Anti-Corruption and Transparency Reporting Template - Malaysia

Purpose: Information
Submitted by: Malaysia
APEC ANTI-CORRUPTION AND TRANSPARENCY (ACT) REPORTING TEMPLATE

ECONOMY: MALAYSIA
CALENDAR YEAR: 2014
LAST UPDATED: 2012

LEADERS’ AND MINISTERS’ COMMITMENTS

- **2010:** We agreed to enhance our efforts to improve transparency and eliminate corruption, including through regular reporting via ACT and other relevant fora on economies’ progress in meeting APEC Leaders’ commitments on anti-corruption and transparency.
- **2006:** Ministers endorsed APEC 2006 key deliverables on Prosecuting Corruption, Strengthening Governance and Promoting Market Integrity and encouraged member economies to take actions to realize their commitments. Ministers also encouraged all economies to complete their progress reports on the implementation of ACT commitments by 2007. Ministers welcomed APEC efforts to conduct a stocktaking exercise of bilateral and regional arrangements on anti-corruption in cooperation with relevant international and regional organizations, and encouraged member economies to fully participate in the stocktaking activities.

Objective: Where appropriate, to self-assess progress against APEC Leaders’ and Ministers’ commitments on anti-corruption, transparency, and integrity and to identify capacity building needs to assist the ACT to identify priority areas for future cooperation.

EXECUTIVE SUMMARY

1. Summary of main achievements/progress in implementing the commitments of APEC Leaders and Ministers on anti-corruption, transparency, and integrity since 2004.

In implementing APEC commitments on anti-corruption, transparency and integrity, the Government of Malaysia has ratified UNCAC on 24 SEPT 2008. Malaysia has also undergone the UNODC Review on Chapters III and IV of UNCAC during the year-3 of the First Review Cycle (2012/2013) by the Governmental experts of the Republic of Philippines and Kenya culminating in the publication of its Executive Summary on 28 May 2013. In the spirit of sharing our experience Malaysia has also agreed to publish its full country review report on the UNODC Webpage on 7 February 2014.

Malaysia’s anti-corruption and transparency initiatives which take into consideration all APEC and other international initiatives have been the sole responsibility of its Malaysian Anti-Corruption Commission formed in 2009 replacing the previous Anti-Corruption Agency Malaysia as the lead agency to combat corruption and promote integrity in both the Public and Private sectors.

The political will of the Malaysian Government is reflected by it making fighting corruption as one of its National Key Result Areas (NKRA). The NKRA Fighting Corruption initiatives are designed to tackle the scourge in three areas: (1) ensuring a reputable and credible Anti-Corruption Commission; (2) focusing on Grand Corruption i.e. zero tolerance policy from the top-down and (3) increasing transparency in government procurement.

Regarding enforcement, the MACC is empowered to carry out prevention and investigation of corruption offences under the MACC Act 2009 which has also incorporated bribery of foreign public officials as an offence in line with Article 26 of UNCAC and the OECD Anti-Bribery Convention. To encourage reporting of corruption the Government of Malaysia has also enacted the Whistle blowers Protection Act 2010 and the Witness Protection Act 2009.
Initiatives to prevent corruption in the Private Sector are also being given equal attention through initiatives of Government-Private sector collaboration through implementation of Corporate Integrity Pledge and Integrity Pacts mechanism.

In the area of international and regional cooperation, the Government of Malaysia has also forged bilateral treaties on MLA and extradition with APEC Economies namely Singapore, USA, Thailand, Australia, Vietnam, Hong Kong and Brunei. The MACC is appointed by the Government of Malaysia as the focal point for UNCAC and other international anti-corruption instruments.

2. Summary of forward work program to implement Leaders’ and Ministers’ commitments.

The Government of Malaysia continues to further strengthen its anti-corruption legislation which is currently under review to include “corporate liability” clause in its MACCA 2009 and making “misconduct in public office” an offence in the Penal Code.

3. Summary of capacity building needs and opportunities that would accelerate/strengthen the implementation of APEC Leaders’ and Ministers’ commitments by your economy and in the region.

The Government of Malaysia looks forward to other APEC economies to share model legislations and practices in its proposed new legislative amendments regarding “corporate liability” and “misconduct in public office’ offence.
I. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO UNCAC PROVISIONS

LEADERS’ AND MINISTERS’ COMMITMENTS

Santiago Commitment/COA: Take All Appropriate Steps Towards Ratification of, or Accession to, and Implementation of the UNCAC:

- Intensify our efforts to combat corruption and other unethical practices, strengthen a culture of transparency, ensure more efficient public management, and complete all appropriate steps to ratify or accede to, and implement the UNCAC.
- Develop training and capacity building efforts to help on the effective implementation of the UNCAC’s provisions for fighting corruption.
- Work to strengthen international cooperation in preventing and combating corruption as called for in the UNCAC including extradition, mutual legal assistance, the recovery and return of proceeds of corruption.

I.A. Adopting Preventive Measures (Chapter II, Articles 5-13)

Contact Point: Name: Karunanithy Y. Subbiah  Title: Head of International Relations Branch of MACC

Telephone Number 603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

RELEVANT UNCAC PROVISIONS

Chapter II, Articles 5-13 including:

- Art. 5(2) Establish and promote effective practices aimed at the prevention of corruption.
- Art. 7(1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants and, where appropriate, other non-elected public officials that:
  - Are based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude;
  - Include adequate procedures for the selection and training of individuals for public positions considered especially vulnerable to corruption and the rotation, where appropriate, of such individuals to other positions;
  - Promote adequate remuneration and equitable pay scales, taking into account the level of economic development of the State Party;
  - Promote education and training programmes to enable them to meet the requirements for the correct, honourable and proper performance of public functions and that provide them with specialized and appropriate training to enhance their awareness of the risks of corruption inherent in the performance of their functions.
- Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.
- Art. 8(2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions.
- Art. 8(5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials. Art. 52(5)/(6) [sharing the information on the financial disclosures that should be in place]
- Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.
- Art. 12(2)(b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.
- Art. 12(2)(c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities.
MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

UNCAC Article 5 (2) - Establish and promote effective practices aimed at the prevention of corruption.

Malaysia's practices aimed at the prevention of corruption are carried out by multi-agency efforts which include as follows:

A. Enforcement practices

i. Enforcement of anti-corruption legislations outlined above is carried out by a central agency called the Malaysian Anti-Corruption Commission (or MACC) as well as the Royal Malaysia Police Department. Offences of corruption are made seizable (may arrest without warrant). Offenders are investigated and prosecuted upon sufficient evidence obtained. Apart from the investigative function, officers of the MACC are also given the powers to detect criminal corruption including gathering of intelligence on corruption with the view to support its investigation function. Sub-section 7 (a) and (b) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) referred.

ii. Offences under Sections 131, 132 and 135 the Companies Act 1965 (Act 125) in reference to conflict of interest are enforced by officers of the Companies Commission of Malaysia.

iii. Offences of corruption under Section 137 of the Customs Act 1967 (Act 235) are enforced by the Customs Department as well as the Malaysian Anti-Corruption Commission.

iv. Serious offences of corruption under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act 613) are enforced by the Malaysian Anti-Corruption Commission.

B. Preventive practices:

i. MACC inspection and consultation efforts

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

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

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

Under the area of government procurement it seeks to (a) reduce leakage in the funds allocated for national development and operations; and (b) enhance fairness in the award of contracts. In the area of grand corruption, the focus will be (a) to prevent the abuse of power and public resources by politicians and senior civil servants and (c) to enhance the delivery of justice against corruption.

Key Achievements of NKRA under the Government Transformation Programme 1.0 (2010-2012)
• Setting up of Integrity Unit in all Ministries, Federal and State Government Departments as well as State Local Authorities wide Service Circular No 6/2013 titled “Establishment of Integrity Unit in all Public Agencies”. The Integrity Unit, which is to be headed by a Certified Integrity Officer will serve as the focal point for the management of integrity issues within the public agencies under the supervision of the newly established (in 2013) Public Agency Integrity Management Division (PAIMD) of the MACC
• The enactment of the Whistleblower Protection Act
• Reward and recognition guidelines for civil servants that lead to successful prosecution of corruption cases.
• Publication of Public Service Reform booklet to promote awareness of the correct systems, processes and procedures
• Expedition of corruption trials through setting up of 14 Corruption Courts
• Name and shame database of corruption offenders
• Development of My Procurement Portal to help increase transparency of government
• Integrity Pacts
• Corporate Integrity Pledge

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

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

iv. The establishment of PEMANDU - the acronym of "Performance Management & Delivery Unit" is a unit under the Prime Minister's Department. It main role is oversee the implementation, assess the progress, facilitate as well as support the delivery and drive the progress of the Government Transformation Programme and the Economic Transformation Programme.

v. The establishment of PEMUDAH - The Special Task Force for Facilitate Business The said Task Force dubbed "PEMUDAH" (taken from the Malay name 'Pasukan Petugas Khas Pemudahcara Perniagaan') is set up to address bureaucracy in business-government dealings by improving the way government regulates business. Terms of Reference:
• to review the status of the public services delivery system in terms of process, procedures, legislation and human resources towards 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 procedures that would improve the efficiency and effectiveness of the public and private sector delivery system;
• to take appropriate action to address issues the National philosophy of 1 Malaysia, People First, Performance Now.
C. Education and Community Relations Practices:

i. MACC Efforts
The MACC’s Community Education Division is tasked to (a) educate the public against corruption and (b) to enlist and foster public support against corruption. These efforts are carried out through the giving of live talk shows, dialogues, lectures, seminars, debates, and workshops on anti-corruption. Also included here are:

- publications of flyers, magazine, pamphlets, posters with anti-corruption messages etc.
- TV production based on success stories of cases investigated
- TV/Radio public service announcements (PSA) or messages on the dangers of corruption
- community relation (including sports/quiz) or outreach programs for schools, villages,
- exhibitions

D. Other Institutional Efforts:

i. Malaysia Anti-Corruption Academy (MACA) Efforts
The Academy is set up as the anti-corruption capacity and capability training center for officers of the Malaysian Anti-Corruption Commission as well as other Government departments and agencies and Government linked companies.

ii. Institute of Integrity Malaysia (IIM)
Malaysian Prime Minister, Dato’ Seri Abdullah Haji Ahmad Badwi has on April 23, 2004, unveiled his master plan to make integrity the cornerstone of his administration. The previous drive of modernization and industrialization has delivered tremendous growth and wealth to the nation and has transformed Malaysia from a mainly agrarian economy into the dynamic economy that it is now. However, the national economic transformation has left significant imprints of the country’s social fabric; pertinent among these is the erosion of the value system. Environmental degradation, irresponsible civic behavior and corruption were widespread. The materialistic mentality Plan to improve awareness, commitment and participation of the citizen towards enhancing integrity. The scope of the plan is holistic and wide-encompassing. For the first 5 years, the plan outlined 5 objectives to be achieved namely:

- To continuously and effectively combat and reduce incidence of corruption, malpractices and abuse of power;
- To enhance efficiency in the delivery system of the civil service and to reduce unnecessary bureaucracy;
- To improve corporate governance and business ethics;
- To strengthen the family institution; and
- To improve the quality of life and the well-being of the society.
UNCAC ARTICLE 7 (1) Adopt, maintain and strengthen systems for the recruitment, hiring, retention, promotion and retirement of civil servants

The Public Services Department is the foremost personnel agency. All aspects of human resource management policy come within the ambit of the Public Services Department. The PSD is responsible for appointment and recruitment of personnel in the Civil Service. Under Article 144 (1) of the Federal Constitution, the main functions of the Commission are to appoint, confirm, emplace on the permanent or pensionable establishment, promote transfer and exercise disciplinary action over members of the service or services to which its jurisdiction extends.

Recruitment:
- The main objective of the recruitment policy of the Civil Service of Malaysia is to attract and retain high caliber personnel in the public sector. The policy and procedure is provided in the General Orders Chapter ‘A’: Public Officers Regulations (Appointments, Promotion and Termination of Service) 2005.
- Applications into the Public Services are made on-line.
- Recruited personnel are required to undergo a probation period of 1 to 3 years before being confirmed into the service.
- Confirmation of recruited are based on Performance Appraisal and the passing of examination on government laws and regulations (within the 3 year probation period)

Promotion:
The Performance Appraisal System is used in determining annual salary progression and promotion. This system introduces a more systematic, and reliable assessment because there are fewer subjective elements. It recognizes the need to give more weight to different aspects for different service groups. Aspects that are evaluated includes:
- (a) work output based on knowledge, work quality, timeliness, ability to manage and make decisions;
- (b) good values such as trustworthiness and reliability;
- (c) potential for leadership;
- (d) the annual targets as agreed upon by the officer being evaluated and the supervising officer.

Under the New Remuneration Systems (NRS), seniority in the civil service is no longer given top priority. The selection process for officers to be promoted includes an assessment on qualities such as leadership, innovativeness and creativity in addition to their qualifications, experience, training (fulfilling attendance of a minimum 7-day courses per annum in compliance with Service Circular No.6 of 2005), Performance Appraisal Report.

Pension
The mandatory retirement age for a public servant is 60. Public sector personnel appointed on or after 12 April 1991 can either opt to join the Pension Scheme or the Employees’ Provident Fund Scheme.

Retirement Benefit
Retirement benefit payable to public sector personnel are:
- Gratuity
- Lifelong monthly pension
- Cash award in lieu of accumulated leave. These payment are given to a pensionable employee upon retirement. For those on optional retirement, only gratuity and cash award in lieu of accumulated leave are paid upon retirement whereas pension is only payable upon attaining the age of 60. Upon the pensioner's demise, the remaining pension is granted to the dependents, namely widow, or widower, and eligible children.

PROCEDURE FOR SELECTION FOR PUBLIC POSITIONS CONSIDERED VULNERABLE TO CORRUPTION
Malaysia does not have a specific procedure on the selection of personnel on this aspect. However Malaysia has a generic procedure under Regulation 19 of the Public Officers' (Appointment, Promotion and Termination of Service) Regulations 2005 and Service Circular No. 7 of 2010 : Guidelines on Management of Acting and Promotion in Public Service which stipulates that candidates must satisfy the following conditions:-
(a) the candidate must be examined and certified to be healthy by a medical practitioner;
(b) the candidate must take an oath under the Statutory Declaration Act 1960 that he:

(i) do not have any criminal record;
(ii) have never been dismissed from any job;
(iii) he is not a drug addict;
(iv) he does not hold a foreign citizenship and
(v) he is not an discharged bankrupt.

Before being confirmed into a service scheme every candidate
(a) undergo security vetting by virtue of Service Circular No.6 of 2011
(b) make declaration of asset owned/disposed by him and his family members (if he/she is married) - by virtue of Service Circular No.3 of 2002.

Promotion of confirmed Public official to a higher grade is not automatic. A confirmed Public Official due for promotion has to go through a period of acting on the post he is to be promoted. Conditions for acting are as follows:-
(a) confirmed in the service;
(b) achieve a performance level that is required;
(c) recommendation from the Head of Department/Service;
(d) free from disciplinary punishment
(e) had declared assets
(f) cleared integrity vetting by the Malaysian Anti-Corruption Commission;
(g) cleared from the Hardcore Lender's List of Ministry of Education;
(h) Others conditions stipulated by the Promotion Board.

* Period of acting is a minimum of 6 months.
* For the purpose of promotion for officers to Grade 48 and above, the selection process is being carried out by the individual ministerial departmental Search Committee in charge of succession planning vide Service Circular No.3 of 2006: Guidelines to establish Search Committee and Implementation Process of Succession Planning (Pekeliling Perkhidmatan Bilangan 3 Tahun 2006).

For an officer to be recommended for promotion by the Search Committee he/she must possess the characteristics of a "towering personality" described below:

a) having motivation, enthusiasm and clear vision and constantly strive to achieve outstanding success;
b) having a high quality of leadership which is capable of motivating, directing and encouraging the team;
c) possessing high-level knowledge and skills;
d) being resilient, highly competitive and self-reliant as well as having the characteristics of industry and high management skills;
e) being highly creative, constructive, scientific, progressive, innovative, critical, global and analytical;
f) being rational, liberal, forward looking, competent, independent and confident in thinking;
g) having self-esteem and patriotic; and
h) having ethical and moral values

Procedure for training of such individuals:
Malaysia does not have a specific procedure in this aspect but a uniform government directive for the training of all categories of public officials (of the Federal Ministries and Prime Minister's Department) which is embodied in the Service Circular No.6 of 2005 which stipulates that public officials are required undergo a minimum of 7 days of courses per year. However personnel in the corruption-prone government departments, like all other personnel of the Public Services, are required to undergo basic training courses determined by
their respective services or departments, mainly in collaboration with the Malaysian Anti-Corruption Commission, to include knowledge on anti-corruption law and the evils of corruption, inculcation of universal values and codes of conduct and ethics.
In addition to the above, syllabuses for public services examination also includes an understanding of the Malaysian Anti-Corruption Act 2009.

Procedure for rotation of such individuals to other positions:-

Till date there is no specific procedure of rotation/placement of public officials in positions vulnerable to corruption. However all public officials of Government of Malaysia are subject to transfer based on Service Circular No 3 of 2004. Factors to be considered for transfer/placement are as follows:
(a) the qualification, experience, specialization and skill of the staff with the job description/post;
(b) the inclination, interest, personality and suitability of the staff with the post to be filled;
(c) the implementation of certain project/programme currently carried out by the staff;
(d) development and career path of the staff.
(e) succession plan;
(f) strengthening and enhancing the organization through placement of the suitable staff;
(g) strengthening the experience and skill of the staff;
(h) effectiveness and image of the staff; and
(i) the well-being and welfare of the staff.

Factors to be taken into consideration to transfer an officer:
(i) avoidance of personal interest and interest of certain parties; and
(ii) avoidance of overspecialization, inbreeding, and indispensable officer,

Ideal period to be taken into consideration to transfer an officer:
(i) non-sensitive post- 3 to 8 years
(ii) sensitive post-3 to five years

Steps to impose job rotation for all "hot job" - engage directly with customers during the processing of an application that can generate financial returns or any other form of rewards; directly involved with the client when enforcing the law; required to carry out tasks for payment or collection of revenue from customers; and make decisions based on consideration of discretionary powers whether a customer is eligible or ineligible for something or has/does not violate any regulations or laws; public official working at "hot-spot" –referred to the location of work which are more prone to corruption (for instance entry / exit points or border stations) and those identified as "hot staff" - i.e. an officer or staff at risk usually those who are under court order or disciplinary action by the government agency have been recently (in 2011) been recommended by the NKRA Corruption Monitoring and Coordination Division at the Public Delivery Task Force chaired by the Deputy Prime Minister. As a result of the Delivery Task Force meeting all heads of department have taken steps to implement job rotation based upon the recommendation of the NKRA Corruption Monitoring and Coordination Division. Till date there is no written directive (in the form of service circular) being issued by the Government on this matter. E.g. of implementation Currently the Customs Department of Malaysia has taken proactive steps and make more credible job rotation supported by computer system. The Customs Department has developed an e-placement system using internal resources to prevent "hot staff" from being placed at "hot-spot" or "hot-job" positions.
**UNCAC Article 7(4)** Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest

Prevention of conflict of interest in the Public Sector is being implemented through:

- **Regulation 4 (2) of Public Officers (Conduct and Discipline) Regulations 1993**
  An officer shall not:
  (a) subordinate his public duty to his private interests;
  (b) conduct himself in such a manner as is likely to bring his private interests into conflict with his public duty;
  (c) conduct himself in any manner likely to cause reasonable suspicion that-
     (i) he has allowed his private interests to come into conflict with his public duty so as to impair his usefulness as a public officer; or
     (ii) he has used his public position for his personal advantage
  (d) 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;

- **Sec 23 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694)-Offence of using office or position for gratification:**
  23. (1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.
  (2) For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.
  (3) For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a State shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution or Laws of the Constitution of that State.
  (4) This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

- **Transparency in Public Procurement is promoted through the following measures:**
  1. **Treasury Instructions (TI) and Treasury Circulars:** which determined the procedures for procurement of supplies, services and works based on the principles of fairness and best value for money besides promotion of local industries, transfer of technology, sustainability in supply of good and services to meet the Government needs from the best and reliable sources, and achieving National Development Goals -
     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 MYR 500,00) (TI.No.170)
     f. calling of tender (procurement more than MYR 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)
Further requirements for quotations and tender:-

- Quotations /Tender submitted must be a sealed envelope (TI No.195)
- Quotations/Tender are to deposited in a safety box provided with separate keys held by the Security Officer and a Senior Officer (TI No.186)
- Quotations/Tenders are opened by the Quotation/Tender Opening Committee of a lest 2 officers (TI No. 197)
- The Quotations/Tenders opened are then submitted to the Secretariat for processing and recommendation.

**H. Any officers 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)**

**i. Public procurement of works -**

a. Requisition -Works not exceeding MYR 100,000 (TI No.180)
b. Direct appointment of contractor- Works not exceeding MYR 20,000 (para (b) TI No.180.1)
c. Direct appointment on rotation basis of contractor- Works between MYR 20,000- MYR 100,000)(para (c) TI 180.1)
d. calling for tender for works exceeding MYR 500,000 (TI No.181 and TI No.172) Public procurement of services through negotiation-TI No.185 are carried out by the Treasury and the Tender Board designated as Tender Board "A" (for services more than MYR 20 million) or Tender Board "B" (for services up to MYR 20 million). Members of the Board are appointed the Minister of Finance (for Federal projects) or the Heads of States or the Chief Minister (for State projects)

**2.Initiatives of the National Key Result Area Corruption Monitoring and Coordination Division which include:-**

i. Implementation of Myprocurement and Mypartnership portal to ensure transparency in public procurement.
ii. **Defining parameters of support letters** to deter undue influence by individuals on decision-making process of public officials in procurement process
iii. **Training for procurement officers**
iv. **Implementation of Integrity Pact tool**- a formal agreement between contractors/suppliers and the Government to abstain from corruption activities as required by Ministry of Finance Treasury Circular No .10.of 2010
v. **Demarcation between procurement and Privatization/Public Private Partnership**
vi. **Reviewing the Procurement Price Negotiation**
vii. **Enhance technical capability and costs committee at every ministry and agencies**
UNCAC Article 8 (2) Endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honorable and proper performance of public functions
Malaysia has complied with Article 8 of the Convention and the Resolution adopted by the General Assembly 51/59 on Action Against Corruption (International Code of Conduct for Public Officials) by having in place the following codes of conduct and ethics:-

· Public Officers (Conduct & Discipline) Regulations 1993 P.U.(A) 395 of 1993
· Principles of the "Twelve Pillars"
· General Circular No.4/1999 : Module on Integrity Management (Pekeliling Am Bil.4-1999: Modul Pengurusan Integriti' in the National Language)
· Judges Code of Ethics 2009
· The Code of Ethics of the Prime Minister's Office 2000

UNCAC Article 8 (5) Establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials
Malaysia fulfills the provision under paragraph 5 of Article 8 through the following instruments:

· Government General Orders Chapter D- Public Officers (Conduct and Discipline)Regulations 1993 | P.U.(A) 395 of 1993:-
  o Regulation 5 - Outside Employment
  o Regulation 8 - Presents, etc* Cross reference Service Circular No.3 of 1998
  o Regulation 9 - Entertainment
  o Regulation 10-Ownership of property** Cross reference Service Circular No.3/2002
  o Regulation 16- Involvement in the futures market
  o Regulation 18- Publication of books, etc
  o Regulation 20- Prohibition on acting as editor, etc. in any publication
  o Regulation 21-Taking part in politics

**Service Circular 3 of 2002 - Asset Ownership and Declaration by Public Officer (Pekeliling Perkhidmatan Bilangan 3 Tahun 2002)
UNCAC ARTICLE 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities

Measures taken by the Malaysian Public Administration in respect of simplifying administrative procedures to facilitate access to its competent decision-making authorities are as follows:

1. Institutionalizing the quality services in all 27 ministries, over 720 Government agencies and 144 local authorities in the 14 states including the Federal Territory under its current ONE SERVICE, ONE DELIVERY, NO WRONG DOOR concept. The “One Service, One Delivery reflects the Government’s aspiration to present the “One Government, Many Agencies” identity to enable customers to easily access public services.

One Service, One Delivery, No Wrong Door aims to ensure:
- Government agencies are viewed as an integrated entity, well-coordinated, well informed and customer-friendly.
- Customer can deal with Government agencies in a fast, simple and transparent manner using various service channels.
- Customer satisfaction through speedy action by Government personnel and agencies.

2. 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.

3. Issuance of Guideline on Customer Relations to Chief Secretaries of Ministries, Heads of Federal Departments, CEOs of Statutory Bodies, State Secretaries and Senior Management of Local Authorities vide Public Administration Development Circular No 1 of 2008 (PEKELILING KEMAJUAN PENTADBIRAN AWAM BILANGAN 1 TAHUN 2008, in the National Language). The said guideline requires all departments/agencies of Ministries, Federal and State Governments, Statutory Bodies and Local Authorities to implement and adapt “Meeting with Customer Day Programme “ from one day a month to be a everyday practice.
UNCAC Article 12 (2) (b) Promote the development of standards and procedures designed to safeguard the integrity of private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State.

Malaysia complies with the provision of this Article by having in place the following measures:

1. **Private Entity Reporting Standards (PERS)**, which is a set of accounting standards issued or adopted by Malaysian Accounting Standards Board (MASB) for application by all private entities in Malaysia.

2. **Malaysian Business Code of Ethics**
The Malaysian Business Code of Ethics or *Rukuniga* is a code of business ethics based on religious values, philosophy and culture of the people in this country. The Malaysia Rukuniga formulation is based on the teachings of religion, philosophy and traditions of a plural society in Malaysia. It is an effort of the National Consumer Advisory Council (MPPN), Ministry of Domestic Trade, Cooperatives and Consumer Affairs to boost the self-discipline or self-regulation among the business community in Malaysia.

The Integrity Pact comprises of a declaration process by bidders not to offer or give any form of bribes as a means to obtain a contract or to facilitate certain processes in Government procurement.

4. **Making conflict of interest activities committed by Directors of Companies** criminal offences under Sections 131 and 132 of the Companies Act 1965.

5. **Making conflict of interest activity by Public Bodies (a public body includes government owned and linked companies)** a criminal offence under Section 23 of the Malaysian Anti-Corruption Act 2009.

UNCAC Article 12 (2) (c) Promote transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities

In Malaysia a *company* is a business organization that is registered (or "incorporated") under the **Companies Act, 1965** or its predecessor legislation.

The incorporation of a company has two legal effects: firstly, it creates a legal person. Secondly, that legal person has "perpetual succession", i.e., it lasts until liquidated by an order of court. A corporation or body corporate is a legal person created and recognised by the law. In this sense it is an artificial legal person as opposed to individuals who are known as natural persons. As a person, a company has:
* the rights to take legal action
* the rights to hold property
* with powers and liabilities as an individual but is distinguished from the members it have from time to time.
**Article 13 (1)** Promote the active 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 the fight against corruption.

The MACC has progressed into initiating needed improvements in the area concerning Prevention. Under the umbrella of its Transformation programme, namely the PMO (Project Management Office) Prevention, a significant focus was established in expanding its community outreach to civil society.

Since its transformation from a government agency to an independent commission in 2009, the MACC views changes of its strategies in corruption prevention as imminent and in sync with the current approaches worldwide.

Under the PMO Prevention Transformation agenda, civil society engagement (CSE) was established as one of the six (6) key service lines or focus areas. The main target of the CSE service line was to establish contact with CSO’s that raise concerns and issues surrounding corruption in the nation, namely the vocal, active and influential.

Series of meetings and discussions with selected CSO’s and influential individuals who have been in the forefront of representing civil society led to a set of engagement programmes that were based on the principle of seeking cooperation and generating collaboration. Through this approach the element of education and empowerment would surface to ensure and generate greater understanding and ultimately garnering public confidence and support in corruption prevention initiatives undertaken by the MACC.
### FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Initiatives to improve transparency under the Government Transformation Programme 2.0 (2013-2015)

- **Enforcement Agency**
  1. Special Committee on Corruption to answer questions concerning MACC Annual Report in Parliament
  2. Executive Review Committee in MACC
  3. Project Management Office on Prevention
  4. Streamlining oversight committees (set up under the MACC Act 2009)

- **Grand Corruption**
  1. Insertion of Corporate Liability clause into the MACC

- **Government Procurement**
  1. Fact-tracking access to the Auditor General’s Performance Audit Report for immediate action
  2. Action committee on AG Report
  3. Auditor General’s online dashboard
  4. Putrajaya inquisition
  5. Guidelines for middle-men/lobbyist

- **Education and Public support**
  1. Setting up of Corruption Prevention Secretariat in Teacher’s Training College
  2. Training of Members of Parliament
  3. Incorporate anti-corruption element in textbooks in primary and secondary schools

Malaysia is in the process of preparing its responses to the SACL on Chapter II (Prevention) V (Asset Recovery) for the 2nd Review cycle by 2015.

Note: at the time of reporting some of the above initiatives have been implemented

### CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

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I. B. Criminalization and Law Enforcement (Chapter III)

Contact Point:  Name: Karunanithy Y. Subbiah  Title: Head of International Relations Branch of MACC
Telephone Number  603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

RELEVANT UNCAC PROVISIONS

- Art. 15 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:
  - The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;
  - The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.
- Art. 16(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.
- Art. 17 Adopt measures to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.
- Art. 20 Adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.
- Art. 21 Adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:
  - The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;
  - The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.
- Art. 27(1) Adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Malaysia has implemented the provisions of Articles 15,16,17,20, 21 and 27 (1) of UNCAC under the Malaysian Anti-Corruption Commission Act 2009 and the Penal Code. And in 2013 Malaysia’s implementation of UNCAC articles had been reviewed by the Philippines and Kenya under the UNCAC Review Mechanism. Malaysia’s Country Review Report on Chapters III and IV has also been published in the UNODC webpage.
<table>
<thead>
<tr>
<th>FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)</th>
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<tbody>
<tr>
<td>Legislative Reforms to (i) to include “corporate liability” clause in the Malaysian Anti-Corruption Commission Act 2009 in line with Article 26 of UNCAC and (ii) to make “misconduct in public office” an offence in the Penal Code by year end 2014.</td>
</tr>
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<tr>
<th>CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Model legislations for “corporate liability” and “misconduct in public office”</td>
</tr>
</tbody>
</table>
## I.C. Preventing Money-Laundering

**Contact Point:** Name: **Karunanithy Y. Subbiah** Title: **Head of International Relations Branch of MACC**

Telephone Number: **603-88867136** Fax Number: **603-88889568** Email Address: **karuna@sprm.gov.my**

### RELEVANT UNCAC PROVISIONS

- **Art. 14(1)** Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.
- **Art. 14(2)** Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions.
- **Art. 14(3)** Implement appropriate and feasible measures to require financial institutions, including money remitters, to:
  1. (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  2. (b) maintain such information throughout the payment chain; and
  3. (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

### MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- **UNCAC Article 14 (1)** Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions including natural or legal persons, that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering.

Domestic regulatory and supervisory regime to banks etc. to deter and detect all forms of money laundering in Malaysia includes:-

**The Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (Act613) which covers the following of reporting institutions as provided under its**

2. Islamic banking business as defined in the Islamic Banking Act 1983 [Act 276].
4. Insurance business, insurance broking business, adjusting business and financial advisory business as defined or provided in the Insurance Act 1996 [Act 553].
5. Takaful business as defined in the Takaful Act 1984 [Act 312].
6. Dealing in securities, as defined in the *Capital Markets and Services Act 2007 [Act 671], but not including the activity of providing investment advice by an investment adviser as defined in the *Capital Markets and Services Act 2007.*
8. (Omitted).
9. Business activities carried out by the prescribed institutions as defined in the Development Financial Institutions Act 2002 [Act 618].
10. Activities carried out by Lembaga Tabung Haji established under the Tabung Haji Act 1995 [Act 535].
11. Postal financial services as provided under subsection 24(3) in the Postal Services Act 1991 [Act 465].
12. Gaming carried out in common gaming houses as defined in the Common Gaming Houses Act 1953 [Act 289].
13. Issuance of designated payment instrument and operation of payment system as provided under the Payment Systems Act 2003 [Act 627].
14. Activities carried out by a member as defined in the Accountants Act 1967 [Act 94].
15. Activities carried out by an advocate and solicitor as defined in the Legal Profession Act 1976 [Act 166].
16. Activities carried out by a person admitted as an advocate pursuant to the Advocate Ordinance Sabah 1953 [Sabah Cap. 2].
17. Activities carried out by a person admitted as an advocate pursuant to the Advocate Ordinance Sarawak 1953 [Sarawak Cap. 110].
*Note-This Act has replaced the Securities Industry Act 1983 [Act 280] w.e.f. 28 September 2007-see subsection 381(2) of Act 671 and P.U. (B) 342/2007.
**NOTE-Words “futures broking business and futures fund management business as defined in the Futures Industry Act 1993 [Act 499]” ceased to have effect as “futures broking business” and “futures fund management business” not defined in Capital Markets and Services Act 2007 which replaced Futures Industry Act 1993.
18. Activities carried out by a person prescribed by the Minister or licensed by the Registrar of Companies to act as a secretary of a company pursuant to section 139a of the Companies Act 1965 [Act 125].
19. Activities carried out by a licensee as defined in the Pool Betting Act 1967 [Act 384].
20. Activities carried out by a totalizator agency as defined in the Racing (Totalizator Board) Act 1961 [Act 494].
21. Activities carried out by a racing club as defined in the Racing Club (Public Sweepstakes) Act 1965 [Act 404].
22. Activities carried out by a notary public as defined in the Notaries Public Act 1959 [Act 115].
23. Activities carried out by a trust company as defined in the Trust Companies Act 1949 [Act 100].
24. Activities carried out by the Corporation as defined in the Public Trust Corporation Act 1995 [Act 532].
25. Activities carried out by a moneylender as defined in the Moneylenders Act 1951 [Act 400].
26. Pawnbroking business as defined in the Pawnbrokers Act 1972 [Act 81].
28. Management of unit trust scheme or prescribed investment scheme as defined under the Securities Commission Act 1993 [Act 498] by a management company.
29. Activities carried out by any person, who has obtained permission to operate remittance services under the Exchange Control Act 1953 [Act 17].
30. Activities carried out by a money lender as defined in the Money Lenders Ordinance [Sabah Chapter 81].
31. Activities carried out by a moneylender registered under the Money Lenders Ordinance [Sarawak Cap. 114].
32. Activities of dealing in precious metals or precious stones carried out by companies incorporated pursuant to the Companies Act 1965 [Act 125] and businesses as defined and registered under the Registration of Businesses Act 1956 [Act 197].
33. Offshore financial services as defined in the Labuan Offshore Financial Services Authority Act 1996.
34. Activities carried out by a listing sponsor and a trading agent as defined in the Labuan Offshore Industry Act 1998 (Act579)

**UNCAC Article 14 (2)** Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions

Malaysian legislative measure to comply with this provision is under **Section 23** of the Anti-Money Laundering and Anti-Terrorism Financial Act 2001 and Anti-Money Laundering and Anti-Terrorism Financial Act 2001 (Cash and Negotiable Bearer Instruments Declaration) Order 2009:-

**Section 23. Currency reporting at border**
(1) A person leaving or entering Malaysia with an amount in cash, negotiable bearer instruments or both, exceeding such value as the competent authority may prescribe by **order published in the Gazette***, shall declare to the competent authority such amount in such form as the competent authority may specify.
(2) Any person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding one year or to both.
(3) Notwithstanding the Exchange Control Act 1953 [Act 17] and the Central Bank of Malaysia Act 1958, the Controller of Foreign Exchange shall have authority to submit to the
competent authority information received under section 24 or 25 of the Exchange Control Act 1953.

(4) Any declaration required to be made or given under subsection (1) shall for the purposes of the Customs Act 1967 [Act 235] be deemed to be a declaration in a matter relating to customs.

- UNCAC Article 14 (3) Implement appropriate and feasible measures to require financial institutions, including money remitters including money remitters, to:
  (a) include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator;
  (b) maintain such information throughout the payment chain; and
  (c) apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.

Malaysia fulfills the provisions of this Article under the Electronic Commerce Act 2006 (Act 658); Electronic Government Activities Act 2007 (Act 680); Digital Signature Act 1997 (Act 562); Payment Systems Act 2003; Section 119 Banking and Financial Institutions Act 1989 (Act 372); and Sections 13, 14, 15, 16, and 17 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2009 which provide for reporting obligations by reporting institutions as well as Central of Malaysia (Bank Negara Malaysia) and Sectoral Guidelines.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

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CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

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II. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO APEC INTEGRITY STANDARDS (CROSS CHECK WITH I.A. ABOVE)

Contact Point: Name: Karunanithy Y. Subbiah Title: Head of International Relations Branch of MACC
Telephone Number: 603-88867136 Fax Number: 603-88889568 Email Address: karuna@sprm.gov.my

<table>
<thead>
<tr>
<th>LEADERS’ AND MINISTERS’ COMMITMENTS</th>
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<tbody>
<tr>
<td>Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:</td>
</tr>
<tr>
<td>- Establish objective and transparent criteria that assure openness for merit, equity, efficiency for the recruitment of civil servants, and promote the highest levels of competence and integrity;</td>
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<tr>
<td>- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;</td>
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<tr>
<td>- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];</td>
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<tr>
<th>MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS</th>
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<tr>
<td>PLEASE SEE RESPONSE IN I.A ABOVE</td>
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<th>FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)</th>
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<tbody>
<tr>
<td>Malaysia is proposing to introduce “misconduct in public office” as a criminal offence to strengthen transparency and integrity in public organizations.</td>
</tr>
<tr>
<td>Under the proposed offence “public office” would also include those in the private sector dealing in administration of public funds. It is hope that the Parliament would passed this legislation by 2014.</td>
</tr>
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</tr>
</thead>
<tbody>
<tr>
<td>The Malaysian Anti-Corruption Academy (MACA) remains committed to provided anti-corruption capacity and capability building programmes to law enforcement bodies of APEC economies.</td>
</tr>
<tr>
<td>Malaysia also looks forward for model legislations, practices and experiences in “misconduct in public office” from APEC economies.</td>
</tr>
</tbody>
</table>
III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

Contact Point: Name: Karunanithy Y. Subbiah  Title: Head of International Relations Branch of MACC
Telephone Number: 603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

LEADERS’ AND MINISTERS’ COMMITMENTS
Santiago Commitment/COA: Deny safe haven to officials and individuals guilty of public corruption, those who corrupt them, and their assets:

- Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.
- Encourage each economy to promulgate rules to deny entry and safe haven, when appropriate, to Officials and individuals guilty of public corruption, those who corrupt them, and their assets.
- Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF’s Special Recommendations (Santiago Course of Action)
- Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)
- Implement relevant provisions of UNCAC. These include:
  - Art. 14 (Money laundering)
  - Art. 23 (Laundering of Proceeds of Crime)
  - Art. 31 (Freezing, seizure and confiscation)
  - Art. 40 (Bank Secrecy)
  - Chapter V (Asset Recovery)

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

COORDINATION AMONG FINANCIAL INTELLIGENCE UNITS
- For offences of money-laundering, the Government of Malaysia has established cooperation by being a member of the following international and regional organizations: The Asia–Pacific Group on Money Laundering, The Offshore Group of Banking Supervisors and the Egmont Group of Financial Intelligence Unit. As at May 2012 the BNM/FIU has signed 35 MoUs on the sharing of financial intelligence with the FIUs of the following countries (including those from APEC Economies of Australia, Brunei, Indonesia, Thailand, China, South Korea, Japan, Hong Kong, Chile, USA, Peru, India, New Zealand, Vietnam, Singapore, Papua New Guinea, Philippines).

IMPLEMENTATION OF FATF RECOMMENDATIONS
- In 2007, based on the APG Mutual Evaluation Exercise that was carried out in Malaysia, we obtained 9 “Compliant”, 24 “Largely Compliant”, 15 “Partially Compliant” and one “Non-Compliant” ratings against the FATF 40+9 Recommendations. In responding to the 2012 revision of the FATF Recommendations, the working group of NCC Malaysia has come up with a Concept Paper on Anti-Money Laundering and Counter Financing of Terrorism (AML/CFT) in the Money Services Business Sector which adopts a risk-based approach in identifying, assessing and understanding the country’s ML/FT risks which places further expectations on reporting institutions to assess and mitigate ML/FT risks.

COORDINATION WITH APEC ECONOMIES
- On cooperation with member economies in regards to investigation of corruption, the Malaysian Anti-Corruption Commission has carried out nine joint investigations with the Anti-Corruption Bureau of Brunei between 2004 and 2012 on cross border corruption between the two countries. Apart from this Malaysia has also extended mutual legal assistance to Thailand, South Korea, CPIB Singapore, ACB Brunei, and KPK Indonesia in sharing of information, locating witnesses, suspects and in recording
IMPLEMENTATION OF UNCAC ANTI-MONEY LAUNDERING PROVISIONS

- The UNCAC provisions of Articles 14, 23, 31, and 40 as well as Chapter V are enforced through the Anti-Money Laundering and Anti-Terrorism Act 2001 as well as the Mutual Assistance in Criminal Matters Act 2002 and the Extradition Act 1992. As far as the economies of Singapore and Brunei are concerned Malaysia’s cooperation on extradition is provided under the Summons and Warrants (Special Provisions) Act 1971.

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Malaysia is in the process of preparing its responses to the SACL on Chapter V (Asset Recovery) for the 2nd Review cycle by 2015.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Malaysia is contemplating “settlement in bribery/anti-money laundering cases” for non-conviction based offences as an alternative avenue for recovery of assets.
IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

Contact Point: Name: Karunanithy Y. Subbiah  Title: Head of International Relations Branch of MACC
Telephone Number: 603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

LEADERS’ AND MINISTERS’ COMMITMENTS

Santiago Commitment/COA: Fight both Public and Private Sector Corruption:
- Develop effective actions to fight all forms of bribery, taking into account the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or other relevant anticorruption conventions or initiatives.
- Adopt and encourage measures to prevent corruption by improving accounting, inspecting, and auditing standards in both the public and private sectors in accordance with provisions of the UNCAC.
- Support the recommendations of the APEC Business Advisory Council (ABAC) to operate their business affairs with the highest level of integrity and to implement effective anticorruption measures in their businesses, wherever they operate.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

- Making both active and passive bribery of foreign public official as offences in the MACCA 2009.
- Setting up of compliance units in Government Linked Companies. The compliance units setup will be headed by a Certified Integrity Officer (CeIO) seconded from the MACC. E.g. PETRONAS (state-owned oil and gas company, AMANAHRAYA or Public Trustee, TENAGA National (the National Electrical Energy Company) and TELEKOM (the national telecommunication company).

FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

Legislative Reforms to (i) to include “corporate liability” clause in the Malaysian Anti-Corruption Commission Act 2009 in line with Article 26 of UNCAC and (ii) to make “misconduct in public office” an offence in the Penal Code by year end 2014.

It is envisaged that the term “public official” under this new amendment is to include those in the private sector so long as they are involved in the management of public finance.

CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

Private sector companies do send their senior executive staff to the Chief Executive Integrity Officers course which is conducted by the Malaysia Anti-Corruption Academy.
V. ENHANCING REGIONAL COOPERATION

Contact Point: Name: Karunanithy V. Subbiah  Title: Head of International Relations Branch of MACC
Telephone Number: 603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

LEADERS’ AND MINISTERS’ COMMITMENTS

Santiago Commitment/COA: Strengthen Cooperation Among APEC Member Economies to Combat Corruption and Ensure Transparency in the Region:

- Promote regional cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption.
- Afford one another the widest measure of mutual legal assistance, in investigations, prosecutions and judicial proceedings related to corruption and other offences covered by the UNCAC.
- Designate appropriate authorities in each economy, with comparable powers on fighting corruption, to include cooperation among judicial and law enforcement agencies and seek to establish a functioning regional network of such authorities.
- Sign bilateral and multilateral agreements that will provide for assistance and cooperation in areas covered by the UNCAC. (Santiago Course of Action) These include:
  - Art. 44 – Extradition
  - Art. 46 – Mutual Legal Assistance
  - Art. 48 – Law Enforcement Cooperation
  - Art. 54 – Mechanisms for recovery of property through international cooperation in confiscation
  - Art. 55 – International Cooperation for Purposes of Confiscation
- Work together and intensify actions to fight corruption and ensure transparency in APEC, especially by means of cooperation and the exchange of information, to promote implementation strategies for existing anticorruption and transparency commitments adopted by our governments, and to coordinate work across all relevant groups within APEC (e.g., SOM, ABAC, CTI, IPEG, LSIF, and SMEWG).
- Coordinate, where appropriate, with other anticorruption and transparency initiatives including the UNCAC, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, FATF, the ADB/OECD Anticorruption Action Plan for the Asia Pacific region, and Inter-American Convention Against Corruption.
- Recommend closer APEC cooperation, where appropriate, with the OECD including a joint APEC-OECD seminar on anticorruption, and similarly to explore joint partnerships, seminars, and workshops with the UN, ADB, OAS, the World Bank, ASEAN, and The World Bank, and other appropriate multilateral intergovernmental organizations.

MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Regional Cooperation on extradition, mutual legal assistance and the recovery and return of proceeds of corruption

Malaysia implements this requirement by having in place -

- the Mutual Assistance in Criminal Matters Act 2002
- Summons and Warrants (Special Provisions) Act 1971-applicable to Singapore and Brunei.

With respect to bilateral treaties, two general processes are followed.

a) In respect of countries with which Malaysia does not have any existing treaties, pursuant to section 3 of the Extradition Act and section 18 of the Mutual Assistance in Criminal
Matters Act, a special direction must be issued by the responsible Minister to give an incoming request the force of law. Such a special direction is issued by the Minister of Home Affairs for extradition and the Minister charged with the responsibility for legal affairs, and can be issued subject to any restrictions, limitations, exceptions, modifications, adaptations, conditions or qualifications as the Minister may specify in the direction. A special direction enables the incoming request to be executed in accordance with Malaysia’s domestic law, i.e., the Extradition or Mutual Assistance in Criminal Matters Act. The procedure is provided for in sections 18 and 3 of the Extradition Act and the Mutual Assistance in Criminal Matters Act, respectively.

b) For countries with which Malaysia has an existing bilateral treaty, once the treaty has been published in the official Gazette, the provisions of the respective domestic acts (Extradition, Mutual Assistance in Criminal Matters) become applicable to any incoming requests by virtue of an order of the Minister designating the country a “prescribed foreign State” under section 2 of the Extradition Act and section 17 of the Mutual Assistance in Criminal Matters Acts. Such an order may further contain any restrictions, limitations, exceptions, modifications, and adaptations, conditions or qualifications as in the case of non-treaty countries that the Minister may specify. A special direction is not required in respect of treaty countries. The procedure is provided for in sections 17 and 2 of the Extradition Act and Mutual Assistance in Criminal Matters Act, respectively.

**Designated Authorities**
The designated authorities in matters pertaining to Mutual Legal Assistance and Extradition is the **Attorney General** whereas the **Malaysian Anti-Corruption Commission is the central authority for Asset Recovery**

**Bilateral Treaties**
The Government of Malaysia has forged the following treaties (i) on **Mutual Legal Assistance in Criminal Matters** with the Governments of Like-Minded ASEAN Members comprising of Brunei, Cambodia, Indonesia, Lao PDR, Myanmar, Thailand and Singapore (2006) (ii) on **Extradition** with Indonesia (1974) Thailand, USA (1995), India (2010), Hong Kong (1995), Korea and Australia (2005).

- On matters pertaining to anti-corruption the MACC has forged MoUs with ICAC Hong Kong, GIV Vietnam, NACC Thailand, and ACB Brunei, BAK Austria, KPK Indonesia and CHRAJ Ghana. The main focuses of these MoUs are on information exchange, capacity and capability building.

- The MACC’s International Relation Branch is the focal point for UNCAC, OECD, and ADB/OECD initiatives.

**Cooperation in anti-corruption initiatives:**

(i) Malaysia hosted the Asia regional Meeting on Anti-Corruption Strategies” on 21-22 Oct 2013 at Kuala Lumpur- resulted in the **KL Statement on Anti-Corruption Strategies which has been tabled at the 5th Conference of State Parties (CoSP) in Panama.**

(ii) Malaysia hosted the Multi Stakeholder Workshop on the Review Mechanism for UNCAC 24-27 February 2014

(iii) The MACC is an ad hoc observer (invitees) in the **OECD Bribery in International Business Transaction (WGB)**

(iv) The MACC is a member of the newly established **Economic Crime Agencies Network (ECAN)** (which comprises of CPIB Singapore, SFO New Zealand, Australia Federal Police, ICAC Hong Kong, the Federal Bureau of Investigation USA, United Kingdom Serious Fraud Office, KPK Indonesia, World Bank, City of London Police, European Anti-Fraud Office (OLAF),

(v) The MACC –UNCAC focal point was involved in the sharing of experience in UNCAC Review Mechanism in Myanmar in February 2014.
**FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)**

| 1. | Bilateral cooperation with Supreme National Anti-Corruption Commission, Republic of Yemen and ACC Bangladesh, in year 2014 |
| 2. | Apply as an invitee to the **OECD Bribery in International Business Transaction (WGB)** |

**CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION**
VI. OTHER APEC ACT LEADERS’ AND MINISTERS’ COMMITMENTS

Contact Point: Name: Karunanithy V. Subbiah  Title: Head of International Relations Branch of MACC
Telephone Number: 603-88867136  Fax Number: 603-88889568  Email Address: karuna@sprm.gov.my

LEADERS’ AND MINISTERS’ COMMITMENTS

- **2005**: Ministers encouraged all APEC member economies to take all appropriate steps towards effective ratification and implementation, where appropriate, of the United Nations Convention against Corruption (UNCAC). Ministers encouraged relevant APEC member economies to make the UNCAC a major priority. They urged all member economies to submit brief annual progress reports to the ACT Task Force on their APEC anti-corruption commitments, including a more concrete roadmap for accelerating the implementation and tracking progress. (See Section I Above, UNCAC)

- **2006**: Ministers underscored their commitment to prosecute acts of corruption, especially high-level corruption by holders of public office and those who corrupt them. In this regard, Ministers commended the results of the Workshop on Denial of Safe Haven: Asset Recovery and Extradition held in Shanghai in April 2006. Ministers agreed to consider developing domestic actions, in accordance with member economy's legislation, to deny safe haven to corrupt individuals and those who corrupt them and prevent them from gaining access to the fruits of their corrupt activities in the financial systems, including by implementing effective controls to deny access by corrupt officials to the international financial systems.

- **2007**: We endorsed a model Code of Conduct for Business, a model Code of Conduct Principles for Public Officials and complementary Anti-Corruption Principles for the Private and Public Sectors. We encouraged all economies to implement these codes and welcomed agreement by Australia, Chile and Viet Nam to pilot the Code of Conduct for Business in their small and medium enterprise (SME) sectors. (AELM, AMM)

- **2008**: We commended efforts undertaken by member economies to develop comprehensive anti-corruption strategies including efforts to restore public trust, ensure government and market integrity. We are also committed to dismantle transnational illicit networks and protect our economies against abuse of our financial system by corrupt individuals and organized criminal groups through financial intelligence and law enforcement cooperation related to corrupt payments and illicit financial flows. We agreed to further strengthen international cooperation to combat corruption and money laundering in accordance with the Financial Action Task Force standards. International legal cooperation is essential in the prevention, investigation, prosecution and punishment of serious corruption and financial crimes as well as the recovery and return of proceeds of corruption. (AELM, AMM)

- **2009**: We welcome the Anti-Corruption and Transparency Experts' Task Force's Singapore Declaration on Combating Corruption, Strengthening Governance and Enhancing Institutional Integrity, as well as the APEC Guidelines on Enhancing Governance and Anti-Corruption. We encourage economies to implement measures to give practical effect to the Declaration and Guidelines. (AMM)

- **2010**: We agreed to leverage collective action to combat corruption and illicit trade by promoting clean government, fostering market integrity, and strengthening relevant judicial and law enforcement systems. We agreed to deepen our cooperation, especially in regard to discussions on achieving more durable and balanced global growth, increasing capacity building activities in key areas such as combating corruption and bribery, denying safe haven to corrupt officials, strengthening asset recovery efforts, and enhancing transparency in both public and private sectors. We encourage member economies, where applicable, to ratify the UN Convention against Corruption and UN Convention against Transnational Organized Crime and to take measures to implement their provisions, in accordance with economies legal frameworks to dismantle corrupt and illicit networks across the Asia Pacific region. (AELM, AMM)

- **2011**: We will also take the following steps to increase convergence and cooperation in our regulatory systems: Ensure implementation of our APEC anti-corruption and open government commitments by 2014 through deeper cooperation in APEC. (AELM)

- **2012**: We strongly commit to fight against corruption to ensure openness and transparency in APEC. Acknowledging that corruption fuels illicit trade and insecurity and is a tremendous barrier to economic growth, the safety of citizens, and to the strengthening of economic and investment cooperation among APEC economies, we endorse commitments on Fighting Corruption and Ensuring Transparency (see Annex E). (AELM)

- **2013**: On Sustainable Growth with Equity: We agreed to take further steps toward empowering, engaging and opening opportunities for our stakeholders to fully participate in
our economic growth, by considering the following concrete actions: (f.) advance greater collaboration among law enforcement authorities, in combating corruption, bribery, money laundering, and illicit trade, through the establishment of an APEC Network of Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) that will strengthen informal and formal regional and cross-border cooperation. (AELM).

Fighting Corruption and Ensuring Transparency (AMM 2013). We reaffirmed the importance and the need to enhance prevention and enforcement in addressing corruption, bribery and other financial crimes and illicit trade that imperil our security and prosperity agenda, including the safeguarding of public assets, natural resources, and human capital. We also reaffirmed our commitment to create ethical business environments that support sustainable economic growth, in particular by strengthening ethical standards, and we encouraged all stakeholders to implement APEC’s high standard principles for codes of business ethics. We applauded the Anti-Corruption and Transparency Working Group (ACTWG)’s continued leadership in collaborating with other APEC fora. We further committed to establish among member economies an “APEC Network of Anti-Corruption Authorities and Law Enforcement Authorities (ACT-NET)”, under the auspices of ACTWG to promote networking and foster relationship-building among anti-corruption and law enforcement officials who can assist one another in detecting, investigating and prosecuting corruption and domestic and foreign bribery, money laundering, and illicit trade cases; to provide a forum that can facilitate bilateral and multilateral discussions of such cases, as appropriate; and to facilitate the sharing of expertise and experiences in detecting, investigating and prosecuting such cases (see Annex D).

### MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

As per part I, II, III, IV & V above

### FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)

As per part I, II, III, IV & V above

### CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION

As per part I, II, III, IV & V above