



**Asia-Pacific  
Economic Cooperation**

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**2014/SOM3/ACT/017**

**Agenda Item: 10**

## **Anti-Corruption and Transparency Reporting Template - Indonesia**

**Purpose: Information  
Submitted by: Indonesia**



**APEC  
CHINA 2014**

**19<sup>th</sup> Anti-Corruption and Transparency  
Experts' Working Group Meeting  
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## APEC ANTI-CORRUPTION AND TRANSPARENCY (ACT) REPORTING TEMPLATE

ECONOMY: Republic of Indonesia

CALENDAR YEAR: 2014

LAST UPDATED: May 2014

## 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.

Indonesia is fully committed to tackle and prevent corruption by implementing international and domestic anti-corruption measures and strategies. These include the UNCAC provisions, APEC code of conducts, domestic legislations and policies. Since 2012-2014, Indonesia has taken wide steps and real action in combatting corruption, especially in the investigation and prosecution of corruption cases. In the prevention side, the government of Indonesia undertakes several measures to enforce cooperation and coordination amongst government's agencies and ministries to prevent corrupt practices, fraud and misconducts. This step is taken in order to increase transparency, good governance and integrity, especially in public service agencies.

As described in previous interim report, Indonesia will set out National Strategies on Corruption Prevention and Eradication as the national platform of fighting against corruption. This plan has been realized through the issuance of the National Strategies in 2010 followed by the issuance of Presidential Decree No.1 year 2013. This grand strategy and plan will be implemented by related agencies and ministries according to each year priorities and targets prescribed in the document.

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

Governance and anti-corruption are two essential components for a strong and sustainable economic and social development. As every nation needs this development to pursue its visions and goals, it is imperative to put massive effort, resource and determination to solve corruption problems and to create true governance. As part of the APEC member economies, Indonesia will continuously put its effort to implement APEC Leaders' and Ministers commitments in tackling corruption.

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.

Capacity building, sharing knowledge and expertise and also joint cooperation among economies will become a tool to increase members' resources and abilities to implement the APEC Leaders commitments. In this context, Indonesia sees several issues that need to be strengthened, such as: (1) effective prevention strategies, (2) public-private-partnership, (3) legal person liability, (4) tax crimes and anti-money laundering strategies, (5) intelligence and investigation.

## 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)

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### 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.

- Art. 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.

#### MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

To implement Article 5, Indonesia has undertaken several measures including:

- Establish "KPK Roadmap 2011-2023" as a guidance to its working plan toward the implementation of National Integrity System
- The implementation of Presidential Instruction No.1/2013 on National Action Plan on Prevention and Eradication of Corruption 2013. This is to ensure the adoption of "Strengthening Institutional Mechanisms" in law enforcement institutions. Each institution is obliged to follow mechanisms in their internal systems (recruitment, placement, mutation, and promotion based on assessment, fit and proper test, competence, and integrity)
- Government organizations and institutions will be encouraged to implement Internal Oversight System, Government Internal Control System, to conduct Fraud Risk Assessment, create Fraud Control Plan and implement Fraud Control System
- A comprehensive early warning system will be created by integrating wealth report and gratification report (e-gratification module)
- KPK conducted assessment on: subsidized fertilizer management system, foreign-worker employment license service, policy of strategic commodity trade procedure, social assistance policy, corruption-risk mapping at the Indonesia Parliament body, non-taxable state revenue management policy, Fraud-Control System and Recruitment and facilitator management
- The MoU establishment with Indonesian Ministries and other government agencies
- The establishment of cooperation agreement with Indonesia Armed Forces, Directorate General of Immigration, Directorate General of General-Law Administration and with 33 universities in Indonesia.

In order to ensure clean and transparent governance, Indonesia also has completed code of conduct for state officials (clear sanctions and punishment systems, disciplinary, conflict of interest).

To promote active public participation, several activities have been implemented as follows:

- Organize workshops and conference on anti-corruption
- KPK conducted Public Perception Survey
- Conducted public examination on 20 corruption case verdicts (cooperation with Indonesia Corruption Watch)
- Conducted campaign "Election with Integrity" for public

To tackle corruption in strategic sectors, KPK has been conducted research and system reviews on state's mining and energy sector. Mining and energy is one of the country's biggest revenue sources that need to be managed efficiently in order to prevent potential corruption in the sector. As such, during 2013, KPK has been reviewed the Ministry of Energy's system and operation. Through the reviewing process, KPK has found several potential problems and provided solutions and recommendation to the Ministry to be evaluated and implemented for further improvement.

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

Indonesia will intensify its effort in enhancing the implementation of UNCAC provision including:

- Ensuring effective system in preventing conflict of interest. In this cope, KPK is in the progress to improve current asset declaration system.
- Many NGOs have been supported both government and private sectors in promoting transparency and anti-corruption programs. The agencies drafted and issued numerous research, books and guidelines on anti-corruption, anti-bribery and transparency. They also released handbook and code of conduct for private sector and business entities. Indonesian government should take further step to support and enforce more serious and concreté cooperation with these agencies and public.

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

- Best practices to promote effective public-private-partnership
- Training and technical assistance to improve asset declaration system and preventive measure of conflict-of-interest

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

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#### 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

Corruption Eradication Commission or KPK has taken serious measures to enforce the anti-corruption law. Investigation and prosecution of grand corruption cases has been targeted since 2013. KPK is committed to uphold enforcement without compromise, and to be remained independent, prudent and in line with the law and procedures. In doing so, KPK has been prosecuted hundreds of corruption cases since its establishment. KPK also investigate money laundering offence involved in those cases.

Based on Anti-Money Laundering Law (Law No.8/2010), KPK also has authority to investigate money laundering offence besides corruption. The law enables KPK to conduct thorough investigation and more than that the power to seize and confiscate proceeds of corruption or the ill-gotten assets. As such, KPK will also be

able to effectively recover losses to the state budget/finance.

To prevent bribery offenses, the Commission conducts anti-bribery campaigns and education, establishes anti-bribery programs with numerous government agencies and state-owned enterprises and also cooperates with CSOs and private companies to promote governance and clean business. Several workshops, seminars and joint cooperation have been established to promote anti facilitation payment and bribery.

Understanding that corruption is an extraordinary crime, requiring competent and professional law enforcement authorities to be able to punish them, KPK has been initiated several joint training and capacity building programs:

- Asset repatriation seminars and workshops for police forces and judges
- Anti-money laundering and investigation workshops and training for the National Police and Attorney General Office

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

- Government will amend anti-corruption act, Criminal Code, Criminal Procedure Code, and MLA and Extradition Act to support international cooperation in the field of criminal law enforcement
- Completion of the new Asset Forfeiture Bill
- Indonesia will continue to implement all the measures to comply with the UNCAC
- To develop a stronger law enforcement authorities cooperation at domestic and global levels
- Law enforcement authorities to develop and/or constantly manage their whistle-blower system and witness protection program/system

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

- Capacity building on foreign bribery, trading in influence, bribery in the private sector, concealment, liability of legal persons
- Training and capacity building on protection of witnesses, expert and victims, whistleblower system and compensation for damage
- Conducted 5 capacity building training for the National Police, the Attorney General Office and State Audit Agency officials
- KPK also supervises and conducts joint investigation with police forces for serious corruption cases handled by the National Police
- Collaboration with respected government agencies to establish "Island of Integrity" program to support anti-corruption and governance strategies



### I.C. Preventing Money-Laundering

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#### 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) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, 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.

#### MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

Indonesia's FIU (PPATK) continuously demonstrates its authorities and power to detect and prevent money laundering offences in the country. Based on Law No. 8/2010, the agency has duties and tasks to: (1) prevent and combat money-laundering acts, (2) to regulate and supervise financial institutions, (3) to help LEA in detecting and investigating the cases, and (4) to detect and analyses STRs (suspicious transaction reports).

##### A. International Fund Transfer Instruction (IFTI) Reporting Obligation

Based on Law No. 8 Year 2010 on Prevention and Eradication of Money Laundering, banks and other financial service provider who conduct international money transfer service is required to submit report for any international fund transfer to PPATK. These requirements come into effect on January 2014 for banks and July 2014 for non banks. PPATK also has issued Head of PPATK Regulations No. PER-12/1.01/PPATK/06/13 on the Procedure to Submit International Fund Transfer Reports as technical guidance for banks and money remitters in reporting the IFTIs.

##### B. Reporting Obligation for Goods and Other Service Provider.

In accordance with Law No. 8 Year 2010, the Good and Services Providers such as jewellery stores, real estate agents, auction house, antique dealers and car dealers must submit reports to PPATK for any transaction equivalent or above 500 million rupiah. This reporting obligation comes into force in March 2012.

Some regulations has been issued in 2011 as technical guidance for Good and Services Providers to submit reports to PPATK such as

1. Head of PPATK Regulation number 10/1.02.1/PPATK/09/11 on Know Your Customer principles for Goods and Other Services Provider
2. Head of PPATK regulation number 12/1.02.1/PPATK/09/11 concerning reporting procedure on suspicious financial transaction for Goods and Other Services Provider.

##### C. PPATK also has issued various regulations as efforts in detecting money laundering activities such as:

- a. The Head of PPATK Regulation No.: PER-09/1.02.2/PPATK/09/12 concerning the procedure for submitting suspicious transaction reports and cash transaction reports for financial services providers has been enacted on September 4, 2012.

- b. The Head of PPATK Regulation No.: PER-10/1.02.2/PPATK/09/12 concerning procedure for implementing compliance audits or specific audits has been enacted on September 4, 2012.
- c. The Head of PPATK Regulation No.: PER-11/1.02/PPATK/09/12 concerning exempted cash transactions from reporting obligation has been enacted on September 4, 2012.
- d. Head of PPATK Regulation No: PER- 3/1.02.1/PPATK/03/2012 concerning The Procedure of Suspension of Transactions and Postponement of Transactions in the field area of Banking, Capital Market, and Insurance
- D. The Supreme Court has Issued Regulation of the Supreme Court of the Republic Indonesia Number 01 Year 2013 Regarding the Procedure for Settlement of Request for Handling of Assets in the Money Laundry Crime or Other Crime. This regulation is an important part of the anti money laundering efforts since it provides legal basis for handling the assets related with money laundering or other crime.

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

- As deemed by the Anti-Money Laundering Law, KPK has authority to investigate both money laundering and corruption cases. To enforce their duties and mandates, law enforcement authorities need to work closely with FIU, Indonesian Central Bank and other domestic banks, Ministry of Finance and other relevant agencies for asset repatriation measures.
- In addition, FIU along with KPK will intensify cross-border cooperation to prevent and eradicate money laundering. This strategy will complement domestic money laundering prevention strategies conducted by the agency. FIU will continuously take concrete actions to increase public awareness on anti-money laundering and to provide training and technical assistance for financial sectors.
- The amendment of the new Asset Recovery Bill was still in progress. The Parliament along with the President's office has been discussing the new draft since 2012 with not much updated progress so far.
- Government Regulation on the carrying of Cash and other payment instrument to or from Indonesia custom area. This government regulation is designed as a basis to enhance the monitoring of cross border movement of cash or other payment instrument. As publicly known, cross border cash/payment instrument movement can be abused for money laundering activities. Therefore it is necessary for related agencies to effectively detect the cross border cash/payment instrument movement. The government has finished the drafting of the aforementioned regulations and currently waiting for the signing by the president

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

Technical assistance and capacity in the following areas will be needed by Indonesia FIU, LEAs and judicial agency:

- Non conviction based confiscation
- Anti-money laundering system

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

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**LEADERS' AND MINISTERS' COMMITMENTS**

**Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:**

- 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;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

**MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS**

As the only body entrusted to regulate, manage and review public officials' financial disclosure, KPK committed itself to perform the task with the high standard. KPK is determined to increase compliance rate by giving technical assistance for public officials. Through training of trainers and consultation, KPK socialize and train public officials on how to provide complete and thorough report of their assets information.

As part of corruption prevention and accountability in the electoral process, KPK also urges candidates of the district/presidential elections to disclose their assets. KPK then checked and verified of the reports. The reports then made public. Since 2012, KPK along with the regional Election Commission also socialized the importance of establishing good governance to the candidates, parliament members and politicians.

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

A better system to prevent conflict-of-interest needs to be improved to support anti-corruption measures. The government also has to create an effective and transparent recruitment system of civil servants in order to recruit high competent officials. In addition, every government institutions should also develop and maintain internal whistle-blower system to receive complaints from public.

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

### III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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#### 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

Since the enactment of Law on the Prevention and Eradication of the Crime of Money Laundering (Law No. 8 Year 2011), Indonesia Financial Intelligence Unit, the PPAATK, has been implemented tremendous efforts in preventing and detecting money laundering and safeguarding the financial system. The new AML law regulates specific provisions to counter money laundering, as follows:

- Enlist wider coverage of predicate offences (25 crimes) including narcotics & psychotropic substances and any other crimes imposed with 4-year imprisonment or more (article 2)
- Clear description and scope of money laundering and the elements of the crime (article 3, 4 and 5)
- Strong penalties for the offences (article 7)
- Indonesia FIU should be able to request information from bank (bank secrecy is not levied) (article 28, 45)
- The agency has powers to freeze, seize and confiscate proceeds of crime (article 81)

Indonesia encourages all APEC economies to have strong cooperation amongst FIUS and to seek potential joint cooperation or investigation to effectively prevent cross border criminal acts and deny safe haven.

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

Law enforcement authorities should continue to work together to prevent, investigate and prosecute money laundering acts as deemed by the law. The two main objectives of the law are safeguarding the stability of financial system from money laundering and other financial crimes and also to recover the stolen state assets.

To establish strong AML/FT regime, FIU and other competent authorities should:

- Establish a network of key contacts across agencies who can communicate each other informally to facilitate a whole-of-government approach to follow and detect the proceeds of corruption
- Work together to achieve the best asset recovery outcomes
- Build shared understanding of the roles and responsibilities of key agencies involved in following the proceeds of corruption

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

- Stronger cooperation amongst APEC economies in combatting money laundering
- ACT NET shall facilitate and provide opportunities of APEC's FIUs to share information and conduct joint investigation within the scope of Asia Pacific
- MLA request for specific asset recover purpose should be prioritised in order to punish the perpetrators and their illicit assets

#### IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:

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##### 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

One thing that KPK still lacks is legislation to investigate and prosecute private sector corruption. Based on anti-corruption law, KPK is solely liable to prosecute corruption case involving state/government officials and other persons involved in the crime. During these past 10 years (2003-2014), KPK has been prosecuting hundreds of people inflicted in corruption (managers, directors, CEO and employees of private and multinational companies).

Regarding the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Indonesia isn't a party to the OECD nor ratifies the convention. Since Indonesia also does not have any anti foreign bribery law, the government has been drafting such legislation on the amendment of the anti-corruption law. The amendment will be regulating the active and passive forms of bribery of foreign public official.

The anti-bribery legislation is regulated by Law No. 31/1999 and Law 20/2001 (article 11, 12, 12 A and B). As part of prevention measures, KPK develops anti-bribery and anti-gratuities program for ministries and government officials. KPK educates government officials about gratuities, gifts and benefits and how to make a report to the Commission. KPK also cooperate with NGOs and business sector on anti-bribery programs to support the implementation of UNCAC provision and APEC commitments.

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

- The enactment of the amended anti-corruption law by 2015-2016.
- To assist the development of gratification control programs in government institutions
- The implementation of "gratification e-module"
- Cooperate with CSOs/NGO in promoting governance and code of conduct for business

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

## V. ENHANCING REGIONAL COOPERATION

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### 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

During its Chairmanship, Indonesia had initiated the establishment of the first APEC law enforcement network. The initiative had been called ACT-NET whereas the ACTWG will have the first meeting of ACT-NET in SOM 3 2014. Indonesia has been working closely with APEC members in terms of corruption cases investigation and prosecution. Indonesia also has been coordinating and actively participating in several anti-corruption and transparency initiatives including OECD Working Group on Bribery meetings, APG, ADB/OECD Anticorruption Action Plan for the Asia Pacific region and also South East Asia Parties against Corruption (SEA-PAC).

KPK Indonesia also has been active in maintaining cooperation with international organizations and other countries by:

- Sending delegations to various international forums and meetings for on-going active participation
- Organizing visiting programs (training) for foreign anti-corruption agencies



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

Indonesia is committed to develop and intensify stronger cooperation with all APEC economies in the fight against corruption, money laundering and other economic/financial crimes.

It is also imperative to build strong the MLA and extradition regime in order to provide clear and informative procedures on Mutual Legal Assistance (MLA) request to Indonesia.

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

As deemed by the UNCAC and APEC anti-corruption commitments, APEC economies should give higher priority to process MLA/extraditions and any other requests from fellow APEC economies. This is to ensure more effective and stronger cooperation to investigate and punish any lawbreakers. In the spirit of asset repatriation strategies, this initiative will also be needed to prevent money laundering scheme and to save back the illicit assets to its origin.

## VI. OTHER APEC ACT LEADERS' AND MINISTERS' COMMITMENTS

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### 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: (L) 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

Corruption prevention and eradication (CPE) on a national scale is the commitment of the government in the framework of running a clean and dignified country. For that reason, it is our intention to continuously strive for the fulfilment of this commitment without end. To this end, Indonesia had issued the anti-corruption grand strategy namely the "National Strategies on Corruption Prevention and Eradication" as the national platform on combating corruption consisting of medium-term and long-term objectives. The element of the National Strategies on Corruption Prevention and Eradication are:

1. Enforcement strategy
2. Prevention strategy
3. To carry out measures to harmonize the drafting of laws and regulations in the field of corruption eradication and related sector
4. Anti-corruption education and campaign
5. International cooperation and asset recovery/repatriation
6. Anti-corruption reporting mechanism

The national strategies should be implemented by relevant government institutions and ministries on yearly basis. Based on the Strategies, each institution should formulate, plan and implement anti-corruption prevention program within its jurisdiction and scope of work. The Indonesia Central Planning Agency (Bappenas) who is responsible to monitor and review the implementation program will carry out thorough monitoring program and provide report to the President.

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

- To ensure the actual and continuity of the implementation of National Strategies on institution level
- To monitor the effectiveness of the strategies in combating corruption and creating governance and transparency in Indonesia

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

**ECONOMY AND IN THE REGION**

Assistance from reputable international organization to monitor, review and enhance the effective implementation of the National Strategies/Plan is strongly needed



**Asia-Pacific  
Economic Cooperation**

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**2014/SOM3/ACT/018**  
Agenda Item: 10

## **Anti-Corruption and Transparency Reporting Template - Korea**

Purpose: Information  
Submitted by: Korea



**19<sup>th</sup> Anti-Corruption and Transparency  
Experts' Working Group Meeting  
Beijing, China  
13 August 2014**

**APEC ANTI-CORRUPTION AND TRANSPARENCY (ACT) REPORTING TEMPLATE**

**ECONOMY:** KOREA  
**CALENDAR YEAR:** 2014 **LAST UPDATED:** May 1, 2014

**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.**

Korea signed the UNCAC in 2003, and it was ratified by the National Assembly on 27 March 2008. The convention entered into force on 26 April 2008. The act to implement the convention, *the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corruption Practices* was passed in the National Assembly on February 29, 2008. The implantation review of Chapter III & IV of the UNCAC on Korea was concluded in March 2013. Korea successfully responded to the on-site visit of the convention and its executive summary is available on UNCAC website. Korea has also been assessed and received a positive evaluation regarding Korea's implementation of phase 3 recommendations of the OECD Anti-Bribery Convention in October 2012.

As for the Anti-Money Laundering and Countering Financing of Terrorism(AML/CFT), since its entry to the FATF in 2009, the Korean government equipped itself with a sound and internationally renowned AML/CFT regime as it underwent multiple revisions and improvements to *the Financial Transaction Reporting Act (FTRA)* and *the Prohibition of Financing for Offences of Public Intimidation Act (PFOPIA)*

There have been the ACRC's noteworthy efforts to meet the APEC's commitments on anti-corruption and Transparency recently.

In 2011, the ACRC introduced *the Act on the Protection of the Public Interest Whistleblowers*, securing a safe and reliable channel through which all people can report on violations of the public interest. The act becomes an institutional basis on which to promote ethical corporate management practices and fair competition among market participants. It also provides a legal safe net to protect public interest whistleblowers, since it contains provisions securing confidentiality and the personal protection of whistleblowers acting for the public and banning retaliation against the public interest whistleblower

The ACRC has prepared the draft of the *Bill on the Prevention of Illegal Solicitation and Conflict of Interest* and submitted the bill to the National Assembly in 2013. The new bill will impose a criminal or administrative penalty on public officials who accepted money, entertainment or any item of value even if no special favor is given to the provider in return. In addition, the bill prohibits anyone from making an illegal solicitation to public officials with regard to their official duties.

Since the first enactment of *the Code of Conduct for Public Officials* in 2003, all central government agencies and local governments created their own code of conduct in May 2003. All judicial offices including courts, the National Election Committee, and the Constitutional Court with an exception of the National Assembly also adopted their own version of a code of conduct. State-owned enterprises and organizations including state-funded agencies established the Code of Conduct for Public Organization Employees since April 2006. *The Code of Conduct for Local Council Members* was proclaimed as a presidential decree on November 2, 2010 and entered into force on February 3, 2011.

In 2012, the ACRC was awarded the UN Public Service Award 1st prize recognizing the integrity assessments. The Integrity Assessment is an initiative to measure and publish the integrity levels of public organizations by surveying public service users on corruption experience. This initiative encourages the public sector to make voluntary efforts to fight corruption.

The ACRC opened Anti-Corruption Training Institute in October 2012, as the first exclusive anti-corruption educational facility in Korea. The institute, which can accommodate 550 trainees at once, mainly focus on training of public officials from the central government, local governments and other public organizations.

As for the fight against corruption in private sector, in addition to the implementation of the Public Interest Whistleblower Act, the Integrity Pact was introduced in 2012 to prevent any unjust acts of bidders for a contract to which the state is a party and expanded to the local government contracts in 2013.

## **2. Summary of forward work program to implement Leaders' and Ministers' commitments.**

For this year, the ACRC is planning to pass the "bill on the prevention of illegal solicitation and conflict of interest" through the National Assembly this year. It is also planning to revise the "Act on the Protection of Public Interest whistleblowers" to expand the protection of whistleblowers, which will be applicable to a total of 280 laws pertaining to public interest violation by adding 100 laws that are directly related to the health and safety of the people.

**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.**



## 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)

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### RELEVANT UNCAC PROVISIONS

See below

### MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS

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

The Anti-Corruption and Civil Rights Commission of Korea is the national anti-corruption body, which is the control tower of anti-corruption policy for the central and local governments, and public organizations. The ACRC formulates anti-corruption policies to be implemented at every level of government. The major anti-corruption policies conducted by the ACRC are: i) performing the Integrity Assessment and Anti-Corruption Initiatives Assessment; ii) analyzing and removing corruption-causing factors from the very stage of drafting laws and regulations; iii) receiving and handling reports on suspected corruption and public interest violation; iv) managing the Code of Conduct for Public Officials; v) offering protection and reward for reporters of corruption and public interest violation; vi) providing integrity training through the ACRC's Anti-Corruption Training Institute; and raising public awareness and promoting partnerships with civil society and international organizations against corruption.

On the other hand, the Ministry of Security and Public Administration (MOSPA) is responsible for the recruitment & HR management of public

officials, and public service ethics including property registration & disclosure system for public officials, restriction of employment of retired officials, and others.

- **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.

#### **Korea's Public Official Recruitment and HR Management System (the Ministry of Security and Public Administration)**

##### **Recruitment**

The Korean government recruits public officials through recruitment exams or other channels based on the principles of meritocracy and openness. Two types of recruitment exams are in place: entry-level open recruitment exam and career-based open recruitment exam. The entry-level open recruitment exam is for many, unspecified people and categorized into the exams for 9<sup>th</sup> grade public officials, 7<sup>th</sup> grade public officials, and 5<sup>th</sup> grade public officials (manager-level). This system aims to guarantee equal opportunity for all and to attract talent to the public sector. The recruitment system is managed by the Ministry of Security and Public Administration (MOSPA), according to the State Public Officials Act and the Presidential Decree on Appointment of State Public Officials. On the other hand, career-based open recruitment exams are conducted by the Minister of the concerned ministry except the 5<sup>th</sup> grade public officials, for which MOSPA conducts the exam. Career-based open recruitment system was introduced to recruit experts and experienced public officials for specific areas.

##### **Promotion**

Public officials can be promoted to a higher position based on the assessment on their performance records, career, test results, and others. When a public official was imposed a disciplinary action in the past, he or she can be promoted only when a certain period of time (6 to 18 months) has passed since then depending on the type and severity of the disciplinary action. In case that the public official was disciplined for receiving money and hospitality, misappropriation or embezzlement of government budget, sexual harassment or sex trade, additional three months shall be added to the period for which promotion is limited.

##### **Remuneration**

Every year, MOSPA conducts investigation into the overall level of remuneration for public officials compared to that of the private sector, and reflects

the result in drafting plans to improve working conditions of public officials, if necessary. For comparison, the remuneration level of the private sector means the average wage for office workers at medium-sized companies with more than 100 regular workers. When the private sector remuneration is set to 100, the remuneration for public officials stands at 84.5% as of 2013.

#### **Education and Training**

Education and training for public officials is provided by MOSPA, central government agencies and their training institutes. Training institutes mainly provide general training courses of newly-hired public officials and specialized training courses for public officials at each agency. There are 30 training institutes under central government agencies and 15 for local government officials.

The Anti-Corruption Training Institute, which was opened in 2012, is responsible for offering anti-corruption education and training for public officials, providing group training courses and cyber training courses. In 2013, 4,537 officials participated in group training courses and 70,290 took cyber courses. Group training courses are designed for three target groups: (1) high-ranking public officials, (2) audit and integrity officials, and (3) working-level public officials. The ACRC has been shifting the focus of anti-corruption education from the working-level to high-ranking officials, by the means of reflecting education records of high-ranking officials in the core indexes of Anti-Corruption Initiatives Assessment. It provided five sessions for 221 participants in 2013, and aims to offer 10 sessions for 500 participants in 2014. In addition, the Institute visits and provides tailored training courses for each organization upon their request. The Anti-Corruption Training Institute focuses on enjoyable and cultural education with play or concert rather than education centered on anti-corruption policy, institutions, and systems.

- **Art. 7(4) Adopt, maintain and strengthen systems that promote transparency and prevent conflicts of interest.**

#### **Enacting and implementing Public Service Ethics Act**

Korea enacted Public Service Ethics Act to guide public officials to meet their obligations by preventing corruption and securing fairness of the public sector. Article 2-2 of the Act prescribes that conflicts of interest should be prevented preliminarily and public officials should not pursue their private interest abusing their authority. Articles following the Article 2-2 provide concrete initiatives such as Property Registration, Blind Trust of Stocks, Gift Declaration and Employment Restrictions of Retired Public Officials.

#### **Enacting and implementing Code of Conduct for Public Officials**

The ACRC enacted and has implemented the Code of Conduct for Public Officials, in order to set appropriate value and behavioral standards to help public officials not to be corrupted in conflict situations, including conflicts of interest, while carrying out their duties.

In order to prevent public officials from facing conflicts of interest while carrying out their duties, the Code of Conduct for Public Officials set 16 behavioral standards such as "Recusation for Conflicts of Interest (Article 5)," and "Prohibition of the Improper Use of Public Position (Article 10-2)." It also defines disciplinary measures for the violators.

Anyone who detects public officials' violation of the code of conduct can report the case to the ACRC or a Code of Conduct Officer in the agency concerned. Regarding the reported case, the ACRC confirms the violation, informs the head of related officer's agency and receives result of the case handled, under article 10 of enforcement decree in Act on Anti-Corruption and the Establishment and Operation of the Anti-Corruption & Civil Rights

Commission. The agency concerned handles the reported case, and then notifies the result to the ACRC.

The ACRC conducts inspections in order to enhance compliance and secure effectiveness of the code, especially during holiday seasons when moral hazard is highly likely to occur in civil services. The ACRC reports violations to the agency concerned so that it can address the issue.

**Planning to enact Act on Prevention of Illegal Solicitation and Conflict of Interest**

The ACRC is planning to enact a new law, so-called "Act on Prevention of Illegal Solicitation and Conflict of Interest" which deals with "conflict of interest," currently stipulated in the Code of Conduct for Public Officials (Presidential Decree), and penalties for the violation, in order to more effectively prevent and manage conflict of interest situations facing public officials.

To this end, the Commission has prepared to draw up this new law, by studying foreign legislation cases such as the U.S. or Canada, collecting opinions of experts, and holding open discussions since 2011. Furthermore, it has made and distributed "Guidelines for Conflict of Interest" as a practical guide for public officials to fairly carry out their duties and to effectively respond to conflict of interest situations.

The "Guidelines for Conflict of Interest" suggests 4-step measures (self-diagnosis check list – counselling about conflict of interest situations – managing conflict of interest – monitoring conflict of interest & taking disciplinary measures against violation) so that public officials themselves can assess corruption possibilities and resolve conflict of interest through the ethical counselling system.

- **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.**

The Code of Conduct for Public Officials is applicable to national and local government officials and was enacted on February 18, 2003 as a presidential decree and entered into force on May 19, 2003. Based on the code of conduct, all central government agencies and local governments also created their own code of conduct and put them into effect on May 19, 2003. In September 2003, all judicial offices including the court, the National Election Committee, and the Constitutional Court with an exception of the National Assembly adopted their own versions of a code of conduct. With the amendment of Article 8 of the Anti-Corruption Act in July 2005, the code of conduct for public officials expanded to public organization employees. Urged by the ACRC, all state-owned enterprises and organizations including state-funded agencies established and have implemented the Code of Conduct for Public Organization Employees as a form of official policy with approval from their board of directors or from the head of organization. As of 2014, the number of state-owned enterprises and organizations is 868 according to the MOSPA bi-annual announcement prescribed by the article 3-2 of the Public Service Ethics Act.

The Code of Conduct for Local Council Members was proclaimed as a presidential decree on November 2, 2010 and entered into force on February 3, 2011. The Code of Conduct for Local Council Members prescribes 15 ethical standards that local parliament members must abide by along with detailed descriptions of the system for implementing the code of conduct.

- **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]

#### Implementing Property Registration System for Public Officials

Property Registration System has been introduced to prevent illegal property accumulation of public officials by regularly requesting them to disclose information on property status of themselves and their family members.

A legal basis for the system lied in the enactment of Public Service Ethics Act in 1981, and the first registration for 644 high-rank officials was made in 1983. In 1993, voluntary asset declaration of the president Kim Young-Sam drove reinforcement of the Property Registration and System. As a result, the Public Service Ethics Act was revised with extension of the number of target officials above Grade-4 and officials above Grade-7 working in such as taxation, auditing, and law enforcement areas.

After some additional revisions, about 190 thousand public officials are registering their property status as of 2014 and 5,004 high-rank officials such as President of Korea, members of the National Assembly, rank-'A(Ga)' of SES, and chairs of public service related companies are registering and disclosing their property status, promoting transparency of the government

#### <Overview of the Property Registration System>

Target officials	Elected and politically appointed officials, public officials above rank-4 (above rank-7 working in certain areas), judges, prosecutors, presidents/deans of universities, military officers above colonel-level, chairs of public service related organizations
Target properties	Cash, deposits, securities, and real estate of public official oneself, spouse, and lineal descendants and ascendants
Reviewing body	Public Ethics Committee
Penalties against corrupt officials	If a false disclosure or illegal accumulation of property is acknowledged: - taking warning or corrective action, - making the false disclosure public - imposing penalties such as disciplinary measures or dismissal

#### <Asset Registry Agency>

Types of public officials	Asset registry agency
. Lawmakers and public officials of the National Assembly . Judges and public officials of the courts . Chief Justice, judges, and public officials of the Constitutional Court	- The secretariat(or the administration office) of the concerned agency

. Public officials of the National Elections Commission and local elections commissions	
. Public officials of the government ministries and agencies	- The government ministries and agencies
. Public officials of local governments . Local assemblymen and public officials of local assembly	- The local government - The local assembly
. Public officials of offices of education of metropolitan cities, provinces, and special self-governing province . Commissioner and public officials of education commissions of metropolitan cities, provinces, and special self-governing province	- The office of education - The education commission
. Officials of public service-related organizations	- Supervisory ministries and agencies(local government) of the public service-related organization
. Other persons subject to asset registration, public officials of government ministries and agencies, and executives of public service-related organizations whose assets are disclosed	- The Ministry of Security and Public Administration

#### **Implementation of the Blind Trust of Stocks Initiative**

The initiative of Blind Trust of Stocks prescribed in Article 14-4 through 14-10 of the Public Service Ethics Act has been introduced to eliminate the connection between public officials' duties and stocks they hold. Public officials who are subject to asset disclosure or who are 4<sup>th</sup> grade or higher at the Financial Services Commission should transfer their stocks through blind trust. When the amount of stocks possessed by him/herself, spouse, and lineal descendants and ancestors exceeds KRW 30 million, the stocks should be disposed according to one of the following procedures: a. they should sell the stocks possessed, or b. they should sign a blind trust contract with a financial institution which would take over the stocks. When the public official does not want to follow either of the procedures, he or she should be subject to the deliberation of the Blind Trust Committee regarding the duty-relatedness of the stocks possessed. The asset registry agency should announce the disposal or blind trust of the stocks on the Official Gazette within one month of such notification from the stockholder.

#### **Implementation of Gift Declaration**

Gift Declaration initiative prescribed in Article 15 and 16 of the Public Service Ethics Act requires public officials to declare any gifts they receive from foreign governments, other organizations, or individuals in connection with their duties. However, gifts under 100 thousand KRW and personal gifts from foreign individual do not have to be declared.

Public officials and staff or executives of public service-related organizations (including family members) should declare gifts whose value exceeds

USD 100 at the time of receipt. The public official who received any gifts should immediately report to the head of his/her ministry or organization, and the head should transfer the gift to the head of the registry agency within 30 days.

**<Head of registry agency by types of public officials>**

Types of public officials	Head of registry agency
Public officials of government ministries and agencies, the Board of Audit and Inspection, the National Intelligence Service, institutions under the President, and staff and executives of public service-related organizations	The Minister of Security and Public Administration
Soldiers and officials of the Armed Forces	The Minister of Defense
Public officials of the constitutional institutions(including the National Assembly and the courts), local governments, and staff and executives of public service-related organizations	Head of the concerned agency (separately operated from the executive branch)

**Restriction of employment of retired officials**

Articles 17 through 19 of the Public Service Ethics Act prevent inappropriate connection between public officials and private companies by restricting retired officials to be employed to certain companies. For 2 years, public officials above rank-4 and officials above rank-7 working in law enforcement, auditing, and issuing license are limited to get a job of private companies which are related to their former duties of last 5 years. This initiative was introduced to prevent retired public officials from exercising inappropriate influence on their former government agencies in favor of their new companies.

The employment restriction provisions are applied for public officials who are subject to asset registration under Article 3 of the Public Service Ethics Act and who seek to work at a for-profit private business or organization within 2 years after retirement. Types of businesses or organizations for which retired public officials cannot work are those with the capital of more than KRW 5 billion and trade volume of more than KRW 15 billion, which are designated by the Minister of Security and Public Administration. As of 2014, a total of 3,960 businesses and organizations are subject to the restriction. When a retired public official wants to work at such a business or organization, he or she should apply for the examination of duty-relatedness by the competent public service ethics commission after his/her ministry or agency completed the initial examination. The government monitors violations of the restriction by checking information on employed workers collected by the National Health Insurance Service twice a year. A violation can lead to dismissal from his/her company and imprisonment of no more than 1 year or a fine of no more than KRW 10 million.

**Report on Outside Activities**

Pursuant to Article 15 of the Code of Conduct for Public Officials, public officials should report to the head of his/her agency the details of outside activities including the person who requested such activities, the place, date, and honorarium thereof when they provide lecture, presentation, or participate in discussion at a seminar, a public hearing, a symposium, or educational courses more than three times or six hours a month in return for any honorarium. They also have to report to the head of his/her agency when they receive more than KRW 500,000 per such outside activity as lecture.

- **Art. 10(b) Simplify administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities.**

#### **Operation of the Information Disclosure System**

The Information Disclosure System aims to guarantee the people's right to know and encourage public engagement in governance by disclosing information which public institutions such as central government agencies and local governments produce and retain while providing public services. The legal ground for the system is the Official Information Disclosure Act (implemented by MOSPA), which took effect on Jan. 1, 1998.

The Act applies to government institutions (central government agencies, the National Assembly, the courts, the Constitutional Court, the National Elections Commission), local governments, state-owned enterprises, government-funded corporations and organizations, and non-profit corporations subsidized by the state or local governments. The types of information which can be disclosed are documents, maps or blueprints, films, tapes, slides or other types of materials which public institutions produced or acquired in the course of performance of public duties.

The first step to request the disclosure of information is to search for the information at the government information disclosure system ([www.open.go.kr](http://www.open.go.kr)) or to submit the information disclosure application form to the competent agency which manages the wanted information. The government agency which received the request should decide on whether the information can be disclosed within 10 days of receiving request, and when the information is decided not to be disclosed, the agency should notify the reason and the appeals procedure to the applicant.

The appeals against the decision of the agency can be made to: (1) the agency which made the decision, (2) the administrative appeals system, and (3) the administrative appeals court.

Meanwhile, the Korean government is operating the pre-announcement system for information on the website of government agencies in order to provide information people want to know before they request the disclosure of such information. In addition, as for public documents which were set "open to the public" by public officials, those documents are disclosed at the government information disclosure system ([www.open.go.kr](http://www.open.go.kr)) without any request for disclosure. Such disclosure system will be expanded to all public institutions which use the electronic approval system by 2016.

- **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.**

There are legal provisions, public policies, and programs that promote cooperation between business and both law enforcement and regulators, and promote integrity in the private sector. For example, the Korean Policy Council for a Transparent Society develops policies and facilitates cooperation among various sectors by sharing project plans and disseminating best practices. The Council brings together some 26 organizations in nine sectors such as public service, politics, business, civil society, state-owned companies, academia, and the media. The Council supports legislative and regulatory amendments and institutional improvements necessary to ensure transparency.



Korea has taken steps to increase awareness of ethics standards and compliance procedures among firms, officials, and professionals involved in the private sector. For example, in 2011, ACRC organized training programs on ethical management and prevention of corruption for publicly-owned corporations and SMEs. ACRC has also produced Business Ethics Brief, a monthly newsletter on domestic and global trends in ethical business management, distributing it to corporate managers, civil society groups, and university students by e-mail. There have also been focused awareness-raising and capacity-building efforts in regard to the IFRS and related standards. The ACRC, together with the Korean Institute of Certified Public Accountants (KICPA), has sought to enhance transparency in the private sector through educational measures. In 2011, the groups co-hosted a "Symposium for Transparent Accounting to Realize Fair Taxation" and a "Symposium to Evaluate Accounting Transparency in Private and Public Sector".

Further, Korea has endorsed certain public commitments by the business community in this area, e.g. to strengthen ethical management, enhance transparency in accounting, and improve corporate governance. For example, the Public Procurement Service (PPS) has established due diligence measures requiring all bidders to sign a "Pledge of Ethical Practice and Integrity" in submitting their bids. The Pledge, citing the OECD Anti-Bribery Convention, commits bidders to establish codes of ethics and whistleblower protection mechanisms. The agreement includes administrative sanctions for bidders and contractors who have violated provisions of the Pledge. Random surveys are used to check compliance. The PPS also runs an Integrity Ombudsman Program, providing external monitoring of government contracting processes to ensure compliance with the PPS's integrity rules (OECD 2011: 37).

In 2012, the Integrity Pact system was introduced to prevent any unjust acts of bidders for a contract to which the state is a party. Penalty surcharges will be imposed on "unjust businessmen" in government contracts. The Act on Contracts to Which the State is a Party ("State Contract Act") was amended on December 18 in 2012 to add provisions about the "Integrity Pact." According to the amendment, a bidder or contracting party for a government contract will be required to sign an "integrity pact." The Pact stipulates that the bidder or contractor should not give or receive any money or entertainment when bidding for or making or implementing the contract. Violation of the Pact may result in the cancellation of the tendering or acceptance of the bid, or cancellation or termination of the contract. The Act on Contracts to Which the local government is a Party was also amended on August 8 2013 to introduce the Integrity Pact in local government contracts.

Certified Public Accountants (CPAs) in Korea are bound by professional standards and codes of conduct. The Certified Public Accountants Act (arts. 3-9, 41, 46) provides for mandatory registration, qualification, licensing, and continuing education. The Korean Institute of Certified Public Accountants (KICPA) is a member body of IFAC (International Federation of Accountants), and has fully adopted and published the IFAC-sponsored International Ethics Standards. Under Korea's Certified Public Accountant Act, CPAs must be members of KICPA and conform to its Code of Ethics. Under the CPA Act, KICPA is entrusted with professional governance functions such as registration and discipline of CPAs and accounting firms, setting audit standards, quality control of audited financial statements, and provision and supervision of continuing education for members. KICPA committees monitor and enforce the Code of Ethics and other professional standards, and investigate breaches of KICPA bylaws and provisions of the CPA Act.

- **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.**

The Financial Services Commission (FSC) is the principal supervisory authority on financial institutions in Korea and the Financial Supervisory Service (FSS) acts as the executive supervisor for the FSC.

#### Supervision on Corporate Disclosure

The corporate disclosure system is for securities issuers including listed companies, to inform investors of important facts on the company such as managerial status, current, past and projected financial performance, future business plans, etc. in a prompt and accurate manner. This helps investors make rational investment decisions and the securities market to maintain a fair trading order.

- Registration Statement: When the total public offering or sales amount of new or outstanding securities is 1 billion won or more, the public offering or sales may not be made unless the issuer files a registration statement that is accepted by the FSC/FSS.
- Periodic Disclosure: A stock-listed corporation in the KRX stock market or KOSDAQ market, or an issuing company that has listed its non-guaranteed bonds, convertible bonds, bonds with warrants, participating bonds, exchangeable bonds or certificates representing pre-emptive rights should submit an annual business report to the FSC/FSS and the KRX within 90 days after the end of each business year. A corporation that must submit an annual business report should also submit semi-annual and quarterly business reports to the FSC/FSS and the KRX within 45 days after the end of the respective period. A corporation that adopted K-IFRS must submit the annual report in consolidated basis.
- Other Disclosures : Tender Offer, Proxy Solicitation, Large Acquisitions and Changes in Shareholding, Reports by Executives and Significant Shareholders

#### Regulation on Audit

The purpose of audit and accounting regulation is to protect investors and other stakeholders by ensuring transparency and reliability of financial statements. The audit and accounting regulation is mainly composed of three components: regulations on companies, regulations on external auditors, and establishment of professional standards.

*External Audit:* According to the Act on External Audit of Stock Companies 1 (AEASC), a stock company which meets one of the following criteria is required to have its financial statements audited by an external auditor:

- A stock company with total assets equal to or greater than KRW 10 billion as of the end of the preceding fiscal year;
- A listed stock company and a stock company which intends to be listed in the relevant business year or the following business year;
- A stock company with total assets and total liabilities each equal to or greater than KRW 7 billion as of the end of the preceding fiscal year;
- A stock company with total assets equal to or greater than KRW 7 billion and with 300 employees or more as of the end of the preceding fiscal year.

These companies should appoint an external auditor within 4 months from the commencement of each fiscal year, which requires approval from its internal auditor or auditor appointment committee. The appointment should be reported to shareholders at the annual general shareholders' meeting, notified to shareholders in writing or by email, or posted on the company's website.

*Internal Accounting Management System:* A company that is listed or has total assets of KRW 100 billion or more as of the end of the preceding fiscal year should establish an internal accounting management system to ensure the reliability of accounting information it prepares and discloses to the

public. The internal accounting management system includes (i) matters related to the identification, measurement, classification, recording, and reporting of accounting information; (ii) matters related to the control and correction of errors in accounting information; (iii) matters related to the internal verification of accounting information such as regular examination and adjustment of accounting information; (iv) matters related to the maintenance of books and records such as control procedures designed to prevent forgery, alteration, and destruction of accounting information; (v) matters related to the separation of duties between executives/ employees in charge of preparing and disclosing to the public accounting information; and (vi) other matters necessary for the preparation and disclosure of reliable accounting information.

*Review and Examination of Financial Reports:* The SFC/FSS may review financial reports of a company subject to the external audit requirement. If the SFC/FSS deems it necessary, it may request the company, its subsidiaries, its auditor, and other related companies to submit certain documents or present their opinions. The SFC/FSS may examine the books and records of the company concerned, its subsidiaries, and other related companies or examine their business operations and financial status. If necessary, the SFC/FSS may also review the external auditor's audit report. For the purpose of conducting an audit report review, the SFC/FSS may review auditors' working papers and interview those involved in the audit engagement.

- **Art. 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.**

#### **Public access to Information**

See response on Art 10(b) of I.A

#### **Public Participation in Decision-making processes**

The ACRC aims to faithfully carry out its duty as a communication channel between the people and the government. Under the slogan "No voice left unheard," the Commission integrated communication channels for public complaint, suggestion, and policy discussion that had been operated by different administrative organizations and created an online communication channel called "e-People."

Starting with the integration of the complaint handling systems of 7 central administrative bodies in August 2005, e-People integrated all central government departments in July 2006, and connected local governments and major public organizations in February 2008, to lay the foundation to provide a one-stop service in handling civil complaints to the people. From then, until 2013, it integrated the complaint-filing channels of 740 organizations in total, including offices of education in cities and provinces across the nation, and public organizations. Consequently, the number of complaints filed through e-People is constantly increasing, rising from 402,442 in 2006 to 1,523,787 in 2013.

The ACRC operates "Policy Discussion on e-People" as online public-private cooperative channels, to make and push forward government policies through communication with the people before the government establishes, implements, and evaluates policies.

The Policy Discussion on e-People is an online platform where the people and the government communicate with each other. Ordinary people, experts, and public officials participate in the e-People policy discussions on large-scale government projects, major state affairs, or major government policies. Through the e-People policy discussion, government agencies can collect the opinions of the people through a unified channel when making and implementing their policies, and the e-people can actively suggest their opinions on the policies of each agency.

As of 2013, the "Policy Discussion on e-People" has integrated the policy discussion channels of 111 government agencies. Furthermore, based on this

system, the ACRC has communicated with the people on 1,359 issues of various agencies in 2013 alone, through electronic hearings, policy forums, and surveys. Moreover, the ACRC directly selected the issues or policies that were closely related to the daily lives of the people, such as private education or sexual violence against children, and conducted special online discussions, working with the concerned agencies and private portal sites to listen to the opinions of the people across the nation. The collected opinions were reflected in the government policies.

Meanwhile, the rapidly increasing number of smartphone users has changed the way of communication to mobile platforms such as mobile messengers or SNS. Therefore, the "Policy Discussion on e-People" channel, which was limited to the internet website, is now accessible through the mobile application since May, enabling the people to participate more easily in policy discussions. The policy discussion application received the silver medal at the 2013 Korea GoodApp Award, proving its uniqueness and effectiveness, and it is contributing to the realization of a communication service without time and space restraints

#### **Students Education & Public Awareness Raising**

To nurture the right values and lifestyle of the youth and the future generation, it is necessary to teach the value of integrity from a young age. Since 2008, the ACRC designated "Integrity Education Research Schools" and supported their efforts to provide students with integrity education programs. The Integrity Model School program was introduced to designate some elementary/middle/high schools nationwide to provide customized integrity education for their students, and to share the best practices of these schools with other schools. The 2013 program was carried out by 30 schools (25 elementary schools and 5 middle schools) with 2 low-performing schools replaced out of the schools designated in 2012.

In addition to "Integrity Education Research Schools", the Commission developed integrity education materials for teachers and parents of elementary, middle, and high school students so that systematic integrity education can be carried out in families and schools. The Commission has distributed the materials to all schools to promote integrity education in school life.

The educational materials developed for elementary schools in 2009 are comprised of workbooks for students and guidebooks and referential materials for teachers, to be used in various ways in class. The main values emphasized in the materials are fairness, responsibility, commitment, moderation, honesty, and respect. With subtitles such as "Impartiality & fairness" or "Honesty for truth," the relationship between the values and integrity is well explained in the materials. The educational materials for middle and high schools developed in 2010 are divided into 4 types: workbooks for middle school students and guidebooks for middle school teachers; and workbooks for high school students and guidebooks for high school teachers. These materials were developed to be used as supplementary materials for ethics or social studies classes.

It is notable that the materials for elementary schools were developed for teaching values to individuals while materials for middle and high schools were created to make students think about anti-corruption from institutional and social perspectives.

In the meantime, the Commission developed the Integrity Education Manual for parents in 2010 so that integrity education can be provided not only in school but also at home. This manual has two parts: "Common sense of integrity for parents," explaining the norms of integrity and actual cases; and "Integrity Stories to share with children," suggesting concrete instruction guidelines for situations of conflict of interest that parents and children may often face.

The Commission also developed various forms of integrity education materials for elementary, middle, and high school students. These materials were developed to be available in the mobile environment, such as tablet PCs and smart phones, so that the students can have easy access to them. The ACRC used various content tools such as animations, cartoons, or games rather than existing materials like texts or video clips.

The Commission produced an animation series, "Moongchi's Family" with 3 seasons from 2009 to 2011. The 26-episode TV animation series, each running for about 5 minutes, was planned and produced in 2009 to raise awareness among elementary school students about integrity by conveying messages in a way that young students can understand. The series helps children to easily understand the unfamiliar and difficult concept of integrity and to learn about the values of courage, conscience and honesty through the experience of a puppy named Moongchi. The series was aired on EBS, and was well received by the audience as an effective tool to teach integrity to children through animation. After the broadcast, the series was distributed to about 6,000 elementary schools and offices of education around the country to be used in class. The English version was also developed to be used as English education material.

The ACRC has provided various programs that college students can participate in such as writing contests, promotion activities, and field trips. The University Student Integrity PR Club was established to raise awareness of university students about integrity issues, and spread a culture of integrity through creative and passionate spirits of university students since they are the future leaders of the nation. Under the initiative, which began in 2009, 4~6 members form a team representing a region. They have made considerable contributions to establishing a culture of integrity in the concerned region and spreading integrity values on campus by performing integrity campaigns, voluntary activities, and club activities based on their own contents.

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

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

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

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**RELEVANT UNCAC PROVISIONS**

See below

**MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS**

◇ *Responses below are based on the country report of implementation review on Chapter III & IV of the UNCAC*

- **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.

Articles 133, 129 and 130 of the Criminal Act criminalize active and passive bribery of public officials. The definition of public official is contained in Article 2 of the State Public Officials Act and Article 2 of the Local Public Officials Act and covers a wide range of subjects, including appointed and elected officials, as well as the judiciary and prosecutors. Additionally, Article 4 of the Act on Aggravated Punishment extends the definition of public officials to the personnel of certain State-owned or controlled enterprises. Although Article 3 of the Enforcement Decree of the Act on Aggravated Punishment exempts some categories of State or government-managed enterprises from the coverage of the bribery provisions of the Criminal Act, these groups are covered by Article 357 of the Criminal Act on breach of trust.

- **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.

Korea extensively criminalized active bribery of foreign officials and officials of public international organizations in the Act on Combating Bribery of Foreign Public Officials in International Business, whose Articles 2 and 3 cover all elements of the offence as envisaged by article 16 paragraph 1. The passive offence is not criminalized; however, Korea can prosecute passive bribery of foreign public officials under the provisions of the Criminal Act

on breach of trust. Foreign public officials can also be prosecuted for money laundering where corruption crimes serve as predicate offences.

- **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.

Articles 355-359 of the Criminal Act are general law provisions under which public officials can be prosecuted for occupational embezzlement. Article 5 of the Act on the Aggravated Punishment, etc. of Specific Crimes establishes aggravated punishment for public officials acting as accounting officers due to the nature of their work.

- **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.

The Public Service Ethics Act mandates that public officials register their property, so that the process of acquiring property can be monitored. If they cannot reasonably explain a significant increase in their assets, the investigative agency can initiate an investigation. However, while Korea has considered the criminalization of illicit enrichment, illicit enrichment per se is not criminalized as an offence in Korean law.

- **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.

Korea partially criminalized bribery in the private sector in Article 357 of the Criminal Act (Receiving or Giving Bribe by Breach of Trust). Aggravated punishment for bribery is applicable to employees of financial institutions.

- **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.

General articles of the Criminal Act concerning accomplices, assistants and instigators are applied to offences established in accordance with the Convention. Those are Article 30 (Co-Principals), Article 31 (Instigator), Article 32 (Accessories), Article 33 (Complicity and Status), and Article 34 (Principal through Innocent Human Agent and Aggravation of Punishment for Particular Instigation or Aiding and Abetting) of the Criminal Act.

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

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



**I.C. Preventing Money-Laundering**

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**RELEVANT UNCAC PROVISIONS**

See below

**MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS**

- 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) Implement feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders.
- Art. 14(3) Implement appropriate and feasible measures to require financial institutions, 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.

Korea's AML/CFT system was introduced on November 28, 2001 with the enforcement of the Financial Transaction Reports Act (FTRA) and the Proceeds of Crime Act (POCA). These two legislations were passed by the National Assembly on September 3, 2001, promulgated on September 27, 2001 and came into force three months later. Key aspects of the AML/CFT system include the criminalization of ML offences pursuant to the POCA and implementation of Suspicious Transaction Reports (STR), Currency Transaction Reports (CTR) and Customer Due Diligence (CDD) obligations pursuant to the FTRA.

**Criminalization of ML**

Criminalization of ML refers to defining and penalizing the act of ML as a separate offence. For a ML act to be considered as a criminal offence, the laundered funds should come from a set of defined predicate offences. ML offences involve the process of concealment or disguise of the criminal proceeds. Penalization of predicate offences is not a necessary condition for ML offences to be penalized. The point of ML criminalization is that a money laundering offence is in itself a crime that can be severely punished. In Korea, two statutes define criminalization of ML: the POCA and the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, et cetera (ASPIT). Any person who commits a ML offence is subject to imprisonment not exceeding five years or a fine not exceeding KRW 30 million under the POCA and imprisonment not exceeding seven years or a fine not exceeding KRW 30 million under the ASPIT.

**STR**

If there are reasonable grounds to suspect that the funds involved in a financial transaction (including exchange of casino chips) are illegal assets or the counterparty of the transaction is engaged in ML, suspicious transaction reports (STRs) should be filed to the Commissioner of KoFIU. Financial institutions along with casinos make their own subjective decisions whether or not to file the STRs. The number of STRs increased steadily up to 2011, but decreased in 2012 by 12%, signifying that the AML system in Korea reached the stabilized stage.

**<Number of STRs Filed by Financial Institutions & Disseminated to Law Enforcement Agencies (LEA)>**

(Unit : Cases)

	2006	2007	2008	2009	2010	2011	2012
Filings by Financial Institutions	24,149	52,474	92,093	136,282	236,068	329,436	290,241
Disseminations to LEAs	2,267	2,331	5,234	7,711	11,868	13,110	22,173

**CTR**

Under the CTR (Currency Transaction Reports) system, reporting entities are required to report to KoFIU all cash transactions above a designated threshold. Information such as the identity of the person making the transaction, transaction date and amount are automatically reported to KoFIU when more than KRW 20 million in cash is either withdrawn or deposited within a single business day. CTR reporting system is different from the STR reporting system with its objectivity in reporting mechanism.

Korea adopted the CTR system in 2006 pursuant to Article 4(2) of the FTRA (enacted on January 18, 2006). The initial threshold was KRW 50 million, but it was gradually lowered to KRW 30 million in 2008 and to KRW 20 million in 2010 in accordance with the Enforcement Decree of FTRA addendum.

**<Number of CTRs Filed>**

(Unit : Thousands)

	2006	2007	2008	2009	2010	2011	2012
Filings by Financial Institutions	5,013	3,875	6,678	6,782	11,609	11,308	10,337

**CDD**

CDD (Customer Due Diligence) system requires financial institutions to identify a customer's address and contact information in addition to his or her name and resident registration number during a transaction. If the transaction seems to be suspicious of money laundering, CDD requires further identification on the beneficial ownership and the purpose of the transaction. The key objective of the CDD procedure is to prevent financial institutions from being ill-used in money laundering activities. In Korea, financial institutions are required to apply CDD as a reasonable precaution. Korea introduced and implemented the CDD procedure on January 18, 2006. CDD allows financial institutions to lower the reputation risk by minimizing the chance of getting involved in money laundering through accurate identification of their customers while serving their customers with customized financial products. From the money laundering perspective, financial institutions may acquire a basis for discerning suspicious transactions by regular compilation of information on their customers. CDD is synonymous to KYC, *Know Your Customer*, policy because it allows financial

institutions to understand their customers clearly so that they will not provide the criminals with their financial services.

**<Real Name Verification System and CDD>**

Real-Name Financial Transaction Act	CDD under FTRA (Introduced in January 2006)	High Risk Customer : Enhanced Due Diligence (EDD)*
Name, Resident Registration Number	Name, Resident Registration Number + Address, Contact Information	Name, Resident Registration Number + Address, Contact Information + Beneficial Ownership, Purpose of Transaction

\* Details of EDD are specified in AML/CFT Regulation (FIU Notice).

**EDD**

Korea implemented the EDD (Enhanced Due Diligence) policy on December 22, 2008. EDD categorizes customers and financial products into different money laundering risk levels. More rigorous customer identification such as identifying the beneficial ownership and the purpose of transactions will take place if the risk of money laundering is higher. By assessing risks and applying a risk based approach, financial institutions may use their resources efficiently and protect themselves from money laundering schemes.

**Preparation for implementation of the revised FATF**

In February 2012, the FATF was restructured around 40 Recommendations that replace the former 49. The consolidated requirements reflect the issues that had been discussed at the international level. In particular, the risk-based approach criterion recommends the countries to manage their resources more effectively by establishing a central institution that coordinates the AML/CFT system. In addition, the Recommendations cover the introduction of CDD and STR requirements for lawyers, accountants, estate agents and other DNFBPs and strengthen CDD requirements relating to PEPs. Hence, an extensive examination of our system and establishment of strategies are indispensable for the implementation of the new standards and measures should be acted on accordingly.

**The recent amendment of FTRA**

In November 13, 2013 the amendment of FTRA was put into force, resolving 2 weak points by the FATF international standards. First, it abolished the threshold for STR to require financial institutions to report suspected transactions regardless of their amount. Before the amendment, for financial transactions over KRW 10 million or USD 5,000, STR reporting was mandatory; for amounts below the threshold, it was left to the reporting entity's discretion. Second, the revised FTRA now requires remittance information to be provided to the beneficiary financial institution. For cross-border wire transfers, the ordering financial institution is required to provide full information including the name, account number, resident registration number and address of the originator to the beneficiary financial institution. For domestic wire transfers, on the other hand, the ordering financial institution is required to

provide only the name and account number of the originator to the beneficiary financial institution in order to minimize unnecessary leakage of private information. However, when a beneficiary financial institution needs extra information to examine suspicious transaction cases or when the Commissioner requests for information for the purpose of analyzing suspicious transaction reports, the originator's resident registration number or address should be provided within three working days. In addition, with the revision of the FTRA Enforcement Decree effective as Nov. 13, 2013, it designates threshold amount of wire transfer required to report originator information as 1 million won in domestic wire transfer or USD 1,000 in cross-border wire transfers, which complies with FATF standard amount. .

**FURTHER MEASURES PLANNED TO IMPLEMENT COMMITMENTS (indicate timeframe)****CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION**

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

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**LEADERS' AND MINISTERS' COMMITMENTS**

**Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:**

- 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;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

**MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS**

See response above(I.A.)

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

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

**III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):**

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**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**

- **Promote cooperation among financial intelligence units of APEC members including, where appropriate, through existing institutional mechanisms.**

Amid growing concerns about frequent money laundering and terrorist financing activities using cross-border financial transactions, the international community has found it increasingly necessary to facilitate global cooperation in fighting such activities. Korea is actively participating in international collaboration in the AML/CFT field

**Participating Financial Action Task Force (FATF)**

The Financial Action Task Force on Money Laundering (FATF) is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorism financing. The FATF currently comprises of 34 member jurisdictions and 2 regional organisations (EC, GCC)

Since the establishment of KoFIU in 2001, Korea vigorously sought full membership at the FATF. Korea obtained the FATF observer status in August 2006 and completed the mutual evaluation, an essential process to become a member of the FATF, in November 2008. The Mutual Evaluation Report was adopted at the FATF Plenary in June 2009 and Korea gained full membership in October 2009.

In October 2009, the Korean government established an action plan to further improve the AML/CFT regime in line with the FATF standards. The plan sets out detailed measures to be taken in the short, medium and long-term. The focus of the plan is to address the deficiencies in the Korean AML/CFT regime identified in the FATF Mutual Evaluation Report, which was adopted in June 2009. It includes firm and decisive measures that require legislative actions. The Korean government is now faithfully taking measures to improve the AML/CFT regime in accordance with the action plan.

#### **Asia/Pacific Group on Money Laundering (APG)**

The Asia/Pacific Group on Money Laundering (APG) is a FATF-style regional body comprising 41 member jurisdictions in the Asia-Pacific region. Korea has been an active member of the APG since its admission back in 1998. Korea took the APG Co-Chair position from 2003 to 2004 and hosted the 7th APG Annual Meeting in 2004 in Seoul. The Annual Meeting was held for five days from June 14 to 18, 2004 and was attended by 210 representatives from 28 member jurisdictions, 9 observer jurisdictions and 13 international organizations. Currently Korea is a member of the steering Group and the DAP(Donors and Providers) Group.

#### **The Egmont Group**

The Egmont Group of Financial Intelligence Units (the Egmont Group) was established in 1995, and has grown to a membership of 139 financial intelligence units. Its purpose is to find ways to promote the development of FIUs and to cooperate in the areas of information exchange, training and the sharing of expertise among its members in the interest of combating money laundering and terrorism financing. KoFIU joined the Egmont Group in 2002 and has been actively participating in its activities. In 2008, KoFIU hosted the 16th Egmont Group Plenary and Working Group Meetings in Seoul for five days from May 25 to 29. It was of great significance in that it marked the first Egmont plenary held in Asia and the first one since the Egmont Group was launched as an official international organization in 2007. 250 representatives from 90 FIUs around the world and 12 international organizations including the World Bank and the United Nations Office on Drugs and Crime attended the 2008 Egmont Group Plenary and discussed ways to reinforce international AML/CFT cooperation among FIUs across the world.

#### **Bilateral Cooperation**

KoFIU is actively expanding its bilateral cooperative ties with foreign FIUs. Since its establishment, KoFIU has signed MOUs regarding exchange of financial transaction information with 56 foreign FIUs. Among them, APEC member economies are as follows in the order of date of signing. Australia AUSTRAC (May. 28, 2003), Indonesia PPATK (Oct. 20, 2003), Japan JAFIO (Dec. 18, 2003), Philippines AMLC (Jun. 17, 2004), Thailand AMLO (Jun. 17, 2004), Canada FINTRAC (Jun. 23, 2004), United States FinCEN (Nov. 23, 2004), Russia FMFS (Jun. 29, 2005), Chile UAF (Jun.

30, 2005), People's Republic of China CAMLMAC (Nov. 15, 2005), Hong Kong JFIU (Apr. 06, 2006), Mexico MexFIU (Jun. 13, 2006), Malaysia UPW (Apr. 30, 2007), New Zealand NZPFIU (Oct. 21, 2008), Singapore STRO (Jul. 07, 2009), Brunei Darussalam FIU (12.7.18), Peru UIF Peru (Jul. 4, 2013), Vietnam FIU (Jul. 18, 2013)

- **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.**

No consideration of legislation to deny entry and safe haven to officials and others guilty of public corruption

- **Implement, as appropriate, the revised Financial Action Task Force (FATF) 40 Recommendations and FATF's Special Recommendations (Santiago Course of Action)**

See response above(I.C)

- **Work cooperatively to investigate and prosecute corruption offenses and to trace freeze, and recover the proceeds of corruption (Santiago Course of Action)**

The purpose of The Act on International Judicial Mutual Assistance in Criminal Matters is to promote an international cooperation in the suppression and prevention of crimes, by prescribing the scope, procedure, etc. of mutual assistance provided at the request of, and requesting to, any foreign country in connection with any investigation or trial of a criminal case. Korea has signed bilateral mutual legal assistance treaties with 28 States. Korea also acceded to the European Convention on Mutual Assistance in Criminal Matters, which has 50 Member States including Korea. Korea has never refused to provide mutual legal assistance in a criminal matter.

#### **Art. 14 (Money Laundering)**

See the response above (I.A.)

#### **Art. 23 (Laundering of Proceeds of Crime)**

Money laundering and concealment are criminalized in the Act on Regulation of Punishment of Criminal Proceeds Concealment (Articles 3 and 4) ("Proceeds Act"). Some elements envisaged in UNCAC article 23 (b) (ii) (i.e., participation, association, conspiracy to commit, aiding, abetting, facilitating and counseling) are covered by Article 32 paragraph 1, Article 30 and Article 31 paragraph 1 of the Criminal Act. 15. There are some limitations as to the qualification of certain corruption offences in the Criminal Act (Articles 355 and 356 regarding embezzlement) as predicate offences to money laundering (subparagraph 1 of Article 2 of the Proceeds Act). Pursuant to a revision of the Proceeds Act in May 2013, Article 357 of



the Criminal Act became a predicate offence for money laundering.

**Art. 31 (Freezing, seizure and confiscation)**

Confiscation of proceeds of crime, as well as property, equipment and instrumentalities used or destined to be used in corruption offences, with due protection of the rights of bona fide third parties, is covered by the Criminal Act (Article 48) and the Proceeds Act (Articles 8-10). Additionally, there are confiscation provisions in the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices (Articles 3-6) and the Act on Special Cases Concerning Forfeiture for Offences by Public Officials (Articles 3-6). Criminal proceeds include income derived from such proceeds, and value-based confiscation is possible.

The above-listed laws, together with the Act on Reporting and Use of Certain Financial Transaction information, also address the identification, freezing or seizure of criminal proceeds and instrumentalities.

Measures on the administration of frozen, seized and confiscated property are contained in the Act on Special Cases Concerning the Prevention of Illegal Trafficking in Narcotics, the Criminal Procedure Act (Articles 477-479) and the Regulation on Process of Seized Items of the Prosecutors' Office.

**Art. 40 (Bank Secrecy)**

Bank secrecy restrictions cannot hinder the investigation of corruption offences. Financial institutions shall share information with law enforcement agencies upon receiving a corresponding court warrant (Article 4 of the Act on Real Name Financial Transactions Guarantee of Secrecy).

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

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

**IV. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO PRIVATE SECTOR CORRUPTION:**

Contact Point: Name: Miyoung Kang Title: Deputy Director

Telephone Number: 82-2-360-6570 Fax Number: 82-2-360-3528 Email Address: youngsun19@korea.kr

**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**

See response above(I.A)

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

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

## V. ENHANCING REGIONAL COOPERATION

Contact Point: Name: Miyoung Kang Title: Deputy Director  
 Telephone Number: 82-2-360-6570 Fax Number: 82-2-360-3528 Email Address: youngsun19@korea.kr

### 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

- 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

Extradition and mutual legal assistance (MLA) are principally governed by the Extradition Act, the Act on International Judicial Mutual Assistance in Criminal Matters (“MLA Act”), as well as bilateral and multilateral treaties on extradition and MLA. Extradition and MLA are also available in the absence of a treaty on the basis of reciprocity (Articles 4 of the Extradition and MLA Acts, respectively). Korea has further adopted administrative manuals on extradition and MLA. In cases where a treaty is in place between the requesting and requested States, the treaty precedes the domestic law pursuant to Article 3-2 of the Extradition Act and Article 3 of the MLA Act.

Articles 44-48 of UNCAC are self-executing and could be applied directly by Korea without any implementing laws. Korea can use the Convention as the legal basis for international cooperation, though it has had no experience in doing so.

**Extradition** shall be afforded only if the act constitutes a criminal offence under Korean law and the legislation of the requesting State, and the offence is punishable by imprisonment for at least one year or more severe penalties. All UNCAC offences are subject to at least one year’s imprisonment in Korea, and are thereby extraditable pursuant to the Extradition Act.

Korea has granted the majority of extradition requests, including in corruption cases related to embezzlement and bribery. Of the 43 incoming extradition requests from 2008-2012, Korea granted 17 and has refused three. There have been no extradition requests invoking the Convention.

Korea has signed bilateral extradition treaties with 31 countries, three of which have not yet entered into force. Effective as of 29 December 2011,

Korea acceded to the European Convention on Extradition, which enables Korea to engage in extradition proceedings with 50 countries.

The Minister of Justice is designated as the central authority for **mutual legal assistance** under the Convention. Korea has signed bilateral MLA treaties with 28 States, three of which have not yet entered into force, and also acceded to the European Convention on Mutual Assistance in Criminal Matters. Korea has never refused to assistance in a criminal matter and has received 383 requests from 2008-2012. There have been no incoming or outgoing MLA requests invoking UNCAC or UNCAC offences.

The receipt of and response to MLA requests is done through diplomatic channels. Korea would not accept MLA requests through INTERPOL. Urgent requests can be expedited through informal or direct communications with the Ministry of Justice. Requests made by telephone are rarely accepted, though Korea accepts requests via fax or e-mail.

**Korean law enforcement** institutions engage in a wide range of **international cooperation**, including the provision of technical know-how and the exchange of information, expertise and personnel with other countries.

Korea's FIU is a member of the APG and the Egmont Group of FIUs. It actively exchanges AML/CFT information with foreign counterparts through these channels and bilateral MOUs with 56 other FIUs. The FIU also supports the provision of MLA and responds to information requests from foreign counterparts. The FIU renders assistance on anti-corruption and asset recovery, among other topics, internationally and conducts training and provides know-how to other countries, including low capacity countries in Asia-Pacific.

The Korean Prosecution Service (KPS) has posted seven legal attachés at Korean embassies and has received attachés from abroad. At the Legal Research and Training Center in the Ministry of Justice in Korea, judges and prosecutors from Asian and African countries are trained through exchange programmes. The International Cooperation Center (ICC) established in KPS actively promotes the international cooperation of the prosecution. KPS dispatches around 80 prosecutors annually to other countries and invites foreign legal experts and prosecutors through grant programmes via Korea's International Cooperation Agency (KOICA). KPS has signed 20 bilateral MoUs with 16 countries and the World Bank. ICC also supports the establishment of an asset recovery network for Asia-Pacific. The Korean Supreme Prosecutors' Office operates a Digital Forensic Center in order to combat crimes committed through modern technology.

In December 2012, the Korean Supreme Prosecutors Office hosted a meeting in Seoul with other Asia Pacific countries to establish the Asset Recovery Inter-Agency Network for Asia and the Pacific (ARIN-AP). South Korea offered to house the ARIN-AP secretariat, establish a website in January 2013 and then to organize a meeting in first quarter of 2013 to solicit input by other countries.

The Ministry of Justice engages in international cooperation, including by conducting training at its Legal Research and Training Center, drawing on foreign development budgets from the Korean Office of Development Assistance (ODA).

KNPA cooperates with foreign counterparts, including through the exchange of personnel, hosting annual training courses and attending international conferences and meetings. KNPA has entered into MoUs with 18 countries.

ACRC, while not a law enforcement agency, has also cooperated substantially with foreign anti-corruption bodies and provided training courses, attended seminars and hosted foreign study tours. ACRC has in place seven MOUs with foreign counterparts and is part of the International Association of Anti-Corruption Authorities.

At the regional level, Korea is a dialogue partner country of the Chiefs of Police of the Association of Southeast Asian Nations (ASEANAPOL).

Korea participates in joint investigative teams on the basis of arrangements, such as MoUs and diplomatic channels, and has had experience with joint investigations in corruption cases at the international level. Special investigative techniques are used often by Korean law enforcement agencies in domestic cases and internationally, on a case-by-case basis, as permitted by Korean law.

- **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.**

Korea participates in the following groups of international cooperation:

- UNCAC Working Group on Asset Recovery, Prevention & Implementation Review Group
  - OECD Working Group on Bribery
  - FATF, Asia/Pacific Group on Money Laundering, The Egmont Group
  - ADB/OECD Anti-Corruption Initiative for Asia and the Pacific
  - G20 Anti-Corruption Working Group
- **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.**

2014

On March 27, 2012, the ACRC and IACA signed an MOU to share anti-corruption knowledge and expertise, and promised to cooperate in anti-corruption education and research and exchange of human resources. In November 2012, at the 1st Assembly of Parties held in Austria, Chairperson Young-ran Kim was elected as one of the board members.

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

**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: Miyoung Kang Title: Deputy Director  
 Telephone Number: 82-2-360-6570 Fax Number: 82-2-360-3528 Email Address: youngsun19@korea.kr

### 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

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

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<b>CAPACITY BUILDING NEEDS AND OPPORTUNITIES THAT WOULD ACCELERATE/STRENGTHEN IMPLEMENTATION OF COMMITMENTS BY YOUR ECONOMY AND IN THE REGION</b>
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**Asia-Pacific  
Economic Cooperation**

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**2014/SOM3/ACT/019**

Agenda Item: 10

## **Anti-Corruption and Transparency Reporting Template - Malaysia**

Purpose: Information  
Submitted by: Malaysia



**19<sup>th</sup> Anti-Corruption and Transparency  
Experts' Working Group Meeting  
Beijing, China  
13 August 2014**

## 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 (NKRAs). 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

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### 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.

- Art. 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.

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

##### **Key Achievements of NKRA under the Government Transformation Programme 1.0 (2010-2012)**

- **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. Its main role is to 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/quizzes) 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; and (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
- f) 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 subjected for **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" -referring 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) conduct himself in such a manner as to bring the public service into disrepute or bring discredit to the public service;
- (h) 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 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 least 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**
- **Service Circular No. 3 of 1998** : Guidelines in Giving and Receiving Gifts in Public Services (*Pekeliling Perkhidmatan Bilangan 3 Tahun 1998: Garis Panduan Pemberian dan Penerimaan Hadiah Didalam Perkhidmatan Awam*, in the National Language)
- **Treasury Circular Letter No.11 of 1995**: Guidelines on Oversea Trips due to Government Procurement (*Surat Pekeliling Perbendaharaan Bil.11 Tahun 1995: Panduan Lawatan ke Luar Negeri kerana Perolehan Kerajaan*, in the National Language)
- **Service Circular Letter No.4/2000**: Honorary or Nominee Membership of Public Officials in Private Golf Club and Private Recreational Club and the use of facilities free of charge in the said clubs by Bodies or Societies of Department (*Surat Pekeliling Perkhidmatan Bilangan 4 Tahun 2000: Keahlian Pegawai Awam di Dalam Kelab Golf dan Kelab Rekreasi Swasta secara Kehormat atau Nominee sera Penggunaan Kemudahan secara Percuma di Kelab Tersebut oleh Badan atau Persatuan Jabatan*, in the National Language)

**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 A -Public Officers Regulations** (Appointment,Promotion and Termination of Service) 2005[ Peraturan-Peraturan Pegawai Awam(Perlantikan,Kenaikan Pangkat dan Penamatan Perkhidmatan)2005 , in the National Language]
- **Government General Orders Chapter D- Public Officers (Conduct and Discipline)Regulations 1993 [ P.U.(A) 395 of 1993:-**
  - Regulation 5- Outside Employment
  - Regulation 8 - Presents, etc\* Cross reference Service Circular No.3 of 1998
  - Regulation 9 - Entertainment
  - Regulation 10-Ownership of property\*\* Cross reference Service Circular No.3/2002
  - Regulation 16- Involvement in the futures market
  - Regulation 18- Publication of books, etc
  - Regulation 20- Prohibition on acting as editor, etc. in any publication
  - Regulation 21-Taking part in politics

\* Service Circular 3 of 1998 - Guidelines on Giving and Receiving Gifts in Public Service [ Pekeliling Perkhidmatan Bilangan 3 Tahun 1998- Garis Panduan Pemberian dan Penerimaan Hadiah di Dalam Perkhidmatan Awam, in the National Language)

\*\*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 *Rukunniaga* is a code of business ethics based on religious values, philosophy and culture of the people in this country. The Malaysia Rukunniaga 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.

**3. Implementation of "Integrity Pact" agreements** for all government procurement contracts vide Treasury Circular Letter No.10 of 2010.

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**

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

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#### 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.

**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.

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

Model legislations for "corporate liability" and "misconduct in public office"

### I.C. Preventing Money-Laundering

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#### 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:
  - (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.

#### 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 (Act 613) which covers the following of reporting institutions as provided under its**

1. Banking business, finance company business, merchant banking business, discount house business and money-broking business as defined in the Banking and Financial Institutions Act 1989 [Act 372].
2. Islamic banking business as defined in the Islamic Banking Act 1983 [Act 276].
3. Building credit business, development finance business, factoring business and leasing business as defined in the Banking and Financial Institutions Act 1989 [Act 372].
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.
7. Money-changing business as defined in the Money-Changing Act 1998 [Act 577].
- \*\*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].
27. Estate agency practice as defined in the Valuers, Appraisers and Estate Agents Act 1981 [Act 242].
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 (Act 579)

**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)**

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**LEADERS' AND MINISTERS' COMMITMENTS**

Santiago Commitment/COA: Strengthen Measures to Effectively Prevent and Fight Corruption and Ensure Transparency by Recommending and Assisting Member Economies to:

- 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;
- Adopt all necessary measures to enhance the transparency of public administration, particularly with regard to organization, functioning and decision-making processes;
- Develop and implement appropriate public financial disclosure mechanisms or codes of conduct for senior-level public officials [SOM III: Guidelines];

**MEASURES UNDERTAKEN TO IMPLEMENT COMMITMENTS**

PLEASE SEE RESPONSE IN I.A ABOVE

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

Malaysia is proposing to introduce "misconduct in public office" as a criminal offence to strengthen transparency and integrity in public organizations. Under the proposed offence "public office" would also include those in the private sector dealing in administration of public funds. It is hoped that the Parliament would pass this legislation by 2014.

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

The Malaysian Anti-Corruption Academy (MACA) remains committed to providing anti-corruption capacity and capability building programmes to law enforcement bodies of APEC economies.

Malaysia also looks forward for model legislations, practices and experiences in "misconduct in public office" from APEC economies.

### III. IMPLEMENTATION OF ANTI-CORRUPTION COMMITMENTS RELATING TO SAFE HAVENS (CROSS CHECK WITH I.C. ABOVE):

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#### 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

##### COOPERATION 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 Egment 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.

##### COOPERATION 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

of statements.

**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 2<sup>nd</sup> 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:

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##### 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

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### 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
- Extradition Act 1992.
- 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 5<sup>th</sup> 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.

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

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### 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 Agencies (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

