

Briefing Note

Government Procurement Act

Prepared by the Center to Combat Corruption & Cronyism (C4 Center)

BACKGROUND

Government procurement in Malaysia has long been plagued by high-profile scandals that have seen huge financial and infrastructural losses and wastage, such as the procurement of Scorpene submarines, littoral combat ships, and defective ventilators during the Covid-19 pandemic. C4 Center entered into consultations with the Ministry of Finance between 2023 and 2024 on recommendations for the essential elements for a government procurement legislation. **Among the key weaknesses of the procurement system that needed to be addressed at the time were the:**

- **Lack of enforceability of procurement regulations.** These were only encoded in circulars and directions issued by the Treasury, which are administrative and do not possess legally binding force;
- **Lack of transparency on procurement-related information** and the lack of a mandatory minimum standard for publishing such information across procurement bidding platforms;
- **Power of the Ministers** in charge of federal ministries to make tender award decisions through the exercise of influence on bureaucrats in their ministries;
- **Need for an effective complaints and review mechanism** that is empowered to suspend, reverse, or void procurements that have been disbursed in violation of procurement regulations.

On 25 August 2025, the Government Procurement Bill was submitted for its first reading in the Dewan Rakyat (House of Representatives) and was only made publicly available for viewing that day. The second and third reading of the Bill was undertaken just two days after the first reading, on 27 August. An opposition Member of Parliament raised that the entirety of the Bill's life cycle from submission by the Attorney-General's Chambers (AGC) to the Cabinet up until it was passed in the Dewan Rakyat had taken only 15 days. The short time between readings was insufficient for the Bill (91 pages and 93 clauses long) to be properly debated and scrutinised, especially given the Bill's ambit over such an essential area of governance.

The Bill was nonetheless passed in the Dewan Rakyat on 28 August 2025, and subsequently also passed in Dewan Negara (Senate) on 8 September 2025. Having passed through both Houses of Parliament, the Government Procurement Act (GPA) currently awaits gazettment before it enters into force. The key features of the Act, as well as any concerns and potential loopholes, will be elaborated below.

What does the Government Procurement Act introduce?

1. Approving authorities for government procurements

The Act sets out the parties who are able to act as approving authorities under the Act, which include the Minister of Finance ('the Minister'), procurement boards, a committee established by the controlling officer in charge of the procurement in question, or the controlling officer themselves,¹ subject to the approval thresholds based on contract value.² The Minister is also empowered to prescribe the procedures for approval.³

Procurement boards are established by the Minister for every Ministry.⁴ In the case of a conflict of interest, the affected procurement board member must disclose the nature of the interest to the rest of the board⁵ and shall recuse themselves from any decision-making process regarding the procurement in question.⁶ Furthermore, if a procurement board is unable to come to a unanimous decision the board must refer the matter to the Minister for a decision.⁷

For procurements where the Minister is the main approving authority, the Minister must – before making a decision – consult with the relevant procurement boards who must in turn, submit a recommendation to the Minister taking into account the provisions of the Act.⁸ The Minister is not obligated to follow the recommended decision made by the procurement board and may choose a different course of action,⁹ and their decision is final.¹⁰

Concern: The provisions of the GPA consolidate a disproportionate amount of decision-making power in the Minister who is empowered to single-handedly decide on the highest value category of procurements (more than RM50 million for goods and services, or more than RM100 million for works). This allows the Minister to be both decision-maker and regulator in the administration of government procurement.

2. Creation of a Registry and the role of the Registrar

Potential vendors who wish to participate in government procurement must first be registered under the GPA.¹¹ Applications for registration must be made to the Registrar of Government Procurement,¹² who shall be a public officer from the Treasury appointed by the Treasury Secretary General.¹³ The Registrar is granted the authority to approve or reject any application if they are satisfied (among other criteria) that the applicant is "fit and proper".¹⁴ Any person aggrieved by a decision of the Registrar may submit a review request to the Treasury Secretary General,¹⁵ but the Act does not stipulate a duty to respond to such request.

Concern: The Registrar could potentially be a gatekeeper to allow or block vendors from participating in government procurement, with virtually no avenues for recourse. The influence of the Minister could also be problematic as the Secretary General of Treasury who appoints the Registrar serves under the Minister, allowing for indirect control over the registration of vendors. To blur these distinctions further, the Secretary General of Treasury is empowered with all of the same functions as the Registrar as well.¹⁶

3. Prohibition against unapproved transfer of contract

The Act prohibits any registered person to transfer, assign, or novate contracts awarded under this Act to any other person without prior approval of the controlling officer responsible for the government procurement.¹⁷

Concern: Unregulated sub-contracting has resulted in a situation where main contractors pass government projects down to multiple sub-contractors, with each taking a share of the budget. This practice leaves the final implementer with limited funds, leading to poor-quality work and higher government costs for repairs or replacements. While the Act now regulates the practice of sub-contracting, the decision-making of approval vested in a single officer increases the risk of abuse – especially when review procedures are weak. Sub-contracting is also linked to the formation of cartels in procurement tendering, which this provision does little to remedy.

4. Review mechanisms

Objections by any person must first be made to the procuring entity.¹⁸ The Minister is empowered to prescribe the procedure for the administration of complaints, conditions for objection, and even the person that is required to administer complaints and objections.¹⁹ The objection will then be subject to a review panel established by the controlling officer.²⁰

If the complainant is still dissatisfied with the decision made by the review panel, they may appeal to the newly established Government Procurement Appeal Tribunal,²¹ whose members are appointed solely by the Minister.²² The Tribunal's jurisdiction is limited to matters relating to the decisions and the decision-making process of the review panel, and do not have jurisdiction over matters relating to the contravention of the GPA, amongst others.²³ Proceedings are open to the public unless the Chairman of the Tribunal is satisfied that it would be against public interest for it to be so.²⁴

Concern: The process of review lacks independence from the Minister who is able to influence both review mechanisms through the review panel complaint procedures or through the appointments of Appeal Tribunal members. The scope of the Appeal Tribunal is also fairly limited and is unlikely to provide meaningful remedy to aggrieved parties, even when clear-cut corruption in the procurement process has been established.

5. Information disclosure and transparency

The Act imposes a general duty to disclose any interest in a procurement (including beneficial ownership) on any person administering, conducting or implementing the procurement.²⁵ The Registrar also is empowered to publish information relating to registered parties under the Act or on the registration process if they deem it to be in the public interest.²⁶

Concern: The disclosures of interest need not be made public, and the Registrar's power to publish information is entirely discretionary and only relating to matters pertaining to registered parties or registration. The Act in general does not set out any obligations or minimum standards for procuring entities to publish information relating to tender such as eligibility criteria or deliverables.

6. Investigative and enforcement powers

The Secretary General to the Treasury or a State Financial Authority can authorise any officer under their purview to exercise powers of investigation and enforcement.²⁷ Authorised officers have powers of search and seizure,²⁸ access to computerised data,²⁹ and forfeiture.³⁰ Search warrants issued under this Act remain valid even if defective,³¹ and the courts are barred from granting relief in relation to search and seizure except in narrow circumstances.³²

Concern: These provisions confer police-like powers on Treasury officers, without the checks and safeguards that exist under the Criminal Procedure Code. Even junior officers could be authorized to carry out searches, seize documents, and access digital systems with minimal oversight.

7. Exemptions to the application of the Act

The Minister is empowered to exempt any one-off budgetary allocation of funds from the application of the Act³³ and exempt any person from the registration requirement.³⁴ Procuring entities may issue a Procurement Public Interest Certificate to declare any procurement as “crucial for public interest reasons”, and a procurement done this way cannot be delayed or suspended by any objection or appeal under the Act.³⁵ Acts or proceedings of a procurement board are not invalidated despite a procurement board member contravening the proper procedure.³⁶

Concern: The multitude of exemption clauses that require no additional justification for their use, compounded with the existing concerns regarding the independence of decision-makers, and extremely high level of control over government procurements granted to the Minister are factors highly likely to create a procurement regime that is vulnerable to abuse and corruption.

CONCLUSION

The Government Procurement Act is Malaysia’s first attempt at creating a legally binding procurement regime. While the Act contains provisions that are aimed at regulating and streamlining the procurement process, its many flaws almost entirely outweigh its potential benefits. The Act’s consolidation of decision-making power in the Minister of Finance, limited complaints and remedy mechanisms, lack of transparency, and many exemptions cast a great deal of doubt on whether it will be able to meaningfully address corruption in government procurement. In implementing the new Act and creation of subsidiary legislation, efforts should be made to uphold the spirit and principles of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Public Procurement to ensure Malaysia’s framework is aligned with international standards of fairness, integrity, and transparency.

For more information on public procurement in Malaysia, refer to C4 Center’s report:

Policy Proposal to the Malaysian Government: The Procurement Act:

<https://c4center.org/policy-proposal-to-the-malaysian-government-the-procurement-act/>

REFERENCES

1. Section 10(1)
2. First Schedule
3. Section 10(4)
4. Section 11(1) read with the Second Schedule
5. Section 12(5)
6. Section 12(6)
7. Section 12(8)
8. Section 13(2)
9. Section 13(3)
10. Section 13(4)
11. Section 17
12. Section 18
13. Section 14(1)
14. Section 18(4)
15. Section 26
16. Section 14(5)
17. Section 35
18. Section 61(1)
19. Section 61(6)
20. Section 62
21. Section 68(1)
22. Section 63(2)
23. Section 67
24. Section 79
25. Section 37(1)
26. Section 25
27. Section 45(1)
28. Section 47
29. Section 50
30. Section 53
31. Section 49
32. Section 55
33. Section 2(2)
34. Section 24(1)
35. Section 32(1)
36. Section 12(7)