on the request of the appropriate authority of a prescribed foreign State, assist in obtaining any thing by search or seizure.

(2) Where, on receipt of a request referred to in subsection (1), the Attorney General is satisfied that—

- (a) the request relates to a criminal matter in that prescribed foreign State in respect of a foreign serious offence; and
- (b) there are reasonable grounds for believing that the thing to which the request relates is relevant to the criminal matter and is located in Malaysia,

the Attorney General, or an authorized officer directed by him, may apply to the court for a warrant

under section 36 in respect of premises specified by the Attorney General.

(3) An application for a warrant referred to in section 36 in respect of any thing in the possession of a financial institution shall be made to the High Court.

(4) An application for a warrant referred to in section 36 shall specify with sufficient particulars the thing in the possession of a financial institution.

Search warrant

36. (1) On an application referred to in section 35, the court may issue a warrant authorizing an authorized officer to enter and search the premises specified by the Attorney General if the court is satisfied that—

(a) an order made under section 23 in relation to any thing on the premises has not been complied with; or

(b) the conditions in subsection (2) are fulfilled.

(2) The conditions referred to in paragraph (1)(b) are—

(a) that there are reasonable grounds for suspecting that a person specified in the request has committed or has benefited from a foreign serious offence;

(b) that there are reasonable grounds for believing that the thing to which the application relates—

(i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application is made; and

(ii) does not consist of or include items subject to legal privilege; and

(c) that the court is satisfied that it is not contrary to the public interest for the warrant to be issued.

(3) A warrant issued under this section shall be subject to such conditions as the court may specify in the warrant.

Additional powers of person executing search warrant, etc.

37. (1) Where an authorized officer has entered premises in the execution of a warrant issued under section 36, he may seize and retain any thing that is specified in the warrant, other than items subject to legal privilege.

(2) An authorized officer may photograph or make a copy of any thing seized under subsection (1).

(3) Where an authorized officer seizes any thing or takes a photograph or makes a copy of any thing under a warrant, he shall inform the Attorney General and shall, unless the Attorney General otherwise directs, immediately send the thing or the photograph or copy of the thing to the appropriate authority of the prescribed foreign State concerned.

(4) Any person who hinders or obstructs an authorized officer in the execution of a warrant issued under this section commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Regulation 23 of MACMA Regulations 2003

Cases in which constraint order may be made

(1) The powers conferred on the High Court by regulation 24 to make a constraint order are exercisable where -

- (a) judicial proceedings have been instituted in a prescribed foreign State;
- (b) the judicial proceedings have not been concluded; and (c) either-
 - (i) a foreign forfeiture order has been made in the judicial proceedings; or
 - (ii) it appears to the High Court that there are reasonable grounds for believing that a foreign forfeiture order may be made in the judicial proceedings.
- (2) The powers conferred on the High Court by regulation 24 to make a restraint order are also exercisable where -
 - (a) the High Court is satisfied, whether by information that has been placed before it or otherwise, that judicial proceedings are to be instituted in the prescribed foreign State; and
 - (b) it appears to the High Court that a foreign forfeiture order may be made in the judicial proceedings.
- (3) Where the High court has made a restraint order under regulation 24 by virtue of sub regulation (2), the High Court shall discharge the restraint order if the proposed judicial proceeds are not instituted with such time as the High Court considers reasonable and which shall not in any event exceed period of three months.
- (4) The High Court shall not make a restraint order under regulation 24 if it is of the opinion that it is contrary to the interests of justice for the restraint order to be made.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

In the years 2013-2015 the total numbers of MLA requests received and considered in accordance with Sections 31 and 32 of MACMA 2002 for restraining of dealings in property is as follows:

2013 - 6

2014 - 7

2015 - 8

(b) Observations on the implementation of the article

Section 35 of MACMA provides that the Attorney General at the request of a prescribed foreign State may assist in obtaining anything by search or seizure and in fulfilling the request may apply for a search warrant. A search warrant may be granted in terms of section 36. Section 31(1)(b) is also applicable to the issuance of restraint orders.

This paragraph of the article has been implemented.

Paragraph 3 of article 55

3. The provisions of article 46 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 46, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated, including, to the extent possible, the location and, where relevant, the estimated value of the property and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested, a statement specifying the measures taken by the requesting State Party to provide adequate notification to bona fide third parties and to ensure due process and a statement that the confiscation order is final;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested and, where available, a legally admissible copy of an order on which the request is based.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The relevant measures taken to implement the requirements of the article under review are as follows:

Section 19(3) of MACMA 2002:

(3) Every request shall-

(a) specify the purpose of the request and the nature of the assistance being sought;

(b) identify the person or authority that initiated the request; and

(c) be accompanied by-

(i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of this Act;

(ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;

(iii) where the request relates to-

(A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or

(B) the tracing of property that is suspected to be connected with a foreign serious offence, the name, identity, nationality, location or description of that person, or the location and description of the property, if known, and a statement setting forth the basis for suspecting the matter referred to in subsubparagraph (A) or (B);

(iv) a description of the offence to which the criminal matter relates, including its maximum penalty;

(v) details of the procedure which that prescribed foreign State wishes Malaysia to follow in

- giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign State pursuant to the request;
- (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign State, a statement indicating when the judicial proceedings are likely to be instituted;
 - (vii) a statement setting out the wishes of that prescribed foreign State concerning the confidentiality of the request and the reason for those wishes;
 - (viii) details of the period within which that prescribed foreign State wishes the request to be met;
 - (ix) if the request involves a person travelling from Malaysia to that prescribed foreign State, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;
 - (x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and
 - (xi) any other information that may assist in giving effect to the request or which is required under the provisions of this Act or any regulations made under this Act.
- (4) Failure to comply with subsection (3) shall not be a ground for refusing assistance.

Section 33 of MACMA 2002 - Proof of orders, etc. of prescribed foreign State

- (1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44-
- (a) any order made or judgment given by a court of a prescribed foreign State purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and
 - (b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a prescribed foreign State shall be deemed without further proof to be a true copy.
- (2) A document is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that prescribed foreign State.

Section 34 of MACMA 2002 - Evidence in relation to proceedings and orders in prescribed foreign State

- (1) For the purposes of sections 31 and 32 and the regulations made pursuant to section 44, a certificate purporting to be issued by or on behalf of the appropriate authority of a prescribed foreign State stating that-
- (a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that prescribed foreign State;
 - (b) a foreign forfeiture order is in force and is not subject to appeal;
 - (c) all or a certain amount of the sum payable under a foreign forfeiture order remains unpaid in that prescribed foreign State, or that other property recoverable under a foreign forfeiture order remains unrecovered in that prescribed foreign State;

- (d) a person has been notified of any judicial proceedings in accordance with the law of that prescribed foreign State; or
- (e) an order, however described, made by a court of that prescribed foreign State has the purpose of-
 - (i) recovering, forfeiting or confiscating-
 - (A) payments or other rewards received in connection with an offence against the law of that prescribed foreign State that is a foreign serious offence, or the value of the payments or rewards; or
 - (B) property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or
 - (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence against the corresponding drug law of that prescribed foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

(2) In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a prescribed foreign State, shall be admissible as evidence of any fact stated in the document.

(3) A document is duly authenticated for the purposes of subsection (2) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in the prescribed foreign State, or by or on behalf of an appropriate authority of that prescribed foreign State.

(4) Nothing in this section shall prejudice the admissibility of any evidence, whether contained in any document or otherwise, which is admissible apart from by virtue of this section.

Protection of bona fide third party interests is provided under Paragraph 31 of the Mutual Assistance in Criminal Matters Regulations 2003:

(1) Any third party claiming an interest in any property restrained or forfeited under the Act and these Regulations may apply to the High Court for an order -

- (a) declaring that the interest of the applicant in that property or part of it was acquired bona fide; and
- (b) restoring such property or the value of the interest in such property to the applicant.

(2) An application for an order under sub regulations (1) shall be made in accordance with Form 35 and shall be supported by -

- (a) a statement setting out the name and description of the applicant and the grounds on which the order is sought; and
- (b) affidavits verifying the facts relied on.

(3) on receipt of an application under subsection (2), the High Court shall examine the application and, on being satisfied that the property was acquired bona fide, issue an order in accordance with Form 36.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. In order to assist the State Party in making a comprehensive request to Malaysia consisting of all the necessary information, the AGC makes available online “Form AGC 2” which is the Model Form for MLA Requests to Malaysia.
2. A Step-By-Step Guide in Requesting MLA from Malaysia is also available, for example in the publication “Requesting Mutual Legal Assistance in Criminal Matters from APEC Economies: A Step-By-Step Guide”.

(b) Observations on the implementation of the article

Provisions of the Mutual Assistance in Criminal Matters Act fulfil the requirements of this paragraph of the article. Section 19 of the Mutual Assistance in Criminal Matters Act provides for the content of MLA requests. Section 19 is very detailed in respect of the manner in which a request may be made and the contents of the request. The section has flexibility in the sense that the requesting State is required to specify the purpose of the request and the nature of the assistance sought. The section further requires the requesting State to give details of the procedure which it wishes Malaysia to follow in fulfilling the request. Section 33 deals with the proof of orders of a requesting State. Section 34 deals with the evidence in relation to proceedings and orders in the requesting State.

(c) Successes and good practices

The flexibility of section 19 counts as a good practice. It allows Malaysia to fulfil any request in the manner the requesting State wishes and to the fullest, provided whatever is requested is within legal limits. Moreover, the detailed guidance and model request forms facilitate the provision of assistance.

Paragraph 4 of article 55

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The requirements of Article 55 paragraph 1 (a) do not change the position of Malaysia on the requirements of the MACMA 2002, namely that an MLA request can only be enforced if the request is supported by an enforceable, authenticated copy of a foreign forfeiture order issued by the court

of the requesting State Party in compliance with Sections 31 and 32 of MACMA 2002 read with Division 4 of the Mutual Assistance in Criminal Matters Regulations 2003 (above cited).

Action taken in pursuance of Article 55 paragraph 2 - request for identifying, tracing and freezing proceeds of crime - will be made in accordance with Sections 35, 36 and 37 of MACMA 2002 once the requirements of MACMA 2002 have been met with.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Members Countries) dated 29 November 2004:

Article 22 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.
- (2) Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.
- (3) A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.
- (4) Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.
- (5) The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order

Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters dated 28 December 2006:

Article 20 - Instruments and Proceeds of Crime

- (1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds may be located in its jurisdiction.
- (2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested Party, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds by a court of the Requesting Party.
- (3) The Requested Party shall, to the extent permitted by its laws, give effect to a final order forfeiting the instruments or proceeds of crime, or a declaration that such instruments or proceeds of crime have been forfeited or a final order for the recovery of pecuniary penalties made by a court of the Requesting Party. The Requested Party shall assist the Requesting Party in any related proceedings arising from the enforcement of such final order or declaration in the Requested Party.

(4) In the application of this Article, the rights of bona fide third parties shall be respected under the laws of the Requested Party.

(5) The Requested Party shall deal with the forfeited instruments or proceeds of crime or the recovered pecuniary penalties in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited proceeds or instruments of crime or the value thereof or recovered pecuniary penalties to the Requesting Party upon such terms as it deems appropriate.

(6) In this Treaty “proceeds of crime” includes any property derived or realised, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property and other benefits derived from the commission of an offence.

(7) In this Treaty “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People’s Republic of China concerning Mutual Legal Assistance in Criminal Matters dated 1 February 2008:

Article 19 - Proceeds and Instrumentalities of Crime

(1) The Requested Party shall, upon request, use its best endeavours to identify or locate any proceeds or instrumentalities of crime located within its jurisdiction or to ascertain whether any such proceeds or instrumentalities are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instrumentalities may be located in its jurisdiction.

(2) Where pursuant to paragraph (1) suspected proceeds or instrumentalities of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the forfeiture or confiscation of proceeds or instrumentalities of crime, such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party.

(4) Proceeds or instrumentalities of crime forfeited or confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

(5) In the application of this Article, the rights of bona fide third parties shall be respected to the extent permitted by the law of the Requested Party.

(6) For the purposes of this Agreement-“proceeds of crime” includes-

(a) property derived or realised directly or indirectly from the commission of an offence; and

(b) property which represents the equivalent value of the property and other benefits derived from the commission of an offence; “instrumentalities of crime” means property used or intended to be used in connection with the commission of an offence or the equivalent value of such property.

Treaty between the Government of Malaysia and the Government of the United States of America on Mutual Assistance in Criminal Matters dated 21 January 2009:

Article 17 - Assistance in Forfeiture Proceedings

1. The requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate,

trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime or recover pecuniary penalties.

2. A Party in control of forfeited or confiscated property or assets or pecuniary penalties recovered shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale or the pecuniary penalties recovered to the other Party upon mutually acceptable terms.

3. In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters dated 16 December 2011:

Article 17 - Restraint, Forfeiture and Confiscation

(1) The Parties shall assist each other in relation to criminal matters involving the identification, location, restraint, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime in accordance with the domestic law of the Requested Party.

(2) Where an offence has been committed and a conviction has been obtained in the Requesting Party, the property which has been seized by the Requested Party may be returned, in accordance with the domestic law of the Requested Party, to the Requesting Party for the purpose of forfeiture or confiscation.

(3) The rights claimed by bona-fide third parties over such property shall be respected.

(4) Where a Party has forfeited or confiscated property as a result of cooperation provided by the other Party, it may at its discretion and to the extent permitted by its domestic law, share such property with the other Party.

Treaty between the Government of Malaysia and the Government of the Republic of Korea on Mutual Assistance in Criminal Matters dated 27 September 2013:

Article 17 - Assistance in Forfeiture Proceedings

(1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds of crime may be located in its jurisdiction.

(2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested State, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds of crime by a court of the Requesting State.

(3) The Requested Party shall deal with the forfeited instruments or proceeds of crime in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited instruments or proceeds of crime or the value thereof to the Requesting Party upon such terms as it deems appropriate.

(4) In the application of this Article, the rights of a bona fide third party shall be respected under the laws of the Requested State.

(5) In this Treaty, "proceeds of crime" includes-

(a) any property derived or realized, directly or indirectly, from the commission of an offence or

property which represents the equivalent value of the property;

(b) other benefits derived from the commission of an offence;

(c) any other sum imposed based on the equivalent sum of the benefit received from the commission of the offence.

Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters dated 12 November 2012:

Article 21 - Assistance Regarding Proceeds and Instruments of Crime

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party the result of its inquiries.

(2) When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of a crime are found, the Requested Party shall, upon request, take such measures as are permitted by and in accordance with its laws to restrain and forfeit those proceeds or instruments.

(3) Proceeds or instruments forfeited or confiscated pursuant to the Treaty shall accrue to the Requested Party, unless and otherwise agreed.

Treaty between the Government of Malaysia and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters signed on 23 November 2015 and in force as of 19 February 2017.

Article 20 - Proceeds and Instrumentalities of Crime

(1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavour to locate, trace, restrain, freeze, seize and forfeit proceeds and instrumentalities of crime.

(2) The Requested Party shall assist the Requesting Party, to the extent permitted by its laws, in proceedings relating to the forfeiture of proceeds and instrumentalities of crime. This may include action to freeze or seize the proceeds or instrumentalities of crime pending further proceedings.

(3) Where the Requesting Party seeks assistance in the enforcement of an order which restrains, freezes, seizes and forfeits the property or assets, the request shall be accompanied by the original order or a certified copy of it.

(4) The Requested Party in control of property or assets dealt with in accordance with this Article shall dispose of them according to its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of such property or assets, or the proceeds of its sale, to the Requesting Party upon mutually acceptable terms.

(5) In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and Ukraine on Mutual Legal Assistance in Criminal Matters signed on 4 August 2016 but yet to enter into force.

Article 17 - Assistance in Forfeiture Proceedings

(1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime.

(2) A Party in control of forfeited or confiscated property or assets shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property

or the proceeds of its sale to the other Party upon mutually acceptable terms.

(3) The Requested Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect bona fide third party interests in the property to be transferred.

(b) Observations on the implementation of the article

The domestic law of Malaysia is clear on what a requesting State has to do when making an MLA request. Further to that, the country has demonstrated its willingness to fight against corruption and ML/TF risks across borders by entering into treaties with other countries containing asset recovery provisions.

This paragraph of the article has been implemented.

Paragraph 5 of article 55

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please provide a reference to the date these documents were transmitted, as well as a description of any documents not yet transmitted.

Malaysia has provided copies of its asset recovery legislation to the secretariat during the course of review.

(b) Observations on the implementation of the article

The paragraph of this article has been implemented.

Paragraph 6 of article 55

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia gives effect to its international obligations through special directions under the Mutual Assistance in Criminal Matters Act 2002 for States parties to the Convention that do not have bilateral MLATs with Malaysia. Section 18 of MACMA 2002 provides for a special direction of the Minister in writing for foreign requests from multilateral States parties, e.g. under this Convention.

Malaysia does not require the existence of a treaty as a condition for mutual legal assistance. Under section 18 of MACMA 2002, in the case of a non-treaty partner, Malaysia may provide mutual assistance in criminal matters to that State in accordance with a Special Direction of the Minister charged with responsibility for legal affairs if the Minister, on the recommendation of the Attorney General, agrees to accede to the request.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

(b) Observations on the implementation of the article

As much as Malaysia has treaties with other countries, it does not make this a condition for rendering MLA to other countries. It can provide assistance to those countries with which it does not have treaties, in accordance with section 18 of the Mutual Assistance in Criminal Matters Act. This section allows MLA to be given through the special direction of the Minister on the recommendation of the Attorney General.

Malaysia can also apply this Convention as the legal basis for MLA (see article 59 below). As confirmed by the national authorities during the country visit, Malaysia has received several requests on the basis of this Convention in relation to non-treaty partners and has not made any outgoing requests on the basis of the Convention because all outgoing requests thus far have been made to treaty partners. In those cases, the Minister's special designation is still required.

This paragraph of the article has been implemented.

Paragraph 7 of article 55

7. Cooperation under this article may also be refused or provisional measures lifted if the requested State Party does not receive sufficient and timely evidence or if the property is of a de minimis value.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Refusal of requests for assistance in terms of insufficient and timely evidence and property of de minimis value are covered under Sections 20 (1) (g) and (h) MACMA 2002 as follows:

Refusal of assistance

(1) A request by a prescribed foreign State for assistance under this Part shall be refused if, in the opinion of the Attorney General— ...

(g) the facts constituting the offence to which the request relates does not indicate an offence of sufficient gravity;

(h) the thing requested for is insufficient importance to the investigation or could reasonably be obtained by other means;

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. Based on record, Malaysia has never refused a request for international cooperation on the basis that the property was of de minimis value.
2. In the event that the request is insufficient in terms of facts and evidence, Malaysia would request additional information (facts & evidence) from the Requesting State.

If the additional information is not received within reasonable period of time, it is Malaysia's practice not to refuse but to provisionally close the case, so it may reactivate it once it receives the additional information from the Requesting State.

(b) Observations on the implementation of the article

The Mutual Assistance in Criminal Matters Act has clear provisions relating to the circumstances under which MLA may be refused.

The paragraph of this article has been implemented.

(c) Successes and good practices

Inasmuch as the legislation is clear on the refusal of requests, it is a good practice that Malaysia does not in practice refuse requests but closes the cases provisionally until additional information or evidence from the requesting State is subsequently received.

Paragraph 8 of article 55

8. Before lifting any provisional measure taken pursuant to this article, the requested State Party shall, wherever possible, give the requesting State Party an opportunity to present its reasons in favour of continuing the measure.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

In practice, consultation has always been the practice between Malaysia and requesting States, either during the consultation process or during the execution stage of the assistance sought.

In all of Malaysia's bilateral MLATs, a provision on consultation has always been inserted to emulate such practice. Further, Malaysia has always believed in consultation and engagement with its treaty partners, even where circumstances exist where a request could be refused.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study:

1. Malaysia received a request from Country P to obtain information on an internet services provider (ISP) for a fraud investigation on 4 April 2014. However, the request was lacking in terms of facts and evidence. Hence, Malaysia sought additional information from Country P. Despite several reminders, there was no response received from Country P. Instead of refusing the request, Malaysia provisionally kept in view (KIV) the request from 27 July 2015.

Malaysia finally received the additional information on 13 September 2016, which enabled Malaysia to further consider and take necessary actions to execute the request.

(b) Observations on the implementation of the article

Consultations between the requesting and requested State ensure that the channels of

communication are open and there is adequate sharing of information between the parties. They also allow for the greatest measure of assistance to be provided.

It was confirmed by the authorities that Malaysia follows the same practice in an asset recovery matter of consultation before lifting provisional measures, by giving the requesting State an opportunity to respond. Moreover, provisional measures of restraint of property are maintained as long as possible in accordance with the domestic law, until the relevant information is provided by the requesting country. If this does not occur within one month, the case is administratively closed, as noted above, so it can be reopened once the information is received from the requesting State.

This paragraph of the article has been implemented.

(c) Successes and good practices

Continuous consultation between the requesting and the requested State is a good practice.

Paragraph 9 of article 55

9. The provisions of this article shall not be construed as prejudicing the rights of bona fide third parties.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Protection of bona fide third party interest is provided under Regulation 31 of the **Mutual Assistance in Criminal Matters Regulations 2003**:

(1) Any third party claiming an interest in any property restrained or forfeited under the Act and these Regulations may apply to the High Court for an order -

(a) declaring that the interest of the applicant in that property or part of it was acquired bona fide; and

(b) restoring such property or the value of the interest in such property to the applicant.

(2) An application for an order under subregulations (1) shall be made in accordance with Form 35 and shall be supported by -

(a) a statement setting out the name and description of the applicant and the grounds on which the order is sought; and

(b) affidavits verifying the facts relied on.

(3) on receipt of an application under subsection (2), the High Court shall examine the application and, on being satisfied that the property was acquired bona fide, issue an order in accordance with Form 36.

Notice of proceedings for forfeiture of property is also given under section 41 of MACC Act and Section 61 of AMLTFAPUAA, as noted under article 53(c) above.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

The interests of bona fide third parties are sufficiently protected under Malaysian law.
This paragraph of the article has been implemented.

Article 56. Special cooperation

Article 56

Without prejudice to its domestic law, each State Party shall endeavour to take measures to permit it to forward, without prejudice to its own investigations, prosecutions or judicial proceedings, information on proceeds of offences established in accordance with this Convention to another State Party without prior request, when it considers that the disclosure of such information might assist the receiving State Party in initiating or carrying out investigations, prosecutions or judicial proceedings or might lead to a request by that State Party under this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

According to the first cycle Country Review Report of Malaysia, Chapter III & IV of UNCAC, under article 46 paragraph 4, “Malaysia indicated that the spontaneous transmission of information is not precluded under the Mutual Assistance in Criminal Matters Act 2002 of Malaysia. Further, MACMA provides in section 4 that it does not prevent the provision or obtaining of international assistance to or from the International Criminal Police Organisation (INTERPOL) or any other international organization.”

Section 4 of the Mutual Assistance in Criminal Matters Act 2002

- (1) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization.
- (2) This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from any foreign State other than assistance of a kind that may be provided or obtained under this Act.
- (3) This Act does not prevent the provision or obtaining of international assistance in criminal matters under any other written law.

The Mutual Assistance in Criminal Matters Act does not pre-empt Malaysia from providing information informally in criminal matters. As a matter of practice Malaysian law enforcement authorities, in particular the FIU, the police and the MACC, regularly transmit information relating to criminal matters to their counterparts in other countries. Examples of information sharing platforms through which this is done include interagency memoranda of understanding (MoUs), INTERPOL, ASEANAPOL and the Egmont Group of Financial Intelligence Units.

The AMLTFAPUAA provides for sharing information with foreign counterparts on ML, TF and similar offences. This extends to cover predicate offences through section 29(3) and section 10 of the AMLATFPUAA.

Sections 10 and 29(3) provide broad powers for the FIU to exchange all information required to be accessible by the FIU and all other information which the FIU has the power to obtain or access.

[source: Mutual Evaluation Report 2015 for Malaysia]

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

1. Statistics on proactive sharing of intelligence to foreign FIUs, as shown below:

Corruption related	2013	2014	2015
Proactive disclosure to Foreign FIUs	1	1	1

2. STATISTICS ON SPECIAL COOPERATION (NON MLA/INFORMAL COOPERATION) BETWEEN MACC AND FOREIGN STATES FOR 2010-2016

Types of Assistance	2010		2011		2012		2013		2014		2015		2016	
	Req uest by MA CC	Req uest from Fore ign Stat e												
To Obtain Information/Documents	3	5	2	4	1	7	2	9	3	6	1	4	4	11
Taking of Evidence	4	1	6	1	1	4	4	5	6	1	9	4	4	2
Service of Process	1	0	2	0	1	0	1	0	3	0	0	0	0	0
Arrest Warrant	0	2	0	1	0	4	0	0	0	2	0	2	0	1
To Locate Person	4	1	2	2	1	0	2	1	0	3	0	1	1	0
Total	12	9	12	8	4	15	9	15	12	12	10	11	9	14

(b) Observations on the implementation of the article

The law of Malaysia is in compliance with this paragraph of the article. The Mutual Assistance in Criminal Matters Act in clear terms provides that it does not prevent the provision of international assistance. AMLTFAPUAA also provides for the sharing of information, and the statistics provided show that information is proactively provided by the FIU and MACC to foreign counterparts in corruption-related matters.

This article has been implemented.

Article 57. Return and disposal of assets

Paragraph 1 of article 57

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Measures taken to dispose of or restore property forfeited to its prior legitimate owners are made in accordance with regulation 28 of the **Mutual Assistance In Criminal Matters Regulations 2003**:

Regulation 28 provides as follows:

- (1) On the recovery of the property to which the foreign forfeiture order relates or any part of it under the warrant for enforcement issued under regulation 27, the ownership of the property, if sold, of the net proceeds of it shall then pass to and become vested in the Government of Malaysia free from any right, interest or encumbrance of any person except a right, interest or encumbrance that is held by a purchaser in good faith for valuable consideration and that is not otherwise void under any written law;
- (2) If any property is vested in the Government of Malaysia under subregulation (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument whatsoever and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority or body as the Attorney General may specify.
- (3) If the property vested in the Government of Malaysia under sub regulation (1) is immovable property, the vesting shall be registered in the name of the Federal Lands Commissioner upon production of the warrant for the enforcement of the foreign forfeiture order -
 - (a) In Peninsular Malaysia, to the Registrar Title or the Land Administrator, as the case may be;
 - (b) In Sabah, to the Registrar of Title or the Collector of Land Revenue, as the case may be;and

- (c) In Sarawak, to the Registrar of the Title or the Director of Lands and Surveys, as the case may be.
- (4) The Government of Malaysia shall have absolute discretion on the management and disposition of any property seized and forfeited pursuant to section 32 of the Act and regulation 27.
- (5) Subject to subregulation (6), the sums in the hands of the Government of Malaysia or the manager appointed under Regulation 29 shall first be applied in payment of expenses incurred by the Attorney General in executing the request for assistance under section 31 of the Act and then the manager's remuneration and expenses, if any, and after that in payment of such other payments, if any, as the Minister may direct to be made out of those sums.
- (6) Where a fixed amount is payable under the foreign forfeiture order and, after that amount has been fully paid, any such sums remain in the hands of the Government of Malaysia or the manager, the manager shall distribute them -
- (a) among the persons who held the property which has been realised under the Act and these Regulations; and
- (b) in such proportions,
- as the Minister may direct after giving reasonable opportunity for such persons to make representations to the Minister.
- (7) Any sums remaining after all the payments required to be made under subregulations (5) and (6) have been made shall be paid into the Consolidated Fund.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

It was reported that there have been no cases where assets were finally and definitely returned to a foreign State party, although there have been cases involving the return of funds to overseas banks.

(b) Observations on the implementation of the article

Malaysia is in compliance with this paragraph of the article. The Mutual Assistance in Criminal Matters Regulations do provide for the return of property to legitimate owners.

This paragraph of the article has been implemented.

Paragraph 2 of article 57

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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legal basis enabling the Government of Malaysia to return confiscated assets to other States Parties is provided for under Regulation 28 (Enforcement of foreign forfeiture order) and Regulation 31 (Protection of bona fide third party interest) of the **Mutual Assistance In Criminal Matters Regulations 2003** (referred to under Article 55 paragraph 9).

Regulation 28 of the Mutual Assistance In Criminal Matters Regulations 2003 provides as follows:

- (1) On the recovery of the property to which the foreign forfeiture order relates or any part of it under the warrant for enforcement issued under regulation 27, the ownership of the property, if sold, of the net proceeds of it shall then pass to and become vested in the Government of Malaysia free from any right, interest or encumbrance of any person except a right, interest or encumbrance that is held by a purchaser in good faith for valuable consideration and that is not otherwise void under any written law;
- (2) If any property is vested in the Government of Malaysia under subregulation (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument whatsoever and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority or body as the Attorney General may specify.
- (3) If the property vested in the Government of Malaysia under sub regulation (1) is immovable property, the vesting shall be registered in the name of the Federal Lands Commissioner upon production of the warrant for the enforcement of the foreign forfeiture order -
 - (a) In Peninsular Malaysia, to the Registrar Title or the Land Administrator, as the case may be;
 - (b) In Sabah, to the Registrar of Title or the Collector of Land Revenue, as the case may be; and
 - (c) In Sarawak, to the Registrar of the Title or the Director of Lands and Surveys, as the case may be. y

- (4) The Government of Malaysia shall have absolute discretion on the management and disposition of any property seized and forfeited pursuant to section 32 of the Act and regulation 27.
- (5) Subject to subregulation (6), the sums in the hands of the Government of Malaysia or the manager appointed under Regulation 29 shall first be applied in payment of expenses incurred by the Attorney General in executing the request for assistance under section 31 of the Act and then the manager's remuneration and expenses, if any, and after that in payment of such other payments, if any, as the Minister may direct to be made out of those sums.
- (6) Where a fixed amount is payable under the foreign forfeiture order and, after that amount has been fully paid, any such sums remain in the hands of the Government of Malaysia or the manager, the manager shall distribute them -
 - (a) among the persons who held the property which has been realised under the Act and these Regulations; and
 - (b) in such proportions.
as the Minister may direct after giving reasonable opportunity for such persons to make representations to the Minister.
- (7) Any sums remaining after all the payments required to be made under subregulations (5) and (6) have been made shall be paid into the Consolidated Fund.

Regulation 31 of the Mutual Assistance In Criminal Matters Regulations 2003:

Protection of bona fide third party interest

- (1) Any third party claiming an interest in any property restrained or forfeited under the Act and these Regulations may apply to the High Court for an order -
 - (a) declaring that the interest of the applicant in that property or part of it was acquired bona fide; and
 - (b) restoring such property or the value of the interest in such property to the applicant.
- (2) An application for an order under subregulations (1) shall be made in accordance with Form 35 and shall be supported by -
 - (a) a statement setting out the name and description of the applicant and the grounds on which the order is sought; and
 - (b) affidavits verifying the facts relied on.
- (3) on receipt of an application under subsection (2), the High Court shall examine the application and, on being satisfied that the property was acquired bona fide, issue an order in accordance with Form 36.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The

funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

Provisions under the Mutual Assistance in Criminal Matters Act and Regulations deal with the enforcement of foreign forfeiture orders and the protection of the interests of bona fide third parties. The Regulations further provide for the payment of amounts due under a foreign forfeiture order. Those provisions constitute sufficient compliance with this paragraph of the article.

This paragraph of the article has been implemented.

(c) Successes and good practices

It is a success that Malaysia has actually enforced the relevant provisions of the Act resulting in proceeds of property being returned to a bona fide third party.

Subparagraph 3 (a) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

(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;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legislative basis is the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 “AMLTFAPUAA” for the case study below.

In addition, the authorities also referred to Section 61 of AMLTFAPUAA- Bona fide third parties (quoted above under article 53(c)).

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C’s name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

Example: Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Members Countries):

Article 22 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.
- (2) Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.
- (3) A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.
- (4) Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.
- (5) The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.

(b) Observations on the implementation of the article

The AMLTFAPUAA refers to the general offence of money laundering. Further, in terms of the Mutual Assistance in Criminal Matters Act there are general provisions relating to request of enforcement of foreign forfeiture orders. There is no provision that where the relevant offence is embezzlement of public funds or the laundering of embezzled public funds a different procedure applies. Also, section 32 of the latter Act is clear that the High Court in Malaysia will register a foreign forfeiture order if it is satisfied that the order is in force and not subject to further appeal in the prescribed foreign State. The provisions of the Mutual Assistance In Criminal Matters Regulations do not change this position.

It is also noted that not all treaties provide for the principle of the paragraph under review (e.g., treaty with the Republic of India).

This paragraph of the article has not been implemented. It is recommended that Malaysia amend its legislation to adopt measures providing for the return of proceeds to the requesting State party in the case of embezzlement of public funds or of laundering of embezzled public funds, in particular by reviewing relevant treaties, in order to incorporate this part of the Convention.

Subparagraph 3 (b) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(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;

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

See response to Article 57 para 2 above.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See Article 57 para. 2 above

(b) Observations on the implementation of the article

Observations made under paragraph 2 of article 57 apply.

Subparagraph 3 (c) of article 57

3. In accordance with articles 46 and 55 of this Convention and paragraphs 1 and 2 of this article, the requested State Party shall:

...

(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.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The legislative basis is Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 “AMLTFAPUAA” for the case study below.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C’s name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property.

The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

The relevant provision applicable appears to be regulation 28 of the Mutual Assistance in Criminal Matters Regulations. This provides for the return of property which is the subject of a foreign forfeiture order to its legitimate owner. Further, Malaysian law does provide for the compensation of victims of crime.

This sub-paragraph of the article has been implemented.

Paragraph 4 of article 57

4. Where appropriate, unless States Parties decide otherwise, the requested State Party may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the return or disposition of confiscated property pursuant to this article.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

The provisions under regulation 28 (4), (5) and (6) of **Mutual Assistance in Criminal Matters Regulations 2003** are measures taken to comply with the requirements of the article under review.

28.(4) The Government of Malaysia shall have absolute discretion on the management and disposition of any property seized and forfeited pursuant to section 32 of the Act and regulation 27.

28.(5) Subject to subregulation (6), the sums in the hands of the Government of Malaysia or the manager appointed under regulation 29 shall first be applied in payment of expenses incurred by the Attorney General in executing the request for assistance under section 31 of the Act and then the manager's remuneration and expenses, if any, and after that in payment of such other payments, if any, as the Minister may direct to be made out of those sums

28.(6) Where a fixed amount is payable under the foreign forfeiture order and, after that amount has fully paid, any such sums remain in the hands of the Government of Malaysia or the manager, shall distribute them-

(a) among the persons who held property which has been realised under the act and these Regulations; and

(b) in such proportions,

as the Minister may direct after giving reasonable opportunity for such person to make representations to the Minister.

28.(7) Any sums remaining after all the payments required to be made under subregulation (5) and (6) have been made shall be paid into the Federal Consolidated Fund.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

Regulation 28 of the Mutual Assistance in Criminal Matters Act provides for this.

This paragraph of the article has been implemented.

Paragraph 5 of article 57

5. Where appropriate, States Parties may also give special consideration to concluding agreements or arrangements, on a case-by-case basis, for the final disposal of confiscated property.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Requests must be formally made to the Attorney General, as per Section 19 of MACMA 2002 on a

case-to-case basis.

Regulation 28 of the Mutual Assistance In Criminal Matters Regulations 2003 provides as follows:

(1) On the recovery of the property to which the foreign forfeiture order relates or any part of it under the warrant for enforcement issued under regulation 27, the ownership of the property, if sold, of the net proceeds of it shall then pass to and become vested in the Government of Malaysia free from any right, interest or encumbrance of any person except a right, interest or encumbrance that is held by a purchaser in good faith for valuable consideration and that is not otherwise void under any written law;

(2) If any property is vested in the Government of Malaysia under subregulation (1), the vesting shall take effect without any transfer, conveyance, deed or other instrument whatsoever and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority or body as the Attorney General may specify.

(3) If the property vested in the Government of Malaysia under sub regulation (1) is immovable property, the vesting shall be registered in the name of the Federal Lands Commissioner upon production of the warrant for the enforcement of the foreign forfeiture order -

(a) In Peninsular Malaysia, to the Registrar Title or the Land Administrator, as the case may be; (b) In Sabah, to the Registrar of Title or the Collector of Land Revenue, as the case may be; and (c) In Sarawak, to the Registrar of the Title or the Director of Lands and Surveys, as the case may be.

(4) The Government of Malaysia shall have absolute discretion on the management and disposition of any property seized and forfeited pursuant to section 32 of the Act and regulation 27.

(5) Subject to subregulation (6), the sums in the hands of the Government of Malaysia or the manager appointed under Regulation 29 shall first be applied in payment of expenses incurred by the Attorney General in executing the request for assistance under section 31 of the Act and then the manager's remuneration and expenses, if any, and after that in payment of such other payments, if any, as the Minister may direct to be made out of those sums.

(6) Where a fixed amount is payable under the foreign forfeiture order and, after that amount has been fully paid, any such sums remain in the hands of the Government of Malaysia or the manager, the manager shall distribute them -

(a) among the persons who held the property which has been realised under the Act and these Regulations; and

(b) in such proportions.

(7) Any sums remaining after all the payments required to be made under subregulations (5) and (6) have been made shall be paid into the Federal Consolidated Fund as the Minister may direct after giving reasonable opportunity for such persons to make representations to the Minister.

Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Members Countries):

Article 22 - Assistance in Forfeiture Proceedings

(1) The Requested Party shall subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.

(2) Where a request is made under paragraph 1, the request shall be accompanied by the original

signed order, or a duly authenticated copy of it.

(3) A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.

(4) Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.

(5) The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.

Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters dated 28 December 2006:

Article 20 - Instruments and Proceeds of Crime

(1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds may be located in its jurisdiction.

(2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested Party, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds by a court of the Requesting Party.

(3) The Requested Party shall, to the extent permitted by its laws, give effect to a final order forfeiting the instruments or proceeds of crime, or a declaration that such instruments or proceeds of crime have been forfeited or a final order for the recovery of pecuniary penalties made by a court of the Requesting Party. The Requested Party shall assist the Requesting Party in any related proceedings arising from the enforcement of such final order or declaration in the Requested Party.

(4) In the application of this Article, the rights of bona fide third parties shall be respected under the laws of the Requested Party.

(5) The Requested Party shall deal with the forfeited instruments or proceeds of crime or the recovered pecuniary penalties in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited proceeds or instruments of crime or the value thereof or recovered pecuniary penalties to the Requesting Party upon such terms as it deems appropriate.

(6) In this Treaty “proceeds of crime” includes any property derived or realised, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property and other benefits derived from the commission of an offence.

(7) In this Treaty “instruments of crime” means any property used in or intended to be used in, or in connection with, the commission of an offence.

Agreement between the Government of Malaysia and the Government of Hong Kong Special Administrative Region of the People’s Republic of China concerning Mutual Legal Assistance in Criminal Matters dated 1 February 2008:

Article 19 - Proceeds and Instrumentalities of Crime

(1) The Requested Party shall, upon request, use its best endeavours to identify or locate any

proceeds or instrumentalities of crime located within its jurisdiction or to ascertain whether any such proceeds or instrumentalities are located within its jurisdiction and shall notify the Requesting Party of the result of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such proceeds or instrumentalities may be located in its jurisdiction.

(2) Where pursuant to paragraph (1) suspected proceeds or instrumentalities of crime are found, the Requested Party shall take such measures as are permitted by its law to prevent any dealing in, transfer or disposal of, those suspected proceeds or instrumentalities of crime, pending a final determination in respect of those proceeds or instrumentalities by a court of the Requesting Party.

(3) Where a request is made for assistance in securing the forfeiture or confiscation of proceeds or instrumentalities of crime, such request shall be executed pursuant to the law of the Requested Party. This may include enforcing an order made by a court in the Requesting Party.

(4) Proceeds or instrumentalities of crime forfeited or confiscated pursuant to this Agreement shall be retained by the Requested Party unless otherwise agreed upon between the Parties.

(5) In the application of this Article, the rights of bona fide third parties shall be respected to the extent permitted by the law of the Requested Party.

(6) For the purposes of this Agreement-“proceeds of crime” includes-

(a) property derived or realised directly or indirectly from the commission of an offence; and

(b) property which represents the equivalent value of the property and other benefits derived from the commission of an offence; “instrumentalities of crime” means property used or intended to be used in connection with the commission of an offence or the equivalent value of such property.

Treaty between the Government of Malaysia and the Government of the United States of America on Mutual Assistance in Criminal Matters dated 21 January 2009:

Article 17 - Assistance in Forfeiture Proceedings

1. The requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime or recover pecuniary penalties.

2. A Party in control of forfeited or confiscated property or assets or pecuniary penalties recovered shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale or the pecuniary penalties recovered to the other Party upon mutually acceptable terms.

3. In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland on Mutual Assistance in Criminal Matters dated 16 December 2011 :

Article 17 - Restraint, Forfeiture and Confiscation

(1) The Parties shall assist each other in relation to criminal matters involving the identification, location, restraint, freezing, seizure, forfeiture and confiscation of proceeds of crime and instrumentalities of crime in accordance with the domestic law of the Requested Party.

(2) Where an offence has been committed and a conviction has been obtained in the Requesting Party, the property which has been seized by the Requested Party may be returned, in accordance with the domestic law of the Requested Party, to the Requesting Party for the purpose of forfeiture or confiscation.

(3) The rights claimed by bona-fide third parties over such property shall be respected.

(4) Where a Party has forfeited or confiscated property as a result of cooperation provided by the other Party, it may at its discretion and to the extent permitted by its domestic law, share such property with the other Party.

Treaty between the Government of Malaysia and the Government of the Republic of Korea on Mutual Assistance in Criminal Matters dated 27 September 2013:

Article 17 - Assistance in Forfeiture Proceedings

(1) The Requested Party shall, upon request, endeavour to ascertain whether any instruments or proceeds of a crime are located within its jurisdiction and shall notify the Requesting Party of the results of its inquiries. In making the request, the Requesting Party shall notify the Requested Party of the basis of its belief that such instruments or proceeds of crime may be located in its jurisdiction.

(2) Where suspected instruments or proceeds of crime are found or are believed to be located in the Requested State, the Requested Party shall take such measures as are permitted by its laws to prevent any dealing in, transfer or disposal of, those suspected instruments or proceeds of crime, pending a final determination in respect of those instruments or proceeds of crime by a court of the Requesting State.

(3) The Requested Party shall deal with the forfeited instruments or proceeds of crime in accordance with its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of the forfeited instruments or proceeds of crime or the value thereof to the Requesting Party upon such terms as it deems appropriate.

(4) In the application of this Article, the rights of a bona fide third party shall be respected under the laws of the Requested State.

(5) In this Treaty, "proceeds of crime" includes-

(a) any property derived or realized, directly or indirectly, from the commission of an offence or property which represents the equivalent value of the property;

(b) other benefits derived from the commission of an offence;

(c) any other sum imposed based on the equivalent sum of the benefit received from the commission of the offence.

Treaty between the Government of Malaysia and the Government of the Republic of India on Mutual Assistance in Criminal Matters dated 12 November 2012:

Article 21 - Assistance Regarding Proceeds and Instruments of Crime

(1) The Requested Party shall, upon request, endeavour to ascertain whether any proceeds or instruments of a crime are located within its jurisdiction and shall notify the Requesting Party the result of its inquiries.

(2) When, pursuant to paragraph 1 of this Article, suspected proceeds or instruments of a crime are found, the Requested Party shall, upon request, take such measures as are permitted by and in accordance with its laws to restrain and forfeit those proceeds or instruments.

(3) Proceeds or instruments forfeited or confiscated pursuant to the Treaty shall accrue to the Requested Party, unless and otherwise agreed.

Treaty between the Government of Malaysia and the Government of the People's Republic of China on Mutual Legal Assistance in Criminal Matters signed on 23 November 2015 and in force as of 19 February 2017.

Article 20 - Proceeds and Instrumentalities of Crime

- (1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavour to locate, trace, restrain, freeze, seize and forfeit proceeds and instrumentalities of crime.
- (2) The Requested Party shall assist the Requesting Party, to the extent permitted by its laws, in proceedings relating to the forfeiture of proceeds and instrumentalities of crime. This may include action to freeze or seize the proceeds or instrumentalities of crime pending further proceedings.
- (3) Where the Requesting Party seeks assistance in the enforcement of an order which restrains, freezes, seizes and forfeits the property or assets, the request shall be accompanied by the original order or a certified copy of it.
- (4) The Requested Party in control of property or assets dealt with in accordance with this Article shall dispose of them according to its laws. To the extent permitted by its laws, the Requested Party may transfer all or any part of such property or assets, or the proceeds of its sale, to the Requesting Party upon mutually acceptable terms.
- (5) In the application of this Article, the rights of bona fide third parties shall be respected.

Treaty between the Government of Malaysia and Ukraine on Mutual Legal Assistance in Criminal Matters signed on 4 August 2016 but yet to enter into force.

Article 17 - Assistance in Forfeiture Proceedings

- (1) The Requested Party shall, upon request and to the extent permitted by its laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate the proceeds of crime and the instrumentalities of crime.
- (2) A Party in control of forfeited or confiscated property or assets shall dispose of them according to its laws. To the extent permitted by its laws, that Party may transfer all or any part of such property or the proceeds of its sale to the other Party upon mutually acceptable terms.
- (3) The Requested Party may require that the Requesting Party agree to the terms and conditions deemed necessary to protect bona fide third party interests in the property to be transferred.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

Case study: Misappropriation of funds (property confiscation relating to foreign predicate offence) involving compensation of third party-legal person

Mr A, president of a commercial bank in Country P (BoP), was suspected to have misappropriated approx. US 150M from BoP, together with Mr B from 2005-2008. Mr B, his son Mr C and Mr A had opened fictitious/ proxy accounts, using fake identity cards which caused losses to BoP. The funds were used to acquire assets in Malaysia under Mr B and Mr C's name. Country P made a MLA request to Malaysia, and RMP froze and subsequently seized assets under AMLA (due to difficulties in using MACMA 2002). The assets were valued at RM 7.7M (USD 2.3M) and included cash, bank accounts, four luxury cars and two houses. Pursuant to consent forfeiture proceedings, the property was liquidated through the agreement of Malaysia and Country P and all the proceeds were returned to BoP as the third party claiming to have an interest in the property. The suspects were deported and subsequently prosecuted in Country P for fraud and criminal breach of trust. It was clarified that the case did not involve the enforcement of a foreign forfeiture order.

(b) Observations on the implementation of the article

Section 18 of the Mutual Assistance in Criminal Matters Act gives sufficient room to the requesting and requested State to conclude agreements or arrangements on a case-by-case basis for the final disposal of confiscated property.

This paragraph of the article has been implemented.

Article 58. Financial intelligence unit

Article 58

States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of proceeds of offences established in accordance with this Convention and of promoting ways and means of recovering such proceeds and, to that end, shall consider establishing a financial intelligence unit to be responsible for receiving, analysing and disseminating to the competent authorities reports of suspicious financial transactions.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Establishment and functions of FIU

BNM is the competent authority under the AMLTFAPUAA and has established the Financial Intelligence and Enforcement Department (FIED) to perform the function of Malaysia's FIU. FIED is empowered under the AMLTFAPUAA, through a legal delegation by BNM, to be the national centre to receive and analyse information from any person and send any report or any information derived from such a report to an LEA if it is satisfied or has reason to believe or suspect that a transaction involves proceeds of an unlawful activity or serious offence or relates to TF.

Under section 8 of the AMLTFAPUAA, the FIU is the central agency for the receipt of the information and reports from any person, including the following disclosures filed by RIs: cash threshold reports (CTRs) filed under section 14(a) of the AMLTFAPUAA and suspicious transaction reports (STRs) filed under section 14(b). The requirements under section 14(b) requiring RIs to report STRs are applicable to all FIs and DNFbps. STRs and CTRs are received from RIs via the FINS system, which is a secure and protected channel for the FIU to receive reports.

Under section 8 of the AMLTFAPUAA, the FIU is empowered to give instructions to RIs to provide additional information. The FIU may also make recommendations to a relevant supervisory agency, including for the supervisor to request additional information. In conducting its analysis the FIU has access, directly or indirectly, to the widest range of sources of financial, regulatory, administrative and LEA information to undertake analysis.

The FIU has established the following units to carry out both operational and strategic analysis:

- a) Operational Analysis Unit - conducts operational analysis in identifying specific targets, following the trail of particular activities or transactions and determining links between those targets and possible proceeds of crime related to predicate offences and ML/TF. Criteria used to conduct analysis on a subject include the number of STR/CTR matches, amount reported, suspected criminal activity, occupation and nationality.
- b) Macro Analysis Unit - conducts strategic analysis by using information in identifying ML/TF trends and patterns, as well as possible ML/TF threats and vulnerabilities. The information analysed is escalated to relevant stakeholders for appropriate regulatory and enforcement action or policy development.

The FIU is able to disseminate, spontaneously and upon request information and the results of its analysis to relevant competent authorities. The FIU utilizes dedicated, secure and protected channels for dissemination by using the FINS system. The FIUs SOPs outline procedures for the dissemination of information to competent authorities in a secure manner which ensures the integrity and protection of the financial intelligence. Some LEAs have limited direct access to search the FINS system and all LEAs receive spontaneous and reactive disclosures through that system in a closely governed secure framework. Disseminations to those LEAs which are not on FINS are conducted in a secure and protected manner.

The FIU's 'Framework for Analysis and Dissemination of Financial Intelligence' sets out the procedures for handling confidential information to be disseminated to domestic LEAs or foreign counterparts. FIU staff have the necessary security clearance levels and access is limited to facilities and information, including information technology systems.

In implementing sections 9 and 10 of the AMLTFAPUAA, BNM as the competent authority has delegated the function to disseminate and exchange information with domestic agencies and foreign counterparts, to the Head of FIU. Although it is structured within BNM, the FIU operates with sufficient operational independence and autonomy to be free of undue influence or interference. The Deputy Governor of BNM is responsible for the FIU, however, functionally the Head of FIU has the autonomy and power to receive, analyse and disseminate financial intelligence with domestic LEAs and with foreign counterparts. The Head of the FIU has control in setting and expending necessary budgets and other resources. The FIU is operationally independent and autonomous as a separate unit within FIED. The FIU has a SOP which outlines the autonomy of the Head of the FIU in relation to the FIU operations.

[source: Mutual Evaluation Report 2015 for Malaysia]

International Participation of FIED

Please refer to the response in Article 14 above.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

See FATF Mutual Evaluation Report 2015 for Malaysia.

(b) Observations on the implementation of the article

It is noted that Malaysia has a fully operational FIU.

This article has been implemented.

Article 59. Bilateral and multilateral agreements and arrangements

Article 59

States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this chapter of the Convention.

(a) Summary of information relevant to reviewing the implementation of the article

Is your country in compliance with this provision?

(Y) Yes

Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related appropriate time frame) to ensure full compliance with this provision of the Convention.

Malaysia has entered into seven bilateral treaties on mutual legal assistance with Hong Kong (SAR, China) Australia, USA, Korea, India, People's Republic of China (PRC), and the UK, as well as the regional ASEAN Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (with 10 States).

Besides that, section 18 of MACMA 2002 enables Malaysia to provide mutual legal assistance even in the absence of a bilateral treaty with the requesting party. Moreover, in principle Malaysia could apply the UNCAC as the legal basis for mutual legal assistance upon the Minister issuing a special direction under section 18 of the Mutual Assistance in Criminal Matters Act. The execution of the assistance would then be processed in accordance with the Mutual Assistance in Criminal Matters Act.

Section 18 of MACMA 2002- Special direction of Minister

If a foreign State in respect of which no order has been made under section 17 makes a request for mutual assistance in a criminal matter under this Act, the Minister may, on the recommendation of the Attorney General, give a special direction in writing that this Act shall apply to that foreign State in relation to the requested mutual assistance subject to any restriction, limitation, exception, modification, adaptation, condition or qualification contained in the direction.

Please provide examples of the implementation of those measures, including related court or other cases, statistics etc.

According to Country Review Report of Malaysia Chapter III & IV of UNCAC, pp. 312:

Year	Requests Received	Requests Made
Since 2009	4 corruption related requests 25 non-corruption related requests	2 corruption related requests 13 non-corruption related requests
2010	1 corruption related request 19 non-corruption related requests	3 corruption related requests 17 non-corruption related requests
2011	3 corruption related requests 29 non-corruption related requests	1 corruption related request 6 non-corruption related requests
2012	2 corruption related requests 34 non-corruption related requests	-
Total	10 corruption related requests 107 non-corruption related requests	6 corruption related requests 36 non-corruption related requests

Malaysia reported during the first cycle country review (May 2013) that it has never refused to execute a request for mutual legal assistance. However, three of its outgoing requests in non-corruption related matters have been refused by other countries (Australia, Singapore and the UK) on the grounds that the request did not satisfy the strict list approach followed by the requested State

As per Article 14, paragraph 5, the BNM/FIU has signed 39 MoUs on the sharing of financial intelligence with foreign FIUs

(b) Observations on the implementation of the article

Malaysia has entered into treaties with a number of countries. Further to that, the Mutual

Assistance in Criminal Matters Act makes it possible for the country to provide MLA to countries with which it has no treaties in terms of section 18 which provides for the special direction of the Minister.

This article has been implemented.

UNODC