

GOVERNMENT PROCUREMENT BILL 2025

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FIRST SCHEDULE

SECOND SCHEDULE

A BILL

i n t i t u l e d

An Act to provide for the duties, accountability, governance and transparency in Government procurement, the establishment of the Government Procurement Appeal Tribunal and to provide for other matters connected therewith.

[]

ENACTED by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Government Procurement Act 2025.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Application

2. (1) This Act shall apply to—

(a) any person who administers, conducts or implements Government procurement; and

(b) any person who participates in a Government procurement.

(2) Notwithstanding anything in this section, the Minister or, in relation to a State, the Menteri Besar or Chief Minister, as the case may be, may, by order published in the *Gazette*, exempt from the application of this Act any one-off allocation of funds appropriated by the Supply Act or Supply Enactment, as the case may be, for any Government procurement by any statutory body, local authority, Federal Government entity, State Government entity or any other entity in relation to any new programme.

Non-application

3. This Act shall not apply to—

(a) any procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt, including loans and Government bonds, notes and any other securities;

(b) any appointment on contract basis by the Federation or any State for the delivery of public service; and

(c) any procurement—

(i) conducted for the specific purpose of providing international assistance, including development aid;

(ii) funded by an international organization or foreign or international grants, loans or other assistance to which procurement procedures or conditions of the international organization or donor apply; and

- (iii) conducted under the particular procedure or condition of an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory.

Act to be read together with relevant written laws

4. This Act shall be read together with the relevant written laws relating to Government procurement and the provisions of this Act shall be in addition to, and not in derogation of, the provisions of the relevant written laws.

Interpretation

5. (1) In this Act, unless the context otherwise requires—

“implementing agency” means any Government department or agency prescribed by the Minister as an agency that implements Government procurement on behalf of a controlling officer;

“this Act” includes any subsidiary legislation made under this Act;

“Supply Act” or “Supply Enactment” means the Act or Enactment made for the appropriation of any sums from the Consolidated Fund in accordance with Articles 100 and 101 or, sections 15 and 16 of the Eighth Schedule, of the Federal Constitution, as the case may be;

“member of the administration” has the meaning assigned to it in Clause 2 of Article 160 of the Federal Constitution;

“instructions” means any instructions issued under section 91 or 92, as the case may be;

“statutory body” means any body corporate that is formed or incorporated pursuant to any written law but does not include a local authority;

“Legislative Assembly” has the meaning assigned to it in Clause 2 of Article 160 of the Federal Constitution;

“specify”, where no mode is mentioned, means specify from time to time in writing, and a power to specify includes the power to specify differently for—

- (a) different persons or activities; or
- (b) different classes, categories or descriptions of persons or activities;

“prescribed” means prescribed by the Minister in regulations made under this Act;

“entity” means a company, partnership or any group of persons, whether corporate or unincorporate;

“State Government entity” means—

- (a) any company incorporated under the Companies Act 2016 [Act 777] where—
 - (i) in the case of a company limited by shares, the Menteri Besar or Chief Minister incorporated under any State law or any State statutory body is a shareholder having more than fifty per cent of the shares of the company; or
 - (ii) in the case of a company limited by guarantee, the Menteri Besar or Chief Minister incorporated under any State law or any State statutory body is a member of the company; or
- (b) any body corporate incorporated under the Trustees (Incorporation) Act 1952 [Act 258] by the State Government;

“Federal Government entity” means—

- (a) any company incorporated under the Companies Act 2016 where—
 - (i) in the case of a company limited by shares, the Minister of Finance incorporated under the Minister of Finance (Incorporation) Act 1957 [Act 375] or any Federal statutory body is a shareholder having more than fifty per cent of the shares of the company; or

- (ii) in the case of a company limited by guarantee, the Minister of Finance incorporated under the Minister of Finance (Incorporation) Act 1957, a representative of any Ministry or Federal statutory body is a member of the company; or

- (b) any body corporate incorporated under the Trustees (Incorporation) Act 1952 by the Federal Government;

“procuring entity” means the Federal Government or any State Government, and includes—

- (a) any Ministry or Federal statutory body, the local authorities of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya or any Federal Government entity;
- (b) any ministry or department or statutory body of a State, any local authority in a State or any State Government entity;
- (c) any implementing agency; and
- (d) any other entity,

that administers, conducts or implements a Government procurement under this Act;

“Ministry” means a Federal Ministry, including any department or agency under that Ministry and any department or agency of that Ministry in any State or district in Malaysia;

“Ministry of Finance” means the Federal Ministry under the responsibility of the Minister charged with the responsibility for finance;

“Chief Minister” and “Menteri Besar” have the meaning assigned to them in the Financial Procedure Act 1957 [*Act 61*];

“contractor” means a contractor registered under the Lembaga Pembangunan Industri Pembinaan Malaysia Act 1994 [*Act 520*];

“co-operative society” means a co-operative society registered under the Co-operative Societies Act 1993 [*Act 502*];

“contingencies fund” means the Contingencies Fund created under Article 103 of the Federal Constitution or the Contingencies Reserve under section 6 of the Development Funds Act 1966 [*Act 406*];

“Minister” means the Minister charged with the responsibility for finance;

“registered person” means a person registered under section 18, and includes—

- (a) every person named in a registration;
- (b) in the case of a company, the directors, shareholders and senior management of the company;
- (c) in the case of a partnership, all the partners in the partnership; and
- (d) in the case of a co-operative society, any person holding key responsibility in the management of the co-operative society;

“authorized officer” means any public officer authorized in writing under subsection 45(1);

“controlling officer” means—

- (a) a person appointed under subsection 15A(1) of the Financial Procedure Act 1957; or
- (b) a person appointed under subsection 9(1),

to exercise the duties and powers of a controlling officer under this Act;

“procurement officer” means any public officer or person designated or appointed under subsection 8(1) as a procurement officer under this Act;

“circulars” means any circulars issued under section 91;

“partner” and “partnership” have the meaning assigned to them in the Partnership Act 1961 [*Act 135*], the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010 [*Act 707*] and the Limited Liability Partnerships Act 2012 [*Act 743*];

“supplier” means any person who provides or supplies, or could provide or supply goods or services, and includes a person who develops or manufactures goods or services, or a combination thereof;

“beneficial owner” has the meaning provided in section 44B of the Trustee Act 1949 [Act 208], section 109A of the Labuan Companies Act 1990 [Act 441], subsection 2(1) of the Labuan Trusts Act 1996 [Act 554], section 24A of the Labuan Foundations Act 2010 [Act 706], section 69A of the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010, section 20A of the Limited Liability Partnerships Act 2012 or subsection 2(1) of the Companies Act 2016, as the case may be;

“Registrar” means a person appointed to be the Registrar of Government Procurement under subsection 14(1);

“director” has the meaning assigned to it in subsection 2(1) of the Labuan Companies Act 1990 or subsection 2(1) of the Companies Act 2016, as the case may be;

“allocation of funds” means—

(a) in the case of the Federal Government—

- (i) any fund appropriated in accordance with the Supply Act by Parliament, including any contingencies fund;
- (ii) any fund appropriated and directed by the Dewan Rakyat in accordance with sections 3 and 4 of the Development Funds Act 1966;
- (iii) any fund from the trust accounts or Government trust funds established by the Federal Government in accordance with sections 9 and 10 of the Financial Procedure Act 1957;
- (iv) any grant, loan or any form of allocation sourced from subparagraphs (a)(i) to (a)(iii), by or through the Federal Government to any person or entity; and
- (v) any revenue or returns derived from any investments of any fund under subparagraphs (a)(i) to (a)(iv); or

(b) in the case of a State Government—

- (i) any fund appropriated in accordance with the Supply Enactment by a Legislative Assembly;
- (ii) any fund appropriated and directed by a Legislative Assembly in accordance with section 9 of the Development Funds Act 1966;
- (iii) any trust funds established by the State Government paid from the State Consolidated Fund;
- (iv) any grant, loan or any form of allocation sourced from subparagraphs (b)(i) to (b)(iii), by or through the State Government to any person or entity; and
- (v) any revenue or returns derived from any investment of any fund under subparagraphs (b)(i) to (b)(iv);

“Treasury” means the Minister for the time being charged with the responsibility for finance and includes any public officer under the administrative control or direction of that Minister to whom that Minister has delegated or who, in accordance with section 6 or 7 of the Delegation of Powers Act 1956 [Act 358], is authorized to exercise the functions under this Act;

“limited liability partnership” has the meaning assigned to it in the Limited Liability Partnerships Act 2012;

“Labuan limited liability partnership” and “Labuan limited partnership” have the meaning assigned to them in the Labuan Limited Partnerships and Limited Liability Partnerships Act 2010;

“Government procurement” means any procurement for the supply of goods or services or for works funded by the allocation of funds by the Federal Government or any State Government, as the case may be, whether fully or partially, or through the use of any assets owned by the Federal Government or any State Government, as the case may be;

“local authority” means —

- (a) any local authority or authority established or deemed to have been established under the Local Government Act 1976 [*Act 171*], or the Local Authorities Ordinance 1996 [*Sarawak Cap. 20*] or the Municipality constituted under the Kuching Municipal Ordinance [*Sarawak Cap. 116*], or the Local Government Ordinance 1961 [*Sabah Ord. 11 of 1961*];
- (b) in relation to the Federal Territory of Kuala Lumpur, the Commissioner of the City of Kuala Lumpur appointed under section 4 of the Federal Capital Act 1960 [*Act 190*];
- (c) in relation to the Federal Territory of Labuan, Perbadanan Labuan as established under section 3 of the Perbadanan Labuan Act 2001 [*Act 609*]; and
- (d) in relation to the Federal Territory of Putrajaya, Perbadanan Putrajaya as established under section 3 of the Perbadanan Putrajaya Act 1995 [*Act 536*],

and includes any person or body of persons appointed or authorized under any written law to exercise and perform the powers and functions which are conferred and imposed on a local authority under any written law;

“certificate of registration” means a certificate of registration issued by the Registrar under subsection 18(4);

“company” has the meaning assigned to it in subsection 2(1) of the Companies Act 2016 or, in the case of a Labuan company, has the meaning assigned to it in the Labuan Companies Act 1990;

“Appeal Tribunal” means the Government Procurement Appeal Tribunal established under section 63.

(2) Any reference to “State financial authority” in this Act shall be construed as a reference to “State financial authority” within the meaning of section 3 of the Financial Procedure Act 1957.

PART II

ADMINISTRATION OF GOVERNMENT PROCUREMENT

Administration of Government procurement by Secretary General to the Treasury

6. (1) The Secretary General to the Treasury shall be responsible for the administration, control and supervision of all matters relating to this Act.

(2) The Secretary General to the Treasury may delegate any of his powers, duties or functions under this Act, other than the powers under sections 14, 26 and 45, to any officer under his purview subject to such conditions, limitations or restrictions as he thinks fit, and shall give such directions as may be necessary to secure the proper exercise or performance of such powers, duties or functions.

(3) Any delegation under this section shall not preclude the Secretary General to the Treasury himself from exercising or performing at any time any of the delegated powers, duties or functions.

(4) The Secretary General to the Treasury shall exercise due diligence and have in place adequate process and procedures to avoid conflict of interest when exercising his powers, discharging his duties and performing his functions under this Act and in accordance with any instructions or circulars issued under this Act.

(5) The Secretary General to the Treasury shall carry out all such activities and do all such things as are necessary or advantageous and proper for the administration of this Act, or for such other purpose consistent with this Act as may be directed by the Minister in accordance with this Act.

Duties and powers of controlling officer

7. (1) A controlling officer shall have the following duties and powers:

- (a) to be accountable for every act done and decision made in relation to Government procurement administered, conducted or implemented within his purview;
- (b) to supervise procurement officers and procurement committees under his supervision and monitor their compliance with this Act and any instructions or circulars issued under this Act;
- (c) to exercise due diligence and have in place adequate procedures to avoid conflict of interest when exercising his powers, discharging his duties and performing his functions under this Act and in accordance with any instructions or circulars issued under this Act;
- (d) to administer, conduct or implement any Government procurement of which the planning and estimation for the allocated funds have been prepared and approved by the Federal Government or State Government, as the case may be;
- (e) to consider and approve a Government procurement in accordance with this Act;
- (f) to designate or appoint procurement officers and establish procurement committees to assist the controlling officer in performing any of his duties and in the exercise of his powers under this Act;
- (g) to specify the extent to which the duties and powers conferred or imposed upon him under this Act may be exercised or performed on his behalf by a procurement officer or procurement committee, as the case may be, in accordance with this Act;
- (h) to establish a review panel for the handling of complaints relating to Government procurement administered, conducted or implemented by the procuring entity within his purview; and

- (i) to carry out all such activities and do all such things as are necessary or advantageous and proper for the administration of this Act, or for such other purpose consistent with this Act as may be directed by the Secretary General to the Treasury.

(2) Notwithstanding paragraph (1)(g), the controlling officer shall remain accountable for the exercise or performance of such duties and powers by the person so authorized.

(3) A controlling officer shall be responsible for any loss incurred by the Government arising from his failure to ensure that his duties and powers are exercised and performed in accordance with this Act and any instructions or circulars issued under this Act.

Duties and powers of procurement officer

8. (1) A controlling officer—

- (a) in the case of an appointment under section 15A of the Financial Procedure Act 1957, may designate such number of public officers; or
- (b) in the case of an appointment under subsection 9(1), may appoint such number of persons,

as procurement officers for the purposes of this Act.

(2) A controlling officer may specify the extent to which the duties and powers conferred or imposed upon him under this Act may be exercised or performed on his behalf by any procurement officer so designated or appointed and give such directions as may be necessary to secure the proper exercise or performance of such duties and powers.

(3) A procurement officer shall, to the extent of the authorization or appointment granted upon him by the controlling officer in accordance with subsection (2), administer, conduct or implement every Government procurement in accordance with this Act and any instructions or circulars issued under this Act.

(4) Notwithstanding subsection (2), the controlling officer shall remain accountable for the exercise or performance of such duties and powers by the procurement officer so authorized or appointed.

(5) Any procurement officer who fails to comply with subsection (3) shall be responsible for any loss incurred by the Government arising from his failure.

Administration of Government procurement by procuring entity other than a Ministry or ministry or department of a State

9. (1) A procuring entity other than a Ministry or ministry or department of a State shall, subject to the procedures and laws relating to the incorporation or administration of the procuring entity, appoint a person as a controlling officer for the procuring entity.

(2) The Minister may prescribe the procedures for the administration, conduct and implementation of Government procurement by procuring entity other than a Ministry or ministry or department of a State.

(3) For the purposes of this section, “procuring entity other than a Ministry or ministry or department of a State” means any statutory body of the Federal Government or a State Government, Federal Government entity, State Government entity, the local authorities of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya or any local authority in a State that administers, conducts or implements Government procurement.

PART III

APPROVALS IN GOVERNMENT PROCUREMENT

Approving authority in Government procurement

10. (1) Subject to subsection (2), an approval for a Government procurement under this Act may be given by—

- (a) the Minister or, in relation to a State, the Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be;

- (b) a procurement board established under section 11;
 - (c) a committee established by a controlling officer under paragraph 7(1)(f); or
 - (d) a controlling officer.
- (2) The approval threshold of each approving authority under subsection (1) shall be as specified in the First Schedule.
- (3) Notwithstanding subsection (2), a Menteri Besar or Chief Minister, as the case may be, may determine the approval threshold for State Government procurement, which shall not exceed the approval threshold as specified in the First Schedule for each approving authority.
- (4) The Minister may prescribe the procedures for the approvals in Government procurement.

Establishment of procurement board

11. (1) The Minister or, in relation to a State, the Menteri Besar or Chief Minister, as the case may be, may, by notification in the *Gazette*—

- (a) establish a procurement board for every Ministry or, ministry or department of a State, as the case may be; and
 - (b) upon request from the controlling officer of a Ministry or, ministry or department of a State, as the case may be, establish additional procurement board for a specific purpose as the Minister, Menteri Besar or Chief Minister, as the case may be, thinks necessary.
- (2) The procurement board established under this section shall consist of the public officers—
- (a) in the case of a Ministry or ministry or department of a State, as specified in item 1 of the Second Schedule; and
 - (b) in the case of the Ministry of Finance, as specified in item 2 of the Second Schedule.

Approvals by procurement board

12. (1) A procurement board established under section 11 shall consider and approve all Government procurements in accordance with the approval threshold as specified in the First Schedule.

(2) The quorum for every meeting of a procurement board shall not be less than three including the chairman.

(3) No person other than members of the procurement board shall be present or take part in a meeting of the procurement board unless—

(a) he is a member of the secretariat for the procurement board as designated by the controlling officer; or

(b) he is a public officer invited by the chairman for the purpose of advising the procurement board on any matter being deliberated.

(4) Any public officer invited under paragraph (3)(b) shall not be entitled to vote or be present during the making of a decision by the procurement board.

(5) A member of a procurement board having directly or indirectly, by himself, a member of his family or his associate, any interest in any matter under discussion by the procurement board shall disclose to the procurement board the fact and nature of his interest.

(6) A disclosure under subsection (5) shall be recorded in the minutes of the meeting and after the disclosure, the member having an interest in the matter—

(a) shall not be present or take part in any deliberation or decision of the procurement board on that matter;

(b) shall be disregarded for the purpose of constituting a quorum of the meeting for the deliberation or decision on that matter; and

(c) where the member having an interest is the chairman of the procurement board, shall remove himself and be replaced by an alternative chairman as prescribed.

(7) No act or proceedings of a procurement board shall be invalidated on the ground that any member of the procurement board has contravened the provisions of this section.

(8) If a procurement board fails to reach a unanimous decision on any matter being deliberated in a meeting, the procurement board shall refer the matter to the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, for a decision.

(9) For the purposes of this section—

(a) “a member of his family” includes—

- (i) his spouse;
- (ii) his parent, including a parent of his spouse;
- (iii) his child, including an adopted child or stepchild;
- (iv) his brother or sister, including a brother or sister of his spouse; and
- (v) a spouse of his child, brother or sister;

(b) “associate” means—

- (i) a person who is a nominee or an employee of the member;
- (ii) a firm of which the member or any nominee of his is a partner;
- (iii) a partner of the member;
- (iv) a trustee of a trust under which the member or a member of his family is a beneficiary; or
- (v) any corporation within the meaning of the Labuan Companies Act 1990 or the Companies Act 2016, as the case may be, of which or in which the member or any nominee of his or a member of the member’s family is a director or has a substantial shareholding.

Approvals by Minister, Menteri Besar, Chief Minister, etc.

13. (1) The Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, shall consider and approve—

- (a) all Government procurements in accordance with the approval threshold as specified in the First Schedule; and
- (b) any Government procurement referred to the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, by a procurement board under subsection 12(8).

(2) Before giving an approval to a Government procurement, the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, shall—

- (a) in the case of paragraph (1)(a), require the procurement board responsible for the funds allocated for the Government procurement; or
- (b) in the case of paragraph (1)(b), require the procurement board which referred the Government procurement for a decision,

to consider the Government procurement in accordance with this Act and submit a recommendation to the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be.

(3) After considering the recommendation submitted under subsection (2), the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, may concur with the recommendation or may make a different decision as he thinks fit.

(4) Any decision made by the Minister or, in relation to a State, Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, is final and shall be implemented accordingly.

PART IV

REGISTRATION OF SUPPLIERS AND CONTRACTORS

Registrar, deputy registrar and registration officer

14. (1) The Secretary General to the Treasury shall appoint a public officer of the Treasury as the Registrar of Government Procurement who shall perform the duties imposed and exercise the powers conferred on him under this Act for the proper administration of this Act.

(2) The Secretary General to the Treasury shall appoint such number of public officers of the Treasury as deputy registrars of Government procurement and registration officers as are necessary to assist the Registrar in the performance of his duties and the exercise of his powers under this Act.

(3) The appointment of the Registrar under subsection (1) shall be published by notification in the *Gazette*.

(4) The Secretary General to the Treasury may give directions to the Registrar, deputy registrars and registration officers on matters relating to registration under this Act.

(5) The Secretary General to the Treasury shall have the same powers as conferred to the Registrar under this Act.

Duties and powers of Registrar

15. The Registrar shall have the following duties and powers:

- (a) to advise the Secretary General to the Treasury on all matters in relation to registration of suppliers and contractors under this Act;

- (b) to implement and enforce Government policies in relation to registration of suppliers and contractors under this Act;
- (c) to be responsible for the monitoring and investigation of the breaches and non-compliances by registered persons under this Act;
- (d) to administer the registration and recognition of suppliers and contractors and deal with all matters relating to registration under this Act;
- (e) to register suppliers and contractors and deal with matters relating to registration under this Act;
- (f) to establish and maintain the register of suppliers and contractors;
- (g) to establish and maintain the register of recognized suppliers and contractors;
- (h) to take action in accordance with this Act on any breach or non-compliance by registered persons;
- (i) to collect fees as prescribed; and
- (j) to carry out all such activities and do all such things as are necessary or advantageous and proper for the administration of this Act, or for such other purposes consistent with this Act as may be directed by the Secretary General to the Treasury.

Guidelines and written directions by Registrar

16. (1) The Registrar may issue guidelines as the Registrar thinks necessary or expedient for the implementation of his duties and powers under this Act.

(2) The guidelines issued under this section shall be complied with by all registered persons.

(3) The Registrar may issue a written direction as he thinks necessary or expedient to any registered person for ensuring compliance with any guidelines or any conditions or restrictions imposed.

(4) Where a registered person fails to comply with any written direction issued under subsection (3), the Registrar may take one or more of the following actions:

- (a) direct the registered person in breach to comply with or give effect to the written direction;
- (b) impose an administrative penalty under section 85; or
- (c) reprimand the registered person in breach.

(5) The Registrar shall not take any action under subsection (4) without giving the registered person in breach an opportunity to be heard.

Requirement to register

17. No supplier or contractor shall participate in a Government procurement unless he is registered under this Act.

Application for registration, etc.

18. (1) An application for the registration of a supplier or contractor shall be made to the Registrar in the manner as prescribed.

(2) Every application under subsection (1) shall be accompanied by the fee as prescribed.

(3) At any time after receiving an application under subsection (1), the Registrar may—

- (a) in writing, require the applicant to provide any additional information, particulars or document within any period as specified by the Registrar;
- (b) in writing, require the applicant to submit a declaration on matters relevant to the application; and

- (c) visit any place or premises for the purpose of ascertaining the fact and nature of the supply, services or works stated in any application for a registration.

(4) The Registrar may approve an application under subsection (1) if the Registrar is satisfied that the applicant—

- (a) is a fit and proper person;
- (b) has satisfied all the requirements under this Act and complied with any preconditions of the registration; and
- (c) has made a disclosure of interest in accordance with subsection 37(2),

and shall issue a certificate of registration in such form as may be determined by the Registrar.

(5) The Registrar may impose such conditions as the Registrar thinks fit to impose on any registration.

(6) The Registrar may at any time vary or revoke the conditions imposed on a registration under subsection (5).

(7) A registration under this section shall be valid for a period as specified in the certificate of registration.

(8) A registered person may make an application to renew its registration within the period and in such manner as prescribed and shall be accompanied by the fee as prescribed.

(9) Any application for a renewal of registration made a year after the date of expiration of the registration shall be treated as a new application for registration under this Act.

(10) A person whose registration has expired shall be deemed to be without a valid registration for the purposes of section 17.

(11) The Registrar may impose such conditions as the Registrar thinks fit to impose on any renewal of registration.

(12) The Registrar may at any time vary or revoke the conditions imposed on a renewed registration under subsection (11).

(13) Where there is any change in the information of a registration, the registered person shall make an application to the Registrar to amend the information in such manner as prescribed.

(14) The Registrar may impose such conditions as the Registrar thinks fit to impose on any amendment approved under subsection (13).

(15) At any time after having been granted a registration under subsection (4), a registered person may apply to the Registrar for relevant recognition as may be determined by the Treasury.

(16) For the purposes of this section—

- (a) an application under this section may be made by a supplier or contractor in his personal capacity or by any person on behalf of a company, partnership, co-operative society or professional body, and includes—
 - (i) in the case of a company, the director or any person primarily responsible for the management of the company;
 - (ii) in the case of a partnership, all the partners in the partnership;
 - (iii) in the case of a co-operative society, the director or any person primarily responsible for the management of the co-operative society; and
 - (iv) any other person that is named in the application as may be required under this Act;
- (b) “professional body” means any body established under any written law for the purposes of regulating a profession and its qualifications or any other body recognized by the Government.

Grounds for refusal of registration, etc.

19. The Registrar shall refuse an application for a registration or renewal or amendment of a registration under section 18 on any of the following grounds:

- (a) the applicant has been convicted of an offence under this Act;
- (b) the applicant has been convicted for an offence under the Malaysian Anti-Corruption Commission Act 2009 [Act 694] or for an offence relating to corruption under any law outside Malaysia;
- (c) the applicant is one of the persons in the finding of an infringement of a prohibition that has been determined by the Competition Commission in accordance with the Competition Act 2010;
- (d) the applicant has been convicted of an offence and his name has been registered under the Registration of Criminals and Undesirable Persons Act 1969 [Act 7];
- (e) the applicant, in the case of an individual, is an undischarged bankrupt whether within or outside Malaysia; and
- (f) the applicant, in the case of a company—
 - (i) is in the course of being wound up or otherwise dissolved;
 - (ii) had an execution against him in respect of a judgment debt been returned unsatisfied in whole or in part;
 - (iii) had a receiver, a receiver and manager, or an equivalent person appointed within or outside Malaysia, or in respect of any property of the applicant; and
 - (iv) has, whether within or outside Malaysia, entered into a compromise or scheme of arrangement with its creditors, being a compromise or scheme of arrangement that is still in operation.

Registration deemed to be revoked

20. A registration shall be deemed to be revoked—

- (a) in the case of an individual, if the registered person is dead or becomes an undischarged bankrupt, whether within or outside Malaysia;
- (b) in the case of a company, if the registered person—
 - (i) is wound up or otherwise dissolved, whether within or outside Malaysia; or
 - (ii) has been struck off the register pursuant to the Labuan Companies Act 1990 or the Companies Act 2016, as the case may be; or
- (c) in the case of a co-operative society, upon the revocation of the registration of the co-operative society pursuant to the Co-operative Societies Act 1993.

Suspension and revocation of registration

21. (1) The Registrar may suspend a registration granted under subsection 18(4) if—

- (a) the registered person has contravened any provisions of this Act or has not complied with any instructions, circulars or guidelines issued under this Act, and an action has been taken under section 85;
- (b) the registered person has been convicted for an offence under the Malaysian Anti-Corruption Commission Act 2009 or for an offence relating to corruption under any law outside Malaysia;
- (c) the registered person is one of the persons in the finding of an infringement of a prohibition that has been determined by the Competition Commission under the Competition Act 2010;

- (d) there is a non-compliance of any guidelines or written directions issued by the Registrar or breach of any condition of registration, by the registered person, and an action has been taken by the Registrar in accordance with subsection 16(4); or
- (e) any information or document that is furnished by the registered person is false or misleading in a material particular.

(2) A suspension of registration under subsection (1) may be made—

- (a) for a period of not more than two years and the Registrar may at any time extend or revoke the suspension in accordance with this Act; or
- (b) for one or more classification codes granted in a registration.

(3) The Registrar may revoke a registration—

- (a) on any of the grounds under section 19; or
- (b) if the registered person or any person named in the registration of the registered person has an interest in another registered person in which he is obligated to disclose under subsection 37(2).

(4) In the case of a State, the Registrar may suspend or revoke a registration of a registered person on the recommendation of the State financial authority for a proven non-compliance of any instructions issued by the State financial authority.

(5) The Registrar shall not suspend or revoke any registration without giving the registered person an opportunity to be heard.

(6) Where a registration is revoked, all fees paid shall not be refunded.

Prohibition on registration

22. Any registered person whose registration has been suspended or revoked under section 21 is prohibited from registering or participating in a new registration and the prohibition shall include—

- (a) every person named in the suspended or revoked registration;
- (b) in the case of a company—
 - (i) the director and any person primarily responsible for the management of the company; and
 - (ii) any beneficial owner of the registered person;
- (c) in the case of a partnership, all partners in the partnership; and
- (d) in the case of a co-operative society, the director and any person primarily responsible for the management of the co-operative society.

Effect of suspension and revocation

23. (1) The person whose registration has been suspended or revoked under section 21 shall continue—

- (a) to be subject to this Act to the same extent as if his registration had not been suspended or revoked; and
- (b) to discharge his obligations, until the Secretary General to the Treasury or the Registrar is satisfied that the person whose registration has been suspended or revoked, as the case may be, has discharged his obligations or made adequate arrangements to discharge his obligations, which remain undischarged at the time of suspension or revocation of the registration, as the case may be.

(2) A suspension or revocation under section 21 shall not operate so as to—

- (a) avoid or affect any agreement, arrangement or transaction entered into by the person whose registration had been suspended or revoked with any person; or
- (b) affect any right, obligation or liability arising under any such agreement, arrangement or transaction.

Exemption from registration

24. (1) The Minister may, after consulting the Registrar, by order published in the *Gazette*, exempt any person or class of persons from the requirement to register under section 17 subject to such conditions as the Minister may specify in the order.

(2) The Minister may at any time, on the recommendation of the Registrar, by order published in the *Gazette*, revoke any order made under subsection (1) if the Minister is satisfied that such exemption should no longer be granted.

Power to publish information

25. If the Registrar thinks that it is necessary or expedient in the interest of the public, the Registrar may publish any information in the form and manner as may be determined by the Registrar in relation to—

- (a) the approval, lapsing, renewal, suspension or revocation of registration or prohibition or exemption from registration under this Act;
- (b) any information on the owner, shareholders, directors, partners or any person named in a registration, including any disclosure of interest by a registered person or persons named in a registration in any other registered person;
- (c) any imposition of a condition; and
- (d) any action taken by the Registrar or the Secretary General to the Treasury under this Act.

Review of decision by Registrar on suspension, revocation and prohibition

26. Any person or registered person who is aggrieved by the decision of the Registrar under this Part may, within fourteen days after the registered person has been informed of the decision, submit a request in writing to the Secretary General to the Treasury for a review of the decision.

Prohibition on registration under same classification code

27. (1) Unless with the prior approval of the Registrar, no registered person shall be registered in the same classification code.

(2) Any person who contravenes subsection (1) commits an offence.

(3) For the purposes of this section—

(a) “registered person” includes—

- (i) any of its employee;
- (ii) any beneficial owner of the registered person;
- (iii) any person of interest which the registered person is obligated to disclose under subsection 37(2);
or
- (iv) any person or group of persons acting in concert with the registered person for the purpose of registering under this Part under the same classification code;

(b) “classification code” means the category of the supply of goods and services or any specialization for works as determined by the Registrar.

PART V

CONDUCT OF PROCUREMENT

Open and competitive procurement

28. (1) Subject to the provisions of this Act, the open and competitive procurement method shall be the primary method in conducting Government procurement.

(2) Notwithstanding subsection (1), the Minister may prescribe the methods other than open and competitive procurement taking into consideration the objectives of this Act.

(3) For the purposes of this section, “open and competitive procurement method” means a procurement method where all registered persons may participate.

Specific policy and measures in Government procurement

29. Notwithstanding the provisions of this Act, the Minister or, in relation to a State, the Menteri Besar or Chief Minister, as the case may be, may, if he considers it in the national or state interest to do so, implement any policy or measures in any Government procurement to encourage, promote, stimulate or facilitate social, economic and environmental development in Malaysia or any particular State, as the case may be.

Specific procedure during period of urgency

30. The Minister may prescribe the procedure for any Government procurement during a period of urgency which requires immediate action in the interest of public order, health or safety.

Provisions for implementing international obligations

31. The Minister may prescribe the methods and procedures for Government procurement as may be required or necessary for implementing obligations arising from international agreements to which Malaysia is a party.

Procurement Public Interest Certificate

32. (1) A procuring entity may issue a Procurement Public Interest Certificate to declare any Government procurement within its purview as crucial for public interest reasons and shall not be delayed or suspended by any objection or appeal under this Act.

(2) The Minister may prescribe the conditions and procedure for the issuance of the Procurement Public Interest Certificate under this section.

Government procurement contract

33. A Government procurement contract between a procuring entity and a registered person shall be made in the form and manner and subject to such terms and conditions as may be prescribed by the Minister.

Administration of Government procurement contract

34. The manner for resolving disputes in relation to the administration of Government procurement contract shall be as prescribed by the Minister.

Prohibition on transfer, etc., of Government procurement grant or contract

35. (1) No registered person shall transfer, assign or novate in any manner a grant or contract awarded under this Act, in total or in part, or any interest in a grant or contract awarded under this Act to any person in any manner without the prior approval of the controlling officer responsible for the Government procurement.

(2) Any registered person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine of not less than three times the value of the grant or contract awarded under this Act or one million ringgit, whichever is higher, or to imprisonment for a term not exceeding five years or to both.

Computerized system for administration of Government procurement

36. The Minister may prescribe for the use of any computerized system for the administration and conduct of Government procurement under this Act.

PART VI**INTEGRITY AND REPORTING****Duty to disclose interest**

37. (1) Any person administering, conducting or implementing a Government procurement having directly or indirectly by himself, a member of his family or his associates any interest in any matter in a Government procurement shall disclose the fact and nature of his interest including any beneficial ownership.

(2) Any person making an application for a registration or any registered person making an application for a renewal or amendment of a registration under section 18 shall disclose to the Registrar—

- (a) any direct or indirect interest by himself, a member of his family or his associates in relation to any other registered person or person applying for a registration under section 18; and
- (b) the beneficial owner to any person making the application or any registered person, as the case may be.

(3) The obligation under subsection (2) shall extend to—

- (a) in the case of a company, the directors, shareholders and senior management of the company;
- (b) in the case of a partnership, all the partners in the partnership; and
- (c) in the case of a co-operative, any person holding the key responsibility in the management of the co-operative.

(4) Any registered person participating or intending to participate in a Government procurement under this Act shall be required to disclose to the procuring entity responsible for the Government procurement—

- (a) any beneficial owner of the registered person; and
- (b) any direct or indirect interest by himself, a member of his family or his associates in relation to—
 - (i) any other registered person, whether or not the other registered person is participating or intends to participate in that Government procurement; and
 - (ii) any person under the purview of the procuring entity who is involved in the conduct of the Government procurement.

(5) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(6) For the purposes of this section—

- (a) “a member of his family”, in relation to a person, member of a procurement board or member of a procurement committee, includes—
 - (i) his spouse;
 - (ii) his parent, including a parent of his spouse;
 - (iii) his child, including an adopted child or stepchild;
 - (iv) his brother or sister, including a brother or sister of his spouse; and
 - (v) a spouse of his child, brother or sister;

- (b) “associate”, in relation to a person, member of a procurement board or member of a procurement committee, means—
- (i) any person who is a nominee or an employee of such person;
 - (ii) a firm of which such person or any nominee of his is a partner;
 - (iii) a partner of such person;
 - (iv) a trustee of a trust under which such person or a member of his family is a beneficiary;
 - (v) any corporation within the meaning of the Labuan Companies Act 1990 or the Companies Act 2016, as the case may be, of which or in which such person or any nominee of his or a member of his family is a director or has a substantial shareholding; or
 - (vi) in the case of a co-operative society, includes any person holding the key responsibility in the management of the co-operative society.

Prohibition against intervention in Government procurement

38. (1) No person shall, directly or indirectly, intervene or, by intimidation, undue influence or in any other manner interfere, in an active procurement so as to cause or which is likely to cause a departure from the procurement process under this Act or any instructions, circulars or guidelines issued under this Act.

(2) Any person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

(3) For the purposes of this section—

- (a) “active procurement” means the period from the date an approval to commence a Government procurement is given by a controlling officer until the date the letter of acceptance is signed by parties;

- (b) “letter of acceptance” means an official letter issued by a procuring entity informing the unconditional acceptance by the Government of the offer submitted by the successful registered person.

PART VII

COMPLIANCE MONITORING

Compliance monitoring and supervisory authority of Secretary General to the Treasury and State financial authority

39. (1) The Secretary General to the Treasury or State financial authority, as the case may be, shall have the general authority for monitoring compliance with this Act and any instructions, circulars or guidelines issued under this Act.

(2) For the purpose of subsection (1), the Secretary General to the Treasury shall have the following powers:

- (a) to conduct review and inspection on any Government procurement process by any procuring entity under its purview;
- (b) to conduct inspection on any registered person in relation to any Government procurement;
- (c) to conduct inquiry into any complaint or objection against any procuring entity;
- (d) to review the administration of complaints and objections by any procuring entity; and
- (e) to do such things as may be necessary or expedient to give full effect to the provisions of this Act and any instructions, circulars or guidelines issued under this Act.

(3) For the purpose of subsection (1), the State financial authority shall have the powers under paragraphs (2)(a), (c), (d) and (e).

(4) The Secretary General to the Treasury or State financial authority, as the case may be, shall appoint such number of public officers of the Treasury or ministry or department of a State charged with the responsibility for finance, as the case may be, as monitoring officers with powers to monitor compliance under this Part.

Compliance monitoring by controlling officer

40. (1) A controlling officer shall be responsible—

- (a) to supervise the procurement officers under his supervision and ensure their compliance with this Act and any instructions, circulars or guidelines issued under this Act;
- (b) to implement and administer a complaints procedure as prescribed and review any complaint against the procuring entity under his purview; and
- (c) to carry out such activities and do such things as are necessary, advantageous and proper for the administration of this Act, or such other purposes consistent with this Act as may be directed by the Secretary General to the Treasury or State financial authority, as the case may be.

(2) A controlling officer may specify the extent to which the responsibilities imposed upon him under this section may be exercised or performed on his behalf by any public officer under his purview and give such directions as may be necessary to secure the proper exercise or performance of such responsibilities.

(3) Notwithstanding subsection (2), the controlling officer shall be accountable for his responsibilities under subsection (1).

Power to require information

41. (1) The Secretary General to the Treasury or State financial authority, as the case may be, or any monitoring officer may, by notice in writing, require any person who administers, conducts or implements a Government procurement to provide any explanation, information, documents or records relating to the Government procurement so administered, conducted or implemented within the period and in the form and manner specified in the notice in writing.

(2) Any person required to provide an explanation, information, document or record under subsection (1) shall ensure that the explanation, information, document or record provided is true, accurate and complete and such person shall provide an express representation to that effect, including a declaration that he is not aware of any other information which would make the explanation, information, document or record provided false or misleading.

Power to require compliance assessment report

42. For the purposes of exercising its powers under this Part, the Secretary General to the Treasury or State financial authority, as the case may be, may, either generally or for a specific Government procurement, require a controlling officer to submit a compliance assessment report which shall contain information relating to the compliance with this Act and any instructions, circulars or guidelines issued under this Act by the procuring entity under his supervision.

Actions based on findings of compliance assessment report

43. (1) The Secretary General to the Treasury or State financial authority, as the case may be, may, after receiving a compliance assessment report submitted under section 42, review and assess the report and record its findings.

(2) If the Secretary General to the Treasury or State financial authority, as the case may be, is satisfied that, based on the findings, there is reasonable ground to believe that a non-compliance or contravention of this Act has or might have occurred, the following actions may be taken:

- (a) in the case of a non-compliance with any instructions, circulars or guidelines by any controlling officer or procurement officer, the Treasury or State financial authority, as the case may be, may recommend actions against the officer in accordance with the relevant written laws relating to public service; or
- (b) in the case of a contravention of this Act, the Treasury or State financial authority, as the case may be, may investigate for offences and take action in accordance with this Act.

Duty to report to enforcement agencies

44. (1) Any person who administers, conducts or implements any Government procurement shall report to the relevant enforcement agency if he becomes aware of a commission of any offence relating to corruption, competition or any other offences under any written laws as may be determined by the Secretary General to the Treasury.

(2) For the purpose of subsection (1), it shall be sufficient for a procurement officer to report in writing to his controlling officer.

PART VIII

INVESTIGATION AND ENFORCEMENT

Authorization of public officers

45. (1) The Secretary General to the Treasury or a State financial authority, as the case may be, may, in writing, authorize any public officer under its purview to exercise the powers of investigation and enforcement under this Act in respect of Government procurement.

(2) There shall be issued to each authorized officer an authority card which shall be signed by the Secretary General to the Treasury or State financial authority, as the case may be.

(3) Whenever such authorized officer exercises any of the powers under this Act, he shall on demand produce to the person against whom the power is being exercised the authority card issued to him under subsection (2).

Power of investigation

46. An authorized officer shall have all the powers necessary to carry out an investigation upon receiving any complaint or report, or upon any non-compliance under this Act or suspicion that any offence has been committed in relation to any Government procurement under this Act.

Search and seizure with warrant

47. (1) If it appears to a Magistrate, upon written information on oath from an authorized officer and after such inquiry as the Magistrate considers necessary, that there is reasonable cause to believe that—

(a) any premises has been used or is about to be used for;
or

(b) there is in any premises evidence necessary to the conduct of an investigation into,

the commission of an offence in relation to any Government procurement under this Act, the Magistrate may issue a warrant authorizing any authorized officer named in the warrant, to enter the premises at any reasonable time by day or night, and with or without assistance, and if need be by force.

(2) Without affecting the generality of subsection (1), the warrant issued by the Magistrate may authorize the authorized officer to—

- (a) search and seize any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated, which contain or are reasonably believed to contain information or furnish evidence of the commission of the offence;
- (b) make copies of or take extracts from any record, book, account, document, computerized data or other thing; and
- (c) take samples of any matter or thing that is the subject matter of Government procurement being investigated.

(3) An authorized officer conducting a search under subsection (1) may, for the purpose of investigating into the offence, search any person who is in or on the premises.

(4) An authorized officer making a search of a person under subsection (3) may seize, or take possession of, and place in safe custody all things, other than the necessary clothing, found upon the person, and any other thing, for which there is reason to believe that they are the instruments or other evidence of the offence, and they may be detained until the discharge or acquittal of the person.

(5) No person shall be searched except by another person of the same gender, and such search shall be conducted with strict regard to decency.

(6) If, by reason of its nature, size or amount, it is not practicable to remove any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized under this section, the authorized officer who effected the seizure shall, by any means, seal such record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated in the premises or container in which it is found.

(7) Any person who, without lawful authority, breaks, tampers with or damages the seal referred to in subsection (6) or removes any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated under seal or attempts to do so commits an offence.

Search and seizure without warrant

48. If an authorized officer is satisfied upon information received that he has reasonable cause to believe that by reason of delay in obtaining a search warrant under section 47, the investigation would be adversely affected or evidence of the commission of an offence is likely to be tampered with, removed, damaged or destroyed, the authorized officer may enter the premises and exercise in, upon and in respect of the premises all the powers referred to in section 47 in as full and ample a manner as if he were authorized to do so by a warrant issued under that section.

Warrant admissible notwithstanding defect

49. A search warrant issued under this Act shall be valid and enforceable notwithstanding any defect, mistake or omission in the search warrant or in the application for such warrant and any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized under such warrant shall be admissible in evidence in any proceedings under this Act.

Access to computerized data

50. (1) Any authorized officer conducting a search under this Act shall be given access to computerized data whether stored in computer or otherwise.

(2) For the purposes of this section, an authorized officer shall be provided with the necessary password, encryption code, decryption code, software or hardware and any other means required to enable the comprehension of the computerized data.

List of things seized

51. (1) Except as provided in subsection (2), where any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated is seized under this Part, the authorized officer who effected the seizure shall as soon as practicable prepare a list of the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized and immediately deliver a copy of the list signed by him to the occupier of the premises which has been searched, or to his agent or servant, at the premises.

(2) Where the premises is unoccupied, the authorized officer who effected the seizure shall wherever possible post the list of the things seized conspicuously on the premises.

Release of things seized

52. (1) Where any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated has been seized under this Act, the authorized officer who effected the seizure, may at any time after that release the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized to the person as he determines to be lawfully entitled to the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized if he is satisfied that the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized is not liable to forfeiture under this Act and is not otherwise required for the purpose of any proceedings under this Act, or for the purpose of any prosecution under any other written law, and in such event neither the officer effecting the seizure, nor the Government or any person acting on behalf of the Government shall be liable to any proceedings by any person if the seizure and the release of the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized had been effected in good faith.

(2) A record in writing shall be made by the authorized officer effecting the release of any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated under subsection (1) specifying in detail the circumstances of, and the reason for, the release, and he shall send a copy of the record to the Public Prosecutor within seven days of the release.

Forfeiture of things seized

53. (1) Any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized in the exercise of any power conferred under this Act shall be liable to forfeiture.

(2) An order for the forfeiture of any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized shall be made if it is proved to the satisfaction of the court that an offence under this Act has been committed and that the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized was the subject matter of or was used in the commission of the offence, even though no person has been convicted of such offence.

(3) Where there is no prosecution with regard to any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized under this Act, such record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated shall be taken as and deemed to be forfeited at the expiration of a period of one calendar month from the date of service of a notice to the last known address of the person from whom the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated was seized indicating that there is no prosecution in respect of such record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated unless before the expiration of that period a claim thereto is made in the manner set out in subsections (4), (5), (6) and (7).

(4) Any person asserting that he is the owner of the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated referred to in subsection (3) and that it is not liable to forfeiture, may, personally or by his agent authorized in writing, give a written notice to the authorized officer in whose possession such record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated is held that he is claiming the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated that is to be forfeited.

(5) Upon receipt of the notice referred to in subsection (4), the authorized officer shall refer the claim to a Magistrate for his decision.

(6) The Magistrate to whom a matter is referred under subsection (5) shall issue a summons requiring the person asserting that he is the owner of the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated that is to be forfeited and the person from whom it was seized to appear before him, and when they appear or they fail to appear, due service of the summons having been proved, the Magistrate shall proceed to the examination of the matter.

(7) If it is proved that an offence under this Act has been committed and that the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated referred to in subsection (6) was the subject matter of or was used in the commission of such offence, the Magistrate shall order the record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated to be forfeited, and shall, in the absence of such proof, order its release.

(8) Any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated forfeited or deemed to be forfeited shall be delivered to the authorized officer and shall be disposed of in such manner as the authorized officer thinks fit.

Property in forfeited things

54. Any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated, forfeited or deemed to be forfeited under this Act shall be the property of the Federal Government.

No cost or damages arising from seizure to be recoverable

55. No person shall, in any proceedings before any Court in respect of any record, books, account, documents, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized in the exercise or the purported exercise of any power conferred under this Act, be entitled to the costs of such proceedings or to any damages or other relief unless such seizure was made without reasonable cause.

Power to require attendance of person acquainted with case

56. (1) An authorized officer making an investigation under this Act may, by order in writing, require the attendance before himself of any person who appears to the authorized officer to be acquainted with the facts and circumstances of the case, and such person shall attend as required.

(2) If any such person refuses or fails to attend as required by an order made under subsection (1), the authorized officer may report his refusal or failure to a Magistrate who shall issue a warrant to secure the attendance of such person as may be required by the order.

Examination of person acquainted with case

57. (1) An authorized officer making an investigation under this Act may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) The person examined under subsection (1) shall be legally bound to answer all questions relating to such case put to him by the authorized officer, but such person may refuse to answer any question the answer to which would have a tendency to expose him to a criminal charge or penalty or forfeiture.

(3) A person making a statement under this section shall be legally bound to state the truth, whether or not such statement is made wholly or partly in answer to the questions.

(4) The authorized officer examining a person under subsection (1) shall first inform the person of the provisions of subsections (2) and (3).

(5) A statement made by any person under this section shall, wherever possible, be reduced into writing and signed by the person making it or affixed with his thumbprint, as the case may be—

- (a) after it has been read to him in the language in which he made it; and
- (b) after he has been given an opportunity to make any correction he may wish.

Admissibility of statement in evidence

58. (1) If any person is charged with an offence under this Act, any statement, whether the statement amounts to a confession or not or whether it is oral or in writing, made at any time, whether before or after the person is charged and whether in the course of an investigation under this Act or not and whether or not wholly or partly in answer to questions, by that person to or in the hearing of an authorized officer and whether or not interpreted to him by another officer or other person, shall be admissible in evidence at his trial and, if the person charged tenders himself as witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) A statement made under subsection (1) shall not be admissible or used—

- (a) if the making of the statement appears to the court to have been caused by an inducement, threat or promise having reference to the charge against such person proceeding from a person in authority and sufficient, in the opinion of the court, to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him; or
- (b) in the case of a statement made by the person after his arrest, unless the court is satisfied that he was cautioned in the following words or words to the like effect:

“It is my duty to warn you that you are not obliged to say anything or to answer any question, but anything you say, whether in answer to a question or not, may be given in evidence.”.

(3) A statement made by a person before there is time to caution him shall not be rendered inadmissible in evidence merely by reason of his not having been cautioned if he had been cautioned as soon as possible after that.

(4) Notwithstanding anything to the contrary contained in any written law, a person accused of an offence to which subsection (1) applies shall not be bound to answer any question relating to the case after any caution as referred to in paragraph (2)(b) had been administered to him.

Obstruction

59. Any person who—

- (a) assaults, delays, impedes, hinders or obstructs an authorized officer in effecting any entrance which he is entitled to effect under this Act in the execution of any duty imposed or power conferred by this Act;
- (b) breaks any seal that has been affixed by an authorized officer on any premises or place;

- (c) fails to comply with any lawful demand of an authorized officer in the execution of his powers and duties under this Act;
- (d) fails, refuses or omits to give any information, evidence or document which may be reasonably required by an authorized officer;
- (e) without reasonable excuse fails to produce any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated required by an authorized officer; or
- (f) provides any information, evidence or document that he knows or has reason to believe is false or misleading, in response to a direction issued by the authorized officer,

commits an offence.

Destruction, concealment, mutilation and alteration of records

60. A person who—

- (a) destroys, conceals, mutilates or alters; or
- (b) sends or attempts to send or conspires with any other person to remove from its premises or send out of Malaysia,

any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated kept or maintained with intent to defraud the Treasury or State financial authority, as the case may be, the Registrar or any procuring entity, or to prevent, delay or obstruct the carrying out of an investigation or the exercise of any power by the Treasury or State financial authority, as the case may be, or the Registrar under this Act commits an offence.

PART IX

COMPLAINTS, OBJECTIONS AND REVIEW

Administration of complaints, objections and reviews

61. (1) Any person who is dissatisfied with any Government procurement in general may submit a complaint to the procuring entity.

(2) Any person who is dissatisfied with any Government procurement exceeding a certain approval threshold as determined by the Minister may submit an objection to the procuring entity.

(3) Any person who has submitted an objection under subsection (2) and is dissatisfied with the decision made by the procuring entity may submit the decision for a review by the review panel of the procuring entity.

(4) The decision by a review panel shall be submitted in writing to the person making the objection within a reasonable period.

(5) If the person making the objection is not satisfied with the decision made by the review panel under subsection (4), such person may, within the period of fourteen days after the date of the decision, appeal to the Appeal Tribunal.

(6) For the purposes of this section, the Minister may prescribe—

- (a) the procedure for the administration of complaints in respect of Government procurement in general;
- (b) the procedure, subject matter and conditions for objection in respect of Government procurement exceeding a certain approval threshold as determined by the Minister;
- (c) the person that is required to administer the complaints and objections; and
- (d) the fee for complaints, objections and review.

Establishment and administration of review panel

62. A controlling officer shall establish and administer a review panel for the purpose of reviewing objections on matters relating to the administration and conduct of Government procurement implemented by the procuring entity under his purview in accordance with the procedure, subject matter and conditions as prescribed.

PART X**GOVERNMENT PROCUREMENT APPEAL TRIBUNAL****Establishment of Government Procurement Appeal Tribunal**

63. (1) There shall be established a Government Procurement Appeal Tribunal.

(2) The Minister shall, by order published in the *Gazette*, appoint the members of the Appeal Tribunal as follows:

- (a) a Chairman and not more than two Deputies Chairman who shall be appointed from among members of the Judicial and Legal Service with not less than ten years of experience; and
- (b) not less than five members from among persons who have integrity and impeccable reputation with proven experience and recognized knowledge in—
 - (i) law;
 - (ii) finance or procurement;
 - (iii) engineering;
 - (iv) economic or commerce; or
 - (v) public administration.

(3) Without prejudice to subsection (2), for the purpose of paragraph (b), no person shall be appointed as a member of the Appeal Tribunal if—

- (a) he has been convicted of an offence, under any law, by a court in Malaysia;
- (b) he is one of the persons in the finding of an infringement of a prohibition that has been determined by the Competition Commission under the Competition Act 2010;
- (c) he becomes bankrupt or insolvent;
- (d) other than the public officers of the Judicial and Legal Service appointed under paragraph 63(2)(a), he is a public officer or a member of the administration;
- (e) he is a member of the Senate or the House of Representatives or any Legislative Assembly; or
- (f) he is a registered person or has interest in any registered person;

(4) A member of the Appeal Tribunal shall hold office for a term not exceeding three years and shall be eligible for reappointment upon the expiry of his term of office, but shall not be appointed for more than two consecutive terms.

(5) For the purposes of this section—

- (a) “interest” includes any direct or indirect interest by himself, through a member of his family or his associate, and any of his beneficial ownership;
- (b) “a member of his family” and “associate” have the same meaning as in paragraphs 37(6)(a) and 37(6)(b) respectively.

Resignation and revocation of appointment

64. (1) The Chairman or any other member of the Appeal Tribunal may at any time resign from his office by giving a notice in writing to the Minister.

(2) The Minister may at any time revoke the appointment of any member of the Appeal Tribunal by order published in the *Gazette* if—

- (a) he resigns his office;
- (b) he has been convicted of an offence, under any written law, by a court in Malaysia;
- (c) he is one of the persons in the finding of an infringement of a prohibition that has been determined by the Competition Commission under the Competition Act 2010;
- (d) his conduct, whether in connection with his duties as a member of the Appeal Tribunal or otherwise, has been such as to bring discredit on the Appeal Tribunal;
- (e) he becomes bankrupt or insolvent;
- (f) he is of unsound mind or otherwise incapable of discharging his duties;
- (g) he becomes a member of the Senate or the House of Representatives or any Legislative Assembly;
- (h) in the case of an appointment under paragraph 63(2)(b), he becomes a public officer or a member of the administration;
- (i) he is guilty of serious misconduct in relation to his duties;
- (j) his performance has been unsatisfactory for a significant period of time; or
- (k) he fails to carry out his obligations under section 73;

Vacation of office

65. (1) The office of a member of the Appeal Tribunal shall be vacated if—

- (a) he dies;
- (b) he resigns or otherwise vacates his office before the expiry of the term for which he is appointed; or
- (c) his appointment is revoked under subsection 64(2).

(2) The Minister shall appoint a person in accordance with section 63 to replace the Chairman or any other member of the Appeal Tribunal during the vacancy in the office of the Chairman or any other member of the Appeal Tribunal.

(3) The Minister may appoint temporarily a person from among the members of the Appeal Tribunal in accordance with section 63 to act as the Chairman or any other member of the Appeal Tribunal during any period when—

- (a) the office of the Chairman or any other member is vacant;
- (b) the Chairman or any other member is absent from duty or from Malaysia; or
- (c) the Chairman or any other member is, for any other reason, unable to perform his duties.

(4) The exercise of the powers or the performance of the functions of the Appeal Tribunal is not affected only because of there being a vacancy in the membership of the Appeal Tribunal.

Composition and quorum

66. (1) Every proceeding of the Appeal Tribunal shall be heard and disposed of by three members or such greater uneven number of members of the Appeal Tribunal as the Chairman may in any particular case determine.

(2) In determining the quorum under subsection (1), the Chairman shall take into consideration the subject matter of the appeal and the relevant expertise of the members.

Jurisdiction

67. (1) The Appeal Tribunal shall have jurisdiction to determine any appeal on matters relating to the decisions and process of the decisions of a review panel.

(2) The Appeal Tribunal has no jurisdiction on matters—

- (a) relating to the contravention of this Act;
- (b) relating to the investigation and enforcement under Part VIII;
- (c) relating to any decision made in relation to a dispute resolution for a Government procurement contract under this Act;
- (d) arising after the issuance of a letter of acceptance by a procuring entity to a registered person and such a letter of acceptance has been signed by parties;
- (e) relating to any trade secret or intellectual property rights;
- (f) where a tribunal has been established by any written law to hear and determine a claim; and
- (g) relating to any complaint or objection that has not been decided by a review panel.

Appeals to Appeal Tribunal

68. (1) A person who is aggrieved or whose interest is affected by a decision of a review panel under section 61 may appeal to the Appeal Tribunal by filing a notice of appeal to the Appeal Tribunal.

(2) The notice of appeal shall be made in writing within fourteen days from the date of the decision of the review panel and the appellant shall give a copy of the notice to the relevant review panel.

(3) The notice of appeal shall summarily state the substance of the decision of the review panel appealed against, contain an address at which any notices or documents connected with the appeal may be served upon the appellant or upon his advocate, and be signed by the appellant or his advocate.

Suspension order against Government procurement

69. (1) The appellant may, at any time after he has lodged a notice of appeal with the Secretary of the Appeal Tribunal, paid any fee and deposit as prescribed and served the notice of appeal to the relevant review panel, make an application to the Appeal Tribunal for an order to suspend—

- (a) the procedures leading to the award of the Government procurement contract which is the subject matter of the appeal; or
- (b) the implementation of any decision made while undertaking the procedures mentioned in paragraph (a).

(2) The application under subsection (1) shall be made within seven days from the filing of the notice of appeal and supported with an affidavit stating reasonable grounds for such order.

(3) The appellant shall provide a copy of the application under subsection (1) together with supporting affidavit to the procuring entity without unnecessary delay.

(4) The procuring entity may file an affidavit to the Appeal Tribunal stating the reasons for not making an order to suspend the Government procurement, including public interest reasons supported by a Procurement Public Interest Certificate issued under section 32.

(5) The Appeal Tribunal, upon considering the affidavits of the appellant and the procuring entity, may decline the request by the appellant or make an order to suspend the Government procurement, either unconditionally or upon such terms and conditions as may be determined by the Appeal Tribunal.

(6) The Appeal Tribunal must not make an order under this section if—

- (a) such suspension is against the public interest; or
- (b) the contract mentioned in paragraph (1)(a) has already been awarded at the date of hearing of the application for the order.

(7) Where the Appeal Tribunal refuses to make an order under this section, the Appeal Tribunal shall give the reasons for its refusal in writing.

Exclusion of jurisdiction of court

70. (1) Where an appeal is lodged with the Appeal Tribunal and the appeal is within its jurisdiction, the issues in dispute in such appeal, whether as shown in the initial appeal or as emerging in the course of the hearing, shall not be the subject of proceedings between the same parties in any court unless—

- (a) the proceedings before the court were commenced before the appeal was lodged with the Appeal Tribunal; or
- (b) the appeal before the Appeal Tribunal is withdrawn, abandoned or struck out.

(2) Where paragraph (1)(a) applies, the issues in dispute in the claim to which those proceedings relate, whether as shown in the initial claim or emerging in the course of the hearing, shall not be the subject of proceedings between the same parties before the Tribunal unless the claim before the court is withdrawn, abandoned or struck out.

Powers of Appeal Tribunal

71. (1) The Appeal Tribunal shall have the following powers:

- (a) to summon parties to the proceedings or any other person to attend before it to give evidence in respect of an appeal;

- (b) to procure and receive evidence on oath or affirmation, whether written or oral, and examine all such persons as witnesses as the Appeal Tribunal considers necessary to procure, receive or examine;
- (c) where a person is so summoned, to require the production of any record, book, account, document, computerized data or other thing in his possession or under his control which the Tribunal considers necessary for the purposes of the appeal;
- (d) to administer any oath, affirmation or statutory declaration, as the case may require;
- (e) where a person is so summoned, to allow the payment for any reasonable expenses incurred in connection with his attendance;
- (f) to admit evidence or reject evidence adduced, whether written or oral, and whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;
- (g) to receive evidence from experts; and
- (h) to generally direct and do all such things as may be necessary or expedient for the expeditious decision of the appeal.

(2) The Appeal Tribunal shall have the powers of a subordinate court under the Subordinate Courts Act 1948 [Act 92] with regard to the enforcement of attendance of witnesses, hearing evidence on oath or affirmation and punishment for contempt.

Procedures of Appeal Tribunal

72. Subject to this Act, the Appeal Tribunal may adopt such procedure as it thinks fit and proper.

Disclosure of interest by Chairman and members of Appeal Tribunal

73. (1) The Chairman, or any member of the Appeal Tribunal shall disclose, as soon as practicable, in the case of the Chairman, to the Minister any interest, and in the case of any member, to the Chairman any interest, whether substantial or not, which may conflict with the Chairman's or member's duties, as a member of the Appeal Tribunal in a particular matter.

(2) In the case of a member of the Appeal Tribunal, if the Chairman is of the opinion that the member's interest is in conflict with the member's duties, the Chairman shall inform all the parties to the matter of the conflict, and—

- (a) if none of the parties to the matter objects to the conflict, the member may continue to execute his duties as a member of the Appeal Tribunal in relation to that matter; or
- (b) if a party to the matter objects to the conflict, the member of the Appeal Tribunal shall not continue to execute his duties as a member of the Appeal Tribunal in relation to that matter.

(3) In the case of the Chairman of the Appeal Tribunal, the Minister shall consider the matter and if the Minister is of the opinion that there is a conflict of interest with his duties as the Chairman of the Appeal Tribunal, the Minister may appoint any of the Deputies Chairman as a replacement Chairman in accordance with section 63.

(4) The failure by the Chairman or any member of the Appeal Tribunal to disclose his interest under subsection (1) shall—

- (a) invalidate the decision of the Appeal Tribunal, unless all parties agree to be bound by the decision; and
- (b) subject the Chairman or member of the Appeal Tribunal to the revocation of his appointment under subsection 64(2).

Secretary of Appeal Tribunal and other officers

74. (1) The Minister shall appoint—

- (a) a senior public officer as Secretary of the Appeal Tribunal to assist the Appeal Tribunal in carrying out its functions under this Act; and
- (b) such number of public officers as the Minister thinks fit to assist the Secretary in carrying out his function under paragraph (a).

(2) For the purposes of this section, the Secretary and any public officer appointed under subsection (1) shall be deemed to be officers of the Appeal Tribunal.

(3) The Secretary of the Appeal Tribunal shall be responsible for the administration and management of the Appeal Tribunal in accordance with this Act.

Obligation of secrecy

75. (1) Except for this Part or for the purposes of any civil or criminal proceedings under any written law, or where authorized by the Minister—

- (a) the Chairman, every other member, the Secretary or any other officer of the Appeal Tribunal shall not, during the time he serves as Chairman, member or officer, disclose any information obtained by him in the course of his duties; and
- (b) no other person who has, by any means, access to any information or document relating to the affairs of the Appeal Tribunal shall disclose such information or document.

(2) Any person who contravenes subsection (1) commits an offence.

Public servants and public officers

76. The Chairman, every other member, the Secretary and any other officer of the Appeal Tribunal, while discharging their respective duties shall be deemed to be public servants within the meaning of the Penal Code [*Act 574*], and to be public officers for the purposes of the Criminal Procedure Code [*Act 593*].

Application of Public Authorities Protection Act 1948

77. The Public Authorities Protection Act 1948 [*Act 198*] shall apply to any action, suit, prosecution or proceedings against the Appeal Tribunal, the Chairman of the Appeal Tribunal, every other member of the Appeal Tribunal and the Secretary of the Appeal Tribunal or any other officer of the Appeal Tribunal in respect of any act, neglect or default done or committed by him in such capacity.

Act or omission done in good faith

78. No action or suit shall be instituted or maintained in any court against—

- (a) the Appeal Tribunal;
- (b) the Chairman or any member of the Appeal Tribunal;
- (c) the Secretary or any other officer of the Appeal Tribunal;
or
- (d) a person authorized to act for and on behalf of the Appeal Tribunal,

for any act or omission done in good faith in the performance of its or his functions and the exercise of its or his powers under this Act.

Proceedings to be public

79. (1) All proceedings before the Appeal Tribunal shall be open to the public.

(2) Notwithstanding subsection (1), the Chairman may, on an application by a respondent to an appeal, make an order for any or all part of the proceeding to be held in a closed session if the Chairman is satisfied that it is against the public interest for any matter under the appeal to be heard in an open proceeding.

Decisions by Appeal Tribunal

80. (1) The Appeal Tribunal shall make its decision without delay and where practicable, within thirty days from the first day of the hearing before the Appeal Tribunal.

(2) The decision of the Appeal Tribunal on any matter shall be decided on a majority of members of the Appeal Tribunal.

(3) The Appeal Tribunal shall have the power—

(a) to affirm the decision of the review panel;

(b) to vary the decision of the review panel; or

(c) to set aside the decision of the review panel and make a new decision.

(4) The Appeal Tribunal shall give reason for its decision in any appeal heard before it.

(5) If the Appeal Tribunal makes a decision under paragraph (3)(c), the Appeal Tribunal may make the following orders:

(a) in the case where the Government procurement was suspended in accordance with section 69, order any decision or action taken by the procuring entity concerned in relation to the procurement which is the subject of the challenge to be set aside and order the procuring entity to take one or more decision or action, in accordance with the relevant provisions of this Act, in place of that which has been set aside;

- (b) in the case where the Government procurement was not suspended and a letter of acceptance has not been signed by parties, order the procuring entity to remedy the situation and place the appellant or the Government procurement process or both to the position prior to the subject matter being submitted to the Appeal Tribunal; and
- (c) in the case where the Government procurement was not suspended and a letter of acceptance has been signed by parties, order the procuring entity to pay to the appellant the costs of participation in the qualification of suppliers and contractors, or the costs of tender preparation, reasonably incurred by the appellant for the purposes of the Government procurement.

(6) The Appeal Tribunal may, in addition to an order made under paragraph (5)(a) or (5)(b), order the procuring entity to pay to the appellant the costs of participation in the qualification of suppliers and contractors, or the costs of tender preparation, reasonably incurred by the appellant for the purposes of the Government procurement.

(7) A decision of the Appeal Tribunal shall be final and binding on the parties to the appeal.

(8) The decision of the Appeal Tribunal shall be in writing and published in the form and manner as prescribed.

Enforcement of decision of Appeal Tribunal

81. A decision given by the Appeal Tribunal may, by leave of the High Court, be enforced in the same manner as a judgment or an order of the High Court.

PART XI

ADMINISTRATIVE ACTION AND PROSECUTION

False documents and information

82. (1) No person shall, in his participation in a Government procurement or any requirements under this Act, submit to a procuring entity, Registrar or to the Treasury—

- (a) any forged, altered or counterfeited document; or

- (b) any information for which that is false or misleading, or contains a material omission.

(2) Any person who contravenes this section commits an offence.

Liability of director, etc., of body corporate, etc.

83. Where any person who commits an offence under this Act is a body corporate, firm, co-operative society or other body of persons, any person who at the time of the commission of the offence was a director or other similar officer of the body corporate, firm, co-operative society or other body of persons or was purporting to act in the capacity or was in any manner or to any extent responsible for the management of any of the affairs of the body corporate, firm, co-operative society or other body of persons or was assisting in its management—

- (a) may be charged severally or jointly in the same proceedings with the body corporate, firm, co-operative society or other body of persons; and
- (b) if the body corporate, firm, co-operative society or other body of persons is found guilty of the offence, shall be deemed to be guilty of the offence and shall be liable to the same punishment or penalty as an individual unless, having regard to the nature of his functions in that capacity and to all circumstances, he proves—
 - (i) that the offence was committed without his knowledge; or
 - (ii) that the offence was committed without his consent or connivance and that he had taken all reasonable precautions and exercised due diligence to prevent the commission of the offence.

Liability of person for act, etc., of employee, etc.

84. Where any person would be liable to any punishment or penalty under this Act for any act, omission, neglect or default committed—

- (a) by that person's employee in the course of his employment;
- (b) by that person's agent when acting on behalf of that person; or
- (c) by the employee of that person's agent when acting in the course of his employment with that person's agent or otherwise on behalf of that person's agent acting on behalf of that person,

that person shall be liable to the same punishment or penalty for every such act, omission, neglect or default of that person's employee or agent, or of the employee of that person's agent.

Power to impose administrative penalty

85. (1) The Secretary General to the Treasury, Registrar or State financial authority, as the case may be, may impose administrative penalty on any person for any non-compliance with any instructions, circulars or guidelines issued under this Act or any contravention of any regulations made under this Act.

(2) The Secretary General to the Treasury, Registrar or State financial authority, as the case may be, shall, before making a decision to impose an administrative penalty on any person, serve on him a written notice calling on him to show cause, within fourteen days from the date of the written notice, why the administrative penalty should not be imposed on him.

(3) If the Secretary General to the Treasury, Registrar or State financial authority, as the case may be, is not satisfied with the explanation given in response to the written notice served under subsection (2) or if the written notice was not responded within fourteen days, the Secretary General to the Treasury, Registrar or State financial authority, as the case may be, may impose an administrative penalty—

(a) in an amount not exceeding twenty-five thousand ringgit;
or

(b) in an amount not exceeding five hundred ringgit for each day of non-compliance and such amount shall not in total exceed the sum of fifty thousand ringgit.

(4) All sums of money received by the Secretary General to the Treasury, Registrar or State financial authority under this section shall be paid into and form part of the Federal Consolidated Fund.

(5) Any amount due under this section shall be recoverable as a civil debt to the Government.

Prosecution

86. No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

Compounding of offences

87. (1) The Minister may, with the approval of the Public Prosecutor, make regulations prescribing—

(a) any offence under this Act as an offence which may be compounded; and

(b) the method and procedure for compounding such offence.

(2) The Secretary General to the Treasury may, with the consent in writing of the Public Prosecutor, at any time before a prosecution is being instituted, compound any offence prescribed as an offence which may be compounded by making a written offer to the person reasonably suspected of having committed the offence to compound the offence upon payment to the Treasury of a sum of money not exceeding fifty per centum of the amount of the maximum fine to which the person would have been liable to if he had been convicted of the offence, within such time as may be specified in the written offer.

(3) An offer under subsection (2) may be made at any time after the offence has been committed but before any prosecution for it has been instituted, and where the amount specified in the offer is not paid within the time specified in the offer, or such extended time as the Secretary General to the Treasury may grant, prosecution for the offence may be instituted at any time after that against the person to whom the offer was made.

(4) Where an offence has been compounded under subsection (2), no prosecution shall be instituted in respect of the offence against the person to whom the offer to compound was made, and any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated seized in connection with the offence may be forfeited or released by the Secretary General to the Treasury, subject to such terms as the Secretary General to the Treasury thinks fit.

General penalty

88. Any person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable—

- (a) in the case of an individual, to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both; or
- (b) in the case of a company, partnership, co-operative society or professional body, to a fine not exceeding five hundred thousand ringgit.

PART XII

GENERAL

Power of Minister to make regulations

89. (1) The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act including any supplemental, incidental or consequential matters in relation to this Act.

(2) Without limiting the generality of subsection (1), Minister may make regulations in relating to all or any of the following matters:

- (a) the exercise of the duties and powers of controlling officer under section 7;
- (b) the exercise of the duties and powers of a procurement officer under section 8;
- (c) the Government procurement procedures by procuring entity other than a Ministry or ministry or department of a State under section 9;
- (d) the procedures for the approval of Government procurement under section 10, including the establishment and appointment of any committee for the purposes of evaluation, consideration and recommendation of any matter in Government procurement, including the administration and procedures for such committee;
- (e) the administration of a procurement board under sections 11 and 12, including—
 - (i) the conditions and procedure for approvals by any person with the authority to approve Government procurement;
 - (ii) matters relating to confidentiality and integrity of the decision-making process;

- (f) the procedure for registration, renewal of registration, amendment of registration, suspension of registration and revocation of registration under Part IV, including—
 - (i) the requirements and preconditions for registration, renewal of registration and amendment of registration;
 - (ii) the procedure for assessment of fit and proper person;
 - (iii) the subject matter, form and manner for declaration required to be made under paragraph 18(3)(b);
 - (iv) the fees and charges;
 - (v) the form and manner for disclosure of interest under subsection 37(2); and
 - (vi) the procedures for giving the opportunity to be heard under subsection 21(5);
- (g) the conduct of procurement under Part V, including—
 - (i) the procedures for open and competitive procurement;
 - (ii) the criteria, qualifications, conditions and limitations for the application of methods other than open and competitive procurement and the procedures;
 - (iii) the conditions and procedures for the issuance of Procurement Public Interest Certificate;
 - (iv) the fees and charges; and
 - (v) the form and manner of contract between procuring entity and registered person;

- (h) the criteria and conditions for the approval of a transfer, assignment or novation of a contract or any interest in a contract, and transfer or assignment of a grant and any interest in a grant under section 35;
- (i) to prescribe the form and manner for the disclosure of interest under section 37;
- (j) the procedures for the administration of a review panel under section 62, including—
 - (i) the powers and duties of review panel and members of review panel;
 - (ii) the form and manner for submission for review;
 - (iii) the methods of Government procurement and party eligible to submit for review; and
 - (iv) the fees and charges;
- (k) the procedures relating to the administration of the Appeal Tribunal under Part X, including—
 - (i) prescribing the responsibilities and control of members of the Appeal Tribunal;
 - (ii) the administration of the funds allocated to the Appeal Tribunal;
 - (iii) remuneration, allowances and benefits for the Chairman and the members of the Appeal Tribunal;
 - (iv) the conduct of the proceedings;
 - (v) provisions relating to costs and expenses by the Appeal Tribunal; and
 - (vi) the fees, charges and deposits;
- (l) to prescribe any fees, charges and deposits to be paid in respect of any matter under this Act; and
- (m) any other matters required by this Act to be prescribed.

Power of Minister to amend Schedules

90. The Minister may, by order published in the *Gazette*, amend the Schedules to this Act.

Instructions and circulars by Secretary General to the Treasury

91. The Secretary General to the Treasury may issue any instructions or circulars as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out or achieving the objects and purposes of this Act, or any provision thereof, or for the further, better or more convenient implementation of the provisions of this Act.

Instructions by State financial authority

92. In the case of a State—

- (a) the State financial authority may, in addition to this Act or any instructions, circulars or guidelines issued under this Act, issue any instructions as may be necessary or expedient for the proper administration of this Act at the State, provided that such instructions are not inconsistent with this Act; and
- (b) any obligation to comply with this Act includes an obligation to comply with any instructions issued under paragraph (a) and any enactments by the Legislative Assembly that is relevant to Government procurement.

Saving and transitional

93. (1) Any person who is registered, for the purpose of Government procurement, as a supplier of goods or services or contractor for works with the Ministry of Finance or any authority authorized by the Ministry of Finance immediately before the coming into operation of this Act shall be deemed to be registered under this Act until the expiry of that registration, except in the case of a society registered under the Societies Act 1966 where the registration is deemed to be revoked six months after the coming into operation of this Act.

(2) Any application for a registration, renewal of a registration, amendment of a registration or an exemption in relation to any supplier of goods or services or contractor for works for the purpose of Government procurement pending on the date of the coming into operation of this Act shall be dealt with under this Act.

(3) Any complaint or objection made in relation to a registration, renewal or amendment of registration pending on the date of the coming into operation of this Act shall be dealt with under the relevant instructions and circulars issued by the Treasury under the Financial Procedure Act 1957 prior to the coming into operation of this Act.

(4) Any complaint or objection made against any procuring entity in relation to any Government procurement pending on the date of the coming into operation of this Act shall be dealt with under the relevant instructions and circulars issued by the Treasury under the Financial Procedure Act 1957 prior to the coming into operation of this Act.

(5) Any application made to the Ministry of Finance or any procuring entity to review any procedure in relation to any Government procurement pending on the date of the coming into operation of this Act shall be dealt with in accordance with the relevant instructions and circulars issued by the Treasury under the Financial Procedure Act 1957 prior to the coming into operation of this Act.

(6) Any appeal made to the Ministry of Finance in relation to any decision on Government procurement pending on the date of the coming into operation of this Act shall be dealt with in accordance with the relevant instructions and circulars issued by the Treasury under the Financial Procedure Act 1957 prior to the coming into operation of this Act

(7) Any Government procurement commenced by any procuring entity before the date of the coming into operation of this Act shall be dealt with in accordance with the relevant instructions and circulars issued by the Treasury under the Financial Procedure Act 1957 prior to the coming into operation of this Act.

(8) Any exemptions given by the Treasury pursuant to any instructions or circulars issued by the Treasury under the Financial Procedure Act 1957 on matters relating to Government procurement prior to the date of coming into operation of this Act shall, on the date of coming into operation of this Act, be deemed to be revoked.

FIRST SCHEDULE

[Section 10]

APPROVAL THRESHOLD

No.	Approving authority	Procurement for goods and services	Procurement for works
1.	Minister/Menteri Besar or Chief Minister or authority determined by State Government	More than RM50 million	More than RM100 million
2.	Procurement board	More than RM500,000 to RM50 million	More than RM500,000 to RM100 million
3.	Committee	From RM50,000 to RM500,000 value of a procurement contract or total value for a year	From RM50,000 to RM500,000
4.	Controlling officer	Below RM50,000 value of a procurement contract or total value for a year	Below RM50,000

SECOND SCHEDULE

[Section 11]

MEMBERS OF PROCUREMENT BOARD

No.	Procuring entity	Members of procurement board
1.	Ministry/Ministry or department of a State	<p>(1) Controlling officer or any public officer authorized by the controlling officer to act on his behalf, who shall be the chairman;</p> <p>(2) Secretary General to the Treasury or any public officer of the Treasury as nominated by the Secretary General to the Treasury or, in relation to a State, the State financial authority or any public officer as nominated by the State financial authority;</p> <p>(3) Director General of Public Works Department or a representative or, in relation to a State, the Director of the State Public Works Department or a representative; and</p> <p>(4) Subject to the approval of the Minister or, the Menteri Besar or Chief Minister, as the case may be, an additional member from a Ministry or ministry or department of a State, as the case may be.</p>
2.	Ministry of Finance	<p>(1) Secretary General to the Treasury or any public officer of the Treasury as nominated by the Secretary General to the Treasury to act on his behalf, who shall be the Chairman;</p> <p>(2) Undersecretary of Government Procurement Division of the Ministry of Finance or a representative;</p> <p>(3) Director responsible for national budget under the Ministry of Finance or a representative; and</p> <p>(4) Director General of Public Works Department or a representative.</p>

EXPLANATORY STATEMENT

This Bill (“the proposed Act”) seeks to provide for the duties, accountability, governance and transparency in Government procurement, the establishment of the Government Procurement Appeal Tribunal and to provide for other matters connected therewith, with the aim to uphold integrity and fairness while maximising the benefits from the use of public resources. Towards that end, the proposed Act was drafted based on the following principles:

- (a) Advocating the culture of accountability as being fundamental in the governance of, participation in and administration of Government procurement, supported by independent check and balance mechanism;
- (b) Ensuring commitment to transparency in Government procurement procedures especially in decision-making, with strong discipline on disclosure principles;
- (c) The optimisation of benefits from the use of public resources in order to deliver the best value for money for the people and country; and
- (d) The maximum implementation of open and competitive procurement method while ensuring access to fair and equitable Government procurement.

PART I

2. Part I of the proposed Act deals with preliminary matters.
3. *Clause 1* contains the short title of the proposed Act and seeks to empower the Minister to appoint a date for the commencement of the proposed Act.
4. *Clause 2* seeks to provide for the application of the proposed Act to persons who administer, conduct or implement Government procurement as well as persons who participates in Government procurement. “Government procurement” is defined under *clause 5* to mean any procurement for the supply of goods or services or for works funded by the allocation of funds by the Federal Government or State Government, whether in total or in part, or through the use of assets owned by the Federal Government or State Government.
5. *Clause 3* seeks to provide for the non-application of the proposed Act to three categories of activities. First, any procurement or acquisition of fiscal agency or depository services, liquidation and management services for regulated financial institutions or services related to the sale, redemption and distribution of public debt. Second, any appointment on contract basis by the Federation or any State for the delivery of public service. Third, any procurement for providing international assistance, funded by international organization or foreign grants or conducted under an international agreement relating to the stationing of troops or relating to the joint implementation by the signatory.

6. *Clause 4* seeks to provide that the proposed Act is to be read together with the relevant written laws relating to Government procurement and that the provisions of the proposed Act shall be in addition to, and not in derogation of, the provisions of the relevant written laws.

7. *Clause 5* contains the definitions of certain words and expressions used in the proposed Act.

PART II

8. Part II of the proposed Act seeks to provide for the administration of Government procurement.

9. *Clause 6* seeks to provide for the administration, control and supervision of the proposed Act by the Secretary General to the Treasury.

10. *Clause 7* seeks to provide for the duties and powers of a controlling officer in the administration of Government procurement under his purview.

11. *Clause 8* seeks to provide for the duties and powers of a procurement officer for the purpose of administering, conducting and implementing Government procurement.

12. *Clause 9* seeks to provide for the administration of Government procurement by a procuring entity other than a Ministry or ministry or department of a State. A procuring entity under this *clause* refers to the statutory bodies of the Federal Ministry or a State Government, Federal Government entity, State Government entity, the local authorities of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya and the local authorities in a State that administer, conduct or implement Government procurement. This *clause* also seeks to empower the Minister to prescribe procedures to be followed by these procuring entities in the administration of Government procurement under their purview.

PART III

13. Part III of the proposed Act seeks to provide for approvals in Government procurement.

14. *Clause 10* seeks to provide that the authorities in approving Government procurement are the Minister or, in relation to a State, the Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, a procurement board, a committee and a controlling officer. The approval given by each approving authority shall be subject to the approval threshold as specified in the First Schedule. However, in the case of a State, the State Government may determine its own approval threshold, but it should not exceed the approval threshold as specified in the First Schedule.

Subclause 10(4) further seeks to empower the Minister to prescribe the procedures for the approvals in Government procurement.

15. *Clause 11* seeks to provide for the establishment of a procurement board for every Ministry or, in relation to a State, every ministry or department of the State. The membership of a procurement board shall be as specified in the Second Schedule.

16. *Clause 12* seeks to provide for the powers of a procurement board to consider and approve Government procurements. This *clause* also provides for the procedures to be observed by the procurement board in its proceedings including the disclosure of interest by members of a procurement board.

17. *Clause 13* seeks to empower the Minister or, in relation to a State, the Menteri Besar or Chief Minister or any other authority as may be determined by the State Government, as the case may be, to make a decision on Government procurements according to their approval threshold as specified in the First Schedule or Government procurement that is referred to them by a procurement board under *subclause 12(8)*.

PART IV

18. Part IV of the proposed Act seeks to provide for the registration of suppliers and contractors.

19. *Clause 14* seeks to provide for the appointment of the Registrar of Government procurement (“Registrar”), deputy registrars of Government procurement and registration officers.

20. *Clause 15* seeks to provide for the duties and powers of the Registrar, which is mainly to advise the Secretary General to the Treasury on matters relating to registration of suppliers and contractors and to monitor and investigate any breaches and non-compliances by registered persons.

21. *Clause 16* seeks to empower the Registrar to issue guidelines which are necessary or expedient for the implementation of his duties and powers under the proposed Act.

Subclause 16(3) seeks to provide the Registrar with the power to issue written direction to any registered person for the purpose of ensuring compliance with any guidelines issued or any conditions or restrictions imposed on the registered person.

22. *Clause 17* seeks to prohibit any supplier or contractor from participating in a Government procurement without being registered under the proposed Act.

23. *Clause 18* seeks to provide for the registration of a supplier or contractor under the proposed Act.

Subclause 18(4) seeks to empower the Registrar to approve any application for registration if he is satisfied that the applicant is a fit and proper person, has fulfilled the requirements and pre-conditions of registration and has made a disclosure of interest in accordance with *subclause 37(2)*.

Subclause 18(8) seeks to provide for the renewal and amendment of registration.

Subclause 18(13) seeks to impose on a registered person the obligation to inform any change in the information of his registration.

24. *Clause 19* seeks to provide for the grounds for refusal to register an applicant, renew a registration and amend a registration, namely if the applicant has been convicted of an offence under the proposed Act or an offence relating to corruption or is one of the persons in the finding of an infringement of a prohibition under the Competition Act 2010 [Act 712].

25. *Clause 20* seeks to provide for the circumstances where a registration under the proposed Act is deemed to be revoked, such as where a registered person is dead or becomes an undischarged bankrupt or, in the case of a company, is wound up or struck off the register pursuant to the Companies Act 2016.

26. *Clause 21* seeks to provide for the suspension and revocation of registration. The Registrar may suspend a registration on a contravention of any provision of the proposed Act, non-compliance of any guidelines or written directions or breach of any condition of registration. Additionally, a registration may also be suspended if a registered person has furnished information or document that is false or misleading.

Subclause 21(3) seeks to provide for the grounds to revoke a registration, which are any of the grounds for refusal to register or renew or amend a registration under *clause 19* or if a registered person has an interest in another registered person in which he is obligated to disclose under *subclause 37(2)*.

27. *Clause 22* seeks to prohibit any person whose registration has been suspended or revoked from registering or participating in a new registration.

28. *Clause 23* seeks to provide for the effects of suspension and revocation of a registration, namely the continuity of obligations until they are discharged by the person whose registration had been suspended or revoked. This *clause* also seeks to provide that any agreement, arrangement or transaction entered into by the person whose registration had been suspended or revoked with any other person shall not be avoided and that any rights, obligations or liability arising out of them shall not be affected.

29. *Clause 24* seeks to empower the Minister to exempt any person or class of persons from the requirement to register under the proposed Act.

30. *Clause 25* seeks to empower the Registrar to publish information relating to registration.

31. *Clause 26* seeks to provide an avenue for complaints against any decision of the Registrar relating to registration.

32. *Clause 27* seeks to prohibit a person from registering for the same classification code, unless with the approval of the Registrar. In this *clause*, “classification code” means the category of goods and services as determined in the guidelines issued by the Registrar.

PART V

33. Part V of the proposed Act seeks to provide for the conduct of procurement.

34. *Clause 28* seeks to provide for the application of open and competitive procurement method in Government procurement, where all registered person may participate.

Subclause 28(2) seeks to empower the Minister to prescribe other methods of procurement taking into consideration the objectives of the proposed Act.

35. *Clause 29* seeks to provide for the implementation of specific policy and measures in Government procurement in the interest of social, economic and environmental development in Malaysia or any particular State in Malaysia. For example, policies or measures that encourage small and medium-sized enterprise participation, promote local products or implement green procurement to reduce negative environmental impact.

36. *Clause 30* seeks to empower the Minister to prescribe procedures for Government procurement during the period of urgency, such as during a pandemic outbreak or major flooding in Malaysia.

37. *Clause 31* seeks to empower the Minister to prescribe for the methods and procedures for Government procurement which may be required or necessary for implementing Malaysia's international obligations.

38. *Clause 32* seeks to empower a procuring entity to issue a Procurement Public Interest Certificate that declares any Government procurement as crucial for public interest reasons and shall not be delayed or suspended by any objections or appeals under the proposed Act. The *clause* further empowers the Minister to prescribe the conditions and procedures for the issuance of the certificate.

39. *Clauses 33 and 34* seek to empower the Minister to prescribe matters relating to Government procurement contract between a procuring entity and registered person, including the manner for resolving disputes.

40. *Clause 35* seeks to prohibit the transfer, assignment or novation of a grant or contract awarded under the proposed Act without the approval of the controlling officer responsible for the Government procurement. A contravention of this *clause* is an offence punishable with a fine of not less than three times the value of the grant or contract or to one million ringgit, whichever is higher, or to imprisonment for a term not exceeding five years or to both.

41. *Clause 36* seeks to empower the Minister to prescribe the use of a computerized system for the administration and conduct of Government procurement.

PART VI

42. Part VI of the proposed Act deals with integrity and reporting.

43. *Clause 37* seeks to impose the obligation to make a disclosure of interest on any person involved in Government procurement.

Subclause 37(1) deals with disclosure of interest by persons who administer Government procurement, to prevent any conflict with their duties and decision-making powers as administrator. This *subclause* applies to any controlling officer, procurement officer, member of a committee, member of a procurement board, and a Minister or, in relation to a State, Menteri Besar or chief Minister, as the case may be.

Subclause 37(2) deals with disclosure of interest by any person making an application for a registration or any registered person making an application for a renewal or amendment of a registration.

Subclause 37(4) deals with disclosure of interest by any registered person who is participating or who intends to participate in Government procurement.

A contravention of this *clause* is an offence punishable with a fine not exceeding two hundred and fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both.

44. *Clause 38* seeks to prohibit any intervention or interference by any person in any active procurement, so as to prejudice the procurement process. In this *clause*, “active procurement” means the period from the date an approval to commence a Government procurement is given by a controlling officer until the date the letter of acceptance is signed by parties. A contravention of this *clause* is an offence punishable with a fine not exceeding five hundred thousand ringgit or to imprisonment for a term not exceeding five years or to both.

PART VII

45. Part VII of the proposed Act deals with compliance monitoring.

46. *Clause 39* seeks to empower the Secretary General to the Treasury or State financial authority, as the case may be, with authority for monitoring compliance with the proposed Act and any instructions, circulars or guidelines issued under the proposed Act.

47. *Clause 40* seeks to impose on a controlling officer the obligation to supervise compliance with the proposed Act by procurement officers under his purview.

48. *Clause 41* seeks to empower the Secretary General to the Treasury or State financial authority, as the case may be, to require any explanation, information, document or record from any person who administers a Government procurement.

49. *Clause 42* seeks to empower the Secretary General to the Treasury or State financial authority, as the case may be, to require the submission of a compliance assessment report by any controlling officer, containing information relating to compliance with the proposed Act by the procuring entity under his supervision.

50. *Clause 43* seeks to empower the Secretary General to the Treasury or State financial authority, as the case may be, to review and assess a compliance assessment report and record its findings.

Subclause 43(2) seeks to empower the Treasury or State financial authority, as the case may be, to take actions based on the findings, that is, in the case of a non-compliance with any instructions, circulars or guidelines, to recommend actions against the officer in accordance with the relevant written laws relating to public service, including the rules and code of conduct of public officers, or in the case of a contravention of the proposed Act, to investigate for offences and take action accordingly.

51. *Clause 44* seeks to impose the obligation to report to relevant enforcement agencies any commission of an offence relating to corruption, competition or any other offences under any written law as may be determined by the Secretary General to the Treasury.

PART VIII

52. Part VIII of the proposed Act deals with investigation and enforcement.

53. *Clauses 45 and 46* deal with the authorization of public officers to exercise the powers of investigation and enforcement under the proposed Act.

54. *Clause 47* seeks to provide for the power of an authorized officer to enter premises which is under investigation for an offence under the proposed Act and conduct a search and seizure with warrant issued by a Magistrate. This *clause* also empowers an authorized officer to search and seize any record, book, account, document, computerized data or other thing or any matter or thing that is the subject matter of Government procurement being investigated.

55. *Clause 48* seeks to provide for the power of an authorized officer to conduct search and seizure without warrant if he has reasonable cause to believe that a delay in obtaining a search warrant would adversely affect the investigation or that evidence of an offence is likely to be tampered with, removed, damage or destroyed.

56. *Clause 49* seeks to provide that a warrant issued under the proposed Act is valid and enforceable notwithstanding any defect, mistake or omission in the search warrant or in the application for such warrant.

57. *Clause 50* seeks to provide that an authorized officer conducting a search under the proposed Act shall be given access to computerized data, including the password, encryption code, decryption code, software or hardware required during an investigation into the computerized data.

58. *Clause 51* seeks to provide for the preparation of a list of things seized by an authorized officer, which shall be delivered to and signed by the occupier of the premises that had been searched, or, if the premises is unoccupied, posted conspicuously on the premises.

59. *Clause 52* deals with the release of things seized by an authorized officer.

60. *Clause 53* deals with the procedure for the forfeiture of things seized under the proposed Act.

61. *Clause 54* seeks to provide that things forfeited or deemed to be forfeited under the proposed Act shall be the property of the Federal Government.

62. *Clause 55* seeks to provide that no person is entitled to the costs of the proceedings before any Court in respect of any thing seized under the proposed Act unless the seizure was made without reasonable cause.

63. *Clause 56* seeks to empower an authorized officer to require anyone relevant to the case being investigated to attend before the authorized officer.

64. *Clause 57* deals with the procedure for oral examination of persons relevant to the case being investigated by an authorized officer, including the making of a statement in writing by such persons with the right to make corrections.

65. *Clause 58* seeks to provide for the admissibility of statement made by a person charged with an offence under the proposed Act, among other things, whether the statement amounts to a confession or not. The *clause* also seeks to disallow statements that have been caused by inducement, threat or promise, or those given without the person being cautioned on his legal rights.

66. *Clause 59* seeks to provide for the offences and penalty in relation to any assault or obstruction against an authorized officer, the production of information, evidence or document that is false or misleading, etc., by any person. An offence under this *clause* is punishable with a penalty provided under *clause 88* (General penalty), that is a fine of not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding three years or to both.

67. *Clause 60* seeks to provide for the offence and penalty in relation to any destruction, concealment, mutilation or alteration of records with the intention to defraud the Treasury or State financial authority, Registrar or any procuring entity, or to obstruct an investigation under the proposed Act.

PART IX

68. Part IX of the proposed Act deals with complaints, objections and review.

69. *Clause 61* seeks to provide for general complaints in respect of Government procurement, objections in respect of Government procurement exceeding a certain approval threshold as determined by the Minister and the review of objections by a review panel.

Subclause 61(6) seeks to empower the Minister to prescribe matters relating to the procedure for the administration of complaints and objections under this *clause*.

70. *Clause 62* seeks to provide for the establishment of a review panel by a controlling officer for the purpose of reviewing objections relating to the administration and conduct of Government procurement by the procuring entity under the purview of the controlling officer.

PART X

71. Part X of the proposed Act seeks to provide for the Government Procurement Appeal Tribunal.

72. *Clause 63* seeks to provide for the establishment and composition of the Government Procurement Appeal Tribunal (“Appeal Tribunal”).

Subclause 63(2) deals with the membership of the Appeal Tribunal. The Appeal Tribunal shall be chaired by an officer from the Judicial and Legal Service with at least ten years of experience in the said service. Other members of the Appeal Tribunal shall be not more than two Deputies Chairman who shall also be officers from the Judicial and Legal Service with at least ten years of experience, and not less than five members who shall be persons with integrity and having impeccable reputation and expertise in the areas of law, finance or procurement, engineering, economic or commerce or public administration.

Subclause 63(3) seeks to prohibit the appointment of a person as a member of the Appeal Tribunal if he falls within one the six reasons stipulated in this *subclause*, namely if he has been convicted of an offence by a Malaysian court or if he has an interest in any registered person.

Subclause 63(4) seeks to provide that the members of the Appeal Tribunal shall hold office for a term not exceeding three years with eligibility for reappointment, but no member shall be appointed for more than two consecutive terms.

73. *Clause 64* seeks to provide for the resignation and revocation of appointment of members of the Appeal Tribunal.

Subclause 64(2) seeks to provide for the grounds of revocation of appointment of a member, namely by reason of his conviction of an offence under any law, unsatisfactory performance for a significant period or failure to disclose any interest which may conflict with his duties as a member of the Appeal Tribunal.

74. *Clause 65* seeks to provide for the circumstances where an office of a member of the Appeal Tribunal is vacated and the procedure for appointing a substitute during the vacancy.

75. *Clause 66* seeks to provide for the quorum in a proceeding by the Appeal Tribunal.

76. *Clause 67* seeks to provide for the jurisdiction of the Appeal Tribunal to hear appeals in respect of any decision or any process of a decision of a review panel. This *clause* also seeks to provide for the circumstances where the Appeal Tribunal has no jurisdiction, namely in matters relating to contravention of the proposed Act, decisions made in relation to dispute resolution for a Government procurement contract, or matters arising after a letter of acceptance had been issued and signed by parties.

77. *Clause 68* deals with the procedure for filing an appeal to the Appeal Tribunal.

78. *Clause 69* seeks to provide for a suspension order on Government procurement pending the decision by the Appeal Tribunal. Under this *clause*, an appellant may apply to the Appeal Tribunal for an order to suspend the procedures or decisions leading to an award of the Government procurement contract which is the subject matter of the appeal. This *clause* further seeks to provide that the procuring entity being appealed against may state reasons as to why a suspension order should not be made, including public interest reasons supported by a Procurement Public Interest Certificate issued under *clause 32*.

79. *Clause 70* seeks to provide for the exclusion of the jurisdiction of court from hearing any matter which is the subject matter of an appeal to the Appeal Tribunal. This is to avoid overlapping of appeals between the Appeal Tribunal and the court.

80. *Clause 71* seeks to deal with the powers of the Appeal Tribunal, including to summon parties to proceedings, to procure and receive evidence on oath or affirmation and to receive expert evidence. This *clause* also seeks to provide the Appeal Tribunal with the powers of a subordinate court under the Subordinate Courts Act 1948 [*Act 92*].

81. *Clause 72* seeks to empower the Appeal Tribunal to adopt its own procedure in the management of appeals before the Appeal Tribunal.

82. *Clause 73* seeks to impose an obligation on members of the Appeal Tribunal to disclose any interests which may conflict with their duties as a member of the Appeal Tribunal.

83. *Clause 74* deals with the appointment of the Secretary and officers of the Appeal Tribunal.

84. *Clause 75* seeks to provide for the obligation of secrecy by members and officers of the Appeal Tribunal, prohibiting them from disclosing any information obtained in the course of their duties.

85. *Clause 76* seeks to provide for the recognition of the members and officers of the Appeal Tribunal as public servants.

86. *Clause 77* seeks to provide for the application of the Public Authorities Protection Act 1948 [Act 198] to the members and officers of the Appeal Tribunal.

87. *Clause 78* seeks to provide protection for the members and officers of the Appeal Tribunal, as well as persons authorized to act on behalf of the Appeal Tribunal, from any action or suit for any act or omission done in good faith.

88. *Clause 79* seeks to provide that the proceedings of the Appeal Tribunal shall be open to public, but the Chairman may, on application, hold a closed session or order that any part of a proceeding be held in closed session upon satisfaction that it is against the public interest to hold an open proceeding.

89. *Clause 80* deals with decisions by the Appeal Tribunal.

Subclause 80(2) seeks to provide that all matters before the Appeal tribunal shall be decided on a majority of members.

Subclause 80(3) seeks to provide the Appeal Tribunal with powers, including to set aside the decision of a review panel and make new decisions.

Subclause 80(5) deals with the effects of a decision by the Appeal Tribunal to set aside the decision of a review panel under *paragraph 80(3)(c)*. Where a Government procurement was suspended pending the decision of an appeal, the Appeal Tribunal may set aside the decision by a review panel and order the procuring entity to take one or more decision or action in accordance with the proposed Act, in place of the decision that has been set aside. Where a Government procurement was not suspended and a letter of acceptance has not been signed by parties pending the decision of an appeal, the Appeal Tribunal may order the procuring entity to remedy the situation and place the appellant or the Government procurement process to the position prior to the matter being submitted to the Appeal Tribunal. Where a Government procurement was not suspended and a letter of acceptance has been signed by parties, the Appeal Tribunal may order the procuring entity to pay the appellant the costs of participation in the qualification of suppliers or contractors or the costs of tender preparation that was reasonably incurred by the appellant.

90. *Clause 81* seeks to provide that a decision of the Appeal Tribunal may, by leave of the High Court, be enforced in the same manner as a judgment or an order of the High Court.

PART XI

91. Part XI of the proposed Act seeks to provide for administrative action and prosecution.

92. *Clause 82* seeks to prohibit the submission of forged documents or information that is false or misleading, a contravention of which is an offence.

93. *Clauses 83 and 84* deal with offences by a body corporate and liability of employee or agent, respectively.

94. *Clause 85* seeks to empower the Secretary General to the Treasury, Registrar or State financial authority, as the case may be, to impose administrative penalty on any non-compliance with any instructions, circulars or guidelines or any contravention of any regulations.

Subclause 85(2) seeks to require the Secretary General to the Treasury, Registrar or State financial authority, as the case may be, to serve a show cause notice before imposing any administrative penalty on any person.

Subclause 85(3) seeks to empower the Secretary General to the Treasury, Registrar or State financial authority, as the case may be, to impose an administrative penalty in an amount not exceeding twenty-five thousand ringgit or not exceeding five hundred ringgit for each day of non-compliance.

95. *Clause 86* seeks to provide for the prosecution of offences under the proposed Act with the written consent of the Public Prosecutor.

96. *Clause 87* seeks to empower the Minister to compound offences under the proposed Acts with the approval of the Public Prosecutor.

97. *Clause 88* seeks to provide for the general penalty for contravention of any provision of the proposed Act.

PART XII

98. Part XII deals with general provisions.

99. *Clause 89* seeks to empower the Minister to make regulations under the proposed Act.

100. *Clause 90* seeks to empower the Minister to amend the Schedules to the proposed Act.

101. *Clause 91* seeks to empower the Secretary General to the Treasury to issue instructions and circulars as may be necessary or expedient for giving full effect to the provisions of the proposed Act.

102. *Clause 92* seeks to empower a State financial authority to issue instructions as may be necessary or expedient for the proper administration of the proposed Act at any State, provided that the instructions are in line with the provisions of the proposed Acts and any instructions, circulars or guidelines issued under the proposed Act.

103. *Clause 93* deals with saving and transitional provisions.

FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3427]