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Implementation Review Group

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Agenda item 2

**Review of implementation of the United Nations
Convention against Corruption**

Executive summary: Malaysia



Executive summary

Malaysia

1. Introduction

1.1. Overview of the legal and institutional framework against corruption 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.

Malaysia is a constitutional monarchy based on the British Westminster model. The power to enact laws is vested in Parliament at the federal and state levels. According to article 160 of the Federal Constitution, laws include written laws, the common law, and any custom or usage having the force of law. English law has been adapted to local circumstances. Following the common law tradition, laws are constantly developed through case law. Islamic law is applicable only to Muslims and is administered by state Syariah courts in matters not related to corruption.

The institutions most relevant to the fight against corruption are the Malaysian Anti-Corruption Commission (MACC), the Attorney General's Chambers (AGC), the Royal Malaysia Police (RMP), the Royal Customs and Excise Department, the Financial Intelligence Unit of the Central Bank of Malaysia (FIU), the Ministry of Foreign Affairs, the Public Service Department (PSD), and the Judiciary.

Malaysia is a member of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, the South East Asia Parties Against Corruption (SEA-PAC) mechanism, the Asia Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Working Group, the Asia Pacific Group (APG) on Money Laundering, the Offshore Group of Banking Supervisors, the Egmont Group of Financial Intelligence Units, the International Association of Anti-Corruption Authorities (IAACA), the International Anti-Corruption Academy (IACA), INTERPOL, and ASEANAPOL.

2. Chapter III: Criminalization and Law Enforcement

2.1. Observations on the implementation of the articles under review

Bribery and trading in influence (articles 15, 16, 18, 21)

Sections 16, 17 and 21 of the Malaysian Anti-Corruption Commission Act of 2009 (MACCA) criminalize active and passive bribery. In all cases the penalty is imprisonment for up to 20 years and a fine, as defined in section 24 of MACCA.

Additionally, other laws regulate specific forms of bribery, namely sections 214 and 161-165 of the Penal Code and section 137 of the Customs Act 1967 (Act 235). All MACCA provisions are applicable to such "prescribed offences", according to section 3 of MACCA.

MACCA uses a broad definition of "officer of a public body", which includes members of the administration, Parliament, and judges. Also, the Penal Code definition of "public servant" is broad and includes appointed and elected officials.

In both laws, public officers can also be covered under the terms “agent” and “person”. This assures a sufficiently wide application. However, the reviewers noted that a coherent simplified terminology might ensure greater legal certainty.

Sections 16 and 17 of MACCA also apply to active and passive bribery in the private sector and section 20 covers corruptly procuring the withdrawal of a tender.

Bribery of foreign public officials or officials of public international organizations is criminalized in section 22 of MACCA.

Although MACCA does not criminalize trading in influence expressly, the broad bribery provisions or measures on abetment can be construed in a way to cover certain such cases. Section 163 of the Penal Code comprises the taking of a gratification for the exercise of personal influence with a public servant.

Money-laundering, concealment (articles 23, 24)

Section 26 of MACCA makes it a crime for “any person who (...) enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject matter of an offence under section 16, 17, 18, 20, 21, 22 or 23”. The application is extended to prescribed offences.

Sections 3 and 4 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA) are also applicable. AMLATFA predicate offences include serious offences, as defined in section 3 and enumerated in its second schedule. Currently, 286 offences are included. Amendments are done regularly by administrative procedure.

Foreign offences are deemed predicate offences if they would constitute predicate offences in Malaysia. A person can be convicted of both money-laundering and the underlying predicate offences.

Concealment is criminalized by section 26 of MACCA as well as sections 3 and 4 of AMLATFA.

Embezzlement, abuse of functions and illicit enrichment (articles 17, 19, 20, 22)

The provisions on embezzlement and misappropriation are rather scattered. Most relevant is section 409 of the Penal Code on criminal breach of trust by a public servant, which covers the acts of dishonest misappropriation, conversion to one’s own use, dishonest use, or disposal of property. Property in regard to the Penal Code includes movable as well as immovable property, funds, rights and securities. Sections 18 and 23 of MACCA can also be construed to allow the prosecution of some cases of embezzlement and misappropriation.

Aspects of embezzlement in the private sector are regulated in section 18 of MACCA, sections 403-409 of the Penal Code and further Penal Code provisions.

Abuse of functions is legislatively covered in section 23 of MACCA, which criminalizes the use of office or position by an officer of a public body for any gratification, whether for himself, his relative or associate.

Although illicit enrichment is criminalized, section 36 of MACCA provides that measures to pursue illicit enrichment can only be taken when an investigation on

another offence under MACCA is underway. Even if the investigation of the other offence fails to show results, charges under section 36 of MACCA are possible.

Obstruction of justice (article 25)

Malaysia's legislation covering obstruction of justice is fragmented. The principal provision is section 48 of MACCA on obstruction of investigations and search. Applied in conjunction with section 353 of the Penal Code and sections 2 and 5 of the Abduction and Criminal Intimidation of Witnesses Act 1947, it can cover acts of employment of actual physical force. The acts of "offering, promising and giving" can be addressed under section 16 of MACCA. There are no case examples on the implementation of these provisions in practice.

Liability of legal persons (article 26)

Section 46 of the Companies Act imposes civil liability of legal persons. Also, the criminal liability of legal person exists. According to the Interpretation Act, the term "person" generally includes a body of persons, corporate or incorporated. Section 11 of the Penal Code defines "person" to "include ... (b) any company or association or body of persons whether incorporated or not". The limited application of those provisions was noted. MACCA establishes the same fines for natural and legal persons.

Participation and attempt (article 27)

Section 28 of MACCA regulates all forms of participation. Section 107 of the Penal Code on abetment is also relevant. The interpretative notes in the Penal Code clarify that acts of instigating, aiding or facilitating an offence can also be subsumed under the term abetting. The same interpretation is applicable for abetting under section 28 of MACCA.

Criminal attempts are legislatively covered in section 28 of MACCA, section 4 (1) (a) of AMLATFA, and section 511 of the Penal Code. Section 28 of MACCA also covers "any act preparatory to or in furtherance of the commission of any offence".

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (articles 30, 37)

The Malaysian legislation does not generally establish minimum penalties, although the severity of sanctions, criminal or non-criminal, takes into consideration the gravity of offences. According to section 145 of the Constitution, the Public Prosecutor has discretion to prosecute based on sufficient evidence *vis-à-vis* a reasonable possibility of conviction. Malaysia does not provide for criminal immunities.

The Criminal Procedure Code (CPC) provides for the possibility of granting bail. For MACCA offences bail is not as of right, but at the discretion of the court.

Parole can be imposed under section 46 E of the Prison Act if at least half of the term of imprisonment has been served and the person has undergone a rehabilitation programme. 120 of the 5,000 prisoners who have been released on parole since 2008 were convicted of corruption offences. There has been no breach of the terms and conditions or revocation of a parole order among those parolees.

The PSD is responsible for public service human resource policy. Pending trial, an interdiction from work or relocation of public servants is possible according to regulation 44 of the Public Officers Regulations 1993, but this has never been executed. Upon conviction, regulations 29 and 33 provide for dismissal, reduction in rank, other or no punishment, depending on the nature and seriousness of the offence. Disqualification of members of Parliament, members of the Legislative Assembly and judges is regulated by the Constitution.

Malaysia does not grant immunity to cooperating suspects, except under section 63 of MACCA in the case of cooperating co-defendants. However, the prosecution would have discretion to abstain from a prosecution, though this has not been exercised. As a general principle, cooperation can be taken into consideration as a mitigating factor during sentencing of an accused person.

Protection of witnesses and reporting persons (articles 32, 33)

According to Malaysia's Witness Protection Act 2009 (Act 696), a witness, including his or her relatives, is given protection based on a threat assessment. The Act is also applicable to other persons who may require protection or assistance under the programme, including victims. Measures may encompass temporary relocation or 24-hour physical protection. Malaysia has not entered into relocation agreements with other States. The identity of participants in court proceedings can be protected through measures such as in camera proceedings. Victim impact statements are possible upon request of the victim.

The Whistleblower Protection Act 2010 (Act 711) in sections 7-10 grants confidentiality of information, immunity from civil and criminal action, and protection against detrimental action, such as termination of contracts or withholding of payments to whistleblowers and any related or associated persons, even if the disclosure does not lead to any disciplinary action or prosecution. Detrimental actions against whistleblowers are criminalized. In any proceeding, it lies on the defendant to prove that the detrimental action was not taken in reprisal for a protected disclosure.

Freezing, seizing and confiscation; bank secrecy (articles 31, 40)

Section 40 of MACCA and sections 55-56 of AMLATFA regulate the confiscation of proceeds of crime, property, equipment or other instrumentalities used in, but not destined for use in, offences. Malaysia allows for non-conviction based forfeiture under section 41 of the MACCA. Since 2009, there have been 26 such cases.

AMLATFA regulates all necessary aspects of tracing, freezing and seizure in relation to money laundering offences. MACCA further regulates relevant elements of tracing, search and seizure in sections 31 et seq., but does not include a specific freezing provision. Section 37 of MACCA could be used for some aspects of freezing by the Public Prosecutor, but is limited to movable property and monetary instruments.

In case the property has been disposed of or cannot be traced, forfeiture of the equivalent value is possible under both laws.

The provisions apply without prejudice to the rights of bona fide third parties

Bank secrecy restrictions are not a challenge to the investigation and seizure of bank, financial and commercial records, according to the Bankers' Books (Evidence)

Act 1949 (Act 33), the Banking and Financial Institutions Act 1989 (Act 372), section 35 of MACCA, and sections 20 and 48-50 of AMLATFA.

Statute of limitations; criminal record (articles 29, 41)

Malaysia has no statute of limitations for criminal offences.

Previous convictions in other States are not admissible, with the exception of the Republic of Singapore, according to section 400 of the CPC, and as provided under section 76 of AMLATFA.

Jurisdiction (article 42)

Jurisdiction is regulated in sections 2-4 of the Penal Code, section 66 of MACCA and section 82 of AMLATFA. If an offence was committed by a citizen or permanent resident outside Malaysia, it may be dealt with as if it was committed in Malaysia. Jurisdiction may also be extended, according to section 82 AMLATFA and section 4 of the Penal Code, to an offence committed by any person against property of any citizen or the Government of Malaysia.

Consequences of acts of corruption; compensation for damage (articles 34, 35)

Sections 24-25 of the Contracts Act provide for the nullification of an agreement if certain aspects of it were unlawful. Furthermore, company registrations may be revoked upon criminal conviction. The Ministry of Finance has established a register of blacklisted firms, which currently comprises 3-4 companies.

According to section 426 of the CPC, a court may issue an order against a convicted person to pay compensation to the victim of the offence.

Specialized authorities and inter-agency coordination (articles 36, 38, 39)

MACC, which has 20 branches in Malaysia, is the lead agency responsible for the detection, prevention and investigation of corruption offences under MACCA. Reports of corruption can be filed at MACC through various channels, including a toll-free hotline.

The Chief Commissioner reports annually to a parliamentary Special Committee on Corruption, which advises the Prime Minister and the Commission on policy and related matters. Other special bodies are the Anti-Corruption Advisory Board and the Complaints Committee, all regulated in Part III of MACCA. There is also a Consultation and Corruption Prevention Panel and an Operations Review Panel.

The RMP is also responsible for the investigation of money-laundering, including predicate offences regulated in AMLATFA. MACC has memoranda of understanding (MoUs) in place with several institutions and receives reports, among others, from the Public Complaints Bureau, the FIU, and the Auditor General. From 309 suspicious transaction reports transferred to MACC in 2011, 307 were investigated and one led to a prosecution.

2.2. Successes and good practices

Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- Section 25 of MACCA establishes a duty to report any bribery transaction or attempt thereof and criminalizes non-compliance.
- Section 50 of MACCA establishes a rebuttable presumption that a gratification has been corruptly received, unless the contrary is proven. Furthermore, according to section 57 of MACCA, evidence is not admissible to show that a gratification is customary in a profession, social occasion or similar context.
- The absence of a statute of limitations helps to maximize the possibility of corruption prosecutions.
- The Operations Review Panel in MACC reviews delayed cases or cases which were transferred to DPP, but did not result in a charge. The Panel submits recommendations, but has no authoritative powers that could interfere with the DPP's discretion.
- 14 specialized anti-corruption courts have been in existence since 2011. Judges are instructed to hear cases within one year and can be held accountable for non-compliance. Other initiatives which helped to reduce the case backlog were the introduction of pre-trial conferences and plea bargaining.
- The institutional set-up of MACC, the Malaysian Anti-Corruption Academy (MACA) and the anti-corruption courts were deemed to constitute exemplary practices. Although many of the institutions are still relatively young, they contribute to improved investigations and prosecutions of corruption cases and should be further strengthened.
- Inter-agency collaboration takes place regularly at different levels. One example is the National Coordinating Committee to Counter Money Laundering (NCC), which is responsible for the development of the anti-money laundering policy and action plan. 16 institutions have established designated NCC focal points that meet quarterly to keep member institutions informed of anti-money laundering developments.
- Various initiatives on corruption prevention are carried out with the private sector, such as integrity pacts, monitoring committees for large projects and integrity pledges. Large Malaysian corporations regularly employ integrity officers and have no-gifts policies in place. MACC provides training for the private sector and has seconded a small number of MACC officers to large companies.

2.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Monitor the implementation of UNCAC article 17 and the implementation of MACCA provisions in such cases. Malaysia may wish to integrate a consolidated offence on embezzlement, misappropriation or other diversion of property by public officials into MACCA. The same recommendation applies to embezzlement in the private sector.

- Consider eliminating the requirement for a prior investigation before an illicit enrichment case can be pursued.
- Consider criminalizing trading in influence distinctly to provide for greater legal certainty in cases of real and supposed influence.
- More fully address all elements on obstruction of justice in a consolidated offence.
- Add obstruction of justice to the predicate offences for money laundering and consider including illicit enrichment.
- Challenges exist regarding the establishment of mens rea for legal persons, and the reviewers welcome the possible introduction of new offences involving legal persons. Moreover, higher fines for corporations and specific civil and administrative sanctions might be useful to maximize deterrence.
- Enable confiscation and forfeiture of instrumentalities destined for use in corruption offences.
- While section 37 of MACCA could be used for freezing in the majority of corruption cases, the reviewing experts recommend specifying the legislation in this regard.
- Make transformed or converted property liable to confiscation.
- Malaysia should introduce provisions in line with article 35 of UNCAC.
- MACCA does not address the replacement or dismissal of the Chief Commissioner of MACC, which could pose a risk to independence. This gap is reportedly being addressed through a Constitutional amendment.

2.4. Technical assistance needs identified to improve implementation of the Convention

- The following forms of technical assistance could assist Malaysia in more fully implementing the Convention:
- Model legislation and legislative drafting assistance to strengthen the implementation of provisions on the bribery of foreign public officials.
- Strengthening investigative skills to support the prosecution of cases involving legal persons.
- Summary of good practices, lessons learned and model legislation in regard to international cooperation in relocating witnesses to foreign countries.
- Assistance in establishing legislative or other measures on admissibility of foreign criminal convictions.

3. Chapter IV: International cooperation

The International Affairs Division (IAD) of the AGC is the central authority for mutual legal assistance (MLA) while the Ministry of Home Affairs (MOHA) is the central authority for extradition. Incoming extradition and MLA requests are processed slightly differently in Malaysia, as described more fully in the country review report, and the IAD plays a central role in monitoring incoming and

outgoing requests. In doing so, IAD communicates with competent authorities of other States and relevant Malaysian institutions. Malaysia also liaises with foreign authorities through diplomatic and informal channels. The AGC has a website in English with a description of the extradition and MLA process, relevant legislation and treaties, contact information, and a model request form and checklist.

Malaysia has in place seven bilateral extradition treaties and six bilateral treaties on MLA. Malaysia is party to the regional Treaty on MLA among like-minded ASEAN Member Countries and also subscribes to the Commonwealth Schemes on MLA (Harare) and Extradition (London).

3.1. Observations on the implementation of the articles under review

Extradition (article 44)

Dual criminality is a fundamental principle of Malaysian law, which is flexibly applied, considering the underlying conduct and elements of the offence. Malaysia uses the list or descriptive approach to determine extraditable offences. UNCAC offences are extraditable due to their threshold period of imprisonment or punishment (not less than one year or death). Subject to the dual criminality requirement, to the extent that not all UNCAC offences are fully criminalized, they would not be extraditable.

Malaysia accepts requests for extradition from treaty or non-treaty partners and could, in principle, accept the Convention as the legal basis for extradition upon the Minister issuing a special direction under section 3 of the Extradition Act 1992. No requests have been received or made by Malaysia solely on the basis of UNCAC. Malaysia has not refused extradition to date, although in two cases it could not execute the request. None of its outgoing requests have been refused. A warrant of arrest scheme is in place with Brunei Darussalam and the Republic of Singapore.

The estimated time from receiving an extradition request to the final decision is between six and twelve months.

Malaysian law gives the Minister discretion not to extradite citizens. Section 49(2) of the Extradition Act obliges the Minister to submit the case to the Public Prosecutor with a view to having the criminal prosecuted under Malaysian law, though there is no binding requirement on the Public Prosecutor to undertake the prosecution. The obligation to prosecute a national where extradition is refused (*aut dedere aut judicare*) is not established in all of Malaysia's bilateral treaties. Malaysia has extradited a national in one non-corruption related case, but has never prosecuted a national in lieu of extradition.

Transfer of sentenced persons; transfer of criminal proceedings (articles 45, 47)

The International Transfer of Prisoners Act 2012 governs the transfer of prisoners with foreign States. Due to its recent enactment, there have been no such cases.

More formal consideration is expected to be given to enacting legislation on the transfer of criminal proceedings in the future.

Mutual legal assistance (article 46)

Malaysia can provide MLA in the absence of a treaty and could, in principle, apply UNCAC as the legal basis upon the Minister issuing a special direction under Section 18 of the Mutual Assistance in Criminal Matters Act 2002 (MACMA).

Malaysia has never refused a request for MLA. However, three of its outgoing requests in non-corruption related matters were refused on the grounds of dual criminality. Since 2009, Malaysia has received ten corruption related requests and 107 non-corruption related requests, and has made six corruption related requests and 36 non-corruption related requests. A request on the recovery of assets was pending at the time of the review.

Malaysia takes a broad approach when considering dual criminality. Because Malaysia recognizes the criminal liability of legal persons, there are no legal obstacles to rendering MLA in these cases, which are commonly received.

Requests can be sent through INTERPOL in urgent circumstances, and Malaysia can act on advance copies in hard and electronic format. In urgent circumstances, Malaysia would also accept oral requests if confirmed in writing. Responses are sent directly to requesting States.

Malaysia has had experience with video testimony in the investigative stage of a terrorism case, though not in corruption proceedings. Foreign video evidence would be admissible under Section 90E(8) of the Evidence Act.

Copies of government records that are not publicly available can be provided based on a production order issued by a court of law under the MACMA, or the Attorney General may apply for a declassification of Government records in accordance with Malaysia's Official Secrets Act. A case example was cited where declassified police records were provided to a requesting State.

Law enforcement cooperation; joint investigations; special investigative techniques (articles 48, 49, 50)

As noted in the introduction, Malaysia is party to a number of mechanisms and networks against corruption and money laundering at the regional and international level. Malaysian law enforcement authorities cooperate internationally through direct inter-agency contacts, MoUs, the inspector generals of police, and channels like INTERPOL, ASEANAPOL and the Egmont Group.

Bilateral and multilateral MoUs with foreign counterparts are in place for several institutions, including MACC (7), the FIU (35) and the RMP (9). MACC has cooperated in 38 cases (not involving formal MLA) with foreign counterparts since 2010. Three liaison officer positions are located in the MACC, the Central Bank and the RMP. Examples of the exchange of personnel and other experts by Malaysia are referenced in the report.

MACC, through MACA as the training provider for Malaysia's Technical Cooperation Programme, provides anti-corruption courses and capacity-building for other States. MACC also sends experts to other countries to conduct training and receives foreign attachment officers. Malaysia joined the APG's Technical Assistance Donor and Provider Group (DAP) to provide AML/CFT technical

assistance and training to other countries. Joint trainings with foreign law enforcement officials are also conducted.

Malaysia has experience conducting joint investigations in corruption cases at the international level. Further, both MACC and RMP employ special investigative techniques in accordance with relevant law (e.g., CPC, Malaysian Security Act and MACCA) and upon request in particular cases internationally. Evidence derived therefrom is admissible in court.

3.2. Successes and good practices

Malaysia has developed a solid system to provide and request international cooperation, which profiles the country to be a provider of technical assistance. The following successes and good practices in respect of the implementation of Chapter IV of the Convention are highlighted:

- Malaysia has concluded bilateral and multilateral treaties and cooperates widely in international and regional organizations and initiatives.
- The review team noted the positive role of the AGC in ensuring a cooperative working relationship among different criminal justice authorities, especially in the efficient processing of MLA and extradition requests and the oversight of incoming and outgoing requests.
- Malaysian authorities have taken proactive steps to sensitize all relevant stakeholders, especially judicial officers, to the applicable laws, procedures and timeframes to be followed.
- The IAD's administrative manuals, work flow charts and checklists for extradition and MLA give administrative and legal certainty for filing and processing requests. Malaysia has published its model request form online. The documentation and procedures are conducive to facilitating international cooperation.
- A unique feature of IAD is the dedicated case management database for extradition and MLA requests, which allows IAD to quickly provide status updates and ensures timely, accurate and efficient execution and tracking of requests. This could be emulated by other countries.
- The review team positively noted Malaysia's practice of flexibly interpreting the dual criminality requirement so as to render a wide measure of assistance.
- Malaysia has taken necessary steps to expediting extradition procedures and simplifying evidentiary requirements.
- Malaysia indicated that it is able to render a wide measure of MLA to requesting States. This is borne out by the increasing number of requests it responded to over the last three years, including in corruption cases.
- A case was cited in which Malaysia rendered assistance in a matter that touched on national security. This would tend to show that the grounds for refusal do not impede Malaysia from complying with requests, which is commendable.

- Section 27(3) of MACMA gives Malaysian authorities flexibility to set appropriate timeframes in which safe conduct will be assured based on the principle of reciprocity.
- Malaysia has in place specialized and skilled manpower who actively cooperate with their foreign counterparts. Dedicated training, capacity building and exchange programmes, including through MACA, are among the international good practices for information exchange, cooperation and corruption prevention.
- The active role of MACC as an international training and assistance provider through capacity building exchange programmes, overseas training and hosting attachment officers is a welcome development. The direct cooperation between MACC, Malaysia's FIU and the RMP with foreign counterparts was also noted.
- The exchange of personnel, experts and capacity building programmes help to enhance cross-border cooperation. The establishment of an MLA unit in MACC, the secondment of a MACC officer to INTERPOL, and specialized units in the RMP were also noted.
- Malaysian law enforcement agencies, in particular MACC, the RMP, AGC and FIU, exhibit a high level of commitment to the fight against corruption and cooperation internationally, and to fully implement the principles of the Convention, in particular at the leadership levels of the agencies.
- The use of joint investigations and an operational working group with Brunei Darussalam are good examples of law enforcement cooperation among countries at the policy and operational level.
- The wide use and application of special investigative techniques in corruption cases domestically and internationally was considered a good practice.

3.3. Challenges in implementation

The following steps could further strengthen existing anti-corruption measures:

- Malaysia is encouraged to make the requisite notification to the United Nations as to whether it would accept UNCAC as a legal basis for extradition.
- Noting that Malaysia has previously extradited its nationals, Malaysia should ensure that future treaties address the obligation to expeditiously submit cases for prosecution and that this is followed in practice.
- Malaysia is encouraged to comprehensively review its existing treaties to ensure that they meet all UNCAC requirements. The reviewers welcome Malaysia's indications that future extradition treaties are tailored to be consistent with UNCAC provisions.
- Malaysia may wish to monitor as much as possible the application of bank secrecy measures to ensure that also in future cases bank secrecy requirements do not delay the provision of MLA.
- Malaysia is encouraged to embrace the rendering of non-coercive assistance, taking into account its flexible application of the dual criminality principle.

- There has been no experience in the transfer of prisoners for providing testimony or assistance, and Malaysia should ensure that the requirements of the Convention are adhered in future cases.
- Malaysia is encouraged to make the requisite notifications to the United Nations as to its central authority and acceptable language for MLA.
- Malaysia should consider specifying in its model request form that requests for MLA are acceptable in English.
- Malaysia should ensure that the undertaking it requires from requesting States that a request does not have as its primary purpose the assessment or collection of tax is not interpreted in a manner contrary to the Convention.
- Malaysia may consider reviewing the MACMA to enable its authorities to postpone rather than refuse assistance that could prejudice a criminal matter in Malaysia, noting that the Act is interpreted and applied this way in practice.
- Malaysia is encouraged to review the MACMA and treaties to ensure that consultations with requesting States are held before refusing or postponing assistance.
