

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

BRIEFING NOTE: MALAYSIA

I. Jurisdiction Overview:

Malaysia is a federal constitutional monarchy consisting of thirteen states and three federal territories. It has both a federal head of state and a prime minister, and its government is modeled after the Westminster parliamentary system, with more power vested in the executive branch over the legislative branch of government. There is a bicameral federal legislature, comprised of a House of Representatives and a Senate, as well as separate unicameral state legislatures. The cabinet is led by the prime minister who is chosen by both houses of Parliament.

The *Malaysian Anti-Corruption Commission Act* (herein referred to as the “Act”) applies to all civil servants and public officials. The Act came into effect on January 1, 2009. It was enacted in order to introduce greater transparency in the country and to address corruption issues in both public and private sector administration.

The *Public Officers’ (Conduct and Discipline) Regulations 1993* (amended in 2002) (hereinafter referred to as the “Regulations”) contains the provisions that all Public Officers are to abide by. A separate code of ethics exists for those working in the Prime Minister’s Office.

II. Scope of Coverage of Conflict of Interest Provisions:

The Act provides for external monitoring by the Malaysian Anti-Corruption Commission (hereinafter referred to as the “Commission”) through the establishment of advisory boards and commissions.

III. Prohibited Activities:

A. General Prohibition on Conflicts of Interest

The Malaysian government’s main focus is on gratification and corruption. The Act defines gratification as any of the following:

- (a) Any money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage;
- (b) Any office, dignity, employment, contract of employment or services, and any agreement to give employment or render services in any capacity;
- (c) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

- (d) Any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) Any forbearance to demand any money or moneys worth or valuable thing;
- (f) Any other service or favour of any description, such as protection from any penalty or disability incurred or apprehended from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- (g) Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of (a) to (f).

The Act was amended to increase the number of groups and individuals included in the term “public body”. It now includes the Government of Malaysia; the Government of a State; any local or statutory authority; any department, service or undertaking of the Government of Malaysia, the Government of a State or a local authority; registered societies; registered sports bodies; registered co-operative societies; registered trade unions; registered youth societies; any company or subsidiary company that is controlled by the above; and any society, union, organization or body as the Minister of the Commission may prescribe.

All public officials, including civil servants and Members of Parliament, are held to the same standard when dealing with corruption and gratification.

The Code states that all members of staff, and officers of the Prime Minister’s Office, should ensure that no conflict of interest exists between the performance of their official duties and their personal matters.

B. Gifts

The Code requires that all officers and members of staff in the Prime Minister’s Office avoid accepting gifts and entertainment in relation to their official duties.

C. Anti-Nepotism Provisions

The Act has a very wide definition of the term “relative”. The Malaysian government includes in this term the following individuals: a spouse, brother or sister, brother or sister of a spouse, a lineal ascendant or descendant of the individual or their spouse, a lineal descendant of an individual’s brother or sister, an aunt, uncle or cousin, and a son-in-law or daughter-in-law.

The Code holds that no gifts or entertainment may be accepted from a relative of an officer or staff member of the Prime Minister’s Office, if it relates to the implementation of the individual’s official duties.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

D. Outside Interests

All staff and officers of the Prime Minister's Office must not side with any political party. They are not to oppose prohibitions that are contained in the Regulations and they are not to involve themselves in activities that are against the laws and regulations of Malaysia. They must also not take part in any unethical or immoral actions.

An officer or member of staff of the Prime Minister's Office should obtain written permission from the Head of Department before pursuing an interest in a business or completing any transaction.

IV. Affirmative Requirements: Duty of Disclosure and Public Declaration re Financial Matters:

Prior to commencing their employment, an officer or member of staff of the Prime Minister's Office should declare their interest in any business or transaction and all forms of their property.

V. Enforcement

The enforcement of gratification and corruption is done by the Commission. The Anti-Corruption Advisory Board advises the Commission. They advise the Commission on the corruption problems in Malaysia and present policies and strategies to the Commission to aid in the eradication of corruption. They evaluate and endorse proposals from the Commission in regard to their day-to-day activities and endorse resource needs of the Commission.

Following the Anti-Corruption Advisory Board's analysis of the Commission's annual report, a report is presented to the Special Committee on Corruption. This Committee was established to advise the Prime Minister of the corruption problems in the country; to examine the Commission's annual report; to examine the Anti-Corruption Advisory Board's comments about the functions of the Commission under the Act; and to clarify the annual report of the Commission.

In order to ensure that the Commission is regulated, the Act provides for a Complaints Committee that monitors the Commission's handling of all non-criminal complaints against officers of the Commission and to identify and make recommendations about any weaknesses in the work procedures of the Commission.

An officer of the Commission may order any person whom the officer believes may assist in an investigation to attend before him for an oral examination. The individual must attend every day until the examination is complete, disclose all information requested of them and not refuse to answer any question, even if it incriminates them or their spouse.

The officer may also order such individuals to produce any records that in his/her opinion may assist in the investigation of the offence. No documents may be altered in any way or removed from the country.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

The officer may also order any person to provide a statement in writing under oath concerning any information that the officer believes would be of assistance in the investigation and he/she may order any person to provide a handwriting or voice sample.

Any information received from interviews, statements, or records will be admissible as evidence for any offence under the Act or for forfeiture of property.

An officer of the Commission, with or without written order from the Public Prosecutor or high-ranking official of the Commission, may:

- enter any premise and search and seize any document, record or data;
- inspect, make copies of or take extracts from any document, record or data;
- search any person who is in or on the premises;
- seize any articles found on such person;
- break open, examine and search any article, container or receptacle; or
- stop, search and seize any conveyance.

The officers may also use any force necessary to enter a premise, remove by force any obstruction and detain any individual found in or on the premises or conveyance until the search is complete.

However, the Act does not bestow prosecution powers on the Commission. Prosecution for offences under the Act can only occur with the consent of the public prosecutor (Attorney-General).

VI. Sanctions

Under the Act, anyone found guilty of committing a corruption offence will, on conviction, be liable to imprisonment for a term of no more than 20 years and a fine of not less than five times the sum of the gratification (if it is capable of being valued) or 10 000 ringgit, whichever is higher.

Any individual who does not inform an officer of the Commission of an offer of gratification promised to them will be subject to fine of up to 100 000 ringgit and/or imprisonment for up to a term of 10 years.

Any individual from whom gratification has been solicited must inform an officer of the Commission or be subject to a fine up to 10 000 ringgit and/or imprisonment for up to a term of two years.

Any individual who, either within or outside of Malaysia, enters into any dealing, knowingly or not, of any property that was the subject matter of an offence will be deemed to have committed an offence and on conviction be liable to a fine of up to 50 000 ringgit and/or a term of imprisonment for up to 7 years.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

Any person who makes or causes another person to make a statement which is false or is intending to mislead is deemed to have committed an offence and is liable of a fine up to 100 000 ringgit and/or a term of imprisonment for up to 10 years.

Individuals will be found to be guilty of any of the above offences if they attempt to commit, prepare to commit or abet or are involved in a criminal conspiracy to commit any offence under the Act.

Any movable property that an officer of the Commission believes is the subject matter of an offence is liable to seizure. If the property is seized, the Commission may choose to return it to the owner, subject to security being provided. If the individual fails to surrender the property on demand, the security will be forfeited and the person will be found to have committed an offence and be liable to imprisonment for up to 2 years and a fine not less than two times the amount of the security supplied.

If the moveable property is in the possession of a bank, then an authorized officer may direct the bank to not part with, deal in or dispose of any part of the property until their order is revoked. An employee of the bank is not liable to any prosecution for being in possession of the property, unless they fail to comply with the order. If they don't comply, they will be subject to a fine not exceeding two times the amount paid out or 50 000 ringgit, whichever is higher, as well as imprisonment for a term up to 2 years.

If in an investigation an officer authorized by the Commission believes that any property, moveable or immovable, may be held or have been acquired as a result of an offence under the Act, may by written notice:

- require that person to supply a statement in writing on oath or affirmation –
 - identifying every property, moveable or immovable, that belongs to, is in possession of, or has interests in, whether in or outside of the country;
 - identifying the date and manner of acquisition of said property;
 - identifying every property sent out of Malaysia during the time period specified in a notice;
 - identifying the estimated value and location of said property;
 - identifying the owner of such property, whether it has been sold or transferred to another person, whether the value has been diminished;
 - identifying all other information relating to his properties, business, travel or other activities as requested in the notice; and
 - identifying all his sources of income, earnings or assets;
- require any relative or associate of the investigated person to provide a statement in writing on oath or affirmation in respect to the above terms

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

- require any banking officer to supply any and all accounts, documents and records relating to any person above.

Any person who does not comply with the above requirements will be found to have committed an offence under the Act and, on conviction, may be found liable to a fine up to 100 000 ringgit and a term of imprisonment of up to 5 years. If a public officer is found to own, possess, control, or hold any interest in a property which the Commission deems to be excessive, and no satisfactory explanation is brought forward by such officer, then he/she will be liable to imprisonment for a term up to 20 years and a fine which is not less than five times the excess or 10 000 ringgit, whichever is higher. If the public officer refuses to comply with the Commission's direction, they will be held liable in the same manner.

An authorized officer of the Commission may require a banking officer to provide access to an individual's bankbooks, banking documents, bank accounts, share accounts, purchase accounts, expense accounts and safe deposit boxes. If the copying or extracting of information from the books cannot be completed without an officer taking possession of the books, the Act allows him/her to do so. If a person refuses to allow an officer the required access, they will be subject to a fine of up to 10 000 ringgit and/or imprisonment for a term of up to 2 years.

Where immovable property is found to be the subject matter of an offence, a Notice of Seizure will be issued and all dealings with respect to the property will be prohibited, unless on behalf of the Government of Malaysia, Government of a State, local authority or other statutory authority. Anyone who acts in contravention of the Notice will have been found to have committed an offence and be liable to a fine not exceeding twice the value of the property or 50 000 ringgit, whichever is higher, and to imprisonment up to a term of 2 years. If the property is outside of Malaysia, the Public Prosecutor may make an application by way of an affidavit to a Judge of the High Court for an order to prohibit the person who holds the property from dealing with it.

When an individual is prosecuted for an offence under the Act, the Court shall order the accused to forfeit the property even if the accused is not convicted of the offence. If the accused is not found guilty of the offence they must still forfeit the property if the Court is satisfied that the accused is not the true and lawful owner of the property and that no other person is entitled to it (as a purchaser in good faith). If the accused has already disposed of the property or it cannot be found, the Court will order the accused to pay a sum equivalent to the amount of the gratification.

Where there is no prosecution or conviction for an offence under the Act, the Public Prosecutor may apply to a Sessions Court Judge for an order of forfeiture of the property if he is satisfied that the property was obtained as a result of the offence. The prosecutor has 18 months from the date of seizure to apply for the order. As long as the seizure is in effect, no dealings or civil proceedings may take place in respect to the property unless it is done so on behalf of the Government of Malaysia, the Government of a State, local authority or other statutory authority, except with the prior consent in writing of the Public Prosecutor.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

An authorized officer of the Commission may intercept, detain and open any mail in the course of mail transport; intercept any message transmitted or received by telecommunication; or intercept, listen and record any conversation by telecommunication. The Commission at trial may use any information obtained as evidence.

An authorized officer may order, by written notice, a suspected individual to surrender his certificate of identity, passport, exit permit or travel document, if they are believed to be a flight risk. If an individual fails to comply, they may be arrested and committed to prison until they comply with the request, or for fourteen days, whichever comes earlier.

Any person who:

- refuses an officer of the Commission access to any premises;
- fails to submit to a search;
- assaults, obstructs, hinders or delays any officer in the execution of his duty;
- fails to comply with any lawful demand, notice, order or requirement of an officer;
- omits, refuses or neglects to give an officer any information that may be reasonably required of him and which he is empowered to give;
- fails to produce, or conceals any book, document or article from an officer;
- rescues or attempts to rescue any item that has been seized;
- destroys any thing to prevent the seizure thereof; or
- interferes, attempts to interfere with, threatens, puts fear into or abducts any person involved in an investigation under the act

will be deemed to have committed an offence under the Act.

VIII. Educational Programs

One of the principal purposes of the Act is to educate public authorities, officials and members of the public about corruption and the detrimental effects it has on all aspects of Malaysian society.

CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

IX. References:

Malaysian Anti-Corruption Commission Bill 2008, online: Parliament Malaysia <<http://www.parlimen.gov.my/billindexbi/pdf/DR212008E.pdf>>.

The Code of Ethics of the Prime Minister's Office, online: Official Website of the Prime Minister's Office of Malaysia <<http://www.pmo.gov.my/?menu=page&page=1654>>.

online: Malaysia Anti-Corruption Commission <<http://www.sprm.gov.my/>>.