

# **GUIDANCE NOTE FOR THE PROVISION OF INFORMATION BY STATES PARTIES FOR THE FOURTH INTERSESSIONAL MEETING OF THE WORKING GROUP ON PREVENTION ON 8 TO 10 SEPTEMBER 2014**

## **I - Information requested from States parties in relation to mandates of anti-corruption body or bodies in respect of prevention (art. 6)**

### **1. Please describe the measures you have taken to implement art. 6 of the Convention.**

#### **PREVENTIVE ANTI-CORRUPTION BODIES**

##### **Policy Bodies:**

Anti-Corruption polices and initiatives in Malaysia are being largely formulated and directed by the Government of Malaysia, namely, the Prime Minister's Department. Hence demonstrating the element of political will to combat corruption and uphold integrity rising to Challenge No.4 of the Malaysian Vision 2020 which is aimed at **“establishing a fully moral and ethical society”**.

Beginning 2013, a Minister in the Prime Minister's Department has been appointed to be in charge of Governance and Integrity. He was the immediate past President of Transparency International Malaysia, the accredited national chapter of the Berlin-based Transparency International, which is an independent, non-governmental and non-partisan organization committed to fight against corruption at all levels of society.

Prior to the appointment of the said minister, the Malaysian anti-corruption drive has been tasked upon the following bodies or agencies:

##### **(1) PEMUDAH-The Special Taskforce To Facilitate Business which is under PM's Department.**

The said Task Force dubbed “PEMUDAH” (taken from the Malay name ‘Pasukan Petugas Khas Pemudahcara Perniagaan’) is set up to address bureaucracy in business-government dealings by improving the way government regulates business.

##### **(2) PEMANDU under the Chief Secretary**

The acronym ‘PEMANDU’ stands for the Performance Management & Delivery Unit. It is a unit under the Prime Minister's Department to oversee the implementation assess the progress, as well as support the delivery and drives the progress of the GTP and the Economic Transformation Programme.

### **(3) The National Key Result Areas (NKRA) Corruption Monitoring and Coordination Division.**

Since the beginning of 2009, in an effort to realize its Vision and thus taking its anti-corruption drive to a new height, the Government of Malaysia under the premiership of the 6<sup>th</sup> Prime Minister has made an announcement that fighting corruption is one of its National Key Result Areas (NKRAs). This led to the formation the National Key Result Areas **(NKRA)** Corruption Monitoring and Coordination Division. This unit was set up by the PM's department to spearhead the Government Transformation Programme (GTP) in enhancing anti-corruption efforts in three key corruption areas namely, The Regulatory & Enforcement Agencies, Government Procurement and Grand Corruption.

Initiatives of the Minister and the agencies under the PM's department and Chief Secretary above are to be implemented by the relevant government enforcement or regulatory agencies as well as those in charge of government procurement.

### **Other Institutional Arrangements**

#### **(1) Institute of Integrity Malaysia (IIM)**

The IIM is setup as a coordinating agency for the implementation of the National Integrity Plan (NIP). National Integrity Plan (NIP) which is geared towards building a resilient nation which practices the value of integrity and ethics.

The **Malaysian Institute of Integrity (MII)** was the brainchild of the 5th Prime Minister of Malaysia declared on **5 November 2003**.

It was established as a company limited by guarantee under the Companies Act 1965 on 4 March 2004.

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

#### **(2) Enforcement Agency Integrity Commission (EAIC)**

The EAIC was set up in 2011 through the Enforcement Agency Integrity Commission Act 2009 (Act 700) as a government check-and –balance mechanism to infuse and improve the level of integrity among the 19 enforcement agencies and their officers under its purview in order to regain public confidence in the nation's enforcement fraternity.

The EAIC serves as an additional platform to implore the public to officially lodge complaints or grouses on the misconduct of enforcement agency officers. It is also

mandated to conduct investigation on complaints and to submit findings to the relevant authorities for further disciplinary actions.

Some of the main roles of the Commission are:

- Managing and processing complaints with the view of reducing complaints against enforcement agencies and their officers to reflect greater effectiveness and efficiency of such agencies;
- Monitor, audit, analyse and provide recommendations to the government on improving procedures and matters related to discipline of enforcement agencies; and
- Conduct frequent visits to enforcement agencies and provide consultation and discuss on ways to improve the image of the agencies.

### **SPECIALISED CORRUPTION PREVENTION BODY:**

The **Malaysian Anti-Corruption Commission (MACC)** is the specialized anti-corruption body set up under the Malaysian Anti-Corruption Commission Act 2009 (Act 694), the Commission mandated to:

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

Embedded in its anti-corruption strategy of prevention, investigation and education, the functions of the MACC are as follows:

Re. Section 7 of MACCA 2009

- (a) to receive and consider any report of the Commission of an offence under this Act and investigate such report as the Chief Commissioner or the officers consider practicable.
- (b) to detect and investigate:
  - (i) any suspected offence under this Act.
  - (ii) any suspected attempt to commit any offence under this Act, and
  - (iii) any suspected conspiracy to commit any offence under this Act.
- (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as, in the opinion of the Chief Commissioner, may be conducive to corruption.

- (d) to instruct, advise and assist any person, on that person's request, on ways in which corruption may be eliminated by such person.
- (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption.
- (f) to educate the public on corruption, and
- (g) to enlist and foster public support for anti-corruption initiatives.

### **The Independence of the Malaysian Anti-Corruption Commission.**

The **Malaysian Anti-Corruption Commission** is established by an Act of Parliament, namely, the Malaysian Anti-Corruption Commission Act 2009 (Act 694) and is independent of the Legislative, Executive and Judiciary. The Head of the Commission are appointed by the Yang diPertuan Agong (the King) on the advice of the Prime Minister.

Administratively, the MACC is placed within the purview of the Prime Minister's Department for the purpose of funding its activities. Operationally, the MACC answers to no one except an independent parliamentary committee set up under the said Act.

[Be that as it may, the MACC is currently (2014) in the process of undergoing structural transformation to enhance the independence and security of tenure of its Chief Commissioner as that of the other public service commissions by a constitutional amendment].

In carrying out its functions, the MACC is only answerable or accountable to the following **Independent Oversight Bodies:-**

#### **(a) Anti-Corruption Advisory Board (ACAB)**

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

#### **Terms of Reference of Anti-Corruption Advisory Board (ACAB)**

1. To advise the Commission on any aspect of the problem of corruption in Malaysia.

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

**(b) Special Committee On Corruption (SCC)**

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

**Terms of Reference of Special Committee on Corruption (SCC)**

1. To advise the Prime Minister on any aspect of the problem of corruption in Malaysia.
2. To examine the annual report of the Commission.
3. To examine the comments of the Anti-Corruption Advisory Board (ACAB) regarding the exercise of the Commission's functions under the Malaysian Anti-Corruption Commission Act, and
4. To seek clarification and explanation on the annual report of the Commission and the comments of the Anti-Corruption Advisory Board.

**(c) Complaints Committee (CC)**

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

**Terms of Reference of Complaints Committee (CC)**

1. To monitor the handling by the Commission of complaints of misconduct (which is non-criminal in nature) against officers of the Commission, and

2. To identify any weaknesses in the work procedures of the Commission which might lead to complaints and, where it considers appropriate, to make such recommendations as to the work procedures of the Commission.

**(d) Operations Review Panel (ORP)**

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

**Terms Of Reference of Operations Review Panel (ORP)**

1. To receive and seek clarification regarding statistics of Investigation Papers opened by the Commission.
2. To receive and scrutinize reports from the Commission regarding Investigation Papers that have exceeded a period of investigation of 12 months.
3. To receive reports from the Commission regarding cases where suspects who were arrested are released by the Commission on bail exceeding 6 months.
4. To receive and scrutinize reports from the Commission regarding the decisions of Investigation Papers made by the Public Prosecutor.
5. To receive and scrutinize reports from the Commission regarding Investigation Papers submitted to the Public Prosecutor in which no decisions have been obtained after 6 months or more.
6. To present its views regarding actions upon cases where no charges are proffered.
7. To advise and assist the Commission on the effectiveness of its investigation operations.
8. To scrutinize, study and endorse proposals to enhance the effectiveness of the Commission's investigation operations to the Anti-Corruption Advisory Board, and
9. To submit an annual report and the ORP comments to the Prime Minister on the progress of the Commission's investigation operations.

**(e) Consultation And Corruption Prevention Panel (CCPP)**

The Consultation and Corruption Prevention Panel is appointed administratively by the Prime Minister from among individuals who represent various civil society organizations including academicians, businessmen, religious figures, media experts and social activists that can assist the MACC towards its objective of inculcating a society that does not tolerate corruption.

**Terms of Reference of Consultation and Corruption Prevention Panel (CCPP)**

1. To scrutinize and endorse to the Commission changes to practices, and work systems and procedures of the public bodies and the private sector which are conducive to the occurrences of corruption.
2. To scrutinize and improve recommendations prepared by the Commission to eradicate corruption in both the public bodies and the private sector.
3. To continuously develop and legislate best practices in priority areas.
4. To advise the Commission on the implementation of community anti-corruption education programmes and campaigns in order to raise awareness and increase support for such programmes.
5. To scrutinize the effectiveness of community education programmes and campaigns which have been implemented by the Commission and to endorse proposals for improvements
6. To continuously monitor public attitudes and perception towards corruption and efforts that have been implemented by the Commission.
7. To assist the Commission as a key communicator in gaining public support, especially between the Commission and the media as well as other sectors that are being identified towards the implementation of anti-corruption and community education programmes and activities which have been implemented by the Commission.
8. To scrutinize, study and endorse proposals to enhance the effectiveness of the corruption prevention efforts by the Commission to the Anti-Corruption Advisory Board, and
9. To submit an annual report and the CCPP comments to the Prime Minister on the achievement of activities carried out and programmes which have been implemented by the Commission.

## FOCAL POINTS

Deputy Chief Commissioner (Prevention)  
Malaysia Anti-Corruption Agency  
Block D6, Complex D  
Federal Government Administration Centre  
62007 Putrajaya  
MALAYSIA

## COMPLAINTS CHANNELS

Public complaints on complaints regarding corruption and related offences are mainly channelled directly to the Malaysian Anti-Corruption Commission either:

1. Personally at any MACC offices and branches;
2. Electronically through the MACC website (emails, short messaging service);
3. Letters of complaints;
4. Telephone/Fax

**Section 25 of the Malaysian Anti-Corruption Act (MACCA) 2009** makes it obligatory for everyone to report gratification given, promised or offered as well as corruption solicited or obtained or attempt has been made to obtain gratification.

Furthermore, in cases of laying information against corruption to the MACC, the identity of informers and information received by the Malaysian Anti-Corruption Commission are also protected under **Section 65 of the MACCA 2009**.

Other formal channels of complaints include complaints made directly to the following bodies<sup>1</sup>:

- (1) Royal Malaysia Police (Section 25 of MACCA 2009)
- (2) Public Compliant Bureau
- (3) Enforcement Agency Integrity Commission

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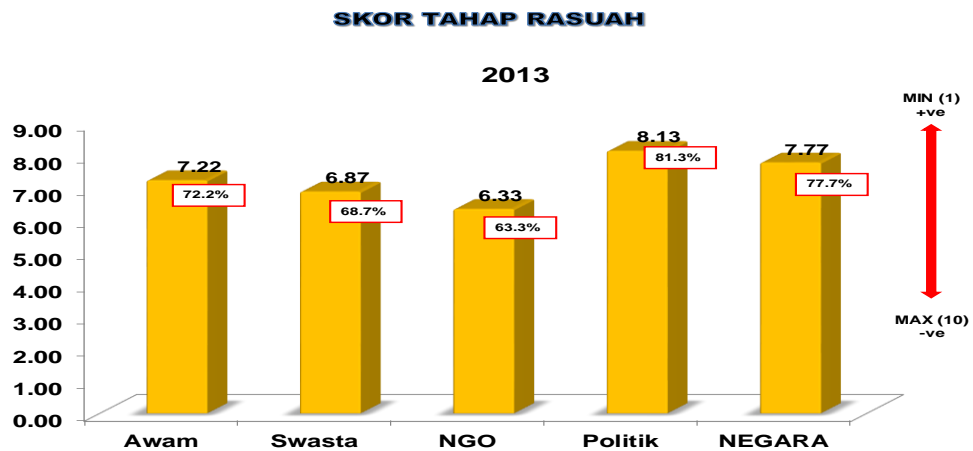
<sup>1</sup> (Note: These latter bodies will refer complaints to the MACC, though the Royal Malaysia Police does have the powers to investigate corruption offences)



**2. Please provide information demonstrating the impact of the work conducted by national bodies with mandates in respect of the prevention of corruption.**

The MACC's Community Education Division has conducted a number of public surveys in 2013 which include the following:

**2.1 Level of Corruption in the Public, Private, NGO, Political Sector and the Nation as per graph 1 below:**



Result of the survey shows that perceived corruption level in the political (or “politik” in the national language) sector is the highest i.e. 81.3 % followed by the public (or “awam” in the national language) sector of 72.2 % and 68.7% in the private (or “swasta” in the national language) sector. As for the corruption level of the nation (or “Negara” in the national language) the level is 77.7%.

**2.2 Public awareness surveys of the extent of public knowledge about the prevention of corruption.**

Result from public awareness surveys of the extent of public knowledge about the prevention of corruption are as follows:

Questions	YES
<b>GENERAL KNOWLEDGE</b>	
<b>Do you know about corruption?</b>	<b>97.2</b>
Do you know about Anti-Corruption Commission (MACC)?	92.9
Paying bribes to government officials is an offense	91.7
<b>SPECIFIC KNOWLEDGE</b>	
MACC's role is to investigate any information in relation to corruption offenses	<b>92.6</b>
MACC's role is to educate the society to fight corruption	85.4
There are <b>elements of corruption</b> in approving niece's / nephew's application for promotion	85.3
Accepting gifts during official business is not only disciplinary offences	79.4
There is an <b>element of corruption</b> in accepting gifts scenario as it helps to speed up the process of claims.	73.2
The MACC's role includes to advise heads of public bodies of any changes in the work practices as well as procedures.	70.4
Do you know the <b>Whistleblower Protection Act</b> would protect a person who provides information on corruption offences?	57.8
Do you get the information about corruption from the MACC?	56.1
Do you know that the <b>Witness Protection Act</b> would protect a person who is a witness to a corruption offences?	55.9
There are <b>elements of corruption</b> in making false claims for mileage	50.4
Do you know about the MACC Independent Advisory Board?	46.9
There is no element of corruption in the declaration of interests as well as the absenteeism in the tender selection meeting.	46.5
The MACC does not have powers to prosecute individuals who involved in corruption offences	32.8

## **2.3 Survey on main sources of getting information on corruption by members of the public.**

The result of the survey is as per table below:

### **The Main Source for Getting Information on Corruption**

<b>Sources of Information</b>	<b>Frequency</b>	<b>Percentage</b>
Electronic Media	1767	35.2
Organisation and Agency	965	19.2
Print Media	950	18.9
Website	900	17.9
Pulic / Individuals	319	6.4
Social Media	113	2.3
<b>TOTAL</b>	<b>5014</b>	<b>100</b>

Note: Website and search engines; Print Media such as newspapers, magazines, flyers, posters, etc; Electronic media such as television, radio, electronic ads.; Social media such as facebook, twitter, blog, youtube etc; Public / Individuals such as families, friends, neighbours, employers, speakers, etc; organisation and agencies such as public and private agencies, political parties, NGOs, schools and etc

## **2.4 Survey on the effectiveness and performance of the Malaysian Anti-Corruption Commission based on the following:**

- **Exposure to the MACC program**

More than half of the respondents were exposed to at least one out of nine of the anti-corruption programmes organised by the MACC. More respondents in the Eastern zone and Sabah were exposed to the MACC programmes while the fewest respondents were from Central and Sarawak zone. In addition, more respondents in the city, students, civil servants, and the Malay ethnic / Bumiputera are exposed to the MACC program.

- **Specific knowledge on corruption and the MACC**

A proper and adequate understanding of corruption and the MACC has become the norm in the society. Respondents from South zone, Sarawak and Sabah, civilians, private sector, students, Chinese and Indians community, and those below 25 years old are among those who should be given more priority in the MACC program to enhance their knowledge on corruption.

- **Independence, Transparency and Professionalism of the MACC**

Based on the findings, the MACC is seen as an independent, transparent and professional agency. However, the MACC should focus more on community from Central zone, South and East zone, rural area, students, private sector, NGOs and political party, Chinese and Indians community as well as those aged 36 years and above.

- **The attitude of the society --- the readiness, willingness, cooperation, self-worth and tolerance towards corruption**

The community is still not prepared to take risks or become a witness to a corruption offence. It is not a norm for a community to be willing to assist in the investigation as well as prosecution of a corruption case. Community from Central zone and Sarawak, rural area, private sector, the Chinese and Indians community as well as those aged 36 years and above are groups that should be given priority in the program to enhance their readiness and willingness in fighting corruption.

The community are more than willing to cooperate with the MACC. However, the efforts need to be strengthened in the Central Zone, South and Sarawak Zone among the Bumiputra and non-Bumiputera as well as those under 25 years old.

To enhance the positive self-worth is as an asset in fighting corruption in the society. However, this basic needs to be strengthened for the target groups such as students, Sarawak zone and those who are under 25 years old.

The society in general will not tolerate corruption. However, extra attention should be given towards respondents in the North, South, Sabah and Sarawak, the community, private sector, Chinese and Indian students and those under 35 years old as they are being relatively "less" tolerant towards corruption than the other groups of people.

- **Level of Confidence towards the MACC**

The level of public confidence towards the MACC as a whole is quite good. But it can be boosted if the level of confidence of the following target groups can be increased: the community in the Central zone, South, East and Sarawak, students as well as the Chinese community and youth aged 25 and below.

- **Support for MACC's efforts**

Generally, the public support the MACC's effort in fighting corruption and majority of them have a positive attitude in the fight against corruption. However, to get a comprehensive support from all levels of society, priority should be given to the people of Sarawak zone, the private sector as well as the Chinese and Indians community.

- **The Effectiveness of the MACC**

The society put a high expectations towards the MACC. However, with a limited delivery capacity causes people's perception towards the MACC turns out to be

negative as if the MACC is not efficient enough in its effort to fight corruption. View on the ineffectiveness of the MACC are mainly identified in the following areas; the Central zone, South, East and Sarawak, people in the city, students, Chinese community as well as individuals aged 25 and below.

### **Key recommendations:**

- i. **Effective Re-branding – a survey on general knowledge shows** that the acronym name of the MACC or *Suruhanjaya Pencegahan Rasuah Malaysia* in the national language, “SPRM”, is often mistaken for the acronym of the Election Commission of Malaysia or “Suruhanjaya Pilihan Raya” (SPR) in the national Language because the acronym name of previous the Anti-Corruption Agency (ACA) or Badan Pencegahan Rasuah (BPR) in the national language is well-known among the public.
- ii. **Re-educate on the roles of the MACC:** Reduce societal expectation on outcome and increase demands on functions of the MACC – The public perceives the MACC based on the outcome, and not on its function. In addition, the public assumes that the MACC has the power to prosecute (67.2%).
- iii. **Visibility of the oversight panels is crucial for check and balance mechanism:** Barely half of the respondents (46.9%) knew about the existence of 5 independent advisory panels established in the MACC. Understanding of the role of the panels. Only a few people knew the role of the 'check and balance' panels which will affect the perception of 'independence' anti-corruption agency
- iii. **The public assumed that the MACC is not independent and there were political interference especially in the investigation of high profile cases.** More than half respondents (58.5%) consider that the MACC is being selective in investigations. The public also assumed that the MACC has power to prosecute (67.2%).
- iv. Increase transparency: Almost 40% assumed the MACC is not transparent.
- v. A campaign to increase the level of professionalism of the MACC based on function rather than the expected outcome (outcome expectation). There are people who were exposed to the MACC program is not convinced with the MACC because of the professionalism issue of a speaker / presenter. Some people tend to be skeptical of the professionalism of the MACC when they require the results (outcomes). The speaker failed to meet the needs of the society as they have limited knowledge on the scenarios / actual cases.

To increase the specific knowledge, especially about the Witness Protection Act (55.9% knew about the act) and the Whistleblower Protection Act (57.8% knew about the act). The knowledge level of the two Acts mentioned above in the society will bring a direct impact on the readiness, willingness and cooperation from the public towards the MACC. Those

people with zero tolerance towards corruption are the assets of the MACC as they are the strength for the MACC in fighting corruption.

**3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.**

**CHALLENGES IN IMPLEMENTATION OF CORRUPTION PREVENTION MANDATES**

- **Coordination challenges between anti-corruption bodies and other government agencies;**

The MACC and other Government departments work closely towards establishing a clean and trustworthy government to ensure efficient service delivery.

Close working relationship among the various federal and state departments in the area of combating corruption by upholding integrity and governance of the public administration is promulgated by the following mechanisms or measures:

- (a) The signing of **Memoranda of Understanding** by the MACC and other enforcement agencies, e.g. with the Royal Malaysia Police, the Road Transport Department, the Royal Customs and Excise Department; Malaysian Computerized Vehicle Inspection Center (PUSPAKOM).
- (b) The MACC secretariat role in the Federal, State and local Government Committees on governance & integrity (JKTU) established through the Prime Minister's Directive No. 1 of 2009.
- (c) The MACC secretariat's role in the Undergraduate's Corruption Prevention Committees of Institutes of Public/Private Higher Learning.
- (d) The MACC secretariat's role in corruption prevention committees of Institutes of Teachers' Education.
- (e) Deployment of MACC Certified Integrity Officers in key government ministries and departments.

- **Communication challenges with regard to raising awareness of the existence, functions and aims of preventive anti-corruption bodies amongst the public;**

Some of the communication challenges faced by the MACC in raising awareness of the existence, functions and aims of the MACC are as follows:

- (a) The lack of well-trained MACC workforce with communication skills.

(b) The existence of cultural and language barriers – Malaysia being a multicultural and multilingual society. The official working languages of the MACC are the national language (Malay) and English (r. Section 32 of MACCA 2009) both Mandarin and Tamil translations/texts/speeches are also used for certain prevention educational materials and face-to-face communication for the Chinese and Indian populace.

Apart from the three major ethnic groups of Malays, Chinese and Indians there are other ethnic groups in the component states of Sabah and Sarawak.

For instance, in the state of Sabah alone we have over 80 dialects! It is now commonly accepted that 32 of Sabah's languages are indigenous to the State, associated with the 32 major ethnic entities. The languages comprise the *Dusunic*, *Murutic* and *Paitanic* Families of the Bornean Stock of the West Austronesian Superstock of Austronesian languages, and are quite closely related.(Herman 2003).

The state of Sarawak, on the other hand, has over 44 indigenous languages. (source: Ethnologue Report 16<sup>th</sup> Edition 2009)

(c) In connection to (b) above, main stream media (both print as well as audio-visual) are only the national language, English, Chinese (Mandarin) and Tamil. Air-time by broadcasting station using indigenous dialect is negligible.

(d) Coverage of main stream media and internet services is also hampered by (inferior) diminutive telecommunication infrastructure and the disparity in rural/urban physical development, not discounting low literacy rate of adults.

- **Implementation challenges with regard to the mandate of preventive bodies due to the interference of other branches of government; and**

The MACC does not face any implementation challenges due to the interference of other branches of the government.

As matter of fact, certain preventive measures recommended by the Chief Commissioner of MACC which agreed upon by Government stakeholders are enforceable by virtue of Section 68 and Section 69 of MACCA 2009 which provides as follows:

*General offence*

**68.** *Any person, who fails to comply with any provision of this Act or any order, direction or notice given by or on behalf of a court, the Public Prosecutor, or an officer of the Commission in the exercise of his functions under this Act, commits an offence.*

*General Penalty*

*69. Every person convicted of an offence under this Act for which no penalty is specifically provided shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.*

**4. Do you require technical assistance in relation to the measures described above? If so, please specify the forms of technical assistance that would be required.**

No technical assistance required.

**II - Information requested from States parties in relation to public sector legislative and administrative measures, including measures to enhance transparency in the funding of candidatures for elected public office and, where applicable the funding of political parties (arts. 5 and 7).**

**1. Please describe the legislative and administrative measures you have taken to prevent corruption in the public sector. In particular, please provide information on measures you have taken to enhance transparency in the funding of candidatures for elected public office and the funding of political parties.**

**PUBLIC SECTOR CORRUPTION PREVENTIVE MEASURES:**

**Legislative Measures**

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

**Table 1-** Legislative Measures and corresponding legislations

	<b>Measures</b>	<b>Legislation</b>
a	Criminalization of corruption in the public sector	Corruption (both active and passive) including abuse of powers and conflict of interest cases have been criminalized under the following legislations: <ul style="list-style-type: none"> <li>• <b>Penal Code Act 574</b> (which was enacted as early as 1937)</li> <li>• <b>Malaysian Anti-Corruption Commission Act 2009</b> (Laws of Malaysia Act 694) which replaces the Anti-Corruption Act 1997 (Laws of Malaysia Act 575) and the Prevention of</li> </ul>



		<p>Corruption Act 1961 (Laws of Malaysia Act 1961).</p> <p>Other related laws</p> <ul style="list-style-type: none"> <li>• <b>Election Offences Act 1954</b> (corruption offences in relation to public election)</li> <li>• <b>Anti-Money Laundering and Anti-Terrorism Financing Act 2001</b> (offences of corruption under the MACCA 2009 are made predicate offences)</li> <li>• <b>Customs Act 1967</b> (corruption offence in relation to smuggling activities)</li> <li>• <b>Companies Commission Act 1965</b> (conflict of interest by directors of companies.)</li> </ul>
b	Making bribery of foreign public officials an offence	s.22 MACCA 2009

	Measures	Legislation
b	Legal obligation to report corruption activities	s.25 MACCA 2009
c	Attempts, preparations, abetment and criminal conspiracies punishable as offence	s.28 MACCA 2009
d	Overcoming bank secrecy laws	s.35 MACCA 2009
e	Asset declaration by suspects	s.36 MACCA 2009
f	Unexplained excessive property as offence	s.36 (3) MACCA 2009
g	Recovery/forfeiture of proceeds and instrumentalities of corruption	s.40 & a.41 MACCA 2009
h	Evidence of accomplice and agent provocateur shall be accepted	s.52 MACCA 2009
i	Evidence of custom inadmissible	s.57 MACCA 2009
j	Protection of informers and information	s.65 MACCA 2009 Whistle blowers Protection Act 2010
k	Protection of witnesses programme	Witness Protection Act 2009  Other related laws for witnesses not under witness

		<p>protection programme:</p> <ul style="list-style-type: none"> <li>• Abduction and criminal intimidation of witness Act 1947</li> <li>• S.506 Penal Code</li> </ul>
l	Extraterritorial jurisdiction of corruption offence	s.66 MACCA 2009 liability of offences outside of Malaysia for Malaysian citizens
m	Increase penalty for corruption offences	<p><b>s.24 MACCA 2009:</b></p> <p>(a) 20 years imprisonment, and (b) fine of not less than five times the sum or value of the gratification or ten thousand ringgit, whichever is the higher</p> <p>Other sanction include dismissal from public service by virtue of the following legislation:</p> <ul style="list-style-type: none"> <li>• <b>Public officials (Conduct &amp; Discipline) Regulations 1993:</b> Regulation 38 (also applicable to Government of State and Local Authority)</li> <li>• <b>Article 48 Federal Constitution</b> (Provision for disqualification for elected and appointed public officials in Parliament)</li> </ul>

## ADMINISTRATIVE MEASURES

### (A) Transparency and accountability in Government Procurement

In area of Public Administration, elements of transparency and accountability are built into the **Financial Procedure Act 1957 (Revised 1972), the Government Contracts Act 1947, various Treasury Circulars**. Any transgression of the latter would be sanctioned under the Public officers' (Conduct and Disciplinary) Regulations or the Penal Code, if the transgression contains criminal elements.

As part of its key performance index in the area of combating corruption in government procurement, the NKRA Against Corruption has also introduced the following measures to reduce leakages in the funds for national development and operations and to ensure fairness in the award of contracts:

- Development of **My Procurement Portal** to help increase transparency of government. This was launched on 1<sup>st</sup> April 2010 as a centralised data centre for government procurement by ministries and agencies which disclose information on

the list of companies that has been awarded tender and their tender prices. to the public i

- **Integrity Pacts** for all government procurement. (This is implemented vide Treasury circular letter No.10 of 2010)
- Parameters for “support letters” (lobby) to deal with attempts by individuals (particularly politicians) to influence procurement decisions by civil servants. (This has been implemented vide the Prime Minister’s Guide Line dated 8 March 2010)

## **(B) Code of conduct for public officials**

Malaysia has complied with Article 8 of the Convention and the Resolution adopted by the General Assembly 51/59 on Action Against Corruption (International Code of Conduct for Public Officials) by having in place the following codes of conduct and ethics:-

**(a) Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) 395 of 1993**

**(b) Principles of the "Twelve Pillars"- values subscribed by civil servants**

**(c) General Circular No.4/1999** : Module on Integrity Management (*Pekeliling Am Bil.4-1999: Modul Pengurusan Integriti'* in the National Language)

**(d) Judges Code of Ethics 2009**

**(e) The Code of Ethics of the Prime Minister's Office 2000**

**(f) Service Circular No. 3 of 1998** : Guidelines in Giving and Receiving Gifts in Public Services (*Pekeliling Perkhidmatan Bilangan 3 Tahun 1998: Garis Panduan Pemberian dan Penerimaan Hadiah Didalam Perkhidmatan Awam*, in the National Language)

**(g) Treasury Circular Letter No.11 of 1995**: Guidelines on Oversea Trips due to Government Procurement (*Surat Pekeliling Perbendaharaan Bil.11 Tahun 1995 or Panduan Lawatan ke Luar Negeri kerana Perolehan Kerajaan*, in the National Language)

**(h) Service Circular Letter No.4/2000: Honorary or Nominee Membership of Public Officials in Private Golf Club and Private Recreational Club and the use of facilities free of charge in the said clubs by Bodies or Societies of Department**

*(Surat Pekeliling Perkhidmatan Bilangan 4 Tahun 2000: Keahlian Pegawai Awam di Dalam Kelab Golf dan Kelab Rekreasi Swasta secara Kehormat atau Nominee sera Penggunaan Kemudahan secara Percuma di Kelab Tersebut oleh Badan atau Persatuan Jabatan, in the National Language)*

### **C. MACC Inspection and Consultation Measures to enhance public delivery system.**

These are carried out by the **MACC's Inspection and Consultation Division** as empowered under sub-sections 7 (c)(d) and (e) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) . These sections of the law empower officers of the MACC to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under the Act and to secure the revision of such practices, systems or procedures and to advise heads of public bodies of any changes in the practices, systems or procedures compatible with the effective discharge of the duties of the public bodies. The same applies to the Private Sector if it is requested by the latter.

*(For examples of achievements of such inspection and consultation operations please visit the MACC website [www.sprm.gov.my](http://www.sprm.gov.my))*

### **D. Government Transformation Programme -National Key Result Area (NKRA) Corruption Monitoring and Coordination Unit.**

This Unit which was set up by the Prime Minister's Office in 2009 to spearhead the Government Transformation Programme (GTP) in enhancing anti-corruption efforts in three key corruption areas namely, **regulatory & enforcement agencies, government procurement and grand corruption** which includes political corruption. In 2012 this Unit was emplaced under the MACC for purpose of administration and co-ordination of anti-corruption efforts mentioned.

Under the area of regulatory and enforcement agencies the objectives are (a)to regain public confidence in Malaysia's enforcement agencies and (b)to enhance competitiveness of Malaysia as a place to do business.

Under the area of government procurement it seeks to (a) reduce leakage in the funds allocated for national development and operations; and (b)to enhance fairness in the award of contracts.

In the area of grand corruption, the focus will be (a) to prevent the abuse of power and public resources by politicians and senior civil servants and (c) to enhance the delivery of justice against corruption.

Key achievements of NKRA under the Government Transformation Programme 1.0 (2010-2012) to prevent corruption in the public sector include as follows:

- Setting up of **Integrity Units** in all Ministries, Federal and State Government Departments as well as State Local Authorities **vide Service Circular No 6/2013 titled "Establishment of Integrity Unit in all Public Agencies"**. The Integrity Unit, which is to be headed by a Certified Integrity Officer will serve as the focal point for the management of integrity issues within the public agencies under the supervision of the newly established (in 2013) Public Agency Integrity Management Division (PAIMD) of the MACC
- The development of the Whistleblower Protection Act 2009 reporting framework.
- Reward and recognition **guidelines for civil servants that lead to successful prosecution of corruption cases.**
- Publication of **Public Service Reform booklet** to promote awareness of the correct systems, processes and procedures.
- Expedition of corruption trials through setting up of 14 **Corruption Courts** beginning 16<sup>th</sup> February 2011 to speed up trails and clear backlog cases.
- **Name and shame database** of corruption offenders. Published on the MACC website from 4<sup>th</sup> March 2010 with the objective to create an awareness and preventive tool for potential corruption offenders.
- Hot Job rotation- government officers in "hot-job" positions will undergo rotation in their job placement and task to circumvent possibilities of corruption, misuse of power and to reduce "comfort interaction" zone between the officers and the public.

**E. Committee for Government Administration on Integrity & Governance: The PM's Directive No.1 of 2009 titled "An Initiative to Consolidate the Integrity Management System of Malaysian Government Administration"**

To complement the legal and punitive measures mentioned above and to further strengthen its policy against corruption and related practices by upholding principles of integrity in the Government delivery, the Government, under the premiership of the 4th Prime Minister initiated a movement styled "Prime Minister's Directive No.1 of 1998 : An Initiative to Consolidate the Integrity Management System of Malaysian Government Administration: The setting up of Management Integrity Committee" which was replaced by the **Prime Minister's Directive No.1 of 2009** (under the premiership of the current and 6th Prime Minister).

The objective of this Directive is to enhance the management of the Malaysian Government Administration under the Special Cabinet Committee on Government Management Integrity (SCCGMI) chaired by the Right Honourable Prime Minister. The mechanism for implementation is through the establishment of Committee Integrity Governance (CIG) at

the Federal and State levels to further strengthen the Management Integrity Committee that was initiated since 1998. This initiative focuses on strengthening quality delivery system of Public Administration encompassed in its 7 terms of references. This effort is regarded as strategic extension and a comprehensive approach towards efforts to inculcate **universal values, strengthen integrity, and combat the scourge of corruption, malpractices and abuse of power by public officials**. This Directive also aims at translating the aspiration and commitment of national leaders that underpins the concept of “1 Malaysia: People First, Performance Now” in the implementation of service delivery in public administration for the general public. For this reason, satisfaction of customers and stakeholders should be a priority and performance continuously improved.

The terms of reference of the CIG are

### **1. Policy and Legislative**

To identify study and recommend amendments to any policy and laws as well as regulations of ministries, departments and agencies so as to overcome weaknesses in management, improve controls against corruption, malpractices, abuse of powers and administrative weaknesses.

Subsequently to create and document strategic plans for enhancing the best governance practices. Such practices provide the capacity to overcome bureaucratic hassles towards achieving Public Service delivery system that is infused with integrity, accountability, trust, fairness, monitoring and stewardship, transparent and responsive to clients.

### **2. Systems and Work Procedures**

To identify and review weaknesses in systems and work procedures of ministries, departments and agencies that are obsolete and complicated so much as giving rise to various bureaucratic red-tapes. This could possibly weaken administration, reduce efficiency, non- accountability at the same time giving rise to avenues for bureaucratic hassles, delays, injustices and indiscriminate (usage of) discretion as well as providing opportunities for corruption, malpractices and abuse of powers. Ministries, departments and agencies ought to identify study and make recommendations to the relevant authorities regarding any changes in the systems and work procedures in order to overcome such weaknesses.

### **3. Noble Values and Code of Ethics**

To carry out activities that encourages the internalization of noble values and ethics to enhance integrity of staffs at the ministries, departments, and agencies. Efforts must be made to integrate noble values and code of ethics with consolidation and implementation of policies, laws, regulations as well as systems and work procedures in bringing abeyance to temptation of staff to commit all forms of negative conduct inclusive of corruption, malpractices, and abuse of powers. To draft and constantly validating departmental Code of Work Ethics as guide for staff in ministries, departments, and agencies.

#### **4. Customer Management**

Ministries, departments, and agencies must set up a system of customer management to portray themselves as being efficient, sensitive, friendly and responsive towards the needs of customers. Failure to handle the needs of clients be they stakeholders, internal or external customers would result in ministries, departments, and agencies being seen as slip-ups in the fulfilment of entrusted duties and responsibilities. A strategic and quality customer management would be perceived as value-added and continuous improvements in the delivery service system.

#### **5. Internal Controls**

Create organizational structure and delegation of power that is comprehensive, work flows that are transparent and with accountability, optimization of resources and information management system that is efficient and effective to assist ministries, departments, and agencies in achieving their missions and visions or objectives that have been determined. Internal controls would enable resources to be directed, monitored, and measured to reduce bureaucratic hassles as well as curbing incidences akin to corruption, abuse of powers and malpractices.

#### **6. Detection, Punitive and Rehabilitative Action**

To detect any contravention of laws, regulations, systems and work procedures or code of work ethics. To promptly take remedial and prevention measures based on laws or disciplinary orders against those involved. To cooperate and report to the relevant enforcement agencies regarding any form of offences or crime committed by staff.

#### **7. Recognition and Appreciation**

Giving recognition and appreciation to staff who have shown exemplary services and exhibiting noble values through voluntary activities by giving religious advice and guidance and those who have reported cases of corruption, malpractices and misconduct within ministries, departments, and agencies

The implementation of the PM's Directive is being monitored by the newly formed MACC Public Sector Governance Division (BUTSA)<sup>2</sup> which acts as the joint-secretariat with MAMPU (Malaysian Administrative Modernization and Management Planning Unit) to the Special Cabinet Committee on Government Management Integrity (SCCGMI) chaired by the Deputy Prime Minister himself.

Table 2 is an example of actions on management integrity and governance issues in government administration decided at Special Cabinet Committee on Government Management Governance and Integrity) in 2012.

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<sup>2</sup> Previously known as the Committee on Governance and Integrity Unit

**Table 2- Progress of issues regarding integrity and governance in Government administration as decided in the meetings in 2012**

NO.	ITEM	PROGRESS
1.	<p>Establishment of a special task force represented by representatives from the Ministry of Home Affairs, Ministry of Higher Education and Ministry of Education Malaysia to overcome the problem of misuse of visas by international students.</p>	<p>The Ministry of Education Malaysia and Ministry of Higher Education have conducted an inspection with the Ministry of Home Affairs by taking into account the current needs. A Standard Operating Procedure (SOP) proposal on the Enforcement of Student Pass has also been standardized. Meanwhile, the Student Pass Division of Immigration Department of Malaysia will re-coordinate the proposals submitted by the Ministry of Home Affairs.</p>
2.	<p>Special Consultative Task Force I of the Committee of Integrity and Governance (SCTCIG I) is required to conduct four studies as follows:</p> <p>2.1 Study on the implementation of assets declaration by the EXCOs and Members of Parliament (Wakil Rakyat) at state level.</p>	<p>The study has been completed and will be presented by SCTCIG I to the Chief Secretary to the Government of Malaysia for his view before being taken to the next stage for further action.</p>



	<p>2.2 Study on gifts receiving policy by EXCO and Members of State Legislative Assembly (ADUN)</p> <p>2.3 Study on the safety issue of enforcement officers during duty such as threats and their welfare.</p>	<p>The study has been completed and will be presented by SCTCIG I to the Chief Secretary to the Government of Malaysia for his view before being taken to the next stage for further action.</p> <p>The study has been completed but the report shall be discussed with relevant agencies involved before it is presented in the meeting of JKKMKPK by considering a number of proposals listed below:</p> <ul style="list-style-type: none"> <li>a. The study shall also involve various parties such as Ministry of Finance Malaysia and Public Service Department of Malaysia to obtain their views on existing protection scheme to government officials such as the ex-gratia scheme.</li> <li>b. The police shall be involved in enforcement operations to overcome the threats of illegal informants.</li> <li>c. Preparation of basic security protection equipment for enforcement officers shall be discussed internally by</li> </ul>
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		<p>relevant agencies.</p> <p>d. Review the increment in the number of enforcement officers and advise agencies to arrange duty schedule in order to overcome the issue of lack of enforcement officers.</p>
3.	<p>Ministries and State Secretaries are required to give suggestions on how to tackle the role of 'middlemen' in determining government contract procurements and business transactions.</p>	<p>Implementation of 'cooling off period' for government retirees has been made one of the initiatives in Fighting Corruption NKRA under Phase two of Government Transformation Programme (GTP 2.0).</p>
4.	<p>There are many disciplinary cases based on the Malaysian Anti-Corruption Commission Report which ended with Administrative Warning. Public Service Department of Malaysia needs to prepare a letter to inform the disciplinary board not to issue such penalty because 'Administrative Warning' is not included in the penalties of disciplinary offenses.</p>	<p>The Public Service Department of Malaysia has circulated a letter with reference JPA(S) 223/8/2-3 Jld. 4(36) dated October 23, 2012. The letter outlined that:</p> <p>a. 'Administrative Warning' is not a form of punishment as stated in rule 38 of the Public Officers (Conduct and Discipline) Regulations 1993 [P.U(A) 395/1993]. Disciplinary punishments refer to warning,</p>

		<p>fine, forfeiture of emolument, salary reduction, demotion and dismissal.</p> <p>b. All heads of department were urged to expedite investigation on cases referred by MACC and submit them to respective Disciplinary Authority for action.</p> <p>c. The Disciplinary Authority is required to take action and impose commensurate disciplinary penalty on cases referred by MACC after appropriate considerations.</p>
<p><b>5.</b></p>	<p>A special task force will be established with other enforcement agencies to tackle integrity issues pertaining smuggling activities at the borders such as smuggling of petrol, subsidized items, as well as human smuggling.</p>	<p>A roundtable discussion with relevant agencies was held and the 11 resolutions produced are as follows:</p> <p>a. Review on the policy of subsidized petrol.</p> <p>b. Create a Border Enforcement Act which can be commonly used by all agencies on duty at the borders.</p> <p>c. Limit of purchase must be in accordance with types of car and fixed by the Ministry of Domestic Trade, Co-operatives</p>

		<p>and Consumerism.</p> <ul style="list-style-type: none"> <li>d. Issuance of directives by Director-General of Customs – Limiting vehicles to carry only ¼ tank of RON95 petrol abroad.</li> <li>e. Overcome external intervention in enforcement affairs.</li> <li>f. Diffuse power of Ministry of Domestic Trade, Co-operatives and Consumerism to relevant enforcement agencies.</li> <li>g. Review logistic needs and staffing of all enforcement agencies in charge at the borders.</li> <li>h. Appoint a coordinating agency for enforcement at the borders lead by Ministry of Domestic Trade, Co-operatives and Consumerism (land) and Malaysian Maritime Enforcement Agency (waters).</li> <li>i. Develop a scientific method (tool) that can be commonly used by all border enforcement agencies to identify RON95 petrol, which can also be used as evidence in court.</li> </ul>
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		<p>j. Blacklist petrol stations that sell RON95 petrol to smugglers or excess the selling limit permitted to foreigners.</p> <p>k. Create an online complaint channel for all agencies involved.</p> <p>These resolutions will be brought to the JKKMKPK Meeting for policy decisions.</p>
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**F. MACC anti-corruption awareness measures in the Public Sector**

The MACC's Community Education Division is tasked to (a) educate the public against corruption and (b) to enlist and foster public support against corruption.

In carrying out these efforts, the MACC’s Community Education Division embarks on **live talk shows, dialogues, lectures, seminars, debates, and workshops on anti-corruption** on targeted government departments which topped the list of the most corrupt-prone departments based on the number of complaints received.

Besides face-to-face communication with the departments concerned, the CED is also tasked to reach a wider range of public officials through the following activities:

- Publications of flyers, magazine, pamphlets, posters, calendars with anti-corruption messages etc. These are distributed to government departments and made available in MACC engagements with the departments.
- **TV production based on success stories of cases investigated.**
- TV/Radio public service announcements (PSA) or messages on the dangers of corruption.
- **exhibitions** on the functions and achievements of the MACC during seminars organized for government departments and institutions.

## **G. Other Institutional Efforts**

### **(i) Malaysia Anti-Corruption Academy (MACA) Efforts**

The Academy is set up as the anti-corruption capacity and capability training center for officers of the Malaysian Anti-Corruption Commission as well as other law-enforcement Government departments, agencies and Government-linked companies.

The MACA, in collaboration with other agencies, is the training provider for certified integrity officer (CeIO) programme of the public sector. The programme participants will be deployed as the Integrity Officers of the Integrity Unit of their respective departments.

### **(ii) Institute of Integrity Malaysia (IIM)**

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

The scope of the plan is holistic and wide-encompassing. For the first 5 years, the plan outlined 5 objectives to be achieved namely:

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

## **2. Please provide information demonstrating implementation of the measures described above.**

### **TRANSPARENCY IN FOR ELECTED PUBLIC OFFICE AND FUNDING OF POLITICAL PARTIES**

The current legislative measures governing transparency in public elections and political parties are:-

- (a) Election Offences Act 1954 (Act 5), in particular corrupt practices under section 8 (Treating), Section 9 (Undue Influence) and Section 10 (Bribery) as below:-

### **Section 8 - Treating**

Every person who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part, the expense of giving or providing any food, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any food, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of any such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector or voter who corruptly accepts or takes any such food, drink, or refreshment or provision or any such money or ticket or who adopts such other means or device to enable the procuring of such food, drink, refreshment or provision shall be guilty of the offence of treating.

### **Section 9 - Undue influence**

(1) Every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence, or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who by abduction, duress, or any fraudulent device or contrivance impedes or prevents the free exercise of the franchise of any elector or voter, or thereby compels, induces, or prevails upon any elector or voter either to give or refrain from giving his vote at any election, or who directly or indirectly interferes or attempts to interfere with the free exercise by any person of any electoral right shall be guilty of the offence of undue influence.

(2) A person shall be deemed to interfere with the free exercise of the electoral right of a person within the meaning of this section who induces or attempts to induce such person to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure.

### **Section 10 - Bribery**

The following persons shall be deemed guilty of the offence of bribery:

(a) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavor to procure, any money or valuable consideration to or for any elector or voter, or to or for any person on behalf of any elector or voter or to or for any other person, in order to induce any elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector or voter having voted or refrained from voting at any election;

(b) every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or

procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment to or for any elector or voter, or to or for any person on behalf of any elector or voter, or to or for any other person, in order to induce such elector or voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting at any election;

*(c)* every person who, before, during or after an election, directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement as aforesaid to or for any person in order to induce such person to procure or endeavour to procure the election of any person, or the vote of any elector or voter at any election;

*(d)* every person who, either before or during an election, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure, the election of any person, or the vote of any elector or voter at an election;

*(e)* every person who, either before or during an election, advances or pays or causes to be paid any money to, or to the use of, any other person with the intent that such money or any part thereof shall be expended in bribery at any election or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any such election;

*(f)* every elector or voter who, before or during any election directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at any such election;

*(g)* every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or to refrain from voting at any such election;

*(h)* every person who, after an election, directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for having voted or for agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment or for the promise of any office, place or employment; and

*(i)* every person who, either before or during an election, directly or indirectly, by himself or by any person on his behalf, in order to induce any other person to



agree to be nominated as a candidate or to refrain from becoming a candidate or to withdraw if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure or offers or promises to procure or to endeavour to procure any office, place or employment, to or for such other person, or gives or lends, or agrees to give or lend, or offers, or promises to procure or to endeavour to procure any money or valuable consideration to or for any person or to or for such other person, or to or for any person on behalf of such other person.

(b) Malaysian Anti-Corruption Commission Act 2009 – in relation to money politics is punishable under Section 16 of the Act.

### **Offence of accepting gratification**

Any person who by himself, or by or in conjunction with any other person—  
(a) corruptly solicits or receives or agrees to receive for himself or for any other person; or  
(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person, any gratification as an inducement to or a reward for, or otherwise on account of—  
(A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or  
(B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned, commits an offence.

### **Politicians arrested and charged for corruption between 2009-2012**

- In 2009, out of a total of 23 politicians arrested, 14 have been charged and the majority are members of the ruling Party
- In 2010, four politicians were arrested and 2 were charged. One of the latter was Ex-MB Selangor Datuk Seri Mohamad Khir bin Toyo.
- In 2011, two politicians were arrested and three were charged.
- In 2012, three politicians were arrested and one was charged.

### **Reported Cases of Money Politics**

#### **Public Prosecutor v Dato' Hj Azman bin Mahalan [2010] 6 MLJ 833**

The respondent was charged in the sessions court on two counts of giving gratification under s 10(b)(aa) of the Anti-Corruption Act 1997 ('the Act'). The prosecution's case was that the respondent had given SP1 certain sums of money in order to persuade SP1 not to accept an offer of settlement from his bankrupted debtor -- SP6 -- so that SP6 would remain a bankrupt, thereby disabling him (SP6) from contesting the top post in a political organisation. The respondent was a serious contender for that same post. The respondent was convicted and sentenced on both charges by the sessions' court judge

#### **Public Prosecutor v Dato' Mohamad Norza bin Zakaria & Anor (2009)**

In March, 2009, Dato' Norza and his agent **Halimi bin Kamaruddin** were charged in the Temerloh Magistrate's Court on two charges of corruption for the winning post in the UMNO party elections in 2008.

**PP v Mohd Anuwari bin Mohd Solleh Mohd Noor (2009)**

Accused allegedly bribed complainant to nominate an individual as a deputy head of a party division.

**PP v Junaidi bin Abdul Hamid (2009)**

Accused was charged for bribing a party member as inducement to secure vote for a certain individual to be elected as party division head post.

**PP v Azman bin Noh (2009)**

Accused was charged for bribing a party member as inducement to secure vote for a certain individual to be elected as party division head post.

## **Political Funding in Malaysia**

- **Disclosure of donations by political party**

A political party is a registered society under the Societies Act 1966 (Act 335). Hence it is subjected to the rules and regulations of the Registrar of Societies.

Societies Act 1966 (Act 335) defines a “political party” reads as follows:

*(a)* any society which by any of its objects or rules, regardless whether such object or rule is its principal object or rule, or constitutes merely an object or rule which is ancillary to its principal object or objects or to its principal rule or rules, makes provision for the society to participate, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or makes provision for it to seek the appointment or election of a person proposed or supported by it to the Dewan Negara; or

*(b)* any society which, notwithstanding anything contained in its objects or rules, carries on any activity or pursues any objective which involves its participation, through its candidates, in elections to the Dewan Rakyat, or to a Dewan Undangan Negeri, or to a local authority, or which involves its seeking the appointment or election of a person proposed or supported by it to the Dewan Negara;

There is no definition of the term “political donation” in the Societies Act 1966 and neither is there any legislative prohibition for any political party to accept so-called political donation from any individual or organization.

Currently, there are also no limits to the amount of “donations” political parties and candidates can receive from special interest groups making it possible for some of the donations being channelled directly to individual politicians instead of to their party.

There is also no requirement for **public** disclosure of such contributions. The Societies Act 1966 only requires the political parties to submit a yearly audited account under Section 14 of the SA 1966 with “the description of any money or property, any pecuniary benefit or advantage received by the society from any person ordinarily resident outside Malaysia or an organization, authority, government, or agency of any government outside Malaysia” within 60 day after it AGM or if no AGM, within 60 days after the end of each calendar year. Additionally, the Registrar of Societies may use its power at any time order the society under Section 14 (2) of SA 1966 to furnish the same information.

However disclosure of its annual returns under Section 14 of SA 1966 is not for public consumption but only for the Registrar and “*a member or subscriber or person having an interest in its funds*” under Section 29 or Section 30. The objective of such disclosure is twofold: to prevent misuse of fund of a registered society and to satisfy the Registrar that the society is prohibited from having, directly or indirectly, any affiliation, connection, communication or other dealing with any society, or other body whatsoever outside Malaysia, or with authority, governmental or otherwise, in any country, territory or place outside Malaysia. Re Section 13 and Section 53 SA 1966.

Donation to political parties- whether legal or illegal?

In the case of *Datuk Haji Harun v Public Prosecutor* [1997] 1 MLJ, the defence put up by the accused that the sums of money solicited and accepted were political donations. The court however rejected the defence story and sentenced him to one year's imprisonment in respect of the 1<sup>st</sup> Charge and 2 years in respect of each of the 2<sup>nd</sup> and 3<sup>rd</sup> Charges.

In the said case it was decided that a donation to a political party are legal so long as the donation is not solicited/accepted with an evil mind (sic) by the accused and that the donation should not be an inducement to do an official act or conduct.

To establish what is evil or otherwise depends on the manner how the donation was solicited and presented. In *Datuk Harun*. the judge made the following observations:

*In ordinary circumstances, the presentation of a donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses; not in some "back alley". I am quite sure that the donor wants to be present to show that he is participating in whatever worthy cause the donee is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledged. In the present case, the donation was "presented" in a very strange way.*

*Political contributions have been a highly-organised professional obligation in Europe and in the States; they are a sign of the times. Malaysia, it seems to me, is emulating that way of life. Whatever may be the moral of it, so long as they are not given and received for the corrupt exercise of official functions, they are not a crime.*

The judgement of Datuk Harun's case seemed to be consistent with a recent (2013) unreported case of PP v Michael Chia Thien Foh. In the latter case, the accused, Michael Chia also put up a defence that sum of money he received by way of cheating another business man was political donation for a political party. But prosecution witness from the political party concerned testified that the party did not seek such political fund. The accused defence therefore rejected.

Given the current scenario regarding complexity of political funding and to ensure transparency on political funding or legalising political donations so to speak, the National Key Result Area (NKRA) Against Corruption is now planning to study the need for creating an act (namely, the Political Parties Act) or proposing amendments to existing ones at several government agencies involved in supervising political parties for the purpose.

The proposed act shall make it mandatory for political parties to publicly declare their sources of political funds to create transparency. However this initiative is yet to be implemented.

- **Asset declaration by election candidates**

There is no legislation requiring election candidates to declare their assets before and after an election.

However asset declaration by election candidates for political parties and for vetting of candidates by the MACC began for the first time only before recent the 13<sup>th</sup> General Election in 2013 in a move proposed by the **MACC's Consultation and Corruption Prevention Panel** to the Prime Minister in efforts to have a clean election.

The said proposal was welcomed by the PM and was duly carried out by internal party arrangements. As for the Barisan National (National Front Coalition) all election candidates eligible for candidacy were required to declare their assets to the party president (who in this case, was the PM himself). The declaration was then to be vetted by the MACC.

Similar asset declaration initiative was also adopted by the opposition coalition members of the People's Alliance or Pakatan Rakyat (PR).

**3. Please outline actions required to strengthen or improve the measures described above and any specific challenges you might be facing in this respect.**

**Initiative to Training for Members of Parliament**

The Perception of corruption in politicians has remained very high among the people with 42% of the public believing that political institutions are corrupt. In an effort to remedy this problem an initiatives has been set up in the GTP 2.0 to create further awareness and improve the understanding of Members of Parliament in corruption related offences, penalties and impact. It will be mandatory for MPs to attend the annual training event in order to remind them and to improve their own understanding, which will hopefully translate in action. The training will be conducted by the Malaysia Anti-Corruption Academy three times a year. The first training session will commence after the 13<sup>th</sup> General Election.

**Declaration of Assets by Members of Parliament and elected candidates**

The challenge posed by this initiative is for such declarations to be made public. As it stands there is no consistency in the practice by ruling government under the National Front Coalition (BN) and those under the People's Alliance or Pakatan Rakyat (PR) as regards public disclosure of the assets declared. Till date, all BN MPs declarations of assets are made to the Prime Minister but made available only to the Chief Commissioner of MACC. Elected candidates of the PR –controlled states of Penang, Selangor and Kelantan , on the other hand, are made public and can be viewed from their state government websites. This challenge could be overcome by having a Political Parties act as proposed by the NKRA Against Corruption GTP 2.0 initiative mentioned above.