

## MALAYSIA'S GOVERNMENT PROCUREMENT REGIME

### 1. INTRODUCTION

The prime objective of the Malaysian Government procurement is to support Government programmes by obtaining value for money through acquisition of works, supplies and services. To meet this objective close attention is given to price factors as well as non-price factors such as whole life cost, quality, quantity, timeliness, maintenance and warranty. The benefits or value from procurement should commensurate with the costs involved and that the best procurement is well and thoroughly evaluated, reasoned and justified. In this context, the Malaysian Government procurement is based on the following policies, principles, objectives and procedures.

### 2. GENERAL PROCUREMENT POLICIES, PRINCIPLES AND OBJECTIVES

#### 2.1 GOVERNMENT PROCUREMENT POLICIES

The Malaysian Government Procurement Policies, in general, provide support for the full achievement of the objectives and aspirations of the National Development Policy and Vision 2020 i.e. towards a developed nation status. The principal policies are as follows:-

- a) To stimulate the growth of local industries through the maximum utilisation of local materials and resources;
- b) To encourage and support the evolvement of Bumiputera (indigenous) entrepreneurs in line with the nation's aspirations to create Bumiputera Commercial and Industrial Community;
- c) To increase and enhance the capabilities of local institutions and industries via transfer of technology and expertise;
- d) To stimulate and promote service oriented local industries such as freight and insurance; and
- e) To accelerate economic growth whereby Government procurement is used as a tool to achieve socio-economic and development objectives.

#### 2.2 PROCUREMENT PRINCIPLES

In general Government procurement is essentially based on the following principles:

##### a) Public Accountability

Procurement should obviously reflect public accountability entrusted with the Government.

##### b) Transparency

All procurement regulations, conditions, procedures and processes need to be clear and transparent to facilitate better understanding among suppliers and contractors.

##### c) Value For Money

Government procurement should yield the best returns for every Malaysian Ringgit spent in terms of quality, quantity, timeliness, price and source.

##### d) Open And Fair Competition

Processes involving Government procurement should offer fair and equitable opportunities to all those participating or competing in any procurement.

##### e) Fair Dealing

All acceptable bids will be processed fairly based on current rules, policies and procedures.

## 2.3 PROCUREMENT OBJECTIVES

Government procurement comprises the following objectives in general:

- a) To ensure continuous supply of materials and services to meet the Government needs from the best and reliable sources;
- b) To ensure efficient, effective and ethical procurement practices to enable the Government to achieve best value for money without compromising on quality, delivery and other price and non-price factors;
- c) To stimulate and encourage the growth and development of local industries through the optimal usage of local resources and materials;
- d) To expand and invigorate the local industrial sector by means of transfer of technology and expertise to suit the nation's needs; and
- e) To promote alternative and multiple sourcing through supplier/vendor development according to the aspirations and vision of the Government.

## 3. PROCUREMENT ENTITIES

### 3.1 MALAYSIAN GOVERNMENT ADMINISTRATION AND MACHINERY

The Malaysian Public Sector and also the Malaysian Government Administration and machinery mainly consist of the following entities:

#### a) The Federal Government

The Federal Government is, in fact, the Central Government with 25 Federal Ministries headed by their respective Ministers and administrative heads, the Secretary-Generals.

#### b) The State Governments

There are 13 State Governments within Malaysia implementing state functions along with Federal Departments. The State Governments generate their own revenues and incur their own expenditures even though the Federal Government undertakes projects at the state level agreed upon in the Concurrent List and Federal List in the Constitution of Malaysia.

#### c) Local Authorities

The Local Authorities constitute the City Councils, Municipalities and District Councils that operate with revenue derived from sources within their jurisdiction and boundaries namely assessment, licensing etc. They also receive financial grants from the Federal Government and respective State Governments. These Local Authorities enjoy financial autonomy although they adhere to the general Government procurement procedures.

#### d) Statutory Bodies

Statutory bodies are set up under Statute Acts both by the Federal and State Governments. These bodies are normally set up for specific purposes and although they are autonomous, they are also generally governed by Government procurement procedures.

## 4. LAWS AND REGULATIONS RELATED TO GOVERNMENT PROCUREMENT

### 4.1 FINANCIAL AUTHORITY

The Federal Government financial authority is vested with the Minister of Finance and the Secretary-General of the Ministry of Finance with directions from the Minister. In the case of State Governments, the financial authority is vested with the respective Chief Ministers, and the respective State Financial Officers with directions from the respective Chief Ministers. The financial authority in Local Authorities and Statutory Bodies is vested with the respective Chairpersons and the Councils or the Board of Directors.

#### 4.2 FINANCIAL PROCEDURE ACT 1957 (Revised 1972)

The Financial Procedure Act 1957 (Revised 1972), provides for the control and management of the public finances of Malaysia and outlines financial and accounting procedures. It includes procedures for the collection, custody and payment of the public monies of Malaysia and of the States, and also the purchase, custody and disposal of public property and related matters.

#### 4.3 TREASURY INSTRUCTIONS

The Treasury Instructions (TI) detail out financial and accounting procedures and encompass the regulations that need to be adhered to in the management of Government funds including procurement.

In ensuring fairness and best value for money, public procurement of supplies undergoes the following processes:

- a. needs determination (TI No.168) and clear specification for supplies/ services/works determined (TI No.174)
- b. purchase through electronic system (TI No.168 A)
- c market survey (TI 169)
- d. utilization of local content, supplies and services (TI No. 169.2)
- e. calling for quotation ( procurement below RM500,00) (TI.No.170)
- f. calling of tender (procurement more than RM 500,00) (TI No.171) through public advertisements in the local media/ website (TI No.172.1) or minimum of five tender suppliers (TI.No.172.1 para (c))
- g. direct purchase (procurement below RM50,000)(TI. No. 173)

#### 4.4 GOVERNMENT CONTRACT ACT 1949

The Government Contract Act 1949 empowers the respective Ministers in the respective ministries to enter into contracts and also empowers the respective ministers to delegate powers to Government Officers to enter into contracts on behalf of the Government.

#### 4.5 TREASURY CIRCULAR LETTERS

Treasury Circulars are issued from time to time to inform, clarify, implement, improve and amend certain policies, rules and procedures whenever required by the Government and financial authorities.

E.g. Integrity Pact

#### 4.6 FEDERAL CENTRAL CONTRACT CIRCULARS

Federal Central Contract Circulars are issued to inform the users on the availability of common user items which are centrally purchased. The Central Contract Circulars normally contain details such as items, name of suppliers, areas of supply and time of delivery. Apart from procurement principles and objectives, most often the Central Contracts objectives are to promote local products and develop vendors.

### 5. CATEGORIES OF GOVERNMENT PROCUREMENT

5.1 For purposes of procurement, the Malaysian Government procurement has been categorized as follows:

#### a) Works

Works contracts include construction and engineering activities involving infrastructure and structures such as buildings, airports, roads/highways, dams, drainage etc. It is also inclusive of mechanical and electrical aspects of works.

#### b) Supplies

Supplies include the supply of raw, intermediate or finished goods and products for any activity of users. Also included are construction materials, food products, uniforms, vehicles, equipment, spare parts, furniture etc.

### c) Services

Services include engagement of manpower, expertise and consultants in the areas of feasibility studies, research, designing, surveying, management etc. Other services such as repairs, maintenance and cleaning services are minor activities under this category.

## 6. TYPES AND MODES OF PROCUREMENT

### 6.1 DIRECT PURCHASE

a) This procedure allows procurement of supplies and services up to the value of RM50,000 directly through the issue of a Government Order to any known suppliers of goods or services consistently supplying goods at acceptable quality and reasonable price. The requirement of registration is exempted.

b) Procurement of works up to the value of RM20,000 may be done through the issue of a Works Indent to a contractor who is registered with the Contractors Services Centre (PKK) and Construction Industry Development Board (CIDB) Malaysia.

### 6.2 QUOTATION

a) Procurement of supplies and services above the value of RM50,000 and up to RM500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All suppliers wishing to take part in quotations must be registered with the Government.

b) Procurement of works above the value of RM20,000 and up to RM500,000 is done through calling of quotations and the minimum number of quotations to be invited is five. All contractors wishing to take part in quotations must be registered with the PKK and CIDB.

### 6.3 TENDERS

Procurement of works, supplies and services above the value of RM500,000 must be done through tender processes. All contractors intending to participate in local tenders must be registered with the Government. International tenders will be invited for supplies and services if there are no locally produced supplies or services available. For specific works, if local contractors do not have the expertise and capability, tenders may be called on a joint venture basis between local and foreign contractors to encourage the transfer of technology. International tenders for works may only be called when local contractors do not have the expertise and capability, and a joint venture is not possible.

## 7. TENDER PROCUREMENT PROCESS

### 7.1 SPECIFICATIONS

Ministries and Departments are required to initially prepare tender specifications. For this purpose, a technical committee needs to be formed. Specifications should be as detail as possible to give the bidders a clear idea of what is required or expected. The specifications drawn are functional or performance based although technically detailed specifications are sometimes used. Compliance to acceptable international standards or their equivalent may also be included in the specifications. However, tailored specifications to suit any brand or country are strictly forbidden. The system provides for an objection from potential bidders, a period of 14 days from the date of issue of tender documents on any tailored specifications for local tender and 28 days for international tender.

### 7.2 TENDER DOCUMENTS

Tender documents are prepared and distributed at a cost, the minimum being RM50. The contents of the tender documents include general and specific terms and conditions, specifications, a copy of agreement, price schedule, delivery period, objection period and the scope of works expected.

### 7.3 ADVERTISEMENT

All tenders are advertised in at least one local daily in the Malay language. International tenders must be advertised in at least two local dailies i.e one in the Malay language and one in the English language. Procurement opportunities can also be accessed through the procuring agencies' websites, MyPROCUREMENT portal (<http://myprocurement.treasury.gov.my>) and MyGovernment portal ([www.malaysia.gov.my](http://www.malaysia.gov.my)). Bidders are given a submission period of not less than 21 days for local tenders. For international tenders the submission period may not be less than 56 days.

### 7.4 SALE OF TENDER DOCUMENTS

Sale of tender documents may commence from the date of publication of advertisement in the dailies. Only contractors fulfilling the local registration requirement may purchase tender documents for local tenders. In the case of international tender, supplies and services contractors are exempted from the local registration requirement. However, works contracts require foreign contractors to register with the CIDB. The requirement to register with CIDB is mandatory for all contractors dealing with the construction industry in Malaysia under an Act of Parliament.

### 7.5 TENDER DEPOSITS

Local suppliers and contractors registered with the Government are exempted from tender deposits. However, international bidders are required to furnish a tender deposit ranging from RM60,000 for bids below RM5 million, to RM 1 million for bids exceeding RM30 million for supplies and services. For works contracts, bidders are required to furnish tender deposits ranging from RM60,000 for contracts below RM10 million, to RM 1 million for contracts exceeding RM100 million.

### 7.6 CLOSING AND OPENING OF TENDERS

The tender advertisement stipulates the precise date and time of closing and the address to which all tenders must be sent. The tenders may be sent by post or dropped into boxes specially made available for this purpose. Tender proposals by bidders should include the technical and financial proposals prepared separately in two copies and sealed in separate envelopes to facilitate scheduling and independent evaluation. A Tender Opening Committee comprising of senior government officers will open and schedule all the tenders and prepare a schedule of prices quoted. All tenders will be accorded a serial number and the name of bidders will be omitted to enable fair, just and independent evaluation of tenders by the Technical and Financial Evaluation committees.

### 7.7 EVALUATION OF TENDERS

Evaluation committees will evaluate all tenders based on the criteria set in the tender document. Evaluation is normally done by two separate committees i.e. Technical Evaluation Committee and Financial Evaluation Committee. The evaluation of both committees will result in the ranking of tenders received and the tender secretariat will apply the pre-determined weightage for the final evaluation of all tenders. This tender evaluation report will then be submitted to the Procurement Boards of Ministries/Departments (Agency Procurement Boards) for consideration and decision.

### 7.8 SELECTION OF SUCCESSFUL BIDDER

The Agency Procurement Boards will consider and select the successful bidder. Selection of tenders will be based on the general procurement principles, pre-determined criteria and final evaluation. All tenders are to be considered by the Agency Procurement Boards. However in

cases where the tender value is above RM100 million for works and RM50 million for supplies and services, the tenders would then be sent with recommendation of the Agency Procurement Boards to the Ministry of Finance for final decision. Information of successful bidder will be displayed in the procuring agencies' websites and MyPROCUREMENT portal.

## 8. REGISTRATION REQUIREMENT OF CONTRACTORS

8.1 All individuals, companies or corporate bodies intending to participate in Government procurement i.e. to do business with the Government are required to undergo a registration process. This includes all contractors of works, supplies and services. Registration authorities are as below: Category Registration Authorities Works Contractors Services Centre (PKK), Ministry of Works and the Construction Industry Development Board (CIDB) Malaysia Supplies Government Procurement Division, Ministry of Finance Malaysia Services Government Procurement Division, Ministry of Finance Malaysia.

8.2 The registration requirement is to ensure that companies/contractors are bona fide, truly committed in the relevant business fields and possesses the capability to carry out works or supply and provide the services. For works, construction and electrical contractors are registered separately. There are six (6) classes of registration for construction and four (4) classes for electrical contractors under the PKK registration.

8.3 This registration requirement enables the government to take disciplinary action and impose penalties on contractors who do not perform according to contract. Penalties imposed according to seriousness of deviations, range from warning, and suspension of registration for a maximum period of 5 years and to blacklisting of Companies/Board of Directors of the contracting parties from conducting further businesses with any Government Ministry, Department or Agency. This applies to contractors/suppliers with consistent or serious deviations from the contract conditions where enforcement of the contract conditions alone would not resolve the seriousness or complications as the case might be.

8.4 Exemption from registration is allowed under certain circumstances but where exemption is granted contractors need to furnish tender deposits.

## 9. CENTRAL PURCHASE OF SUPPLIES THROUGH FEDERAL CENTRAL CONTRACTS/PANEL CONTRACTS

The Government Procurement Division, Ministry of Finance establishes and facilitates procurement of common user items through Federal Central Contracts/Panel Contracts. These contracts are made through open local tenders and sometimes through negotiated tenders. When a Federal Central Contract/Panel Contract has been made for a particular item, all ministries and departments whether Federal or State are required to purchase from these contracts. Items under the central contracts/panel contracts range from foodstuff, office furniture and vehicle spare parts.

## 10. AGENCY PROCUREMENT BOARDS

10.1 All tenders i.e. procurement of supplies, services and works above the value of RM500,000 must be considered and decided by Agency Procurement Boards. The Minister of Finance appoints all Federal Government Procurement Boards and the Chief Ministers of the respective states appoints the State Government Procurement Boards. The chairperson is usually a Head of Department or a Controlling Officer who under the Financial Procedure Act 1957 is empowered to manage the annual allocation given to a particular Ministry or Department.

10.2 Currently two (2) Agency Procurement Boards have been established in all federal ministries i.e. Agency Procurement Board 'A' and Agency Procurement Board 'B'. The Agency Procurement Board 'A' is empowered to decide on tenders up to RM50 million for supplies and services, and up to RM100 million for works. The representative from the Ministry of Finance is the permanent member of the Agency Procurement Board 'A' and his presence is mandatory to validate the decision of the Board. This requirement is mainly to ensure that all procurement principles, policies, rules and regulations and procedures are strictly adhered to. The Agency Procurement Board 'B' is empowered to decide on all tenders below RM20 million without the presence of a representative from the Ministry of Finance.

10.3 Tenders above the values of RM50 million for supplies and services and RM100 million for works for Government Ministries/Departments and tenders above RM100 million for statutory bodies must be forwarded to the Ministry of Finance for final decision. Any decisions of the Agency Procurement Boards which are not unanimous must also be forwarded to the Ministry of Finance for final decision.

#### 11. LETTER OF INTENT

A Letter of Intent will be issued to the successful bidder, if necessary. The Letter of Intent may consist of additional terms and conditions, mostly safeguards and important for the successful implementation of the contract. The Letter of Intent is not legally binding. The final decision on acceptance of the tender depends upon the successful negotiation and/or acceptance of additional terms and conditions.

#### 12. LETTER OF ACCEPTANCE

A Letter of Acceptance is directly issued to the successful bidder if his bid is accepted in total. The successful bidder is then required to attest and return the Letter of Acceptance to the Government. If negotiations are necessary where the Letter of Intent so requires, then upon completion of negotiations, the Letter of Acceptance is issued to the successful bidder and it must be returned to the Government for the formalization of contract. The Letter of Acceptance forms a part of the contract documents and is legally binding.

#### 13. FORMAL CONTRACT

Formal contracts are drawn upon the receipt of the Letter of Acceptance from the successful bidder. Bidders are required to forward Performance Bonds based on stipulated rates according to the value of a contract. Performance Bonds must be obtained from locally incorporated banks, insurance companies and financial institutions that are licensed to operate in Malaysia. The current rates are as follows:

a) For Supplies and Services contract

- i) 2.5 percent of contract value for contracts exceeding RM200,000 and less than RM500,000; and
- ii) 5.0 percent for contracts exceeding RM500,000.

b) For Works contract

- i) 5.0 percent of the contract value exceeding RM200,000.

#### **SYSTEM FOR APPEALS, REVIEWS AND REMEDIES**

Complaint and review mechanisms that are already in place in Malaysia allow bidders to verify that the procurement process conforms to the prescribed procedures. The possibility of review is also a strong incentive for procurement officials to abide by the rules. Malaysia offers bidders a multitude of channels for complaint. A failed bidder may complain to a procuring agency, which

may cancel a tender if it finds any irregularities. An aggrieved bidder may also complain to the Public Complaints Bureau, the Malaysian Anti-Corruption Commission Malaysia, or the Public Accounts Committee. In addition, the Monitoring and Control Division of the Ministry of Finance monitors adherence to procurement rules, and may also set up special task forces to investigate complaints. The minister of finance, however, has the ultimate decision-making authority regarding complaints.

Audits are also important review mechanisms. All procuring agencies in Malaysia have internal audit units that regularly examine weaknesses in and possible breaches of procurement rules. The Auditor General conducts external audits of procurement procedures and may order corrective actions. The reports of the Auditor General are published and presented annually to Parliament. Review mechanisms, however, are effective only if the documentation of procurement proceedings is complete and readily available. In Malaysia, all procurement actions and decisions are recorded and the records are kept between one and 20 years, depending on the nature of the document. The records are generally accessible only to authorized procurement personnel

**Remedial action under Integrity Pact mechanism: Clause on Corruption in Government Procurement Documents: "Termination on Corruption, Unlawful or Illegal Activities"**

(reference: Ministry of Finance Circular Letter No 10 of 2010 - Guidelines for the Implementation of Integrity Pact in Government Procurement or Surat Pekeliling Perbendaharaan Bil 10 Tahun 2010 - Garis Panduan Perlaksanaan Integrity Pact Dalam Perolehan Kerajaan, in the National Language) which reads as follows:

- a) Without prejudice to any other rights of the Government, if the [Company/Firm], its personnel, servants, or employees is convicted by a court of law for corruption or unlawful activity or illegal activities in relation to this [agreement/contract] or any other agreement that the [Company/Firm] may have with the Government, the Government shall be entitled to terminate this [Agreement/Contract] at any time, by giving immediate written notice to that effect to the [Company/Firm]
- b) Upon such termination, the Government shall be entitled to all losses, costs, damages and expenses (including any incidental costs and expenses) incurred by the Government arising from such termination.
- c) For the avoidance of doubt, the Parties hereby agree that the [Company/Firm] shall not be entitled to any form of loss including loss of profit, damages or whatsoever upon termination of this [Agreement/Contract].

**Remedial actions through civil proceedings as provided by:-**

**a) CIVIL LAW ACT 1956 (Act67) -PART VI-FRUSTRATED CONTRACTS**

Adjustment of rights and liabilities of parties to frustrated contracts

*15. (1) Where a contract has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, subsections (2) to (6) shall, subject to section 16, have effect in relation thereto.*

*(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as "the time of discharge") shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:*

*Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.*



(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular-

(a) the amount of any expenses incurred before the time of discharge by the party benefited in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and

(b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of subsections (1) to (3), the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of the said subsections, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under subsections (1) to (4) by any party to the contract the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

#### **Provisions as to application of section 15**

16. (1) Section 15 shall apply to contracts whether made before or after the coming into force of this Act.

(2) **Section 15 shall apply to contracts to which the Government is a party in like manner as to contracts between subjects.**

(3) Where any contract to which section 15 applies contains any provisions which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether those circumstances arise or not, the Court shall give effect to the said provision and shall only give effect to section 15 to such extent, if any, as appears to the Court to be consistent with the said provision.

(4) Where it appears to the Court that a part of any contract to which section 15 applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 15 as only applicable to the remainder of that contract.

(5) Section 15 shall not apply-

(a) to any charter party, except a time charter party or a charter party by way of demise, or to any contract (other than a charter party) or the corresponding provisions of any written law for the carriage of goods by sea;

(b) to any contract of insurance, save as is provided by subsection (5) thereof; or

(c) to any contract to which section 7 of the Sale of Goods Act 1893 of the United Kingdom [56 and 57 Vict.c.71] (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) or the corresponding provisions of any written law applies, or to any other contract for the sale, or for the sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

## **a) GOVERNMENT PROCEEDINGS ACT 1956 (ACT 359)**

### **Claims enforceable by proceedings against the Government**

*Section 4. Subject to this Act and of any written law, any claim against the Government which-*

- (a) is founded on the use or occupation or the right to the use or occupation of State land, or*
- (b) arises out of the revenue laws; or*
- (c) arises out any contract made by the authority of the Government which would, if such claim had arisen between subject and subject, afford grounds for civil proceedings or*
- (d) is a claim (other than a claim in tort) for damages or compensation not included in the preceding paragraphs which might lawfully be enforced by civil proceedings as between subject and subject;*

*shall be enforceable by proceeding against the Government for that purpose in accordance with this Act.*

## **MEASURES TO REGULATE MATTERS REGARDING PERSONNEL RESPONSIBLE FOR PROCUREMENT**

Personnel responsible for procurement are subjected to the following regulations

### **1.Regulations On Declaration Of Interest:**

- Any officer who have vested interest in the Quotation/Tender are required to declare his/her interest and to dismiss himself/herself in writing. **(TI No.197.3)**
- **Regulation 4 (2) of the Public Officers (Conduct and Discipline) Regulation 1993**, as follows:  
*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.*

### **2. 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.

### **3.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.

#### **4. 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.

#### **5. Ministry of Finance Service Circular No.10 of 2010- Guidelines for the Implementation of Integrity Pact in Government Procurement**

The Integrity Pact comprises of a declaration process by bidders not to offer or give any form of bribes as a means to obtain contract or to facilitate certain processes in Government Procurement. Both bidders and civil servants are required to sign pact to refrain from getting involved in corrupt practices throughout the procurement process until the project is completed.

#### **6. REGULATIONS ON SCREENING OF PERSONNEL IN CHARGE OF PUBLIC PROCUREMENT**

- a) Security Vetting by the Police, Department of Insolvency and Department of Health- Public Officers Regulations (Appointment, Promotion and Termination) 2005
- b) Integrity Vetting by the Malaysian Anti-Corruption Commission for public officials going for promotion- Service Circular No.7 of 2010

#### **7. REGULATIONS ON TRAINING OF PERSONNEL IN CHARGE OF PROCUREMENT**

- Specific training for procurement personnel that also include integrity, which are undertaken by the National Institute of Public Administration, (INTAN) Malaysia under the Financial Management Center. Details of the courses are available at [www.intanbk.intan.my](http://www.intanbk.intan.my). Some of the courses conducted by the Center are as follows :-
  - *Government Procurement Management*
  - *Accountability in the Financial Management*
  - *Financial Procedures*
  - *Cost Strategic*
  - *Asset Management.*
- All civil servants, inclusive of those personnel in charge of procurement, 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.

#### **MALAYSIA & UNCITRAL (United Nation Commission on International Trade Law)**

Malaysia has been elected as one of the Asian States to be a member of UNCITRAL Commission for another six-year term beginning on 8 July 2013. Ending in 2019. (Malaysia was a member of the Commission since 2007-2013).

The Malaysian Arbitration Act 2005 ('the Act') is based on the UNCITRAL Model Law 1985 and is similar to the New Zealand Arbitration Act 1969. The Act applies to both domestic and international arbitrations and differs only in relation to certain aspects of the act such as enforcement

In as far as UNCITRAL Model Law on Public Procurement (2011), Malaysia, represented by its Foreign Mission in Vienna, has participated in *Working Group 1: Procurement*.

*NOTE: The above mentioned legislation, regulations, circulars and guidelines as well as the UNCITRAL Model Law on Public Procurement related documents are made accessible to the public on the myprocurement website of the Ministry of Finance (International Procurement Initiative).*

**In relation to public reporting (article 10)**, States parties and signatories may wish to provide information on measures that:

- Make available online, including in open data formats, government information relating to the implementation of the Convention, in order to foster greater transparency, accountability and efficiency;
- Promote the use of online platforms or portals to enhance transparency in public administration, including information on the organization, functioning and decision-making processes of the public administration and on decisions and legal acts.

Information sought may, in particular, include the following:

- Use of websites, online libraries, online archives or other means by which information on the organization, functioning and decision-making processes of the public administration is made available to the general public;
- Outline of the laws, procedures or regulations allowing members of the general public to obtain information on the organization, functioning and decision-making processes of the public administration through information and communications technologies;
- Description of the type of information to be proactively made available and automatically published by the Government through online platforms and websites, including details of:
  - The types of bodies required to publish information;
  - The scope of the information that is published;
  - The means by which the information is published;
  - How often the information is updated;
- Description of the types of information to be made available upon request by a member of the public (i.e. legislation on freedom of information or access to information);
- Standards to protect privacy and personal data in the disclosure of such information;
- Description of online initiatives to raise public awareness with regard to the information available and how it can be accessed online;
- Examples of proactive publication of information online without a special request.

Public access to information with regards organization, functioning, decision-making processes of public administration are made available through:-

**ELECTRONIC GOVERNMENT ACTIVITIES ACT 2007 (Act680)**

With the implementation of electronic government in the public administration. The vision of Electronic Government is a vision for government, businesses and citizenry working together for the benefit of Malaysia and all of its citizens. The vision focuses on effectively and efficiently delivering services from the government to the people of Malaysia, enabling the government to become more responsive to the needs of its citizens.

**Types of information which could be obtain electronically on Government portals and websites include:**

- (a) Organisational function, structure
- (b) Legislation, rules and regulations
- (c) Names, designation and their contact details (telephone number/email addresses)
- (d) Contact Nos.
- (e) Tender announcements (procurement)
- (f) FAQs
- (g) Publications (Annual Reports)
- (h) Statistics

**In relation to participation of society (article 13),** States parties and signatories may wish to provide information on measures that:

- Establish e-government mechanisms, online platforms, smartphone applications, mobile telephone-based reporting and social media to enhance the effective and efficient participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption;
- Enhance the transparency of, and promote the contribution of the public to, decision-making processes, in particular through the use of online platforms to facilitate consultation with the public on issues relating to the prevention of and fight against corruption;
- Promote public information activities, including through the use of information and communications technologies, that contribute to non-tolerance of corruption, as well public education programmes;
- Respect, promote and protect the freedom to seek, receive, publish and disseminate information concerning corruption, in particular through online mechanisms;
- Provide public access, including through online mechanisms, to relevant anti-corruption bodies for the reporting, including anonymously, of any incidents that may constitute an offence established in accordance with the Convention.

Information sought may, in particular, include the following:

- **In relation to enhancing the transparency of and promoting the contribution of the public to decision-making processes (article 13 (1) (a)):**
  - Description of how ICT is used to promote citizen and stakeholder involvement in decision-making processes, such as through large-scale consultations, online platforms, working groups, task forces, citizen referendums and community meetings, and measures to promote such involvement;
  - Description of ICT measures adopted to promote an institutional culture of transparency, open data, open-door policies and regular communication between the Government and civil society;
  - Description of ICT measures adopted to allow members of the public to decide or contribute to decisions on how to allocate parts of the public budget in specific institutions;
  - Description of ICT measures adopted to provide opportunities for individuals and groups outside the public sector to be consulted during legislative drafting processes;
  - Description of the ways in which ICT is used to facilitate public consultations before regulations or other administrative policies are issued, and of any consequences of failure to adhere to the requirement to facilitate such public participation.

**Malaysia's measures in promoting the contribution of the public to decision making process in compliance with the provision of this Article are as follows:**

**Consultation on National Budget**

- **Budget Consultative Council Meetings organized by the Ministry of Finance to seek views from the public and private sectors as well as civil society regarding economic issues and proposals to be included in the budget strategy and measure.**

- **Consequence if failure to consult? - None**

#### **Consultation on Anti-corruption legislation**

- **MACC's held a series of discussion with Bar Council/ NGO/ Chambers of Commerce on**
  - (a) Making MACC independent/constitutional position of the Chief Commissioner**
  - (b) Misconduct in Public Office**
  - (c) Corporate liability**

#### **Role of Malaysian Anti-Corruption Commission- Advisory Board under Section 13 (5) of the MACCA 2009**

**MACC's Advisory Board's recommendations to the Government on aspects of operational, prevention and administrative/budgetary needs for the proper and efficient functioning of the MACC.**

Section 13 (5) The Advisory Board shall have the following functions:

- (a) to advise the Commission on any aspect of the corruption problem in Malaysia;
- (b) to advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;
- (c) to receive, scrutinize and endorse proposals from the Commission towards the efficient and effective running of the Commission;
- (d) to scrutinize and endorse resource needs of the Commission to ensure its effectiveness;
- (e) to scrutinize the annual report of the Commission before its submission to the Special Committee on Corruption; and
- (f) to submit its comments to the Special Committee on Corruption as to the exercise by the Commission of its functions under this Act.

#### **Institutionalisation of Open-Door Policies and Regular Communication between Government and Civil Society**

- (a) Clients Charter in accordance with Development Administrative Circular 3 of 1993 (attached)

The Client's Charter is a written commitment by the Government agencies towards the provision of services to their clients. The Charter must be displayed in prominent places within the premises of the office. The information on the Charter has to be disseminated to ensure that the public are aware of their rights to the services. Consequently, public servants will have to be more sensitive, prepared and accountable in providing quality services. Ultimately, the implementation of the Client's Charter will not be confined to improving quality and productivity but will also contribute to changing the attitudes of public servants in becoming more disciplined, responsible and sensitive to customers' requirements.

Benefits to the Public:

- i. It enables the public to know specifically the quality of service to expect from the department/agency;
- ii. It enables the public to evaluate the performance of the services rendered;
- iii. It reduces uncertainties over the delivery of services;
- iv. It facilitates comparisons between agencies which offer similar services; and
- v. The public will be aware of the quality standards of each department/agency.

(b) The “A Day With The Client Programme” is one of the many efforts that give feedback directly to each Head of Department regarding the problems faced by their clients. Awareness program and pro-active actions in addressing problems of the people should be carried out extensively to enable the government to obtain feedback directly from the people about the level of satisfaction in order to improve the performance of the civil service.

### **Civil Service improvements to stamp out corruption with participation of private sector**

#### **The Setting up of PEMUDAH**

On 7th February 2007, the Special Taskforce to Facilitate Business or PEMUDAH (taken from the taskforce’s Malay name ‘Pasukan Petugas Khas Pemudahcara Perniagaan’) was established. Reporting directly to the Prime Minister, the team comprises 23 highly respected individuals from both the private and public sectors. It is co-chaired by the Chief Secretary to the Government of Malaysia and the Immediate Past President of the Federation of Malaysian Manufacturers

#### Terms of Reference:

- To review the status of the public services delivery system in terms of processes, procedures, legislation and human resource and to propose new policies for improvements;
- To benchmark best practices to improve the ease of doing business;
- To enhance collaboration among public and private sector agencies to improve Malaysia’s competitiveness;
- To monitor the implementation of policies, strategies and procedure that would improve the efficiency and effectiveness of the public and private sector delivery system; and
- To take appropriate action to address issues in line with the National philosophy of 1Malaysia, People First, Performance Now.

#### Vision and Values of PEMUDAH

To achieve a globally benchmarked, customer-centric, innovative, entrepreneurial and proactive public and private sector delivery service in support of a vibrant, resilient and competitive economy and society, driven by the following:

- (i) A sense of urgency
- (ii) Proactive public-private sector collaboration
- (iii) Facilitation, not hampering
- (iv) No more regulation than necessary
- (iv) **Zero tolerance for corruption**

#### **See attachments:**

- **National Integrity Plan**
- **MACC Annual Report Year...**
- **Institute of Integrity Malaysia Report Year...**

- **In relation to ensuring that the public has effective access to information (article 13 (1) (b)):**
  - Legislation, regulations, policies and procedures regarding public access to information through ICT, such as online platforms, including details regarding:
    - Means by which requests may be submitted (in writing, via Internet, by telephone);
    - The types of bodies required to publish information;
    - The scope of the information published;
    - Any information that must be submitted by the requester as part of the request for information;
    - Costs charged to submit a request
    - Applicable time limits within which the Government must respond to the request;
    - Grounds on which a request by a member of the public for information may be denied;
  - Description of staff or entity responsible for administering access to information requests;
  - Description of steps taken to ensure that existing laws, regulations, policies and procedures regarding access to information are widely known and accessible to the public;
  - Description of the means by which the public is informed of how to access information.

Among the electronic government internet applications for members of the public are:

- Electronic Procurement (e-Perolehan) - this application covers central government contracts, tender and direct purchase. All suppliers can obtain tender documents and submit bids in the Internet.
- Electronic Services Directory (e Services)- allows citizens of Malaysia to engage in transactions with government and utilities payments such as telephone and electricity bills, Traffic summons, etc...
- Electronic Labour Exchange (ELX) - a one-stop centre for labour market information that will be accessible to the public.

Information on organization, function and decision-making processes of Malaysian public administration can be access through:

- government portals and websites
- direct interaction with government departments (information counters, help desks etc)
- public communication utilities (toll -free lines, telephone)
- sms/mobile services (traffic offence summons)
- print media (brochures, annual reports,)
- libraries
- community education/relation programmes ( dialogs, roadshows etc) If available, please indicate how many requests for information were made by the public, how many received a response, how long it took for responses to be given. Please provide per annum figures, as available.

Statistics

### **The Malaysian Government Portals and Websites Assessment 2010/2011**

The Malaysia Government Portals and Websites Assessment (MGPWA) was first conducted in 2005 by E-Government. Among the objectives were to analyze the performance of more than 900 Government portals and websites. It was during the 19th Implementation Council Meeting (ICM) Decision on 7 December 2006 that MDeC was mandated to undertake an audit on all of the Government Agencies websites and advise Chairman exactly where they are in their websites and propose ways to enhance and upgrade the websites. Hence, MGPWA has become an annual project that has contributed to tremendous



improvement of our Government portals and websites. The number of portals and websites assessed has been growing from 903 to 1,145 in 2010.

The total portals and websites assessed in MGPWA 2011 have increased to 1,155. They are derivation from item Machinery on myGovernment Portal. From the assessment, there are still availability of inaccessible portals/websites, a total of 64. In the overall ranking of portals and websites, sub rankings were derived. They Ministry, State, Local Authority, University and Managed Portal Services (MPS). Two new sub rankings are introduced - Top 10 Portals and Top 10 Websites.

- **In relation to undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula (article 13 (1) (c)):**
  - Description of public information (education and awareness-raising) activities that contribute to non-tolerance of corruption, particularly those using ICT, including specific initiatives targeting groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations;
  - Description of various means and/or technologies that have been used for the purposes of undertaking public information activities;
  - Description of the use of ICT in educational courses or modules that have been introduced in primary and secondary schools that include components on corruption or related issues such as ethics, civil rights or governance;
  - Description of the use of ICT in university courses or modules that include components on corruption or related issues such as public administration, public procurement, ethics, criminal law or corporate governance.

Information activities that contribute to non-tolerance of corruption:

**A. MACC COMMUNITY EDUCATION EFFORTS:**

These includes (a) awareness programmes (face-to-face) e.g. talks, seminars, lectures etc (b) publication of anti-corruption messages in booklets, brochures, calendars etc to be distributed for the public ; (c) TV dramas based on the MACC success stories (d) special adoption programmes or outreaches in schools and (e) **formation of anti-corruption secretariats with private and public institute of higher learning.**

**The corruption awareness programmes are also carried out with the request and cooperation of the private sector.**

**B.MALAYSIAN ANTI-CORRUPTION ACADEMY COURSES**

Apart from efforts above the MACC's Malaysia Anti-Corruption Academy (MACA), besides being the training provider for government agencies for anti-corruption capacity building, also provides training for government linked companies and private sector entities including the NGO (e.g. Transparency International Malaysia on Forest governance). The MACA is also responsible for the training and certification of Integrity Officers (CeIO) of government department/agencies and soon-to-be private sector entities.

**C. MALAYSIAN INSTITUTE OF INTERGRITY (IIM) Efforts**

The IIM was set up and tasked to implement the National Integrity Plan which was formulated in 2004 in line the aspirations of the Rukun Negara (National Principles) 1970 and the Vision 2020.

The IIM's efforts to enhance integrity is based on a holistic and continuous approach with "synergy" of those from below with those from above. While the leadership should be exemplary and provide guidance those below should give support, feedback as well as check-and-balance on the leadership.

The components of the National Integrity Plan consists of the following institutions:

- Family
- Community
- Civil society (NGO)
- Socio-culture
- Religion
- Politics
- Administration

**C. The Government Transformation Programme: National Key Result Areas (NKRA)- Fighting Corruption Efforts**

Under the first phase (2010-2012) of the Malaysian Government Transformation Programme (GTP), one of its NKRA is in the area of fighting corruption. Spear heading this area is the NKRA - Fighting Corruption Lab ( now called the NKRA Corruption Monitoring and Coordination Division emplaced under the MACC) which had been tasked to curb corruption in three broad areas namely,

- grand corruption,
- government procurement and
- regulatory and enforcement agencies.

Information activities (initiatives) under each of these areas include:

- spelling out the boundaries for the usage of "support letters" issued by political leaders to lobby for bids in government tenders for certain bidders vide MAMPU circular dated 8 March 2010
- showing transparency in Government procurement and privatization contract by disclosing details of awarded vendor, price and project title via MyProcurement portal launched on 1st April 2010
- publishing names and details of convicted offenders (for three years) on the MACC website to curb recidivism ;
- reducing discretionary powers of enforcement agencies through automation e.g.
- Police Information Management System (SPIN) Police Reporting System (PRS), Car Accident Reporting System (CARS);
- CCTV at Immigration entry points;
- e-Kira,e-Tahan,CCTV at Customs Hot Sport Zones
- e-Bidding, e-Kastam , e-AP and e-Puspakom at the Road Transport Department

See attachments:

- National Integrity Plan
- Government Transformation Programme : The Road Map
- Malaysian Anti-Corruption Commission Annual Report Year...
- Institute of Integrity Malaysia Annual Report Year...

- **In relation to respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption (article 13 (1) (d)):**
  - Outlines of the procedures or regulations that ensure the freedom of the public to seek and receive information concerning corruption, in particular using ICT. States parties and signatories may wish to include the following information, if applicable:
    - The extent to which such information is proactively and systematically published by the Government online;
    - The extent to which such information is available upon online request for access to information by a member of the public;
  - Any restrictions applicable to exercise of the freedom to seek, receive, publish and disseminate such information, in particular using ICT, including:

- Restrictions necessary for respect of the rights or reputations of others (libel and defamation laws, etc.);
- Restrictions necessary for the protection of national security or *order public* or of public health or morals;
- Description of how such restrictions are applied in practice;
- Description of procedures that allow a member of the public to apply for review of, or appeal against, the application of such a restriction by the Government.

In Malaysia, the legislation to seek, receive, publish and disseminate information concerning corruption and at the same time respecting the rights of others and for the protection of national security or public order, health or morals is subject to the provisions of the following legislation and regulation:-

**Restricted/ Prohibitory Legislation:**

**A. A report made to the MACC shall be kept secret under Section 29 (4) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)- Power to investigate reports and enquire into information:-**

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

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

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

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

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

**B. Printing Presses and Publications Act 1984 (Act 301) Section 7- Undesirable publications**

(1) If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

(2) In the case of a publication originating in any country outside Malaysia, an order under subsection (1) may, if the order so provides-

(a) prohibit the importation of any or all publications whether before or after the date of the order, subject to such conditions as may be prescribed therein;

(b) in the case of a periodical publication, prohibit the importation of any past or future issue thereof;

(c) in the case of a publication which has been issued or appears or purports to have been issued from any publishing house, agency or other source specified in the order, prohibit the importation of any other

publication which may at any time whether before or after the date of the order has been, or appears or purports to have been, issued from the specified publishing house, agency or other source;

(d) require the publisher thereof to make such deposits of such amount and in such manner as may be prescribed therein before any such publication may be imported. (3) Where the Minister is satisfied that the publisher of any publication has acted in contravention of the Act or any rules or order made thereunder or any condition of the licence or permit or any law relating to sedition or defamation, he may after giving such publisher an opportunity to show cause why the deposit made under paragraph 2(d) should not be forfeited, order the deposit or part thereof to be forfeited.

(4) Whether or not an order has been made under subsection (3) the court may order the deposit or any balance thereof, if any-

(a) to be forfeited where the publisher fails to appear in court to answer any criminal charge or civil action relating to any matter in connection with such publication; or

(b) to be paid out in settlement of any judgment obtained against the publisher arising out of any proceeding in connection with such publication.

(5) Where a deposit made under paragraph 2(d) is ordered to be forfeited or utilized in settlement of any damages under subsection (3) or (4), the order of prohibition under subsection (1) shall become absolute unless the publisher makes a further deposit as may be required by the Minister.

(6) A local or foreign publisher shall be responsible and liable for any action in respect of any material published in his publication.

#### Section 8 Offences

(1) Any person who without lawful excuse is found in possession of any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit.

(2) Any person who prints, imports, produces, reproduces, publishes, sells, issues, circulates, offers for sale, distributes or has in his possession for such purpose any prohibited publication shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

#### Section 8 A Offence to publish false news

(1) Where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer thereof shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both.

(2) For the purposes of this section, malice shall be presumed in default of evidence showing that, prior to publication, the accused took reasonable measures to verify the truth of the news.

(3) No prosecution for an offence under this section shall be initiated without the consent in writing of the Public Prosecutor.

#### Section 8 B Suppression of publication

Where any person has been found guilty of any offence by any court in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suppression of the publication for a period not exceeding six months of such publication.

#### Section 8 C Suspension of publication

(1) Pending the determination of any proceedings for the prosecution of a printer, publisher, editor or writer before any court for any offence in respect of anything published in any publication, it shall be lawful for the court upon the application of the Public Prosecutor to order the suspension of such publication.

(2) Where an appeal has been lodged against the order of acquittal of any person charged with an offence in respect of anything published in any publication, it shall be lawful for the court which will hear the appeal, on application by the Public Prosecutor, to order a further suspension of such publication pending the final disposal of the appeal.

(3) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to imprisonment for a term not exceeding two years or to a fine not exceeding ten thousand ringgit or to both.

Section 9 Undesirable publication may be refused importation

(1) Without prejudice to anything in this Act, the Minister may refuse the importation into Malaysia or withhold delivery or return to the sender thereof outside Malaysia any publication which he is satisfied contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be prejudicial to public interest or national interest.

(2) Notwithstanding subsection (1), the Minister may allow the importation or delivery of any publication after any part of the publication which he considers objectionable under any of the grounds specified in subsection (1) has been, to his satisfaction, obliterated, deleted, erased or removed.

**C. Seditious Act 1984 (Act 15)** Meaning of "seditious" under Section 2

"seditious" when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;

Meaning of "seditious tendency" under Section 3

A "seditious tendency" is a tendency-

(a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;

(b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;

(c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;

(d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;

(e) to promote feelings of ill will and hostility between different races or classes of the population of Malaysia; or

(f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.

(2) Notwithstanding anything in subsection (1) an act, speech, words, publication or other thing shall not be deemed to be seditious by reason only that it has a tendency-

(a) to show that any Ruler has been misled or mistaken in any of his measures;

(b) to point out errors or defects in any Government or constitution as by law established (except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)(f) otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

(c) except in respect of any matter, right, status, position, privilege, sovereignty or prerogative referred to in paragraph (1)(f)-

(i) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established; or

(ii) to point out, with a view to their removal, any matters producing or having a tendency to produce feelings of ill will and enmity between different races or classes of the population of the Federation, if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.

(3) For the purpose of proving the commission of any offence against this Act the intention of the person charged at the time he did or attempted to do or made any preparation to do or conspired with any person to do any act or uttered any seditious words or printed, published, sold, offered for sale, distributed, reproduced or imported any publication or did any other thing shall be deemed to be irrelevant if in fact the act had, or would, if done, have had, or the words, publication or thing had a seditious tendency.

Offences under Section 4 (1) Any person who-

(a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;

(b) utters any seditious words;

(c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

(d) imports any seditious publication, shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

(2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

#### Section 9 Suspension of newspaper containing seditious matter

(1) Whenever any person is convicted of publishing in any newspaper any matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters:

(a) prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order, the future publication of that newspaper;

(b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper or from publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise in the publication, editing, or production of any newspaper; and

(c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

(2) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both.

(3) Nothing in this Act shall affect the power of the court to punish any person contravening an order made under this section for contempt of court: Provided that no person shall be punished twice for the same offence.

#### **D. Official Secrets Act 1972 (Act 88) Meaning of "official secret" under Section 2**

"official secret" means any document specified in the Schedule and any information and material relating thereto and includes any other official document, information and material as may be classified as "Top Secret", "Secret", "Confidential" or "Restricted", as the case may be, by a Minister, the Menteri Besar or Chief Minister of a State or such public officer appointed under section 2B;

#### **Section 8. Wrongful communication, etc. of official secrets**

(1) If any person having in his possession or control any official secret or any secret official code word, countersign or password

which-

(a) relates to or is used in a prohibited place or relates to anything in such a place;

(b) relates to munitions of war and to other apparatus, equipment and machinery which are used in the maintenance of the safety and security of Malaysia;

(c) has been made or obtained in contravention of this Act;

(d) has been entrusted in confidence to him by any public officer; or

(e) he has made or obtained, or to which he has had access, owing to his position as a person who holds or has held office in the public service, or as a person who holds, or has held a contract made on behalf of the Government, or as a person who is or has been employed by or under a person who holds or has held such an office or contract, does any of the following:

(i) communicates directly or indirectly any such information or thing to any foreign country other than any foreign country to which he is duly authorized to communicate it, or any person other than a person to whom he is duly authorized to communicate it or to whom it is his duty to communicate it;

(ii) uses any such official secret or thing as aforesaid for the benefit of any foreign country other than any foreign country for whose benefit he is duly authorized to use it, or in any other manner prejudicial to the safety or interests of Malaysia;

(iii) retains in his possession or control any such thing as aforesaid when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with all lawful directions issued by lawful authority with regard to the return or disposal thereof; or

(iv) fails to take reasonable care of, or so conducts himself as to endanger the safety or secrecy of, any such official secret or thing, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

(2) If any person receives any official secret or any secret official code word, countersign or password knowing or having reasonable ground to believe at the time when he receives it, that the official secret, code word, countersign or password is communicated to him in contravention of this Act, he shall, unless he proves that the communication to him of the official secret, code word, countersign or password was contrary to his desire, be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years.

#### **Public access to information on corruption**

A. Malaysian Anti-Corruption Commission "Name and Shame" Data base published on MACC website ([www.sprm.gov.my](http://www.sprm.gov.my)). Details of offenders under trial or convicted are made available for 3 years. This has been used as effective reference for employers, the Immigration Department, the banking fraternity and also embassies in application for employment, visa and also financial service matters.

B. Law journals of decided cases-Malaysian Law Journals, Current Law Journals etc

C. Public survey/research results by institutions (TI, Universities, independent survey sponsored by NGOs, IIM, MACC)

D. MACC Publications- Annual Reports

See attachments:

- Malaysian Anti-Corruption Commission Act 2009 (Act 694)
- Printing Presses and Publication Act 1984(Act 301)
- Sedition Act 1984 (Act 15)
- Official Secrets Act 1972 (Act 88)

- **In relation to taking appropriate measures to ensure that the relevant anti-corruption bodies are known to the public and providing access to such bodies for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with the Convention (article 13 (2)):**
  - Description of online public information campaigns that promote awareness of the existence of anti-corruption bodies;
  - Description of the means by which members of the public are provided with access to such bodies, particularly through ICT, for the reporting of acts of corruption;
  - Description of the operational mechanisms and applicable procedures for such reporting channels, including reporting obligations, information to be provided and whether reports may be made anonymously.

**2. Please outline actions required to ensure or improve the implementation of these articles and describe any specific challenges you might be facing in this respect.**

Examples of the types of challenge that States parties and signatories may face include the following:

- Developing the appropriate legislative framework for using ICT to facilitate public sector transparency and combat corruption;
- Building ICT infrastructure, including development of software and hardware solutions, to serve a broad range of stakeholders;
- Low levels of usage of ICT systems by the public owing to poor Internet access or other reasons;
- Building the capacity of the relevant governmental authorities to effectively implement legislation on transparency and access to information;
- Availability of data in open formats and difficulties in building accessible databases;
- Difficulties in the coordination of action taken by government agencies to implement adopted legislation and policies.

**MACC Publicity**

Publicity of the MACC takes the form of media announcements or coverages of its operational (investigation), preventative, educational and prosecutorial activities. The MACC has a Corporate Communication Unit which is responsible for public relations matters on issues affecting the activities mentioned. Additionally the MACC's Community Education Division (CED) is tasked to carry out the following functions provided under Section 7 (f) and (g) of the Malaysian Anti-Corruption Commission Act 2009 as follows:

**7(f) to educate the public against corruption; and 7(g) to enlist and foster public support against corruption**

In carrying out the above two functions the CED embarks on awareness campaigns to all levels of the community through its face-to-face educational programmes (seminars, lectures, talks and community-based activities, etc.) as well as print media (posters, brochures, booklets etc containing messages on the need to report acts of corruption) and electronic media (TV and radio talk shows, live-interviews, TV dramas based on success stories of the MACC, etc.)

**Accessibility of the MACC.**

The Malaysian Anti-Corruption Commission Act 2009 provides as follows:

**Section 9. Officer to be always on duty (24/7)**

Every officer of the Commission shall, for the purposes of this Act, be deemed to be always on duty when required to perform his duties or functions and may perform the duties or functions and exercise the powers conferred on him under this Act or under any other written law at any place within or outside Malaysia.

The MACC, with its headquarters in the Federal Administrative Center in Putra Jaya, has branch offices in all the 13 States of Malaysia and 2 other Federal Territories and 20 Sub-branches within the larger States (in terms of geographical and/or population size).



## **Reporting to the MACC**

Information on corruption by members of the public can be made to the MACC through numerous ways:

a	Making a report (in person) directly to officers of the MACC at the Headquarters and its branches/sub-branches
b	Telephone Toll free line
c	Short Messaging Service (SMS)
d	Social Networking (Twitter, Facebook, Email)
e	Letters of complaint
f	Anonymous letters
g	Cultivation of intelligence

### **Anonymity of Reports, Informers and Information is legally provided**

Under Section 29 (4) of the Malaysian Anti-Corruption Commission Act 2009 a report made to the MACC is kept secret.

*Section 29 (4). A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commission and above.*

### **Protection of for Reporting Persons**

#### **• Protection under the MACC Act 2009 (Act 694)**

Both the identities of informers and their information pertaining to corruption offences received by officers of the Commission from informers is protected under Section 65 of Act 694:

#### *Section 65. Protection of informers and information*

*(1) Subject to subsection (2), where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.*

*(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.*

*(3) Any person who gives the information referred to in subsection (1) knowing that the information is false commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand ringgit; and for the purposes of any*

*investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.*

- **Protection under the AMLATFAPUAA 2001 (Act 613):-**Section 5 and Section 6
- **Protection under the Whistle Blowers Protection Act 2010 (Act 711):-**Sections 7, 8, 9 and 10
- **Protection under the Witness Protection Act 2009 (Act 696)**
- **Protection under the Penal Code:-**Section 503 read with Section 506
- **Protection under Abduction and Criminal Intimidation of Witness Act 1947 (Act 191):-**Section 5

**Reporting obligation is provided for under Section 25 of Act 694.**

Section 25 (3) makes it a legal obligation for the public to report any gratification from whom any gratification has been solicited or obtained in contravention of the MACC Act.

Section 25 (4) makes it an offence for any failure to comply with section 25 (3) and punishable upon conviction a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

**Incentive to report-**

The Government of Malaysia and the MACC Act 2009 do not provide for any monetary incentive for the public to report corruption.

**3. Do you require technical assistance for the implementation of these articles? If so, please specify the forms of technical assistance that would be required. For example:**

**Legislative assistance:** Please describe the type of assistance

**Institution-building:** Please describe the type of assistance

**Policymaking:** Please describe the type of assistance **Capacity-**

**building:** Please describe the type of assistance

**Research/data-gathering and analysis:** Please describe the type of assistance

**Facilitation of international cooperation with other countries:** Please describe the type of assistance

**Others:** Please specify

**4. Is any technical assistance already being provided to you? If so, please provide a general description of the nature of assistance, including donor information.**

**II. Information requested from States parties and signatories in relation to promoting good governance in sport and mitigating the risk of corruption that sport faces globally**

**1. In the context of prevention, please describe (cite and summarize) the measures/steps your country has taken (or is planning to take, together with the related appropriate time frame) to promote good governance and mitigate the risk of corruption in sport.**

Information sought may, in particular, include the following:

- **Legislation and policy**
  - Good governance and/or anti-corruption legislation or policies (strategies, codes or other policies)

that have been developed by the State party;

- Training of relevant officials and stakeholders in good governance and/or anti-corruption policies relevant to sport;
  - Risk assessments of areas or sectors related to good governance and corruption in sports;
  - Establishment of policy implementation, institutional or coordination mechanisms (allocated budget, designated responsible institutions, establishment of coordination structures, etc.).
- **Partnerships and inter-institutional coordination**
    - Description of how the participation of relevant stakeholders is promoted, including whether they are consulted and involved in the development, implementation, coordination and monitoring of policies;
    - Measures to promote cooperation, coordination and exchange of information between law enforcement authorities, sports governing bodies and/or the private sector in relation to integrity in sport;
    - Description of partnerships with relevant stakeholders (e.g. educational institutions, local communities and the private sector) to use sport to promote core values, in particular accountability, transparency and integrity.

RESPONSE:

#### **Legislation and policies**

The Malaysian anti-corruption legislation and governance measures in mitigating risk of corruption in relation to sports activities are provided for under **the Malaysian Anti-Corruption Commission Act 2009** which include as follows:

- **Sections 16 and 17 of the Malaysian Anti-Corruption Commission Act 2009** which provides for sanctions against active and passive offences of corruption committed against or by officials of the public and private sectors;
- **Section 22 of the Malaysian Anti-Corruption Commission Act 2009** which provides for sanctions against active and passive offences of corruption committed against foreign public officials;
- **Section 23 of the Malaysian Anti-Corruption Commission Act 2009** which provides for sanction against abuse of functions by officials of a public body which include *“any sports body registered under section 17 of the Sports Development Act 1997 (Act 576)”*

- **Preventive and educational functions of the Malaysian Anti-Corruption Commission** provided for under **Section 7 paragraphs (c), (d), (f) and (g)** of MACCA 2009 which are:

*7 (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems, or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;*

*7 (d) to instruct, advise and assist any person, on the latter’s request, on ways in which corruption may be eliminated by such person*

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

*7 (f) to educate the public against corruption; and*

*7(g) to enlist and foster public support against corruption.*

- **Government Service Circular No.3 of 1998**

In respect of sports activities carried out by Welfare and Sports Clubs of Government Departments, the responsibility to prevent of corruption or abuse of position is under the purview of the **Government Service Circular No.3 of 1998 – Guidelines on Giving and Receiving of Gifts in Public Service paragraphs 21- 25** which stipulate as follows:

#### ***Receiving Gifts and Donations by Welfare and Sports Club- Paragraphs 21-23***

*21. Welfare and Sports Clubs are not permitted to have any direct or indirect relation with any private companies or members of the public to receive any funds in whatever manner to fund their activities;*

*22. However, any funds that are meant to be donated for Welfare and Sports Club by private companies or members of the public shall be channelled to the PUBLIC OFFICIALS WELFARE AND SPORTS COUNCIL (or MKSAK). The Welfare and Sports Club of Departments may individually apply*

for an allocation of such funds with the MKSAK.

23. It is to be stressed that donations meant for and received should not be tainted with elements of coercion, suspicion, dubiousness and burden on any party so as to bring disrepute to the Department and the public service as a whole. In addition, consideration should also be given to the amount and frequency of the donations received. All donations should also be utilized for purposes of club activities and accounted for with statements of account.

#### **Fund Raising by Clubs/Organization-Paragraphs 24-25**

24. Fund raising by registered clubs/organizations which involve or are organized by public officials or Governmental Departments is subjected to the HOUSE-TO-HOUSE AND STREETS COLLECTION ACT 1947 (ACT 200), SERVICE CIRCULAR 6 OF 1987 and any other relevant Acts/laws/regulations.

25. Unregistered clubs/organizations which involve or are organized by public officials or Governmental Departments are not permitted to raise funds.

- **Service Circular Letter No.4 of 2000**

In consonant with the above Government Service Circular No.3 of 1998 – Guidelines on Giving and Receiving of Gifts in Public Service, the Government of Malaysia has in place another regulation known as **Service Circular Letter No.4 of 2000** entitled “**Public Officials Honorary or Nominee membership in private Golf Clubs and free usage of gold club facilities by Department Bodies or Societies**”.

In essence Service Circular Letter No. 4 of 2000 places the burden on Heads of Departments to ensure that the nominations of public officials as honorary members of private golf clubs are only approved upon written application made by the public official concerned and that approval/disapproval takes into consideration the following factors:

- (a) that the nomination is not or will not be in conflict of interest with the Department and public position and official function of the official;
- (b) the number of honorary or nominee membership in possession of the public official;
- (c) the nomination will be in anyway be in conflict with regulation 4 of the Public Officers (Conduct & Discipline) Regulation 1993; and
- (d) the willingness of the applicant to relinquish his membership upon transfer from the State to another State or Department or upon his retirement.

As regards free usage of golf and recreational club facilities for activities organized by governmental bodies or societies or such club members, a written application sent to Head of Department is required in accordance with paragraph 7 of the Service Circular Letter. The approval/disapproval of Head of Department for such applications will be based on the following factors:

- (a) the free offer should not in any way be construed as a conflict of interest of the Department or the position and function of the official;
- (b) the free offer will not in any way cause the official involved in activities in conflict with any conduct stipulated under regulation 4 of the Public Officers (Conduct & Discipline) Regulation 1993;
- (c) the free offer does not contain element of coercion, suspicion, dubiousness and burden on any party; and
- (d) the frequency of usage of facilities in the club concerned.

- **The formulation of the National Integrity Plan (NIP) 2004-2008**

The NIP which was formulated in 2004 is a multi-stakeholder initiative to instil a culture and life-style of ethics and integrity among the populace. The coordinating body for the implementation of the NIP is tasked upon the Institute of Integrity Malaysia (IIM).

Under the IIM Community Integrity Agenda Strategy encapsulated in the National Integrity Plan, governance in sports bodies has been slotted as one of its community integrity programme which was to be carried out in collaboration with stakeholders such as the Youth and Sports Ministry (KBS), National Sports Council (MSN), Olympic Council of Malaysia (MOM) and sports bodies.

#### **Training of relevant officials and stakeholders in good governance and/or anti-corruption policies relevant to sport;**

Malaysia does not have any sport-specific governance / anti-corruption polices training programme. Training programme in good governance/anti-corruption policies are **generic** in nature and is in line with one of the objectives of the **Public Sector Human Resources Training Policy under Service Circular No. 6/2005** to establish noble values and positive attitude;

Such training programmes are carried out through the following approaches:

**(a) Certified Integrity Officers Course**

Under the Government Service Circular No.6 of 2013 (*Pekeliling Perkhidmatan Bilangan 6 Tahun 2013*, in the National Malay Language) it is required that all Government departments and agencies are to establish Integrity Units within the Departments and Agencies to be headed by a Certified Integrity Officer (CeIO).

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

The CeIO programme is conducted at the Corporate Integrity Development Center of Malaysia Anti-Corruption Academy.

**(b) Induction Courses** for new recruits in the Federal Government departments/agencies:

The above mentioned laws and regulations are disseminated to all government officials either in the basic training courses and induction courses.

**(c) MACC outreach programmes** to instil culture of good governance

In the Malaysia, such educational programmes for public officials are being handled by the Malaysian Anti-Corruption Commission's (MACC) Education and Community Relations Division in collaboration with the Malaysia Institute of Integrity (IIM) as part of their outreach programs in the form seminars, lectures, dialogues, workshops etc. on corruption and related crimes.

These programmes are carried out systematically with yearly set targets by the MACC in collaboration with government departments.

**Risk assessments of areas or sectors related to good governance and corruption in sports;**

The MACC does not conduct a systematic assessment on corruption risk in sports activities as one of its priority areas. Cases of corruption in relation to sports are handled on an ad hoc basis (based on information or complaints received).

However, the anti-gambling unit under the D7 Division of CID is monitoring and carrying out law enforcement operations against all sorts of illegal gambling activities in Malaysia, including sport-specific illegal gambling offences.

**Establishment of policy implementation, institutional or coordination mechanisms (allocated budget, designated responsible institutions, establishment of coordination structures, etc.)**

The implementation and coordination of the policies above are being carried out by the following institutions:

**Law Enforcement:-**

- (a) Enforcement of the anti-corruption legislation on sports activities is mainly carried out by the MACC.
- (b) Enforcement of the Betting Act 1953 is mainly carried out by the Royal Malaysia Police

**Regulatory Policy:**

Regulations of Government on sports activities are being enforced by the various Disciplinary Boards of Government Departments.

**Good Governance Policy:-**

- (a) the setting up of **Prevention Division** of MACC – to carry out and coordinate the corruption prevention functions under Sections 7 (c), (d) and (e) of the MACC Act 2009
- (b) the setting up of the **Community Education Division** of MACC – to carry out and coordinate the education functions under Sections 7 (f) of the MACC Act 2009
- (c) the setting up of the **Public Sector Agency Integrity Management Division** (BPIA) of MACC- to carry out and coordinate the tasks and responsibilities of CeIOs (Certified Integrity Officers)
- (d) the setting up of the **Malaysian Institute of Integrity (IIM)**-to carry out and coordinate the implementation of the National Integrity Plan

### **Training:-**

- (a) The setting up of the **Malaysia Anti-Corruption Academy** – to carry out and coordinate training on governance and anti-corruption policies/measures
- (b) Partners of the MACA- which include the Malaysian Institute of Integrity (IIM)
- (c) The RMP conducts in-house Gaming Expert Course for its senior police officer at least once a year.

### **Partnership and inter-institutional coordination**

1. The establishment of the FAM Integrity Committee in partnership with the MACC as reported below.
2. The Royal Malaysian Police (RMP) has also been working hand in hand closely with the Football Association of Malaysia (FAM) and the Malaysian Communications and Multimedia Commission (MCMC) in tackling criminal offences relating to sport, particularly illegal online sports gambling.
3. Placement of Certified Integrity Officer in Ministry of Youth and Sports

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

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

The government issued a circular requiring for the establishment of Integrity Unit in all public bodies at the federal and state level. The directive was in-effect from 1 August 2013 via the Service Circular No. 6 of 2013. As of 31 December 2015, 887 Integrity Units were established.

The Integrity Unit was established in Ministry of Youth and Sports. This unit headed by MACC officer.

Six core functions of the Integrity Unit as stipulate in Service Circular No. 6 of 2013 as follows:

- i. Governance -Ensure the implementation of good governance.
- ii. Enhancing integrity-Ensure the implementation, institutionalization and acculturation of integrity within an organization.
- iii. Detection and verification
  - Detect and verify complaints of criminal misconduct as well as violation of code of conduct and organizational ethics, and to ensure appropriate follow-up action; and
  - Report criminal misconduct to the responsible law enforcement agency.
- iv. Complaints' management -Receive and act on all complaints/information on criminal misconduct as well as violation of code of conduct and organizational ethics.
- v. Compliance Ensure compliance of laws and regulations in-force.
- vi. Disciplinary Function as the secretariat of the Disciplinary Board.

On 30 April 2015, held 'People Centric MACC' Programme with Sports Commissioner's Office (SCO) at the Dewan Perdana, National Sports Institute. The programme which lasted for half day brought together more than 300 participants comprising leaders of sports associations, officers from Sports Commissioner's Office (SCO) and Ministry of Youth and Sports (KBS) officers.

Forum entitled 'Integrity: National Sport Dignity' ('Integriti Maruah Sukan Negara') and a talk on Corruption in Sports were also held in the early morning.

The objective is to cultivate and reinforce integrity element among the athletes and official of sport association. This is very important in enhancing the country image in the sports field at the international level.

2. **In the context of enforcement, please describe (cite and summarize) the measures/steps your country has taken (or is planning to take, together with the related appropriate time frame) to ensure the detection, investigation and prosecution of criminal offences linked to sport integrity.**

Information sought may, in particular, include the following:

- Examples of criminal cases involving offences linked to integrity in sport (corruption, money-laundering, organized crime, match-fixing, etc.);
- Criminalization of sport-specific offences such as match-fixing, competition manipulation, illegal betting and betting manipulation;
- Activities and training to develop the capacity of investigators, prosecutors and other relevant officials in relation to criminal offences linked to integrity in sport;
- Establishment of specialized law enforcement or prosecutorial units responsible for dealing with offences relating to integrity in sport;
- Development of cooperation and coordination mechanisms to promote interaction between law enforcement authorities and relevant stakeholders, such as sport organizations or private-sector entities, in relation to criminal offences relating to sport.

**Response:**

**(a) Criminalization of sport-specific offences such as match-fixing, competition manipulation, illegal betting and betting manipulation**

The issue of gambling and wagering (in sports and other activities) is prohibited under section 31 of the Malaysia Contracts Act 1950 (Act 136) which stipulates that any agreement by way of wager is considered as void with the exception of that to certain prizes for horse-racing.

*31. (1) Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.*

*Exception in favour of certain prizes for horse racing*

*(2) This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize, or sum of money, of the value or amount of five hundred ringgit or upwards, to be awarded to the winner or winners of any horse race.*

**Betting in sport – specific activities is criminalized under the following legislation :**

- **Betting Act 1953 (Act 495)**

Under section 2 the term “**sporting event**” includes any “**race, fight, game, sport or exercise**”.

The term “**betting information centre**” means “any place kept or used for receiving or transmitting by telephone or other means any information relating to any horse race or other sporting event for the purpose of betting or wagering in contravention of this Act.”

The term “**common betting house**” means “

- (i) any place kept or used for betting or wagering whether such betting or wagering, be in cash or on credit, on any even or contingency of or relating to any horse race or other sporting event or lottery to which the public or any class of the public has, or may have, access;
- (ii) any place kept or used for habitual betting or wagering on any such event or contingency as aforesaid, whether the public has, or may have, access there to or not;
- (iii) any place used by a bookmaker for the purpose of receiving or negotiating bets or wagers on any such event or contingency as aforesaid, whether such bets or wagers reach the bookmaker by hand of the person or through telephone or the post or by telegram or by any other means.

Under Section 3 of BA 1953 every common betting-house shall be deemed to be a common public nuisance and contrary to law.

Offences relating to common betting-houses and betting information centres are provided under section 4 of BA 1953 as follows:

(1) Any person who-

- (a) being the owner of occupier, or having the use temporarily or otherwise, thereof, keeps or uses a place as a common betting-house or betting information centre; or
- (b) permits a place of which he is the owner or occupier, or of which he has the use temporarily or otherwise, to be kept or used as a common betting-house or betting information centre; or
- (c) has the care or management of, or in any manner assist in the management or in the business of, a place kept or used as a common betting-house or betting information centre; or
- (d) **receives directly, or directly, any money or valuable thing, for or in respect of any bet or wager on any such event or contingency as is mentioned in this Act, in a common-betting house or betting information centre; or**
- (e) announces, exhibits or publishes, or causes to be announced, exhibited or published, either orally or by means of letter, circular, telegram, placard, handbill, card, print, writing, design, sign, advertisement or otherwise, that place is opened, kept or used as a common betting house or betting information centre within or without Malaysia, or in any other manner invites or solicits any person to commit a breach of any provisions of this Act,

shall be guilty of an offence and shall, on conviction be liable to a fine of not less than twenty thousand ringgit and not more than two hundred thousand and shall also be punished with imprisonment for a term not exceeding five years.

**Betting in a common-betting house, and book-making is an offence under Section 6 (1) of BA, as follows:**

(1) any person who bets or wagers in a common betting house or with a bookmaker on any premises or by any means, shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both.

**(b) Examples of criminal cases involving offences linked to integrity in sport (corruption, money-laundering, organized crime, match-fixing, etc.)**

Initial investigations by the MACC led to the expose of two corruption cases related to match fixing in the Presidents Cup championship involving the Negeri Sembilan and the T-Team teams. Subsequently, three individuals namely the head coach, goalkeeping coach and a bookie, were charged.

- **Corruption in the Negeri Sembilan Team**

On 28th May, 2011, Yusarman Yusof, head coach of the Negeri Sembilan Reserve League team, was prosecuted on 21 charges under Section 16 (b)(A) of the MACC Act 2009 for giving bribes amounting to RM24,900 to his players on 21st April 2011. The detention of the former footballer became the first case involving a coach to be charged in the court of law for corruption in the sports of football.

The accused, together with two bookies that are still at-large, was charged with giving bribes of RM300 to each of the nine players. The bribes were given to induce them to assist and provide opportunities for players of SDM Navy (Penang) to score goals in a Presidents Cup match at Stadium Bertam, Penang when given signals by the bookie. Among the signals were that Negeri Sembilan players must score goals when they see the bookie wearing a white hat while players as well as the goalkeeper must allow the ball through when they see the bookie wearing a red hat.

- **Corruption and math- fixing in the Terengganu T-Team**

Corruption and its relation to the Terengganu T-Team was detected in 2010. Throughout that year, the T-Team played 18 matches of the Presidents Cup. It was noticed that three of the matches were confirmed to have been fixed. The match fixing was found to have involved a Singaporean named Rajendran a/l Kurusamy (51 years old) who is a match bookie and a businessman.

**The facts of the 3 fixed-matches are as follows:**

**i. Terengganu T-Team vs Pahang in Kuantan**

The goalkeeping coach, Sufian Ngah (41 years old), representing the bookie, paid between RM500 and RM1,500 as bribes to six of the T-Team players as an inducement to fix the match.

**ii. Terengganu T-Team vs Selangor**

Bookie Rajendran offered a bribe of RM200 in cash to each of the six T-Team players as an inducement to fix the match.

**iii. Terengganu T-Team vs Negeri Sembilan.**

Bookie Rajendran offered bribes between RM2,000 to RM7,000 in-cash to five of the T-Team players as an inducement to fix the match. The total amount of bribes involved was RM23,000.



On 15 June 2011, Rajendran was prosecuted at the Shah Alam Court for six offences and at the Seremban Court for five offences. Meanwhile, Sufian was prosecuted in the Kuala Terengganu court on six counts of giving bribes. All the charges were under Section 17 (b) (A) of the MACC Act 2009, which were related to offences of bribing the T-Team of Terengganu to fix matches in the Presidents Cup tournament.

**Activities and training to develop the capacity of investigators, prosecutors and other relevant officials in relation to criminal offences linked to integrity in sport;**

**(a) Activities of the Malaysia Anti-Corruption Commission**

On 30 April 2015, held 'People Centric MACC' Programme with Sports Commissioner's Office (SCO) at the Dewan Perdana, National Sports Institute. The programme which lasted for half day brought together more than 300 participants comprising leaders of sports associations, officers from Sports Commissioner's Office (SCO) and Ministry of Youth and Sports (KBS) officers.

Forum entitled 'Integrity: National Sport Dignity' ('Integriti Maruah Sukan Negara') and a talk on Corruption in Sports were also held in the early morning.

The objective is to cultivate and reinforce integrity element among the athletes and official of sport association. This is very important in enhancing the country image in the sports field at the international level.

**(b) Activities of Royal Malaysia Police**

- Interpol conference The two-day conference (20 and 21 February) 2013 entitled 'Match-fixing: The ugly side of the beautiful game' organized under the auspices of the INTERPOL / FIFA Training, Education and Prevention initiative, supported by the Asian Football Confederation (AFC) and the Malaysian Anti-Corruption Commission (MACC).
- Interpol led operations Codenamed SOGA – short for soccer gambling - the operation was launched in June 2007 when officers from INTERPOL's National Central Bureaus and other law enforcement agencies across China (including Hong Kong and Macao), Malaysia, Singapore, Thailand and Vietnam met to exchange intelligence at an operational meeting held at INTERPOL's liaison office in Bangkok.
- Conducted between 1 May and 30 June 2008, Operation SOGA II – short for soccer gambling – was the second action of its type in the region and was timed to coincide with the Euro 2008 soccer championships and the final matches of major soccer leagues around the world.
- In the month-long operation 11 June to 11 July 2010 codenamed SOGA III, police across China (including Hong Kong and Macao), Malaysia, Singapore and Thailand identified and raided nearly 800 illegal gambling dens which handled more than 155 million US dollars' worth of bets.

**Establishment of specialized law enforcement or prosecutorial units responsible for dealing with offences relating to integrity in sport;**

- Offences of corruption in relation to sports under the MACC Act 2009 are investigated by the Operations Division of the MACC.
- The Royal Malaysia Police (RMP) 's Secret Societies, Gambling and Vice Division (commonly called D7) is responsible for enforcement of laws against illegal betting.
- 14 Corruption Courts have been set up in Malaysia to handle all corruption cases.

**Development of cooperation and coordination mechanisms to promote interaction between law enforcement authorities and relevant stakeholders, such as sport organizations or private-sector entities, in relation to criminal offences relating to sport.**

- **Establishment of the Integrity Committee of Football Association of Malaysia**

In efforts to curb corruption and forge integrity among its members and officials, the Football Association of Malaysia (FAM) by partnering with the **Malaysian Anti-Corruption Commission (MACC), the Royal Malaysia Police (RMP) and the Armed Forces Malaysia (ATM)** has setup FAM Integrity Committee.

This initiative began in 2010. As an umbrella body to all football association, the FAM instructed all 14 state football associations to form the same committee. The FAM also established Integrity Department in its organizational structure.

As of 31 March 2016, 12 football associations established their own Integrity committees, i.e Football Associations of Perlis, Kedah, Kuala Lumpur, Perak, Selangor, Negeri Sembilan, Melaka, Pahang, Terengganu, Kelantan, Sabah and Armed Forces Malaysia (ATM).

The function of these committee is to monitor the Malaysia's football league, players and officials from wrongdoings, corruption, and match fixing activities. Among its main responsibilities and activities are:

- I. Report corruption and wrongdoing related to football to relevant authorities (MACC and RMP)
- II. Receive information/complaints and conduct early investigation
- III. Talk on integrity and anti-corruption to all football association officials and athletes before new football season start.

- The Royal Malaysian Police (RMP) has also been working hand in hand closely with the Football Association of Malaysia (FAM) and the Malaysian Communications and Multimedia Commission (MCMC) in tackling criminal offences relating to sport, particularly illegal online sports gambling.

**3. Please outline actions required to promote good governance in sport and mitigate the risk of corruption and describe any specific challenges you might be facing in this respect.**

Examples of the types of challenge that States parties and signatories may face include:

- Developing an appropriate legislative framework in relation to good governance and corruption in sport (e.g. match-fixing, competition manipulation, illegal betting and betting manipulation);
- Bringing together government representatives and relevant international, sports and private-sector organizations to identify and implement good practice standards and helping officials to combat corruption in sport;
- Supporting the work of law enforcement and investigation services and sports organizations in the assessment of corruption risks and in the development of effective responses.

**Response**

- Amendment or new legislation is required to address on-line betting in Malaysia.

A key piece of legislation covering **online gambling Malaysia** is the Betting Act, originally passed in 1953. It makes illegal all types of unlicensed gambling. While the Act has been improved multiple times it makes no specific mention of online, Internet or remote gambling. The improvements would cover provisions under the Communications and Multimedia Act, Lotteries Act, Common Gaming House Act, and the Betting Act.

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. For example:**

**Legislative assistance:** Please describe the type of assistance

**Institution-building:** Please describe the type of assistance

**Policymaking:** Please describe the type of assistance **Capacity-**

**building:** Please describe the type of assistance

**Research/data-gathering and analysis:** Please describe the type of assistance

**Facilitation of international cooperation with other countries:** Please describe the type of assistance

**Others:** Please specify

Response

NIL
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5. **Is any technical assistance already being provided to you? If so, please provide a general description of the nature of assistance, including donor information.**

Response

NIL
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