

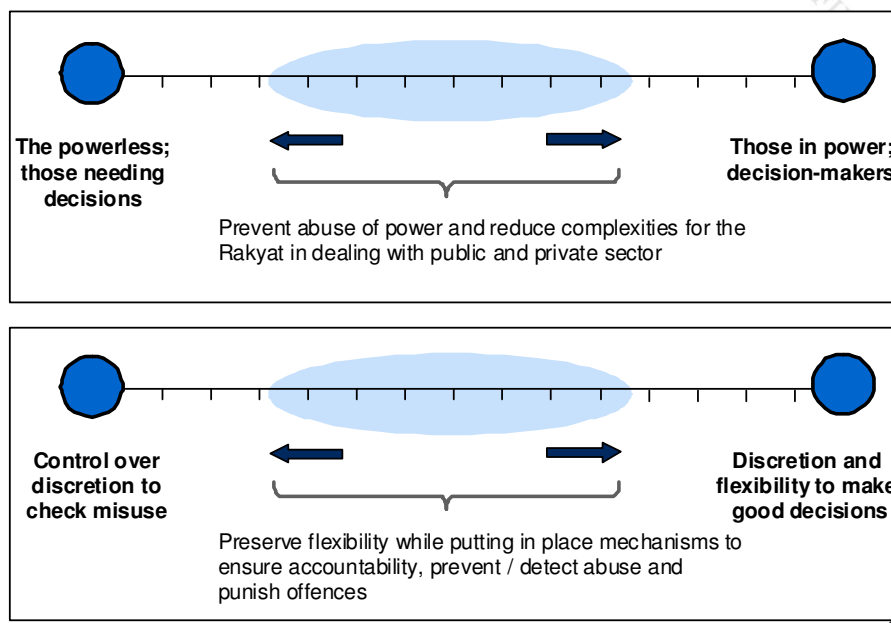
PEMANDU Lab Highlights: Fighting Corruption

“Our corruption ranking, according to Transparency International, has slipped this year to number 56. Although creating a corruption-free nation will not be easy, it is clear that we can be much more transparent, accountable and action-oriented as a government. I will be accountable for executing our plans and delivering our targets as described in this chapter and am seeking the support of all Malaysians to work together with me and my team in making this happen”

(Dato’ Seri Mohamed Nazri bin Abdul Aziz, Minister in the Prime Minister’s Department)



Managing polarities: Corruption



Corruption largely involves managing the polarity between, the powerless and needy, and those with power and discretion in decision making positions. Corruption is inconsistent with the moral, ethical and religious values of the majority of Malaysians. It introduces procedural and financial complexities to daily life of the rakyat, contributes to socio-economic imbalances and erodes Malaysia's value system.

Besides the social costs, corruption also robs the nation of its wealth and resources. PEMUDAH has estimated that corruption could cost Malaysia as much as RM10 billion a year, or 1-2% of GDP, when decisions (e.g., contracting, human resourcing) are made in a sub-optimal fashion. Furthermore, erosion of public's and business community's confidence in our institutions has contributed to our nation's competitiveness ranking slipping significantly from the top 20 most competitive nations in the world 3 years ago, to our current standing of 24.

Therefore, fighting corruption has always been a priority for the Government. In recent times it has taken what it believed to be significant steps, including the upgrading of the Anti-Corruption Agency into the Malaysian Anti-Corruption Commission (MACC) in 2008, and the establishment of the Malaysian Integrity Institute in 2004 to compile and track the National Integrity Index.

Despite its efforts, however, Malaysia's performance in this area has deteriorated - our rankings in global corruption benchmarks such as Transparency International's Corruption Perception Index (TI-CPI) have dropped from 39 in

2004, to 56 in 2009. Surveys have indicated that the rakyat are extremely dissatisfied with the Government's performance in fighting corruption. For example, 67% of Malaysians polled by the 2009 Global Corruption Barometer Survey believe that the Government's actions in the fight against corruption are ineffective.

Therefore, given the urgency of the issue, and what it has learnt from past efforts, this Government is going to do the following things differently in its renewed fight against corruption:

- Have aspirations which are measurable, outcome-based and internationally benchmarked
- Focus improvement efforts on the 3 areas most prone to corruption – grand corruption (includes political corruption), Government procurement, and regulatory and enforcement agencies
- Use transparent KPI measures and targets to define success

The Case of Indonesia: Power of the People

Historically Indonesia has been overwhelmed by widespread corruption in all levels of Government and civil society - as of 2004, it ranked 133 on Transparency International's Corruption Perception Index, along with countries such as Angola, Democratic Republic of Congo, Georgia and Turkmenistan. However, the new presidency in 2004 brought on a shift in the acceptability of corruption within Government, with the announcement of an ambitious anti-corruption action plan in December 2004.

The Aceh tsunami would be a significant test of the Government's new anti-corruption stance. Traditionally the region has been regarded as one of the most corrupt within Indonesia, compounded by a dominant military presence that made independent relief efforts difficult. Reconstruction of water and sanitation services in Aceh, estimated at USD350 million, was at the mercy of limited political accountability, weak institutions and inadequate services, mismanaged utilities and procurement process prone to corruption and collusion. The World Bank noted that "keeping graft away from reconstruction funds will require a concerted, determined effort of vigilance and control, especially since the construction industry itself has been traditionally among the most prone to collusion, kickbacks and other leakages

Today, reconstruction and relief efforts in Aceh are regarded as one of the exemplary cases of local, national, non-governmental and international efforts to dealing with a natural disaster. One of the critical factors that contributed the

success of Aceh's reconstruction was community participation and oversight in reconstruction: from decision-making and village level planning, prioritising, monitoring and controlling finances – which ensured that oversight was from those with a vested interest in ensuring that there were no leakages / abuses in the reconstruction efforts.

"There has been a shift in public perception since 2004, where people perceive that they have a role to play in fighting corruption. Civil society groups and the public are monitoring the procurement process much more now than before" - Rezki Sri Wibowo (DSG, TI Indonesia)

Strong public support for the Corruption Eradication Commission (KPK) is also a key success factor for Indonesia's anti-corruption efforts. Public outcry over recent wire-tapped conversations tapes - allegedly between members of the police, the attorney general's office and a businessman, that involved plans to frame the KPK - resulted in the resignations of the deputy attorney general and the head of the national investigations unit.

Thousands also took to the street recently, in one of the largest movements since *Reformasi*, to support KPK (dubbed CICA: *Cinta Indonesia Cinta KPK*) against the Attorney General's Office and the National Police; when the latter organisation detained the antigraft body's top officials for bribery.

Active civil society participation has improved the perception of corruption within the country. Transparency International's 2009 Global Corruption Barometer Survey found that 74% believe that the Government's actions are effective in the fight against corruption. In addition, Indonesia has moved up in CPI rankings to 111th place currently from 133 in 2004

Have aspirations which are measurable, outcome-based and internationally benchmarked

To allow its performance to be objectively measured by the rakyat, the Government has developed aspirations which are measurable (e.g., using independently commissioned public opinion surveys), clearly linked to outcomes and internationally benchmarked. This indicates its seriousness in tackling this issue and willingness to be judged on the outcomes achieved, and not merely on intent. The Government's aspirations, to be measured via relevant NKPIs discussed later, are as follows:

- Reduce corruption through enforcement and compliance
- Improve our Transparency International corruption perception index score over time

- Improve public perception on the integrity of the Government and civil service (measured through public surveys)

Focus our improvement efforts on the 3 areas most prone to corruption

The Government will now focus predominantly on areas which are both most important to the rakyat and have the largest impact on our competitiveness as a nation. This focus is crucial as the Government would need to direct its leadership capacity and resources to effectively fight corruption. However, these are just ‘entry points’, i.e. we will broaden our efforts over time as our capacity expands.

The three areas that we will be focusing on in the near term are the following:

- Grand corruption (includes political corruption)
- Government procurement
- Regulatory and enforcement agencies

The Government acknowledges that despite directing all our energy and resources to the 3 focus areas, improvements may still not happen overnight. Results in these areas may take many months to become visible. However, we have identified 9 Big Wins, which we are confident would address the main issues of corruption in Malaysia. These initiatives if successfully implemented would deliver the greatest impact to the rakyat and achieve a step change in our anti-corruption reform effort. The Big Wins are then supported by a set of other initiatives to ensure further improvements are achieved over time. These Big Wins and other initiatives will now be discussed in turn as they relate to the 3 focus areas mentioned above.

Tackle grand corruption

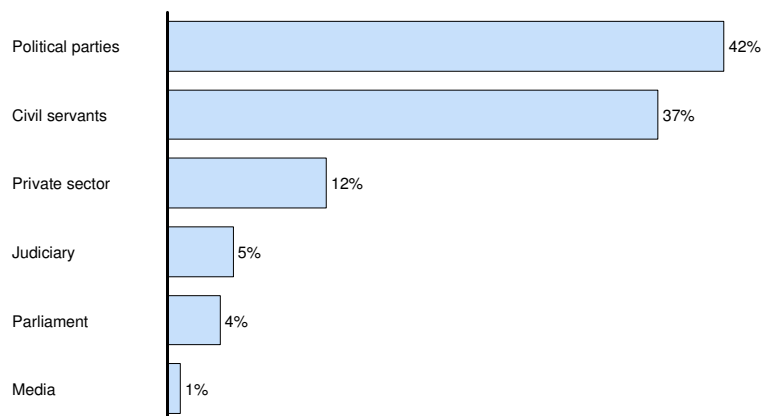
The Government must prevent the abuse of power and public resources by politicians and senior civil servants. In addition, the delivery of justice must be enhanced to ensure that all offenders, regardless of status and position, are prosecuted swiftly with harsh punishments imposed on civil servants and those in public office. This is an important area to focus on given that Malaysians perceive that both our political parties and civil servants are the entities most affected by corruption (Figure 1).

Figure 1

The Malaysian public perceives that corruption most affects political parties



Q: Which of these six sectors/ organisations would you consider to be most affected by corruption?



Source: Transparency International, 2009 Global Corruption Barometer Survey

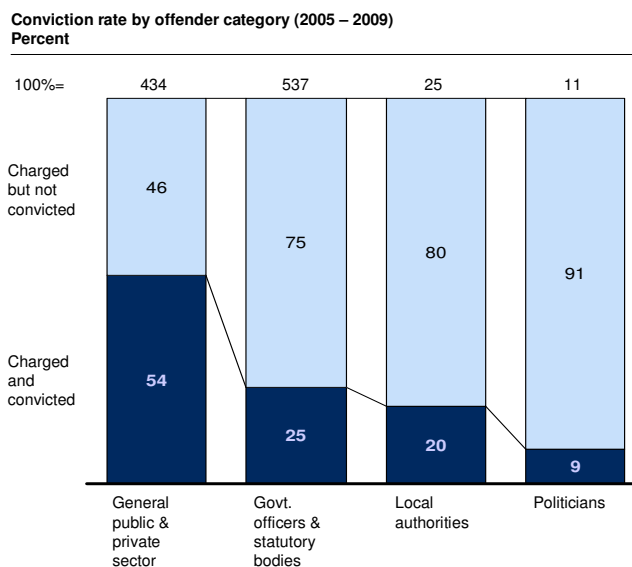
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While the Government acknowledges that it would be difficult to deliver fast results in this area, it is committed to implementing the following Big Wins:

Big Wins

■ Announce zero tolerance policy supported by robust whistleblower protection framework

While there have been many instances of high ranking officials and ministers implicated in corruption cases which involving substantial amounts of money, there has been a lack of transparency and coverage on the action taken against these high profile cases. Successful prosecutions of powerful individuals are rare (Figure 2), causing the public to believe that the Government is protective of politicians as well as politically linked individuals.

Figure 2**Conviction rate by offender category**

Hence, a top down commitment from the Prime Minister in the form of a zero tolerance policy will be enforced. This zero tolerance policy shall carry 6 key messages:

- No one is above the law and no one shall escape the system;
- Full investigation will be launched for all reported cases of corruption regardless of position and status;
- Enforcement agencies will be strengthened; The public is urged to be vigilant and not attempt to commit corruption;
- Focused efforts will be made to break up syndicates/cartels to uproot deeply embedded corruption in the country;
- Full disclosure; Details of convicted corruption case trial will be made public; and
- Harsh and swift punishment will be meted out to those who are found guilty of corruption.

To support the Government's commitment against corruption, a comprehensive whistleblower protection framework consisting of strong legislation and effective implementation mechanisms will be established.

Legislation, which is a fundamental component of the whistleblower protection framework, will be focused on three key areas:

- Scope of application: A Whistleblower Protection Law will need to cover members of the public and private sectors that disclose wrongdoings as well as those required to assist in internal or external processes (e.g., performing inquiries, carrying out audits, etc).
- Type of disclosures: Disclosures that are to be granted protection should include abuse of authority, violation of laws and ethical standards, danger to public health or safety, gross waste, illegality and mismanagement.
 - Disclosures should be made in “good faith” based on “honest and reasonable grounds at the particular time” without necessitating hard evidence from the whistleblower. The duty of gathering evidence will be tasked to investigative agencies to ensure that the whistleblower is not compromised. However, whistleblowers can provide evidence if available legally through the course of their work.
- The nature of protection should cover:
 - Protection from civil & criminal liability (e.g., defamation, breach of confidentiality and statutory secrecy provisions);
 - Protection of employment status (e.g., dismissals, suspensions, discriminations, etc.);
 - Entitlement to relocate if necessary;
 - Entitlement on the part of the whistleblower to take legal action against any person or body responsible for any forms of retribution taken against the whistleblower; and
 - Burden of proof for claims of retaliation to be reversed. Reprisals are assumed to have taken place if disciplinary actions cannot be justified. For example, reprisal is deemed to have happened if a whistleblower is dismissed from work after a disclosure has been made, unless proven otherwise by management.

The Whistleblower Protection Law will be supported by three key implementation mechanisms:

- An authorised agency tasked with implementing, overseeing and enforcing the Whistleblower protection framework will need to be established. Key responsibilities of this agency include: providing accessible channels for complaints, providing assistance with legal advice, and receiving and investigating complaints.
 - Internal reporting structures or channels to address complaints of wrongdoing. While these channels should be easily accessible, the confidentiality of the whistleblower must be guaranteed. At the same time, the private sector should also be encouraged to follow suit. Whistleblowers who feel uneasy about reporting an offence internally can always approach the authorised agency with their cases.
 - Awareness campaigns (e.g., through Non-Government Organisations (NGOs) or authorised agencies) to notify potential whistleblowers of the rights and the protection available to them, and should also address the cultural stigma that depicts whistleblowers as individuals who betray the trust of their colleagues or employers.
- **Enforce existing political laws and conduct study to revamp political funding**

To enhance the level of transparency in the political funding process, it is proposed that politicians and political parties will be required to disclose sources of funding and expenditures to the appropriate agencies. At the same time, the Societies Act 1966 should be strictly enforced on all political parties to ensure that the submission of their reports is done in a timely and accurate manner to the Registrar of Societies (ROS). In addition, during election period, it is also proposed that both the election candidates and political parties be required to disclose their electoral funding and expenditure to the Election Commission. This will require amendments to the Election Offences Act 1954 which currently stipulates that only candidates are required to make disclosures on their expenditures.

All disclosures will be validated through audits by the relevant bodies such as the Auditor General's Offices and independent auditors appointed by the ROS. To further strengthen this initiative, a comprehensive study will be undertaken by the Government to review the current political funding landscape in Malaysia and assess the feasibility of introducing a holistic approach to political funding that comprises full public disclosure, cap on private donations and supplementary public funding.

■ Strengthen independence of key institutions

The Malaysian Government has undertaken significant reforms to promote independence of key institutions, with major legislations such as the Judicial Appointments Commission Act and the Malaysia Anti Corruption Commission Act, being passed in 2009.

However, these institutions are still perceived as not independent. Among the issues that these institutions face are:

- Judiciary – Transparency International (Malaysia) survey in March/April 2008 on lawyers’ perception of the judiciary indicates that 91% felt that the judicial process in the superior courts was subject to various levels of undue influence from the Government or others.
- Attorney General – the Attorney General’s Chambers is sometimes perceived as being partial or deferring towards the Executive branch. In addition, the Attorney General does not sit in, nor is answerable to, the Parliament.
- Auditor General – the Auditor General is seen as independent in coming up with its findings. However, there are questions raised on why certain big ticket items are not audited or given the appropriate attention by the Auditor General.
- MACC – MACC is perceived to be ineffective, i.e., low track record of successfully solving high profile cases and partial towards the Government. Although 5 monitoring committees have been established, they are perceived to be ineffective, and are beholden to the Prime Minister or the Executive.
- Election Commission - public perception is that Election Commission is not proactive in protecting of the rights of the voters and the integrity of the electoral process, even though Election Commission does not have legislative powers. It has been accused by opposition parties of being biased towards the Government when it comes to delineating the constituencies.

It is therefore imperative for the Government to take actions to correct these perceptions. The judiciary, being the country’s most important check and balance institution, must be further reformed for it to be seen as independent from the Executive branch.

Judicial Independence

Currently, the Judicial Appointments Commission (JAC) is tasked to identify suitable candidates for the PM to consider as recommendations for judicial appointments. However, it has some key weaknesses, namely:

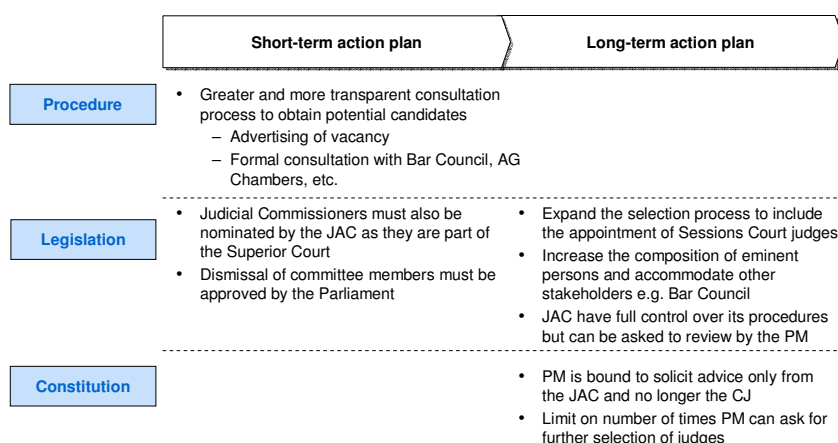
- **Power** – The Federal Constitution requires the PM to consult only the Chief Justice and not the JAC on the appointment of judges.
- **Independence** – the Prime Minister has strong control over the JAC. The PM is allowed to remove any appointed member of the commission (i.e., eminent person) without assigning any reason. The PM also has the discretion to change the procedures of the JAC operations at any time.
- **Transparency** – there is a lack of transparency in terms of consultation with key stakeholders, when the commission is sourcing for potential candidates.

The Government will undertake further reforms to strengthen the JAC. The reform can be done in two phases via a short term and long term action plan (Figure 3):

Figure 3

The Judicial Appointments Commission framework

Further reform measures



These reforms will result in greater separations of power between the Judiciary and the Executive branch while also holding the Judiciary more accountable for its actions. The reform's ultimate objective is to improve public perception toward, and restore public trust in the country's judiciary system.

Strengthen independence of other institutions

There is also a need to reform other institutions that play a pivotal role in the check and balance mechanism in this country. The common issue across these institutions is the perception that they are heavily influenced by the Executive branch. The table below outlines the reform measures for these key institutions:

Reform measures for key institutions in Malaysia

Institution	Reform measure
Auditor General's Office and Election Commission	<ul style="list-style-type: none"> • Appointments <ul style="list-style-type: none"> – PM to propose a candidate to the King after being agreed upon by the Parliament or its subcommittees e.g. Public Accounts Committee; – Appointments are to be made on a fixed term non renewable basis e.g. 5 years, to ensure independence and focus on the job; and – AG and EC should have a closed service scheme for its employees to prevent interference from other parties with vested interest. • Reporting <ul style="list-style-type: none"> – The independent bodies will report to the Parliament through relevant Parliamentary subcommittees who will review its financing, planning and outcomes; and – A new parliamentary committee can be set up to monitor the Election Commission as well as other independent bodies with the Chairman of the Committee being the Speaker of the <i>Dewan rakyat</i>. • Budget <ul style="list-style-type: none"> – The budget for the independent agencies should be determined by the Parliament based on the recommendations of the Parliamentary subcommittee and upon consultation with the Government.

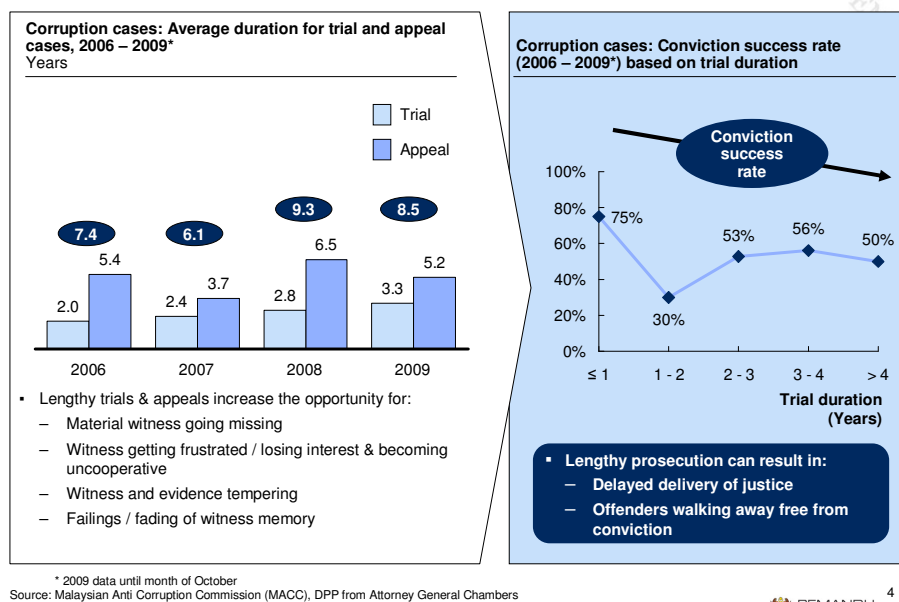
Institution	Reform measure
MACC	<ul style="list-style-type: none"> • Appointment <ul style="list-style-type: none"> – PM to nominate a Chief Commissioner to the King after being agreed by the Parliamentary Special Committee on Corruption; and – The Director of Prosecution to be appointed from outside AG Chamber's i.e. retired judges and lawyers on a contractual basis to promote greater independence in prosecution of cases. The powers of the director is still subjugated and derived from the Attorney General.
Attorney General's Chambers	<ul style="list-style-type: none"> • Reporting <ul style="list-style-type: none"> – The AG Chamber's performance and conduct should be monitored by a Parliamentary Committee to ensure that the prosecution is done in a rigorous and fair manner.

■ **Endeavour to complete prosecution of corruption cases within 1 year, particularly for public interest cases**

Currently, the average duration for the completion of a trial and appeal for a corruption case is 8.5 years (data from January 2009 – October 2009) (Figure 4). These lengthy trials and appeals increase the opportunity for: material witnesses to go missing, witness and evidence tampering, failings or fading of witness memory, as well as witnesses getting frustrated or losing interest in the cases and thus becoming uncooperative. As a result, these lengthy processes have been shown to reduce the conviction rate and are also seen to delay the delivery of justice.

Figure 4

Currently, completion of a corruption case takes about 8.5 years (trial and appeal), which hampers the delivery of justice



As such, speedy completion of corruption cases is crucial to successful conviction of offenders. In order to ensure a swift and efficient prosecution, procedures for witness statement recording and the delivery of subpoenas will be strengthened. In addition, strict timelines will be enforced on all prosecution processes and procedures. In line with this, the case handling capacity of the courts will also be increased through additional DPP appointments and the setting up of new special corruption courts.

■ Enforce stiffer punishment

Under the current Malaysia Anti-Corruption Commission Act 2009, there is no minimum sentence stipulated if an individual is found guilty of corruption. At the same time, for cases that are not prosecuted, departmental disciplinary actions taken are usually light (e.g. the issuance of warnings). This has resulted in the lack of fear of getting caught. Therefore, a minimum jail sentence via a tiered approach based on the severity of offences will be adopted. In addition, a harsher penalty structure will also be implemented for convicted civil servants and leaders as public trust and funds are involved as illustrated by Figure 5.

Figure 5**Longer minimum jail sentence**ILLUSTRATIVE
EXAMPLES

Value of bribe (RM '000)	Minimum Jail Sentence (days)
≤ 100	1
$100 < \text{Bribe} \leq 500$	30
> 500	60

Stronger penalties for civil servants / leaders

Penalties	Offenders	
	Normal	Civil servants / leaders
Jail (Max)	20 years	20 years without parole
Fine (Max)	5x bribe or RM10,000*	7x bribe or RM15,000*

* Whichever is higher

Convicted civil servants and leaders will also be removed from their positions, lose their pensions and other benefits as well as be barred from any future public appointments. As for cases which are referred back to the relevant departments, there will be clear guidelines that align disciplinary actions to the severity of the offence. Delivery of such disciplinary actions will adhere to a fixed timeline to ensure that there are no unnecessary delays in the delivery of punishments.

■ Develop a name and shame offender database

A name and shame approach in the form of a public database, housing information on convicted offenders of corruption, will be implemented as a strong deterrent on committing corruption. Currently, there is no easy access for public to make a quick check on corruption offenders. Those who are convicted can only be checked through reports in Malaysia Law Journals or Prison Department.

The database aims to close this gap and will be made available to the public via the MACC website. Only new records of corruption after the announcement of this initiative will be captured in the database and published. While information on offenders will be made public for 3 years, all information captured will be housed indefinitely in the database

for internal references. The public database of offenders will also serve to facilitate employment decisions, especially for sensitive positions involving authority and trust.

Other Initiatives

Besides the priority Big Wins, the Government is also proposing to implement the following initiatives:

- **Disclose Government allocation to Members of Parliament (MP)**

There is a lack of transparency and accountability in the management of the MPs discretionary allocation which leads to potential abuse. Therefore, the Government will revamp the disbursement and monitoring mechanism of MP's allocation where the usage of funds is publicly disclosed and audited. There will also be new guidelines governing the usage of the allocation for direct individual assistance and implementation of small projects. Finally, all MPs are to receive fair allocation of funds, regardless of political affiliation, though this amount could vary according to social demographics of the constituencies.

- **Segregate duties between Ministers and *Secretary Generals (KSUs)***

There is currently no clear demarcation of jurisdiction and authority between Ministers and KSUs which could lead to the lack of accountability and abuse of power by both parties. To address this issue, a clear job scope on the responsibilities and decision making authority will be drawn up for Ministers and KSUs to clearly distinguish the roles of both parties, which will be informed to the civil servants. By taking these measures, interference by politicians in the running of the civil service will be curbed. Proper accountability will also ensure that neither party is victimised when there are allegations on the abuse of power.

- **Form and enhance a special Parliamentary Select Committee (PSCI) on Integrity**

The Parliamentary Select Committee on Integrity will be re-established with more specific Terms of Reference (ToR) that will focus on integrity issues and cases involving politicians, Government bodies and Government Linked Companies (GLCs). The committee will perform inquiries on issues of public interests relevant to their ToR and refer these

cases for further action to the relevant authorities e.g., MACC. Under the PSCI's purview, a National Integrity Management System will be developed and managed by Institute of Integrity of Malaysia (IIM) to facilitate the monitoring and adoption of integrity best practices amongst politicians, Government and GLCs.

■ **Develop a centralised database on declaration of asset and debt**

Currently, information on assets and debts of the civil service remains with the respective departments. This hampers the efforts by MACC to identify and investigate public officers who have questionably high levels of assets. As such, the Declaration of Asset Module in the Human Resource Management Information System (HRMIS) will be extended and enforced on all Government servants as soon as possible. Accessibility to this module will also be given to the MACC in order for it to detect signs of corruption. However, care will be taken to ensure that there is low risk of leakages of such sensitive information to unauthorised personnel.

■ **Increase the credibility and integrity of the media**

The media plays a very important role in combating corruption. However there is relatively limited media freedom in Malaysia compared to other countries as evidenced by our ranking in the Press Freedom Index.

Therefore, the Ministry of Home Affairs (MoHA) will undertake a comprehensive review of existing laws that governs media freedom including Internal Security Act 1960, Official Secrets Act 1972, Sedition Act 1948, Printing and Publications Act 1984, Multimedia Act 1998 and Defamation Act 1957. Besides the review of existing legislations, MoHA and the AG Chambers will also be conducting a feasibility study on enacting a Freedom of Information Act. A Media Council will also be established to act as an independent watchdog to provide oversight on the media.

■ **Increase transparency in the prosecution of corruption cases**

The public perceives MACC as being bias in prosecuting its cases whereby Government linked politicians and officers are investigated but not prosecuted. Currently, the decision to prosecute lies with the Director of Legal and Prosecution Division in MACC which reports to the AG Chambers. This has raised doubt on the neutrality of prosecution decisions made by the division.

To help correct this perception, the position of MACC's Director of Legal and Prosecution Division will be made an open position on a contractual

basis. This would allow the position to be filled by the most qualified candidate who is external to the AG Chambers (e.g., retired judges, distinguished lawyers).

■ **Develop a reward and recognition scheme for civil servants who provide assistance in corruption cases**

Currently there are not enough incentives for the public to assist in corruption cases. An individual assisting in corruption cases often incur high risk (e.g., retaliation), extra work and no / limited recognition or reward. As such, a reward and recognition scheme for public officers will be developed to encourage more officers to come forward to help in resolving corruption cases by sending the clear message that the Government values and rewards the courage and the “always do the right thing” attitude of public officers. For this purpose, an annual grant from the Government will be placed in a trust fund kept by the Malaysian Institute of Integrity. A committee, chaired by a senior officer from the Malaysian Institute of Integrity, will be established to deliberate and decide on the awarding of rewards and / or recognition on a case by case basis.

■ **Formalise political appointees at ministries**

Ministers and Deputy Ministers are allowed to make political appointments. However several issues have been identified:

- Appointments exceed the allocation allowed by the minister’s budget; and
- Appointments made using positions reserved for civil service or through ministries’ subsidiary companies.

The lack of control over these appointments has created opportunities for the abuse of power within the civil service.

To resolve these issues, the Government will gazette the post of special officers and accord it with proper job scope, responsibility and accountability. In addition to this, JPA will also conduct a study to determine the appropriate number of positions required for each minister.

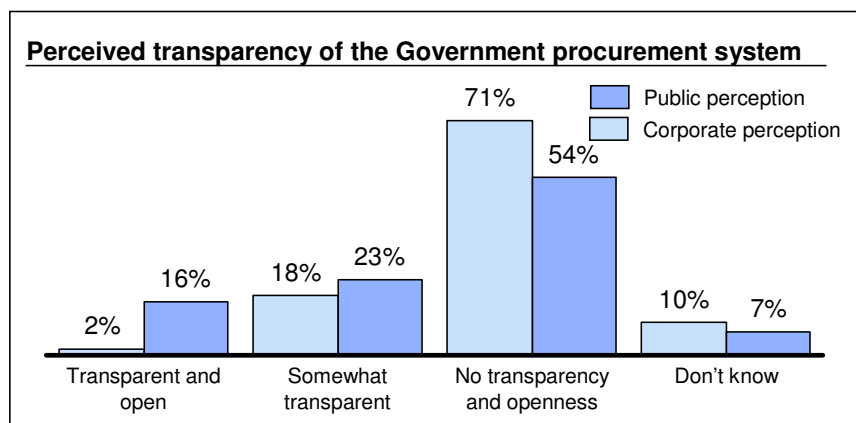
Reduce leakages of funds in Government procurement

The Government will reduce leakages of funds allocated for national development and operation expenditure and ensure transparency in the award of contracts.

Currently the public perceives that there is a lack of transparency in the Government procurement process (Figure 6).

Figure 6

The public perceives there is lack of transparency in the current procurement process or system used for awarding major government projects



Source: Merdeka Center: Malaysian Transparency Perception Survey 2007

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The setting up of high-powered task force headed by Chief Secretary to the Government Tan Sri Mohd Sidek Hassan to study the 2008 Auditor-General's report and take action against those responsible for the financial irregularities revealed therein, is a significant step on the Government's journey in the fight against corruption.

Examples of improvement areas mentioned in the 2008 Auditor-General's Report

In the spirit of transparency, the Government has published in full the Auditor-General's Report of 2008. This Report highlighted situations which, if not properly managed, could provide opportunities for corrupt or improper practices in Government departments and companies. Excerpts included:

"...work done not in accordance with the original scope of works, increased project cost...unutilised facilities upon completion, improper payment made for works not done..."

“...weaknesses such as delay in declaring imported goods and payment of import duties/taxes...errors in classification and valuation...poor handling of Custom Declaration Forms...”

“...poor quality construction works...”

“...even though the original plan was to construct a paved road..., only a gravel road was built...”

“...delay in project completion that resulted in an estimated cost overrun of RM1.43 billion, procurement of excess equipment...”

“...payments made to unqualified recipients...delay in distributing allocations...”

“...(improper) approval based (only) on a draft LP (Local Planning)...”

“...equipment procured at a much higher cost than market value, not less than RM3.66 million worth of equipments not utilised or underutilised...”

“...approval of loans which does not meet the established criteria or without liquid assets or bank / corporate guarantees, loose process in the release of loans...”

“...no contract signed...”

“...finances not managed according to established regulations...”

To prevent a repeat of incidences like the ones reported by the Auditor-General, the following Big Wins will be implemented:

Big Wins

■ Prohibit support letters

The Government will stop the practice of “support letters” from the Ministers, politicians, and others. This is to prevent undue influence from being exerted on civil servants to circumvent standard policies and processes, which in turn will reduce the chance of corrupt practices taking place. Often, these political interventions do not necessarily originate from the politicians themselves, but from vested individuals who use the “support letters” as leverage to negotiate with the Government.

Understanding that an immediate step change will not be easy, as politicians may have obligations to their supporters; the initiative will be accomplished via a phased approach: Initial phase will focus on PM issuing a directive to the civil service that “support letters” and other associated forms of lobbying should not interfere with or circumvent Government processes. The second phase will see PM issue directives to eliminate the practice of support letters. In addition, the Ministry of Finance (MOF) will follow up the directives with treasury circulars to all agencies and ministries to reject the content, and any associated recommendations and instructions, within support letters. The initiative will also be supported by an anonymous channel to report such interference to MACC.

■ **Disclose details of all Government procurement and privatisation contracts**

It has been well established that transparency is crucial for a predictable, fair and efficient Government procurement process. This is because transparency increases public scrutiny on Government procurement process and helps ensure that accountability, and well defined policies, regulations and procedures are put in place.

Analysis of the tender process shows that potential for negative public perception occurs at various stages, from project initiation and planning through to contract execution. Both public and private sector are particularly sceptical of unnecessary projects, award decisions that are not made public or sufficiently justified, project delays, contract variations, and concealment of sub-standard work. This is supported by a number of recent media reports highlighting construction problems (e.g. MRR2 and Terengganu stadium collapse), potential cost overruns and overpayment (e.g. PKFZ, RM42,320 laptop incident), and a lack of transparency in procurement policies, tender process, and budgeting.

The requirement of disclosure is in place in Government procurement processes. For example, Treasury Circular Letter No. 5, Year 2007 clause 43.4, requires respective implementing agencies to announce the list of the awarded projects and procurement, names of the successful contractors, contract sums, and project period at the agencies’ notice boards. It also requires that all tender decisions be made public in each implementing agencies’ respective websites as well as the Government portal.

A cursory review of implementing agencies’ websites and interview with representatives from large ministries (e.g., MoH, MoE, KDN) finds,

however, that compliance to the Treasury Circular Letter No. 5 Year 2007 is lax.

Government Procurement - Examples from Singapore and Korea

Practices from other countries highlight that governments are moving toward great transparency and complete information disclosure. For many, the information is disclosed at a one stop centre so that all information on procurement processes and decisions are readily available and easily accessible. For example, **Singapore** discloses key procurement information at its one stop e-procurement portal:

- Planned projects for purchases greater than SGD \$200,000 in the fiscal year: including description of purchase and the name of purchasing ministry or state board;
- Invitations for quotations or tenders: including description of tender or quotation and name of the calling entity;
- Information on awards: including name of awarding entity, name of awarded party and value of award; and
- Information on Government procurement: including administrative structure, procurement guide, procurement policies and procedures, complaint or appeal procedures and authority and rational for debarment (including corrupt practices).

Korea is also at the forefront of advances in Government procurement. The following information is disclosed at its one stop e-procurement portal:

- Invitation for quotation or tender: including description of tender or quotation, name of calling entity and estimated cost;
- Information on award: including name of awarding entity, estimated cost, name of awarded party and value of award; and
- Information on Government procurement: including administrative structure, relevant laws, procurement policies and procedures as well as codes of conduct.

Therefore the Government will disclose the following key items¹:

¹ Does not include any information that is of national security interest / sensitive

- Disclosure of planned projects: Annual list of all procurement projects planned for which the budget is approved and allocated.
- Disclosure of awarded projects: For those awarded through competitive bids and direct negotiation.
- Procurement Processes: Main procurement processes for Tender (Open and Selective), Quotation and Direct Purchase, guidelines on selection of tender committee and evaluation criteria; and code of ethics.

The information will be made available centrally at the e-Government portal which will display the summary of projects planned and awarded by the respective ministries – for further details on the projects, the public will be guided to the respective ministries' websites via hyperlinks. The Secretary General or Director General of every ministry and agencies will be made accountable to ensure their respective ministries' website is updated with the latest procurement information.

Other Initiatives

Besides the prioritised Big Wins, the Government is also proposing to implement the following initiatives:

- **Tighten price negotiation and enforcement of direct negotiation**

The Government often experiences price inflation especially in direct negotiation procurement as price negotiations are done based on total contract value (and not on unit price). In such cases, suppliers and vendors tend to quote low prices on less consumable items and mark up the prices of frequently used goods. Besides, there is a lack of market research to guide the procurement officers to negotiate for the best price deals, which leads to officers agreeing to unreasonable prices set by irresponsible suppliers and vendors. The initiative aims to tackle the issue by making it mandatory for all procurement officers to negotiate each line item. Additionally, a national database for pricing and/or rates for supply of services will be created to provide benchmark prices and quotes which will serve as a guide during negotiations. This will allow officers to compare prices from a larger pool of providers and therefore negotiate a better deal for the Government.

■ **Clearly demarcate between procurement and privatisation/public private partnership (PPP)**

There is a lack of public awareness on the demarcation between privatisation and procurement processes, leading the public to assume that direct negotiations are allowed for both privatisation and procurement, when in actual fact, it is only allowed for the former. As a result, procurement officers are subjected to great pressure by lobbyists who want to do business with the Government. There are also no clear guidelines to outline the implementation priority and selection criteria of privatisation / PPP projects which lead to both a lack of understanding on why PPP contracts are awarded to certain parties, and also increase the opportunity for unscrupulous parties to exploit lack of understanding for their own gain.

Therefore, there will be a review of the privatisation master plan and development of guidelines to improve the existing privatisation/PPP framework. Clearer guidelines on privatisation will be drawn up to help curb corruption and inappropriate conduct by establishing the basis for the award of privatisation contracts. There is also a need to develop a 2-year rolling privatisation / PPP plan and to strengthen the UKAS organisation structure. On the latter, additional manpower will be required for 2 new divisions: the policy division and advisory division for post-implementation monitoring.

■ **Enhance technical capability at every ministry**

Non-technical departments are allowed to handle procurement of development projects below RM5 million without having to go through the Standard and Cost Committee at EPU (i.e. without the assistance of *Jabatan Kerja Raya* and *Jabatan Pengairan dan Saliran*). The original intent of this move is to ease the backlog of projects at the central agency, therefore speeding up the procurement process and allowing faster project implementation. However, this has resulted in cost overruns, expansion of project scopes as these departments do not have sufficient resources and capabilities, which subsequently led to increased opportunities for corruption and abuse.

To address this issue, each ministry / agency establish its own mini-standard and cost committee whose main responsibility is to determine project needs, analyse project scope and estimated ceiling, and co-ordinate and optimise project implementation. The mini-standard and cost committees will assist in effective decision making and ensure a more transparent process with regard to the technical aspects of Government

procurement. With this enhanced capability, the scope of responsibility of the non-technical departments would be expanded to evaluate projects, as well as supplies and services procurement worth up to RM100 million.

- **Develop systematic training plan for procurement staff and National Procurement Institute**

Training in procurement is important to build specific capabilities in the relevant officers so that they can perform this in the most efficient manner, resulting in cost savings. Currently, the training is not mandatory and is not systematically planned. The modules are focused on basic and operational procurement, and do not include developing a better understanding of Government policies, markets and risks to integrity. Furthermore, the officers are not trained with fraud detection skills to effectively detect and prevent corruption in the system. The initiative is to develop comprehensive and continuous professional procurement training, which includes elements of sustainable anti-corruption education. A curriculum development committee will be set up to specifically develop and design a suitable syllabus and modules for procurement training. Additionally, as part of the long term plan, a feasibility study will be conducted on the formation of a National Procurement Institute to lead this capability building effort.

- **Sign an Integrity pact between the Government and vendors/suppliers**

There is currently a lack of clarity as to what constitutes acceptable conduct between Government ministries / agencies and vendors / suppliers, with little consequence for unethical behaviour. This often results in ignorance being used to justify corrupt or morally ambiguous actions by both parties (Government and vendors / suppliers). Corrupt practices, in turn, inflate project costs, leading to grossly inefficient use of public resources. Therefore a binding agreement in the form of an integrity pact between the Government and vendors / suppliers will be signed to define appropriate behaviour in dealings between both parties.

Implementation of the pact will be piloted in a big ticket / high profile project (e.g. above RM500 million) and used as a showcase for the public, private sector, independent / international institutions, and media. The entire process, from initiation to completion, will be made transparent. An independent body will be invited to monitor and evaluate the entire project 'lifecycle', with an assessment report published at the end. This assessment and report will also analyse the savings achieved through the pact. This will be a signal of commitment for increasing transparency and scrutiny on large value Government project.

Regain the public's confidence in regulatory and enforcement agencies

The Government will regain the public's confidence in the following regulatory and enforcement agencies: Police, Customs, Road Transport Department, and Imigresen. These are the top four Government agencies directly under the Federal Government, with the lowest perceived integrity scores among the business community and the public as polled by the 2007 Malaysian Transparency Perception Survey. These were also the top four agencies with the most number of cases charged by the MACC between 2005 to 2009. A Big Win to be implemented to regain the public trust is as follows:

- **Strictly enforce laws which relate to illegal activities**

The effectiveness of Malaysia's enforcement agencies have come under scrutiny as crime levels and inactions over apparent offenses (e.g. overloaded vehicles, influx of illegal immigrants) continue to increase over recent years. Compliance of rules, regulations and SOPs is deemed to be compromised, whether due to corruption or simply plain negligence.

The need for strong compliance has also been made apparent as from 2005-2009, the Public Complaints Bureau (PCB) has identified that complaints against federal civil servants in the nature of Failure to Enforce and Unfair Action amounted to 24% (or 5,346) of all complaints received.

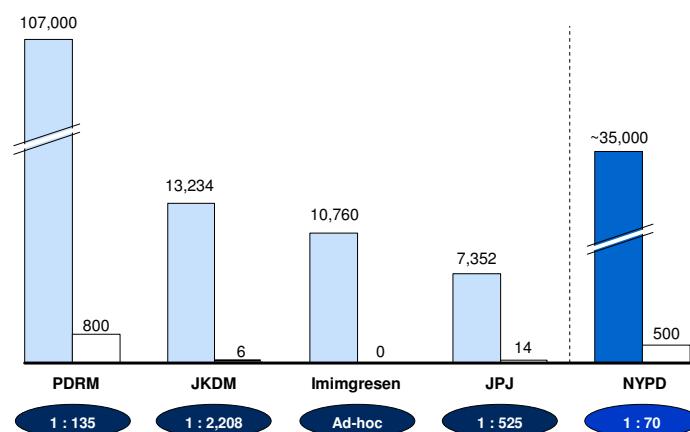
Policies and procedures are already in place, reviewed, enhanced and improved to ensure that agencies meet best practices. However, there is a clear lack of stringent monitoring and consequence management which has contributed to widespread corrupt practices.

Based on the latest statistics provided by PDRM, JKDM, Imigresen and JPJ, the compliance units of these key enforcement agencies require major strengthening to improve overall effectiveness of their roles (Figure 7).

Figure 7

The ratio of compliance officers to the number of enforcement personnel is extremely low as compared to enforcement agencies in other countries

Ratio of compliance officers* to total number of enforcement personnel



* NYPD: Internal Affairs Bureau
Source: PDRM, JPJ, JKDM, JIM, various web literatures

Unlike internal audit units which act after the fact, compliance units are tasked to proactively keep check on enforcement officers to prevent them from flaunting rules and regulations, and misusing or abusing their powers.

The key areas in which compliance is crucial are:

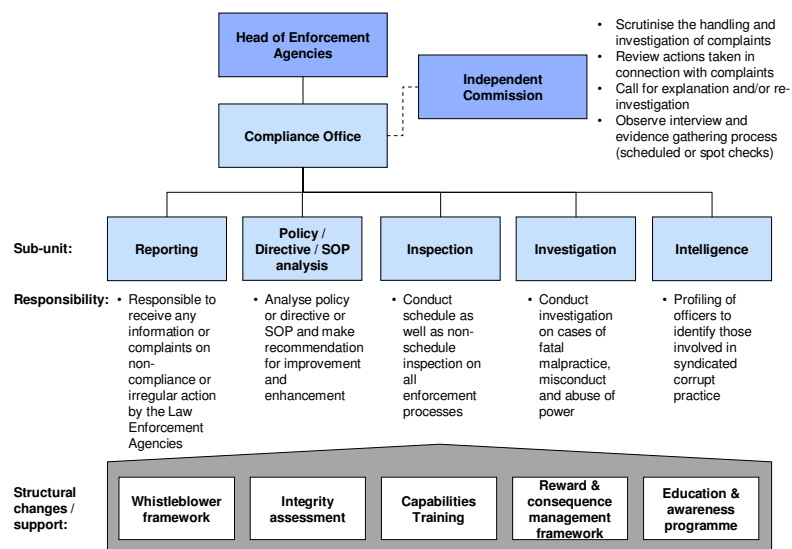
- PDRM: Criminal Investigations Department (CID), Commercial Crimes Investigations Department (CCID), Narcotics and the Internal Security and Public Order Department
- JKDM: Enforcement and Customs divisions
- Imigresen: Enforcement, Foreign Workers, Visa Pass and Permit and Passport and Security divisions
- JPJ: Enforcement division

Suitable resources will be allocated for a dedicated compliance unit within the enforcement agencies. The compliance unit shall be empowered to take actions and report directly to the head of the enforcement agency, with Independent Commission overseeing its management and conduct. Its role will include regular (scheduled & un-scheduled) inspection of enforcement processes, investigations on reported cases of fatal

malpractice, misconduct and abuse of power, intelligence gathering to act on syndicated corrupt practices involving enforcement personnel, and making recommendations for improving existing operating policies and procedures. Figure 8 illustrates the organisational setup of the compliance unit.

Figure 8

A dedicated compliance office with oversight from an independent commission needs to be made mandatory at all law enforcement agencies



A supporting framework will also be established to ensure effectiveness of the compliance unit. This includes a fully functional whistleblower framework, integrity assessment for all compliance personnel, capabilities training, a reward and consequence management framework and also an education and awareness programme.

Other Initiatives

Besides the priority Big Wins, the Government will also be implement the following initiatives:

■ **Reduce discretion through automation**

This aims to reduce human interaction and discretion in selected Government transactions and institute effective monitoring in others, to reduce opportunities for corruption. Solutions that will be implemented include:

- Automating the detection and enforcement of traffic violation through an Automated Enforcement System (AES). Digital traffic cameras will be installed along major highways, accident black spots as well as traffic light junctions across Malaysia. Offences captured will be automatically transmitted to a back-end processing centre, in which the data is verified and summons printed and issued. The AES modules also include an audit trail mechanism to prevent data manipulation. It is envisaged that with the AES, enforcement of public road safety will be significantly improved as traffic offenders will no longer be able to ‘negotiate’ their way out of being summoned or paying a reduced summons.
- Installing CCTVs at major customs and immigration entry and exit points, as well as passengers waiting bays. Footage will be monitored by a central command centre. The consciousness of being watched will keep both enforcement personnel and the public under check, and deter them from engaging in ‘negotiations’ or other shady activities such as human trafficking and smuggling.

■ **Identify opportunities to simplify public interaction processes**

The work processes of these enforcement agencies will be analysed and revamped. In particular, control mechanisms will be put in place for high-risk manual processes that cannot be automated. Operating procedures of front-line enforcement officers will also be reviewed and made public to avoid perception of and deter corrupt behaviour (e.g., pulling over vehicles). Finally, processes will be streamlined to speed up the delivery of services.

■ **Institute hot-job rotation**

This involves rotating enforcement personnel between jobs or workplace to prevent them from developing close relationships with and collaborating with criminal syndicates / organisations. A list of hot-jobs i.e., jobs with high risk for corrupt activities, have been identified in these agencies. Two types of job rotation will take place – internal which involves rotation to a division / branch / unit within the same state; and external which involves rotation to a division / branch / unit in another

state. Officers placed in hot-jobs will need to pass an integrity assessment, and their tenure on these hot-jobs limited to between 6 months and 3 years, after which they will be rotated. A job rotation monitoring committee will also be established to ensure that the rotation system is strictly adhered to.

- **Create a Centralised asset management body**

Currently there is a lack of transparency in the handling of confiscated assets by law enforcement agencies, with high incidence of misreporting and mishandling of such assets for personal gain. Lengthy disposal process also leads to depreciation, misplaced or lost items, damages, and high storage cost. To overcome these issues, a centralised asset management body will be set up as a one-stop centre for law enforcement agencies to transfer all seized and forfeited assets for efficient management and disposal. This will enable the preservation of value of assets seized thereby boosting revenue to the Government upon their disposal, and free the law enforcement agencies to concentrate on their core functions.

- **Increase public awareness on Government agencies service levels, procedures and amendments in law / regulations**

The lack of awareness by the public in these areas some time results in abuse by middle-men (including Government officials) who demand a 'facilitation fee' for speeding up the process or for services to be provided. Therefore, a public awareness program will be launched to explain key processes and publicise service levels of key Government agencies so that the public becomes more informed when dealing these agencies.

- **Raise level of accountability on local Government authority officers and councillors**

The limited mobility of these officers creates opportunities to grow 'deep roots' to engage in corrupt activities. To reduce the level of corruption at the local Government level, such officers will be considered as part of the federal civil. This will allow them to be transferable from one local Government to another local authority or Government agency, and would subject them to a higher degree of accountability. For this to happen, it would require an amendment to the Local Government Act (1971).

- **Create a league table of performance for all local authorities**

It is expected that a greater degree of performance transparency would create a strong incentive for local authorities to improve their service

delivery and curb corrupt practices. As part of the rating criteria, local authorities will be required to establish clear service standards for their key processes, and these will be tracked and monitored. In addition to the rankings, an intervention strategy for consistently poor performing local authorities will also be developed.

Use transparent KPI measures and targets to define what success means

For each of these 3 focus areas, we will be tracking and reporting the following KPI measures along with their respective yearly targets. We believe these targets are sufficiently ambitious and if achieved would represent a significant improvement that the rakyat would be able to see and feel.

Focus area	KPI	Current	2010
Public perception	Transparency Composite Index		
	• CPI score	• 5.1	• 5.2
	• Global Corruption Barometer score	• 28%	• 32%
	• Customised local survey score	• tbc	• tbc
Grand corruption	• Customised local survey score (political corruption)	• tbc	• tbc
Government procurement	• Number of audit findings on procurement	• tbc	• tbc
Regulatory and enforcement agencies	• Number of cases charged vs number of arrest for drug trafficking and possession	• 75%	• 80%
	• Number of summons issued for traffic offences vs hours of operations	• N/A	• 60%
	• Number of cases charged vs. no. of arrests and detention under Immigration Act	• 36%	• 60%
	• Tax recovered from under-declared goods (in RM value)	• RM 18 million	• RM21million
Broader framework	• % of trials completed within 1-year	• 8.5%	• 30%
	• Number of people in the database of convicted offenders	• 0	• 84

Early signs of progress seen on corruption

Even at this early stage, the Government and other institutions (e.g. Parliament) have already gone into action mode to signal their seriousness in combating corruption. Some of the actions that have commenced:

- Prosecution of elected representatives from across the political divide and high-ranking civil servants (including a former KSU) for misuse of public funds
- The setting up of a high-powered civil service task force to probe financial irregularities reported by the Auditor-General in his 2008 Report (as discussed above)
- The establishment of a team by the MACC to conduct a study to plug loopholes and opportunities for misuse of constituency funds by state assemblymen and MPs has been completed. MACC's state directors have already been tasked to brief elected representatives on how to manage their allocation and the right procedures to prevent abuse or misuse
- MACC's request for an additional 600 headcount has been approved and included in the 2010 budget. This is a great boost for MACC as its previous request for manpower has been put on hold. With additional capacity, MACC will be able to strengthen its enforcement efforts.
- Fourteen Special Corruption Sessions Courts and four Special Corruption Appeal High Courts have been included in the 2010 budget and will be established to speed up corruption trials.
- Formulation of the Whistle Blower Act has been announced by the Prime Minister during his 2010 budget speech. The Act aims to encourage informers to expose corrupt practices and other misconduct, and will provide immunity to informers from civil or criminal charges.
- UMNO delegates have passed the party constitutional amendments which will pave the way for the party's transformation. The amendments involved changes to 36 clauses and sub-clauses in seven main articles, with the most important change being expanding the number of members empowered to directly vote for top party positions from the present 2,510 to 146,500. This higher number will deter money politics from taking place.

While these are modest steps, the level of transparency in dealing with the above cases has been unprecedented for the Government. This is only the beginning – over the following 12-36 months, it will continue to implement other initiatives as outlined above in its efforts to meet the NKRA targets.

The rakyat has a major role in fighting corruption

The public must play a role in letting their leaders know that the way things are cannot continue by exercising pressure and serving as watchdog of reform. A strong voice from the rakyat (and media) expressing their frustration and anger on how corruption is currently being managed will make the difference. Currently this sentiment is only being stressed by a small number of bloggers and NGOs, which is insufficient to support to the tide of change that some politicians are advocating. We also urge the public to come forward and report all known cases of corrupt practices or activities, and provide information to assist in the investigation against those charged with corruption. We cannot prosecute without sufficient evidence and witness, and this has resulted in many reported cases being acquitted. The fight against corruption is very much a concerted effort and your support and co-operation is extremely crucial.