

Annex

To facilitate the provision of information on good practices and challenges with respect to the establishment of effective financial disclosure systems for appropriate public officials (inter alia information on legislation, policies, practices and institutions on establishing and maintaining effective financial disclosure systems for appropriate public officials, including measures as may be necessary to permit their competent authorities to share that information with the competent authorities in other States parties) the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

The Secretariat also wishes to draw the attention of the Government to the note entitled “Asset and interest disclosure systems (article 8, paragraph 5, of the United Nations Convention against Corruption)” contained in document [CAC/COSP/WG.4/2018/3](#) that could be used as background material for the completion of the questionnaire.

Contact information

1. Basic information

1.1. Does your country have a financial disclosure system(s) for appropriate public officials in line with articles 8, paragraph 5 and 52, paragraphs 5 and 6 of the Convention? **YES/NO**

If YES,

- a. Please provide a broad overview of your country’s financial disclosure system(s) for public officials and list the relevant national legislation.

Malaysia has different systems of asset declaration for 3 branches of government, namely Executive, Legislative and Judiciary. For executive and legislative, there are different system at the State level. The responses provided is limited to Federal level.

There are a few legal provisions which address the financial disclosures for public official in Malaysia, namely:

- i. Public Officers (Conduct & Discipline) Regulations 1993 (Amendment 2002) P.U. (A) 395/1993 read in conjunction with Service Circular No.3 of 2002: Ownership and Declaration Property by Public Officers;
- ii. The Malaysian Anti-Corruption Commission Act 2009 (Act 694) (hereinafter referred to as “MACCA”);
- iii. Judges Code of Ethics 1994; and
- iv. Code of Ethics for Members of Administration and Members of Parliament 2018

Under the Malaysia’s Interpretation Acts 1948 and 1967, “public officer” means a person lawfully holding, acting in or exercising the functions of a public office. A public official

in the UNCAC is defined in a similar way. For this survey, the terms "public official" and "public officer" are interchangeable.

- b. If your country has, in addition, ad hoc financial disclosure requirements, please provide a broad overview, including applicable categories of officials, sectors/activities, etc.

N/A

- c. What is the objective(s) of your country's financial disclosure system(s) (please select all that apply)?

- Detection of illicit enrichment
- Prevention of conflicts of interest
- All of the above (combined system)
- Other, please describe: _____

If NO,

- a. Please describe (cite and summarize) the alternative measures put in place to ensure full compliance with article 8, paragraph 5 and article 52, paragraphs 5 and 6 of the Convention or is planning to take, together with the envisaged time frame, if any.

N/A

- 1.2. Has your country criminalized "illicit enrichment" as foreseen under article 20 of the Convention? **YES/NO**

If **YES**, please explain.

Malaysia referred to section 36 (3) of MACCA:

(3) Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any person who has been served with the written notice referred to in subsection (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present and past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to—

(a) imprisonment for a term not exceeding twenty years; and

(b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgit, whichever is the higher.

However, this particular provision does not operate independently, but as an upshot in the course of investigations of corrupt offences against public officials. From the tenor of section 36 (1) and (3) MACCA, in the course of investigations against a public official, if there are reasonable grounds to believe that the said official under investigation is in possession of property in excess of his present or past emoluments, the onus lies on him to explain such excess.

2. Targeted officials

- 2.1. Please list the categories of officials required to file a financial disclosure. Please select all that apply and provide the range of targeted officials in each relevant category.

- √ Public officials, including representatives from all branches and agencies of government
 - √ Members of the legislative branch, please list:
 - Member of Parliaments
 - √ Members of the judiciary and prosecution, please list:
 - Judicial and legal services: judges, magistrates, prosecutors etc
 - √ Members of the executive branch, including armed forces and agencies subordinate to a minister, please list:
 - Armed forces, general public service of the Federation, the police force, the education service
 - Officials of independent government bodies (*e.g., standalone boards, commissions and agencies that fall outside the executive, legislative and judicial branches of government*), please list: N/A
 - Officials at the supranational (high-level) bodies (*e.g., representatives of the country in regional and global organizations/bodies*), please list: N/A
 - √ Officials at subnational levels of government (*e.g., officials at the level of local government, provinces and municipalities*), please list:
 - The public service of each State
 - Political party officials, please list: N/A
 - Representatives of publicly owned (fully and partially) enterprises, please list: N/A
 - Representatives of private entities, professional associations, foundations and similar bodies performing public functions and services of public interest, please list: N/A
 - Other, please list:

2.2. What factor(s) shaped the decision on the targeted categories of officials? Please select all that apply.

- √ Objective of the system
- Hierarchical level and position of officials
- Corruption risk level of sectors and functions
- Resources and capacity to manage and verify disclosure
- Other.

2.2.1. Please elaborate on your response above.

Malaysia has implemented many anti-corruption initiatives, among others, an asset declaration system has been introduced officially as one of the efforts in fighting corruption in 1993, followed by a government circular giving effect to the system. The circular is read in conjunction with Service Circular No.3 of 2002: Ownership and Declaration Property by Public Officers (hereinafter referred to as “the Circular”) which lay down the procedure in detail. The Circular is applicable to 1.7 million public official, hence a designated public service website known as the Public Service Human Resource Management information System (HRMIS) was introduced in 2008 for public official to declare their assets. This system is designed to provide a clear mechanism for public officials to declare their assets and interests and to use it as a tool to prevent conflict of interest among public official. Under certain circumstances, this

system can assist enforcement agencies to detect and prosecute those public official who have obtained wealth by misuse of their position and power. There is no minimum period of retention record for asset declared by public official even after the person no longer in public service.

2.3. Does any authority have the power to request any official who would usually fall outside the disclosure system to file financial disclosure (*e.g., designate those in high-risk categories, those under investigation for corruption offences, etc.*)? **YES/NO**

If YES, please list the authority(ies), and explain the applicable criteria and procedures.

Malaysian Anti-Corruption Commission (MACC) has been granted the power to obtain information pertaining to the assets from any officer of a public body who is under investigation for an offence of bribery under MACCA. The asset disclosure regime under MACCA is stated under section 36.

Section 36(1)(a) provides that if, based on the investigation carried out by an officer of the Commission, a MACC officer in the rank of Commissioner and above has reasonable grounds to believe that any property is held or acquired by any person as a result of or in connection with an offence under this Act, that officer may, by written notice, require that the person to furnish a statement in writing, on oath or affirmation, setting out:

- i. every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable;
- ii. every piece of property sent out of Malaysia by him;
- iii. the estimated value and location of each of the properties identified under subparagraph (i) and (ii), and if any of such properties cannot be located, the reason therefor;
- iv. the status of the properties identified under subparagraph (i) and (ii) whether the property is held by him or other person, whether it has been transferred, etc.;
- v. all other information relating to his properties, business, travel, or other activities;
- vi. all his sources of income, earnings or assets.

Unlike the definition of a public official stated in the Service Circulars which only includes civil servants in Malaysia, a wide definition of an “officer of a public body” has been given under section 3 of MACCA:

any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds, and, where the public body is a corporation sole, includes the person who is incorporated as such.

The wide definition of the officer of a public body enables MACC to require any public official, including members of parliament, judges, or officials of a government linked company, to disclose their assets to MACC. To ensure the section can be exercised properly, a wide definition of property has been given in section 3 of MACCA, where property means real or personal property of every description, including money, whether situated in Malaysia or elsewhere, whether tangible or intangible, and includes an interest in any such real or personal property.

Further, the officer of a public body is required to declare his/her assets to MACC, and also those of his/her relatives or associates under section 36(1)(b) of MACCA. Under section 3 of the same Act, a “relative” means:

- a) a spouse of the person;
- b) a brother or sister of the person;
- c) a brother or sister of the spouse of the person;
- d) a lineal ascendant or descendant of the person;
- e) a lineal ascendant or descendant of a spouse of the person;
- f) a lineal descendant of a person referred to in paragraph (b);
- g) the uncle, aunt or cousin of the person; or
- h) the son-in-law or daughter-in-law of the person.

Whereas an “associate” means:

- a) any person who is a nominee or an employee of such person;
- b) any person who manages the affairs of such person;
- c) any organisation of which such person, or any nominee of his, is a partner, or a person in charge or in control of, or has a controlling interest in, its business or affairs;
- d) any corporation within the meaning of the Companies Act 1965, of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than thirty per centum of the total issued capital of the corporation; or
- e) the trustee of any trust, where—
 - i. the trust has been created by such person; or
 - ii. the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per centum of the total value of the assets of the trust.

The scope of assets required to be declared by a relative or associate of the public official is the same as the scope of a public official under section 36(a)(i) to (vi). Section 36(3) of MACCA provides:

Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any officer of a public body who has been served with the written notice referred to in subsection (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess.

The above provision has granted MACC the power to further probe the asset declaration submitted under section 36(1) where MACC has reasonable grounds to believe that the public official is living beyond his means. The public official who has been served with a written order under section 36(3) of MACCA must explain how he was able to own, possess, control or hold such excess.

The public official and his/her relative or associate shall submit his/her asset declaration in writing on oath or affirmation upon the receipt of a written notice by MACC under section 36 of MACCA. The declaration can be submitted by hand or by mail as long as it is submitted within the period specified by MACC. The investigating officer of MACC will then carry out the verification of assets declared by examining the contents and the supporting documents of the assets declared and determining whether it is proportionate or in excess of the public official’s emolument.

2.4. How does your country create and update the list of filers?

Paragraph 4 of the Circular requires that all public officials declare their assets. Hence, all public official will be given an ID and password to log in HRMIS upon their appointment into public service.

2.5. Please provide the approximate number of filers.

1.7 million

3. Frequency of disclosure

3.1. When and how often are targeted officials required to file/submit financial disclosures? Please select all that apply.

- Upon entering office
- Upon leaving office
- Annually
- Biennially (once every two years)
- Once every three years
- Some categories of officials are more frequently required to declare than the others
- Other, please describe.
 - As required by the Government
 - Every five years
 - Upon acquisition of property
 - Upon disposal of property

3.2. Does the competent authority have the power to request targeted officials (filers) to submit ad hoc financial disclosures between the official submission periods? **YES/NO**

If YES, please explain.

The Circular makes declaration of property mandatory by a public officer as required by the Government.

3.3. Are the targeted officials required to update/amend their financial disclosures between submission periods? **YES/NO**

If YES, please provide the ground for updating/amending submitted disclosures and the relevant time frame.

Upon acquisition of additional property and upon disposal of property

4. Competent authority and disclosure process

4.1. Which authority/entity is responsible for collecting and maintaining financial disclosures? Please select all that apply.

- Central competent authority
- Entities employing the targeted officials
- Other authorities depending on the categories/levels of officials (election Commissions, supreme courts, parliamentary committees, etc.). Please list:

Malaysian Anti-Corruption Commission

4.2. How are the financial disclosures submitted?

- √ Centralized submission directly to the central competent authority via:
 - √ Electronic (online) submission system
 - Submission using the paper submission
- √ Delegated submission using paper submission (e.g., to individual bodies, which store them and transmit them to the competent authority)
- Delegated submission using both paper and electronic (online) submission (*paper declarations are submitted to individual bodies while the electronic copies are submitted to a centralized online system of the competent authority*)
- Other.

4.2.1. Please elaborate on your response above and describe the processes and methods of submitting the disclosures.

The submission of asset declaration is made in electronic form through a designated public service website known as the Public Service Human Resource Management Information System (HRMIS).

Paragraph 4 of the Circular requires that all public officials declare their assets under four circumstances: upon being appointed to the service, as required by the government, upon acquisition of additional property, and upon disposal of property. Public officials shall declare their assets every five years. In the event where the public official has not acquired any additional property or disposed of property during the five years' period, he/she shall make an acknowledgement regarding the matter. Every asset declared shall be itemised together with the related legal documents to indicate the legality of the acquired or disposed of asset.

Under Code of Ethics for Members of Administration and Members of Parliament 2018, the declarer shall declare their assets by using forms and submit the forms to the Prime Minister and copy to the Chief Commissioner of MACC. The said declaration will be uploaded to a dedicated portal by MACC for public access.

4.3. If electronic submission is possible, please describe the online tools and platforms available for submitting financial disclosures.

The submission of asset declaration is made in electronic form through a designated public service website known as the Public Service Human Resource Management Information System (HRMIS). The underlying objective of HRMIS is to ensure that the developed application will be able to improve the performance of the public sector delivery system. The HRMIS human resource management application consists of 11 core modules comprising 39 sub-modules (HRMIS, 2009). Asset declaration is one of the sub-modules along with service profile and personal record under Personal Record Management.

4.4. Please describe the measures implemented to ensure compliance and appropriate quality of information when completing and submitting the financial disclosure (e.g., disseminating information materials, training, awareness raising, etc.).

Training programmes for public officials regarding the promotion of integrity, honesty and responsibility in public service mainly conducted by the National Institute of Public

Administration (INTAN). One of the course titled “The Mind-set Transformation Programme” is a mandatory course designed for newly recruited civil servants. 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 including financial disclosure. Participants were also taught the importance of teamwork and instilling good values to create a highly professional public service workforce.

In order to ensure the HRMIS can be operated efficiently, every agency or department shall establish a HMRIS core team who take charge of system functionalities and technical aspects of the HRMIS. After a public official has declared his assets via HRMIS, the declaration is submitted to the Asset Secretariat of the respective agency whose duties are:

- i. to acknowledge receipt of the declaration;
- ii. examine and endorse the declaration; and
- iii. present the declaration forms to the Head of Department.

The Asset Secretariat will acknowledge the submission of the asset declaration of the public official upon the receipt of the declaration. A verifying officer (“the verifier”) will examine the submission by the public official. The verifier will scrutinise the declaration to assess whether the public official lives beyond his means by comparing their income or assets and liabilities. Besides that, the verifier can request further information from the public official if he thinks that the declaration is not sufficient. A report of the asset declaration of the public official will be generated and presented to the Head of Department for endorsement.

5. Scope of disclosures

5.1. Please list the assets and interests included in the financial disclosure forms, including categories of assets and other financial interests. Please also refer to the list below.

- √ Immovable and movable assets
 - √ their value and source
 - √ those (assets) held in the name of others
- √ Income
 - √ their source
- √ Securities
- √ Investments
- √ Savings
- √ Bank accounts
 - √ Any other business relationships with financial institutions
- √ Liabilities / loans / mortgage
- √ Cash
- √ Gifts
- √ Livestock
- √ Ownership interests (*shareholdings*) in companies and other legal entities and arrangements
- √ Business / outside activities (*business interests and financial connections*)
- √ License(s) (*to carry out commercial activities*)
- √ Usufruct rights (to use and benefit from an asset owned by others)

- √ Information on all legal persons linked to the official in any way, individual economic activity, membership and position in undertakings, establishments, associations or foundations

5.2. Is the requirement to disclose an asset dependent on its value (*e.g., assets below a certain threshold do not need to be declared*)? Please explain.

The Circular has defined the property in a similar way and includes immovable and movable property as follows:

- (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 MYR10,000.00, whichever is the lesser.
- (b) Immovable Property
- i. land, including those under temporary occupation license;
 - ii. residential property;
 - iii. commercial building, including office spaces, stalls.

5.3. Does the information mentioned in question 5.1 include assets and relevant financial interests located both in and outside the country? **YES/NO**

5.3.1. **If YES**, does it require the disclosure of an interest in or a signature or other authority over a financial account in a foreign country (please see article 52, paragraph 6, of the Convention)?

No.

5.4. Does your country's financial disclosure system include a declaration of beneficial ownership (of legal entities and arrangements, including nominee arrangements and trusts)?¹ **YES/NO**

Please explain.

5.4.1. Are the targeted officials required to declare assets and interests held, managed or controlled through such legal entities and arrangements? **YES/NO**

If YES, please explain.

UNCAC Article 2(d) defined property as assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets. The Circular has defined the property in a similar way and includes immovable and movable property as follows:

- (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

¹ On beneficial ownership, please refer to the conference room paper prepared by the secretariat entitled "Good practices and challenges with respect to beneficial ownership and how it can foster and enhance the effective recovery and return of proceeds of crime" ([CAC/COSP/WG.2/2022/CRP.1](#)).

- (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

5.5. Are targeted officials also required to submit information for their family members? **YES/NO**

If YES,

- a. Please describe the scope of the family members (spouse(s), registered/non-registered partner(s), children (minor, financially dependent, within the same household, age limits, etc.)).

Regulation 10 of the Public Officers (Conduct & Discipline) Regulation 1993:

*An officer shall, upon his appointment to the public service or at any time thereafter as may be required by the government, declare in writing to the appropriate disciplinary authority or the department heads all property belonging to **him, or his or her spouse or child or held by any person on his behalf or on behalf of his wife or her husband or her child.***

Para 3 of the Circular defines “child” means a child of an officer who is dependant on him.

- b. Please describe the type of information that must be submitted for family members. Is it the same as of the public official?

Yes.

5.6. Does the financial disclosure system cover individuals other than the family members of the filers? **YES/NO**

If **YES**, please list the applicable individuals and the type of information that needs to be submitted.

N/A

5.7. For subsequent regular financial disclosures, what is the extent of information included in such financial disclosures?

- Information required in the disclosure includes only changes in the equity of the filer since the last disclosure
- A complete new disclosure (i.e., a net worth statement)
- Other, please describe: _____

5.8. Does your country’s financial disclosure regime require declaring expenditures? **YES/NO**

If **YES**, please provide an overview of the relevant features.

N/A

6. Access to disclosed information

6.1. Is the information on financial disclosure publicly available? **YES/YES IN PART/NO**

If YES OR YES IN PART

- a. Please describe the measures in place to ensure public access to financial disclosure information (e.g., *proactive publication on a central online platform and/or on relevant authorities' websites, ad hoc disclosure in a paper form upon request, etc.*)

Code of Ethics for Members of Administration and Members of Parliament 2018 provides the asset declarations will be uploaded to a dedicated portal by MACC.

- b. If not all disclosures are publicly available, please list the categories of targeted officials whose disclosures are accessible and/or remain confidential.

Asset declaration of public official made under the Circular via HRMIS is classified as confidential as well as the judges.

- c. If only part of the financial disclosure information is available, please list the type of information that is publicly available.

Code of Ethics for Members of Administration and Members of Parliament 2018 is referred, in 2018, monthly salary and total of asset value were published whereas in 2020, monthly salary and the range of total value of asset owned were published on the portal.

- d. Does accessing financial disclosure information entail any costs?

No.

- e. Does the publication of financial disclosure provide features to search information by different types of information, e.g., legally and beneficially held entities' names and business addresses, types of assets and interests? Please explain.

No.

- f. Do the means of enabling public access allow for a comparison of the targeted officials' assets and interests over a specific period?

No.

- g. Are any measures in place to protect the personal information of the targeted officials and their family members, when applicable? Please explain.

N/A

- h. Please provide the link(s) to the online platform/resource where financial disclosure information is available to the public, if applicable.

<https://mydeclaration.sprm.gov.my>

- 6.2. Do the relevant competent national authorities (law enforcement, FIU, tax and customs authorities, etc.) have access to the financial disclosures? **YES/YES IN PART/NO**

If YES or YES IN PART, please explain how such access is granted, including the list of competent national authorities that can access or request access.

Any enforcement agencies in this country which given powers under respective laws to request for access to the information, for example MACC, Royal Malaysia Police etc.

7. Verification of financial disclosure information

7.1. Is the information disclosed verified? ~~YES~~/NO

If **YES**, please describe the procedures and practices in place to verify the content of financial disclosures, including:

a. Competent authority that conducts the verification (centralized and/or delegated)

Every agency or department shall establish a HRMIS core team who take charge of system functionalities and technical aspects of the HRMIS. After a public official has declared his assets via HRMIS, the declaration is submitted to the Asset Secretariat of the respective agency whose duties are:

- i. to acknowledge receipt of the declaration;
- ii. examine and endorse the declaration; and
- iii. present the declaration forms to the Head of Department.

The Asset Secretariat will acknowledge the submission of the asset declaration of the public official upon the receipt of the declaration. A verifying officer (“the verifier”) will examine the submission by the public official. The verifier will scrutinise the declaration to assess whether the public official lives beyond his means by comparing their income or assets and liabilities. Besides that, the verifier can request further information from the public official if he thinks that the declaration is not sufficient. A report of the asset declaration of the public official will be generated and presented to the Head of Department for endorsement.

b. Frequency (regularity) of verifications (ad hoc and/or systematic and routine)

Upon submission

c. Extent of verification (verification of completeness, compliance with disclosure requirements and/or the analysis of the content of the disclosures)

Both

d. Verification processes and methodologies (e.g., manual examination, electronic checks undertaken against other databases or relevant information, etc.)

Manual examination and relevant information, for example, Paragraph 15 of the Circular provides that the Head of Department shall consider the following when endorsing the asset declaration:

- i. the financial ability of the public officer to own the property declared;
- ii. the way of acquisition of the property declared does not breach 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. monthly instalment payment is not burdensome; and
- v. other factor in connection to the integrity and efficiency of the public service.

7.2. How does your country determine which disclosures to verify?

- Annual verification plan(s)
- Periodic mandatory verification of specific categories of officials
- Random sampling of declarations
- Media reports and/or complaints from the public
- Requests from law enforcement / investigative units

Other, please describe: _____

7.3. If applicable, does the electronic financial disclosure mechanism(s) allow for automated verification (cross-checking) of information across various registers and databases held by the public and private entities, such as registries of various assets, company registers, HR, tax and real estate data, etc.? **YES/NO**

If YES, please explain.

N/A

7.4. Do the competent authorities have timely and direct access to databases and information necessary to verify information in the financial disclosure? **YES/NO**

Please explain.

The competent authorities will be provided the information, not direct access to databases upon request under respective laws.

7.5. Do competent authorities have access to the information held by financial institutions, including bank account records? **YES/NO**

Please explain.

The competent authorities will be provided the information upon request under respective laws

7.6. Please provide the overall verification rate of financial disclosures in percentages for each applicable verification method.

N/A

8. Sanctions

8.1. Please provide an overview of sanctions for non-compliance with financial disclosure requirements, including the sanctionable conducts, type of sanctions, forms of sanctions (administrative/criminal) and targeted officials.

In accordance with paragraph 29 of the Circular, an officer who fails to make a declaration of property can face disciplinary action provided for under Public Officers (Conduct & Discipline) Regulations 1993. Paragraph 38 of the 1993 Regulations specifies the types of disciplinary punishments that may be imposed on the officer if he is found guilty of failure to declare assets as follows:

- i. warning;
- ii. fine;
- iii. forfeiture;
- iv. deferment of salary movement;
- v. reduction of salary;
- vi. reduction in rank; or
- vii. dismissal.

A public official, his/her relatives and associates can be charged under section 36(2) of MACCA if he/she wilfully neglects or fails to declare assets under section 36(1) and shall on

conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding MYR 100,000.

A public official can be liable under section 36(3) for unexplained wealth, and upon conviction, shall be liable for imprisonment for a term not exceeding 20 years and a 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 the higher.

If a person wilfully neglects or fails to comply with the terms of direction by MACC, he/she can be liable to imprisonment for a term not exceeding 20 years and a 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 the higher.

Whereas In the event of wrongdoing being proven against a judge, the Judges' Ethics Committee may impose either of the following sanctions:

- i. the recording of an admonition to the judge or
- ii. the suspension of the judge from his office for a period not exceeding one year

Legal action can be taken under Statutory Declaration Act 1960 for those fail to comply asset declaration made under the Code of Ethics for Members of Administration and Members of Parliament 2018.

8.2. Is there any applicable statute of limitations? **YES/NO**

Please explain.

No limitation period for criminal matters in Malaysia. As per Section 107 of the Criminal Procedure Code, a police officer has a duty to accept any reports on any criminal offence committed within Malaysia.

8.3. Please describe the powers available to the competent authority (responsible for verification of disclosures) to impose and enforce the sanctions described above.

Under section 30 of MACCA, MACC has power to examine persons and to order any person to produce any document in relation to any matter which may assist in the investigation into the offence.

Section 35 of MACCA, MACC has the power to give order to any financial institution for inspect and obtaining copy banker's book, account, share account, expense account, contents of any safe deposit or any document belonging to or in the control of the financial institution.

9. International cooperation and asset recovery

9.1. Does your country (proactively or at the request of another State party) share financial disclosure information with foreign States? **YES/NO**

If YES, please describe the channels and mechanisms for cooperation.

The general provisions in making requests are provided under section 19 of Mutual Legal Assistance in Criminal Matters Act 2002 (Act 621) (hereinafter known as MACMA), Regulations 5 and 11 of the Mutual Assistance in Criminal Matters Regulations 2003.

Section 19 of the MACMA provides for the content of requests made to the Attorney General.

(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, 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 3 of the MACMA of Malaysia, which provides a non-exhaustive list of the types of assistance that may be provided and requested, for instance foreign state can request Malaysia to provided financial disclosure information under sub para of this section as follows:

(a) providing and obtaining of evidence and things;

(b) the making of arrangements for persons to give evidence, or to assist in criminal investigations;

9.2. Does your country cooperate and execute requests received from foreign authorities to assist them in the verification of information in their financial disclosures? **YES/NO**

If YES, please explain, including the channels used.

Refer to the responses given under para 9.1

- 9.3. If applicable, please provide the contact details of the authority responsible for the above types of international cooperation (for exchanging financial disclosure information).

International Affairs Division
Attorney General's Chambers
No. 45, Persiaran Perdana
Precint 4
62100 Putrajaya
W.P Putrajaya, Malaysia

10. Good practices

- 10.1. Please provide examples of any good practices in connection with your country's financial disclosure regime that facilitated the recovery and return of proceeds of crime.

N/A

- 10.2. Do you have any case studies or examples where the financial disclosure regime has enabled or facilitated the recovery and return of proceeds of crime in (or for) your country?

N/A

- 10.3. Please provide examples of good practices concerning the operation of your country's financial disclosure system, including policies and measures adopted to enhance compliance with financial disclosure requirements.

N/A

11. Challenges

- 11.1. What were the main challenges faced by your country when introducing the financial disclosure system(s)?

Political will. As the Malaysian asset declaration system is implemented via administrative regulations for civil servants, a code of conduct for Members of Parliament and Members of Administration and a code of ethics for judges, the absence of criminal codification/ criminal sanction for non-compliance of asset declaration that could serve as a more effective deterrent.

- 11.2. In your opinion, what are the main challenges faced by competent authorities of your country to verify financial disclosures, including accessing information regarding assets and financial interests located abroad?

N/A.

- 11.3. What are the main challenges faced by your country when imposing and enforcing sanctions for non-compliance?

As there are different sets of asset declaration systems which apply to different categories of public official, it would also reflect the different sets of standards would apply to them include imposing and enforcing sanctions.

12. Follow-up to the special session of the general assembly against corruption

12.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 7² of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

Refer the responses given above.

13. Other

13.1. Please provide any other information you consider relevant to your country's legal framework and practices in connection with establishing an effective financial disclosure system that is not highlighted in the questions above.

N/A

² 7. We will strengthen our efforts to prevent, identify and manage conflicts of interest, including by assessing and mitigating corruption risks and through effective and transparent financial disclosure systems, with information disclosed by appropriate public officials made available as widely as possible, and we will use innovative and digital technology in this field, with due regard for data protection and privacy rights.