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The Permanent Mission of Malaysia to the United Nations Office at Vienna presents its compliments to the United Nations Office on Drugs and Crime in Vienna and with reference to the latter's Note Ref. No. CU 2012/28 (A)/DTA/CEB dated 27 February 2012, has the honour to convey herewith the pertinent information on relevant initiatives and practices by Malaysia in relation to the topics for discussion at the upcoming third intersessional Open-ended Intergovernmental Working Group on Prevention meeting to be held from 27 to 29 August 2012 as outlined in the Guidance Note for Secretariat's kind information and record.

The Permanent Mission of Malaysia to the United Nations Office at Vienna avails itself of this opportunity to renew to the United Nations Office on Drugs and Crime in Vienna the assurances of its highest consideration.

17 April 2012

To:

Secretary
Conference of the States Parties to the UNCAC
Corruption and Economic Crime Branch
United Nations Office on Drugs and Crime
Vienna International Centre
P.O. Box 500
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Austria



**INFORMATION BY MALAYSIA ON EXPERIENCES OF IMPLEMENTING ARTICLE 7-9 AND 12
OF CHAPTER II OF UNCAC FOR THE THIRD INTERSESSIONAL MEETING OF THE
WORKING GROUP ON PREVENTION ON 27 – 29 AUGUST 2012**

A. Information requested from States parties in relation to conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 – 9 of the Convention

1. Has your country adopted and implemented articles 7 – 9 of the UN Convention against Corruption?

States parties are encouraged to focus in particular on their implementation of policies and measures relating to conflicts of interest, the reporting of acts of corruption and the use of asset declarations.

Yes. Malaysia has policies/measures in the form of Laws, regulations, Public Service circulars cited and summarized in paragraph 2.1 below.

2. Please cite, summarize and, if possible, provide copies of the applicable policy (ies) or measure(s):

In particular, the Secretariat would be grateful for information regarding policies or measures that:

2.1. Identify and address potential conflicts between the professional duties and personal interests of civil servants or elected public officials.

i. Regulation 4 (2) of the Public Officers (Conduct and Discipline) Regulation 1993

An officer shall not:-

- a. Subordinate his public duty to his private interest;
- b. Conduct himself in such manner as is likely to bring his private interest into conflict with his public duty;
- c. Conduct himself in any manner likely to cause reasonable suspicion that-
 - I. He has allowed his private interest to come into conflict with his public duty so as to impair his usefulness as a public officer; or
 - II. He has use his public position for his personal advantage;
- d. Conduct himself in a such a manner as to bring the public service into disrepute or bring discredit to the public service;
- e. 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.

ii. **Sec 23 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)-Offence of using office or position for gratification:-**

23. (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.

iii. **Treasury Instruction No 197 (3)**

Any officer who has vested interest in the Quotation / Tender exercise is required to declare his/her interest and to dismiss him or herself in writing.

iv. **Prime Minister's Guide 8 March 2010: Action Guide Lines with regards to Lobbying by Government Leaders, Influential or Other persons on Official Matters.**

A guide to define parameters of support letters and/ or other medium of communication, to deter undue influence by individuals on decision making process of public officials in procurement, human resources management, application of license/permits, loan, scholarship, citizenship etc.

v. **Treasury Circular letter No 11 of 1995: Guidelines On Overseas Trips Due To Government Procurement**

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.

vi. **Letter of Undertaking by Public Officials –Regulation 19 of the Public Officers Regulations (Appointment, Promotion, and Termination)2005.**

A mandatory requirement for all public officials appointed by the Government to abide the provisions of the Public Officers (Conduct and Discipline) Regulation 1993, General Orders, Service Circulars, Circular Letters, Regulation and others rules issued by His Majesty The King from time to time.

2.2. Allow and encourage members of the civil service to report acts or suspected acts of corruption. States parties are encouraged to provide specific examples such as training, publicity campaigns, information on the existence and operation of whistleblower hotlines, etc.;

Malaysia has implemented the following policies and mechanism to encourage members of the civil service to report acts or suspected acts of corruption:-

- i. **Training** – All civil servants are required to attend a training Integrity Management Module vide **Government of Malaysia Service Circular No 4/1999** which train the civil servant how to report acts or suspected acts of corruption . The module covers, amongst others, the following topics:-
 - a. Identification of acts of corruption, acts of corruptions , malpractices and abuse of powers; and
 - b. The acts of corruption, malpractices and abuse of powers reporting systems such as the using of email, toll-free, hotline, complaints counter handle by MACC officers in Head Quarters, State offices and branches.

- ii. **Publicity/ Awareness campaigns** – the Malaysian Anti-Corruption Commission efforts under section 7 (f) and (g) of the Malaysian Anti-Corruption Commission Act 2009 which include :
 - a. Road Shows on the provisions of the Malaysian Anti-Corruption Commission with reference to offences under the Act and in particular provisions of **section 25 –Duty To Report Bribery Transactions and section 65 – Protection Of Informers And Information.**
 - b. The Restrain From Accepting: Fight Against Bribe Givers Campaign
 - c. Interviews, talk shows, dialog,
 - d. Drama based on successful operation carried out by the Malaysian Anti-Corruption Commission
 - e. Religious sermons
 - f. Broachers, pamphlets,
 - g. Toll free hotline / emails

- iii. **Recognition Accorded to Civil Servants Who Report on Corruption** – to encourage civil servants to lodge reports against bribe givers to the Authorities/MACC.

2.3. Require asset declarations from civil servants or those elected to public office (States parties are encouraged to provide examples of asset declaration forms where used).

Malaysia has implemented asset declaration for all public officials vide **Service Circular Number 3/2002 – Ownership and Declaration of Asset by Public Official.** According to the circular, every public official is required to declare their asset under the following circumstances:-

- a. when appointed in public service;
- b. when required by the Government ;
- c. when acquiring new properties and
- d. when disposing away properties.

The public officials are required to declare their asset at least once in every five years.

The asset declaration **Form JPS (T) 1/02 – First time declaration, Form JPS (T) 2/02 – Disposal of properties declaration and Form JPS (T) 3/02 – declaration of company/ business owned by public Officials.**

3. Please provide examples of the successful implementation of domestic measures adopted to comply with articles 7 – 9 of the Convention:

3.1. Conflicts of interest are deterred by enforcing the following measures:

- i. Enforcement of Regulation 4 (2) of the Public Officers (Conduct and Discipline) Regulation 1993;
- ii. Enforcement of Sec 23 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Offence of using office or position for gratification;
- iii. Treasury Instruction No 197 (3);
- iv. Compliance with the Prime Minister’s Guide on defining parameters of support letters to deter undue influence by individuals on decision making process of public officials in procurement ;
- v. Compliance with Treasury Circular letter No 11 of 1995: Guidelines On Overseas Trips Due To Government Procurement ;
- vi. The execution of Letter of Undertaking by Public Officials to abide the Public Officers (Conduct and Discipline) Regulation 1993, General Orders, Service Circulars, Circular Letters, Regulation and others rules issued by His Majesty The King from time to time

3.2. The reporting of acts of corruption –

- i. The implementation of **WHISTLEBLOWERS PROTECTION ACT 2010 AND WITNESS PROTECTION ACT 2009.**
- ii. The Restrain from Accepting: Fight against Bribe Givers Campaign
The campaign aims to enhance the integrity of public officials to fight corruption, abuse of powers and malpractices. The campaign also seeks to enlighten the public that bribe givers are not absolved from legal actions to be taken against them. The awareness among the public officials on this scourge of corruption will turn them to be more assertive and defy corrupt practices as a culture of life.

As a result of the campaign, it was noticed that the number of arrests among the public officials under the offence of section 17(a) of the MACC Act 2009 (Act 694) dropped by 32% representing 200 arrests in the year 2010 compared to the 294 arrests made in 2009. However, under the offence of section 17(b) of the same Act, a rise of 283% representing 414 arrests was seen in the year 2010 compared to the 108 arrests made in the year 2009. This report on the statistics clearly reflects a paradigm shift of mindset and attitude amongst the public officials particularly of those who are attached to enforcement agencies.

a. The use of asset declarations.

The asset declaration is a pre-condition for conformation and promotion of all Public Officials under Chapter A of the General Order and violation against the requirement to declare asset can be punishable under Chapter D of General Order.

4. Have you ever assessed the effectiveness of the measures adopted to implement articles 7 – 9? Please outline (or, if available, attach) the results of such an assessment including methods, tools and resources utilized.

States parties may wish, in particular, to provide information in relation to assessments of the effectiveness of measures aimed at:

Method:

- i. Analysis of annual reports and statistics on information/complaints received by the MACC provided by the Record Management and Information Technology Division of the MACC;
- ii. Integrity vetting by the MACC for officials going on promotion/honorary awards for excellent services;
- iii. Asset declaration by public officials are monitored by Public Service Department;
- iv. Periodical meetings and feedbacks of Department Heads.

Example: A considerable amount of support from 10 Enforcement agencies as listed below and the Congress of Unions of Employees in the Public Service (CUEPACS) were gained into making the campaign a successful one.

- Royal Malaysian Police
- Malaysia Maritime Enforcement Agency
- Forestry Department
- Volunteers of Malaysian People (RELA)
- Royal Malaysian Customs Department
- Immigration Department of Malaysia
- Road Transport Department
- Putrajaya Corporation
- Kuala Lumpur City Hall
- Ministry of Domestic Trade, Co-operatives and Consumerism
- Congress of Unions of Employees in the Public Service (CUEPACS)

v. reports of the MACC Advisory Board on Corruption

Tools: Human Resources Information System (HRMIS)

5. Which challenges and issues are you facing in (fully) implementing articles 7 – 9 of the Convention?

States parties may particularly wish to provide details of challenges faced when implementing practices or policies relating to conflicts of interest, reporting acts of corruption and the use of asset declarations including:

- i. *Technical challenges such as the design, development or drafting of new policies, practices and measures.*
- ii. *Communication challenges such as the ability to disseminate publicize and promote the new policy or practice both to public officials and the public more broadly.*
- iii. *Implementation challenges such as the ability to enforce or otherwise encourage adherence to new or existing policies or practices by public officials.*

No challenges faced by Malaysia in implementing articles 7-9 of the Convention.

6. *Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?*

States parties are encouraged to provide a description of any such assistance already being provided and by whom

No technical assistance required.

B. Information requested from States parties in relation to implementation of article 12 of the Convention (Private sector), including the use of public private partnerships

1. Has your country adopted and implemented article 12 of the UN Convention against Corruption?

Yes. Malaysia has to a large extent implemented article 12 of the Convention.

2. Please cite, summarize and, if possible, provide copies of the applicable measure(s) or policy (ies):

Please note that paragraph 2 of article 12 offers different examples of how corruption involving the private sector can be addressed, but does not limit the use of other approaches such as sector specific initiatives etc.

Malaysia addresses issues of corruption in the private sector through the following measures/mechanism:-

- 2.1. Corporate Integrity Pledge
- 2.2. Integrity Pact
- 2.3. Mega Project Monitoring by Integrity Governance Committee
- 2.4. Code of Ethics in Business
- 2.5. Ant-Corruption Clause in Government Contract
- 2.6. Capacity and Capability Building
- 2.7. Disclosure of Procurement Information

3. **Please provide examples of the successful implementation of domestic measures adopted to comply with article 12.**

3.1. States parties are encouraged to provide examples of anti-corruption initiatives carried out together with the private sector.

3.2. States parties may wish to include information on lessons learnt during the planning and/or implementation process as well as specific factors which led to the success of an initiative.

3.3. Moreover, the Secretariat would be grateful for information regarding the form of collaboration with the private sector (e.g. steering structure and processes, communication, financial aspects) and the main partners (e.g. private sector representative organizations, networks, individual companies, SMEs).

The successful implementation of the measures/mechanism outlined in paragraph 2.1-2.7 is as follows:-

Corporate Integrity Pledge (CIP)

The Corporate Integrity Pledge is a document 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 effect of this is twofold:

i. A company will be making a clear stand of how it operates, and this will be locked down in writing – this will be guidance to the company in its business interactions, should it be faced with the possibility of condoning any payments or other activities that would amount to corruption.

ii. A company can use this Pledge to set itself apart from its peers by demonstrating to its stakeholders that its business operations do not include any hidden risks or costs that are associated with corrupt activities. By signing the pledge, the company can be listed in the register of signatories that is carried on the website of the Malaysian Integrity Institute, and can be accessed through the website of Bursa Malaysia Bhd.

The Pledge is a tool to be used by companies and is not a regulatory instrument of any sort. Breach of the pledge – e.g. if a signatory company is later found to have been complicit in corruption – will not carry any legal sanction under the pledge on its own. Instead, the Pledge will be given force through self-reporting by the company, to meet the demands of its stakeholders, in line with the model adopted under the 10th Principle of the UN Global Compact. Adherence to the Pledge is therefore monitored to the same extent that other non-mandated disclosures by any company to its stakeholders are monitored – through scrutiny and demands of the stakeholders.

This Pledge is not issued by any one regulator or authority but is a result of collaboration between Government Agencies such as Bursa Malaysia Berhad, the Companies Commission of Malaysia, the Malaysian Institute of Integrity, the Malaysian Anti-Corruption Commission & NKRA Corruption Monitoring & Coordination Division, Securities Commission Malaysia, Transparency International Malaysia and the Performance Management and Delivery Unit (PEMANDU), Prime Minister's Office, Government Link Company (GLS) and Non-Profit Organizations (NGO). It is made available through the Malaysian Institute of Integrity, who is also maintaining the list of signatories.

As of 30th November 2011, a total of 53 companies have signed the Corporate Integrity Pledge. The companies represent a different sector ranging from business community, banking, manufacturing, Government Link Company (GLCs) and Multinational Company (MNC). Companies and organization who has pledge to MACC so far is National Chamber Of Commerce and Industry of Malaysia, Maybank Berhad, Sime Darby Berhad and Tenaga Nasional Berhad.

Integrity Pact

In the implementation and execution of the Project, the owner and the contractor agree to introduce appropriate measures necessary from time to time, to assist the Parties in creating awareness amongst their employees and agents in their efforts to comply with anti-bribery laws and legislation. These measures known as Integrity Pact that include the following aspect:

Purpose of this Pact

- 1. To introduce programs to create awareness on the offences of corruption and bribery.*
- 2. To promote awareness on the offences of corruption and bribery in collaboration with the Malaysian Anti-Corruption Commission (MACC).*
- 3. To introduce compliance programs in respect of the relevant code of conduct rejecting the use of bribes and other unethical behavior in discharging their responsibilities in the execution of the MRT Project.*
- 4. To establish an independent monitoring system, which may be implemented through the Auditor General of Malaysia or otherwise.*
- 5. To impress the importance of disclosure of interest and/or conflict of interest among the Parties' top management.*
- 6. To place procedures on the prevention of corrupt practices by the Parties' employees or agents as and when the circumstance requires and with each Party's concurrence.*

Commitment of the Parties

- 1. The Parties hereby commit and declare that the Parties and/or their respective employees and agents have not and shall not offer or give bribes in the execution of the Project.*
- 2. The Parties shall disclose any payments that has been made, is being made and intended to be made to agents, brokers or any other intermediaries in connection with the execution of the Project, if it is required by law.*

Penalties in Case of Corrupt Practices

The Parties hereby agree that in the event of the Parties' employees or agents attempting to seek bribe/ be involved in corrupt practices in the execution of the Project, the Parties will promptly report the said action to the responsible authorities (MACC).

Mega Project Monitoring by Integrity Governance Committee

For Government projects worth RM500 million and above it is a Integrity Governance Committee for Mega Project responsibility to monitor the implementation of the project. MACC was the secretariat for this committee. This committee works to ensure that the project is implemented properly without any problems of corruption, abuse of power and malpractices. Their functions are as below:

- 1. Making resolutions and establish policies, laws, regulations and procedures related to government mega projects;*
- 2. Identify weaknesses in policies, laws, regulations and procedures to identify corruption risks;*
- 3. Monitor compliance with policies, laws, regulations and procedures;*
- 4. Detect any non-compliance with contractual agreements (cost, time, quality, quantity);*
- 5. Strengthen the integrity among officers working / executive officer either at the department / agency, government or private;*
- 6. As dissemination of information / complaints related to corruption.*

Codes of Ethics in Business - Collaboration between MACC and SME Corp

MACC and SME Corp are also coming up with a SME Code of Ethics for SMEs. The purpose of the codes is to ensure all SMEs will not involve in corruption, abuse of power and malpractices. By having codes of ethics, its assists to reduce corruption bad effect in those sectors and at the same time enhancing quality of the product, safe human life (consumer) and undermine business trust. By strengthening the integrity in those sectors, directly will increase product quality. The codes of ethics in those sector will eliminate the sources of corruption in which the parties involve will be more transparent, high integrity and less greedy. Above all the sectors will implement good governance in their business.

Capacity and Capability Building

Malaysian Anti-Corruption Commission (MACC), the Malaysian Institute of Integrity and Transparency International Malaysia will provide training to the companies to enhance the level of integrity within the organization. The training module is based on the outcome of the assessment of the company corporate integrity systems. Malaysian Anti-Corruption Commission through Inspection and Consultancy Division also provide assistance to companies in formulating the Code of Ethics and also will give advices on ways to strengthen the system and procedure to plug the loopholes for corruption and abuse of power.

Malaysian Anti-Corruption Commission is pushing for referral policy to materialized in writing for every companies to support the principle of fighting corruption. This is to ensure that any form of corrupt practice occurs in business place will be reported to the relevant authority.

Anti-Corruption Clause in Government Contract

On 28 February 2009 the Ministry of Finance has issued Special Instruction in order to remind all parties involved in government contract not to commit any corrupt practices during the process. The instruction named as Anti-Corruption Clause in Government Contract. All agencies are required to include corruption offence clause in government contract document, whether at all level of the process including document preparation invitation tender/ quotation / e-Bidding. This clause was initiated by MACC base on the examination done toward the problem faces by the government project that was reported in Auditor General Reports.

NKRA Fighting Corruption – Disclosure of Procurement Information

MACC is tasked with the responsibility in the fight against corruption with Chief Commissioner acting as the Coordinator under the NKRA – Fighting Corruption initiative. There are nine core initiative which are identified as Big Wins and one of that directly involve with private sector is Disclosure of Procurement Information. The Ministry of Finance through this initiative has publicized the Government Procurement information through its MyProcurement Portal which was launched by the Prime Minister on 1 April 2010. The success of this initiative than broadens with the venture of the Public Private Partnership Unit (UKAS) into the creation of MyPartnership portal in disclosing information on privatization projects. The portal which is perceived to beef up the level of transparency, integrity and accountability in Government's procurement was officially launched on 25 August 2010.

4. Have you ever assessed the effectiveness of the measures adopted to implement article 12? If so, please outline (or, if available, attach) the results (intended/unintended/positive/negative) of such an assessment including methods, tools and resources utilized.

States parties may wish, in particular, to provide information in relation to the effectiveness of measures implemented jointly with private sector entities.

Our assessment of the effectiveness of measures/mechanism above is based on

- i) analysis of annual reports and statistics;**
- ii) periodical meeting/feedback by Heads of Department**
- iii) reports of the MACC Advisory Board on Corruption**

5. Which challenges and issues are you facing in (fully) implementing the provision?

No challenges are faced by Malaysia in implementing article 12 of this Convention.

6. Do you consider that any technical assistance is required in order to allow you to fully implement this provision? If so, what specific forms of technical assistance would you require?

States parties are encouraged to provide a description of any such assistance already being provided and by whom it is being provided

No technical assistance is needed by Malaysia.