
COUNTRY SPOTLIGHT

Malaysia's Approach to Fighting Corruption

Evolution, Failures and Successes of Malaysia's Anti-Corruption Efforts



Overview

Malaysia's case study highlights both the opportunities and challenges of building and sustaining an effective anti-corruption drive over time. Despite having a rich history of public administration since independence and drawing on international best practices, Malaysia continued to fair badly in global perception surveys on corruption. Indeed, many of the institutions that were set up to detect and sanction corruption became gradually compromised with increasing concentration of political power. Only when the magnitude and scale of corruption in the 1MDB sovereign wealth fund became widely known to civil society and the global media, did citizens become so outraged that they voted out the political

party that had been in power for over 60 years. The new government—a loosely formed coalition of opposition parties led by a former Prime Minister—stressed the “rule of law” and took upon itself to revitalize the institutions that were put in place to fight corruption and to re-establish limits on the power of the Prime Minister. Yet, without the parliamentary majority needed to make changes in the Constitution, the scale of changes was necessarily limited. The actions taken by the Pakatan Harapan (PH) government during its two years in office boosted Malaysia's ratings in global surveys of corruption perceptions. With the collapse of the PH government in March 2020, there is uncertainty whether the anti-corruption reform momentum will be sustained.

Background

Malaysia's anti-corruption institutional framework, dating back to the 1950s, has evolved through the years and to a large extent has been shaped at any point in time by the country's political and economic developments. As shown in the table below, graft prevention efforts started back in the 1950s with the Prevention of Corruption Ordinance and led to the

establishment of the Anti-Corruption Agency (ACA) in 1967. In 2004, the National Integrity Plan (NIP) was introduced with an aim to improve the effectiveness of the anti-corruption efforts. The NIP traced factors that might undermine integrity among individuals, including government systems and procedures, the structure of institutions, and the culture of organizations. To

Year	Trajectory of Anti-Corruption Laws and Agency Evolution in Malaysia
1950	The Prevention of Corruption Ordinance replaced previous laws introduced in the Federated Malay State, State of Johor and that Straits Settlement.
1959	Corruption Prevention Unit formed
1961	Prevention of Corruption Act
1967	Formation of Anti Corruption Agency (ACA)
1970	The Emergency (Essential Powers) Ordinance
1973	Introduction of National Bureau of Investigation
1982	Anti-Corruption Agency (established by PCA 1961)
1997	Anti-Corruption Act
1997	Anti-Corruption Agency (established by PCA 1961)
2009	Malaysian Anti-Corruption Commission Act
2009	Malaysian Anti-Corruption Commission reports to Prime Minister
2019	Malaysian Anti-Corruption Commission reports to Parliament

coordinate, advise and monitor the efforts of the NIP, the Malaysian Institute of Integrity (IIM) was established in 2004 (later rebranded to INTEGRITI in 2015). Together, the NIP and INTEGRITI were to form the crux of a national integrity system for comprehensive reform in Malaysia. The approach stressed individual and institutional ethics, beyond formal laws and regulations, with a goal of maximizing integrity at all levels as a prophylactic against corruption. INTEGRITI has assumed a new role under the current National Anti-Corruption Plan (NACP). It was not until 2009 that the ACA was converted from a government agency into a commission—the Malaysian Anti-Corruption Commission (MACC). The MACC was established with

an intent to empower the anti-corruption body with greater independence and autonomy to investigate cases. It could secure documents and witnesses, arrest and prosecute offenders, and propose reforms that would insulate key decisions from undue political interference. The reforms that took place in 2009 were partly in response to the growing frustration from the public and civil society over the overall quality of government, level of service delivery, problems around red-tape and lack of anti-corruption efforts. However, for several reasons, including gaps in policy or implementation (discussed later in the case), most of these reforms fell short of achieving the desired outcome.

Boost to governance reforms: 2018

Malaysia's anti-corruption efforts received a major boost in 2018 with the election of the Pakatan Harapan government that came to power with the promise of a clean, accountable and transparent regime that resonated well with people following the 1MDB scandal. One of the first steps in this effort was to set up the National Centre for Governance, Integrity and Anti-Corruption (GIACC), as secretariat of the Special Cabinet Committee for Anti-Corruption (JKKMAR), reporting directly to the Prime Minister. The GIACC, in consultation with other agencies and departments, formulated and launched the National Anti-Corruption Plan (NACP) and is currently overseeing its implementation. The main enforcement agency continues to be the Malaysian Anti-Corruption Commission (MACC), the two together being the main anti-corruption bodies in the country.

The NACP outlines the government's strategies and measures around combating corruption, strengthening governance, integrity and transparency in government operations. The five-year plan has a total of 115 initiatives, categorized under 6 strategic thrusts: (i) strengthening political integrity, (ii) accountability and effectiveness of public service delivery, (iii) efficiency and transparency in public procurement, (iv) enhancing the credibility of the legal and judicial system, (v) institutionalizing the credibility of law enforcement agencies, and (vi) inculcating good governance in corporate entities. Early initiatives of the

NACP include mandatory asset declaration for Cabinet Ministers and the Prime Minister's Directive on the roles and responsibilities between ministers and secretaries-general to improve the accountability framework of the administration. Some of the key initiatives and reform efforts that are underway and in line with the objectives of the plan, but not necessarily limited to the NACP, are listed below:

- 1. Strengthening the Parliament:** Reintroducing the Parliamentary Services Act 1963, to provide greater independence and autonomy to parliament to ensure checks and balances on the functioning of the executive.
- 2. Asset Declaration:** The policy for asset declaration is now in place for all executives and is being extended to members of parliament (MPs). The Asset Declaration information has been published on the MACC portal. The next step is to ensure its extension to all the elected MPs.
- 3. Prime Minister's tenure:** The initiative to limit the Prime Minister's tenure to no more than two terms requires amendments to the Federal Constitution, a process that has not yet started.
- 4. Procurement reform:** Efforts on various procurement reforms are on track with a plan to table the Procurement Act in the Parliament in 2020.

5. **Strengthening the Judiciary:** Special courts have been established to expedite trials on corruption cases.
6. **Strengthening the Electoral System:** The Election Commission is reviewing the entire electoral system, including the area of political financing, with the aim of publicizing all the political funders.
7. **Independent Police Complaints and Misconduct Commission (IPCMC):** The draft IPCMC Bill is under discussion with the Chambers of Attorney General.
8. **Ombudsman:** The Ombudsman Act, in draft stages, is meant to replace the Public Complaints Bureau with the aim of improving the management of public complaints in Malaysia.
9. **Reform of Government-Linked Companies (GLC):** The Ministry of Finance is finalizing guidelines for the appointment of senior management, Chairman and Board of Directors in GLCs and subsidiary companies, banning all political appointments in GLCs.
10. **Support Letters:** A new policy that forbids politicians from issuing support letters for government tenders and projects has been introduced.

11. **Organisational Anti-Corruption Plan (OACP) and Anti Bribery Management System (ABMS):** It is compulsory for all government agencies to have an OACP specific to their workflow and the implementation of ABMS has been launched government-wide after a pilot project last year.

While GIACC functions as an anti-corruption planning unit focusing on policy design, implementation, monitoring and assessment, enforcement is under MACC and other enforcement authorities. One of GIACC's key roles is monitoring the progress of the JKKMAR's decisions, from inception to completion. JKKMAR members include the prime minister as chair, the deputy prime minister as deputy chair, senior ministers, the chief secretary to the government, the director-general of the Public Service Department, the secretary-general of the Treasury, the attorney general and auditor general, the director-general of the GIACC, chief commissioner of the MACC, and all secretaries-general of ministries. The JKKMAR met monthly for the first 6 months following its establishment, and every two months thereafter. GIACC presents progress reports to the JKKMAR at regular intervals, using "traffic light" (green, yellow, red) status indicators.

Key changes with some early results

Malaysia's performance on international indicators and rankings on governance, accountability and transparency have improved as a result of some of these reforms and other on-going efforts. Its ranking has improved from 61st in 2018 to 51st in 2019 on Transparency International's (TI) Corruption Perception Index (CPI). On the Edelman Barometer on Trust in Government, Malaysia shot up by 20 points in 2018 to 60 points from 40 points in 2017. Press Freedom also saw an improvement from being ranked 145th in 2018 to 123rd in 2019. Malaysia moved from 15th to 12th in the World Bank's Doing Business 2020 Ranking. The Asian Corporate Governance Association (ACGA) placed Malaysia 4th out of 12 Asian economies in 2018, up from 7th place in 2016. The Economic Intelligence Unit (EIU)

gave Malaysia a marked improvement score for 2020 for improvements in electoral process and pluralism, where it received 9.17 out of 10 in the Democracy Index. It had scored only 7.75 in 2018.

Malaysia has also been recognized for its efforts to pursue corporate governance reforms and broader institutional reforms that complemented the anti-corruption and governance reforms agenda. Based on the ACGA Corporate Governance Watch 2018, the aggregate company scores moved most significantly for Malaysia, where improvements in the Enforcement sub-category and optimism about political change drove scores up 7% from 2016. Malaysia's ranking of 12th in the World Bank's Ease of Doing Business 2020 Report is a

testament to the ongoing reform initiatives to enhance competitiveness, productivity and governance for businesses. The improvement in the Democracy Index is a result of some of the electoral reforms and changes in political campaigning guidelines. Despite the improvement in overall ranking, Malaysia still features in the “flawed democracy” segment, but it has for the first time moved into the top half of the category. Another step to address financial crimes was the setting up of the National Anti-Financial Crime Centre (NFCC) and Corporate Governance Committee to track and report dubious financial transactions. The NFCC Act 2019 provides the NFCC with the legal provision to coordinate and collaborate with enforcement agencies in matters related to the reporting and prevention of financial crimes.

Another key reform was the amendment of the MACC Act in 2018 to incorporate, among others, a new Section (17A) on corporate liability for corruption. The new Section not only establishes a new statutory corporate liability offense of corruption by a commercial organization under Malaysian law, but also deems any director, controller, officer, partner or manager of a commercial organization to be personally liable for the same offense if the commercial organization is found liable, unless the relevant individual can prove that the offense was committed without his or her consent, and that he or she had exercised the requisite due diligence to prevent the commission of the offense. This change was expected to be fully enforced in June 2020. It is key that the relevance and consequences of this change are communicated effectively not only to

the private sector, but also to public officials who are sitting on Boards of corporate entities. It is here that the Executive and Legislative Branch must contend that any political appointments made to statutory bodies and/or GLCs must be cognizant of the fiduciary duties and liabilities of such appointments under the Act.

The Malaysian Government's resolve to take swift action on corruption scandals is on-going, as can be seen from some of the high-profile cases that are being pursued. The strong mandate, independence and resources accorded to the GIACC and MACC to carry out their roles and functions constitute an important step towards the strengthening of institutions. The commitment outlined in the 5-year national plan around anti-corruption enabled the reforms to bear early results. Key areas like political funding, public procurement and political interference are being addressed by putting in place more transparent systems and processes with a robust monitoring and evaluation plan. The government moved swiftly to follow up on some of the big scandals like the 1MDB, Federal Land Development Authority (FELDA), KWAP (Statutory Body for Public Sector Pension) and Tabung Haji (Haji Pilgrims Fund Board) to name a few. This was followed by the arrest of several political leaders and figures who were later charged by MACC for abuse of power, corruption and money laundering, and brought to the courts. Several concurrent cases involving the highest echelon of leadership in the country prior to the 2018 general elections are currently being heard in the courts.

Shortcomings of the previous reform efforts

Previous national level reform efforts on governance and anti-corruption had a limited impact for several reasons. In 2004, the government introduced the National Integrity Plan (NIP) and set up the Malaysian Institute of Integrity (IIM) to coordinate, advise on and monitor initiatives outlined in the NIP. The NIP tried to trace factors that might undermine integrity among individuals, systems and procedures, structure and institutions, and culture. The impact was limited as the focus was on advocacy rather

than on bringing about structural changes. The anti-corruption institutions were focused on mid-level corruption rather than grand corruption involving the highest echelon of government leadership. The NACP for that reason has singled out political interference as one of the major impediments of past reform efforts. The interference affected prudence in administrative and financial management in areas such as public procurement and resulted in half-hearted implementation of reforms.



The anti-corruption institutional framework suffered from limitations, including a lack of independence and autonomy granted to key institutions mandated with the task. There was over-centralization of power in the Executive, and both the MACC and Attorney General's Chambers lacked the independence to deal with grand corruption cases, such as the 1MDB and FELDA when they were initially unearthed. The MACC Act lacked the teeth to accord a mandatory minimum sentence for offenders, resulting in lighter punishments. The Auditor General's reviews were limited to government agencies and auditing of GLCs and government-linked investment companies only in the event of a complaint.

While the introduction of the Whistleblower Protection Act in 2010 was a step in the right direction, it was incapacitated by the weak witness protection infrastructure. Agencies tasked to oversee the whistleblower act and witness protection policy were placed under the Prime Minister's Department and enforcement agencies. This institutional arrangement resulted in a low trust environment and the fear of retaliation by the very authorities against whom the

complaints were likely to be registered. This resulted in less than encouraging rates of whistleblowing from the system. Since 2018, the MACC has been working on streamlining procedures and institutional arrangements for a more effective discharge of the whistleblowing and witness protection act.

Efforts were made to limit the role of politicians in statutory bodies and GLCs, and the government successfully implemented this in all GLCs with the exception of Khazanah Nasional. The GLC Transformation Plan, which was introduced in 2008, attempted to make GLCs more performance-based, including in the appointment of senior management and members of the board. However, transparency of board and senior management appointments with clear performance tied to these appointments remained elusive. Lack of institutionalization of these reforms by way of law and regulations has resulted in the dismantling of some of the reforms previously introduced. Political appointments continued to be made to board and chairman positions, making it difficult to separate political and business interests.

Unfinished reforms

The recent change in government in March 2020 has resulted in some changes at the top level and the key is to maintain the momentum and continuity of the reforms around anti-corruption and governance. The change in government led to the resignation of the Attorney-General and the Chief Commissioner of the MACC. It has resulted in the changing of the guard in several GLCs and government-linked investment companies. However, the new government has formed its Cabinet and has signalled that it is committed to carrying forward these reforms, which are still being led by the Cabinet Committee on Anti-Corruption, the GIACC, and the MACC and others under the framework outlined in the NACP. These plans are not clear yet, but of critical importance is for Malaysia to review the regulations of all its statutory bodies, develop clear regulatory and oversight bodies that will oversee corporate governance, and drive political governance and anti-party hopping laws which caused the fall of the federal government and

some state governments. Further reforms, including, but not limited to, procurement, political funding, asset declaration, politically-linked board appointments in statutory bodies, and effectiveness of the oversight of regulatory bodies, need to be taken to their logical conclusion. Reforms carried out in the judiciary, parliament, election commission and the public service provide a good foundation for institutionalizing the changes. Reform efforts taking place at the Federal level need to be cascaded to other levels of government, namely states and local authorities.

An early stage reform to ensure responsible and credible media reporting has been initiated by setting up the National Media Council. The next step will be to set up governance structures around the quality and authenticity of journalism and media reporting. Media can be a very powerful tool for the government to reach its citizens and for the citizens to hold the government accountable.

The Public Service Act, which is at the draft stage, is another vehicle to accord greater transparency and accountability and separation of powers between elected representatives and public officials. This includes clarity and accountability in the approval process, appointments, rewards and performance management, amongst others, and strong governance structures, including gender mainstreaming. This would ensure an apolitical public service with greater clarity and accountability

across the different branches of government.

The reform of the GLCs and state-owned enterprises is on-going and it is unclear if the next stage of reforms would include those at the subnational levels. This is a complex and politically difficult but important reform area, given its centrality in the Malaysian economy. It is also an area that standard setting bodies must develop to assist countries with complex and tiered public sector structures.

Lessons learned from Malaysia

The Malaysian experience in combating corruption and improving governance provides three important lessons.

- 1. A well-functioning institutional framework that provides for checks and balances in government is key.** When the anti-corruption and governance bodies—the GIACC and MACC—were accorded more powers and resources to deliver their mandate without undue political interference, the message and intentions were clear. Grand corruption cases could be investigated with greater autonomy and independence and brought to trial. Likewise, the passage of the Public Services Act and the Ombudsman Act and institutionalizing some of the on-going reforms will be important for their sustainability in the long run and will minimize the risk of reversal with a change in government.
- 2. Strong support and a clear mandate from the top leadership is a pre-requisite to pursue difficult reforms.** The newly created GIACC was given a

strong mandate from the country's top leadership to coordinate the implementation of the National Anti-Corruption Plan. The GIACC was also assigned as the secretariat of the Cabinet Committee on Anti-Corruption, which provided it with a high-level top leadership platform to discuss, monitor and report on the implementation status of the NACP.

- 3. It is important to have a broader coalition of reformers that is not limited to public institutions and other formal institutions of government.** The role played by civil society groups, the media, businesses, academia, international partners and other concerned parties also complemented the efforts of the MACC and GIACC to combat corruption. Their involvement was not just on the technical front; at times they also provided the needed support to keep the reform agenda on track.