POLITICAL FINANCING REFORMS FOR TRANSPARENT ACCOUNTABLE POLITICAL FUNDING IN MALAYSIA
Prime Minister Najib Razak has acknowledged existence of donations from foreign sources to run elections. Admission highlights two longstanding controversial issues involving financing of Malaysian politics:

- Existence of secret political funds controlled by individuals or trustees
- Access to phenomenal foreign funding, suggesting illegal political financing that undermines legitimacy of parties

To offer recommendations to reform financing of politics. Imperative to make process of financing of political system transparent & accountable. Underlying basis for these reforms: eliminate corruption, promote clean governance & reinstitute integrity in electoral system
### Other Reasons Why Reforms are Needed?

<table>
<thead>
<tr>
<th>Category</th>
<th>Reason</th>
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<tbody>
<tr>
<td>Monetization of politics</td>
<td>Growing <strong>monetization of politics</strong> as private funds seep into political arena in large quantum.</td>
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<tr>
<td>Unequal access to funding</td>
<td><strong>Unequal access</strong> allows those with greater capacity to obtain funds to ascend political hierarchy &amp; win seats during general elections, further undermining electoral fairness</td>
</tr>
<tr>
<td>Covert funding</td>
<td>Worrying allegations of <strong>covert funding</strong> of parties &amp; politicians.</td>
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<tr>
<td>Inadequate legislation</td>
<td><strong>Current legislation &amp; disclosure</strong> requirements <strong>inadequate</strong> to restrict covert funding of politics or ensure fair elections.</td>
</tr>
<tr>
<td>Institutions devoid of autonomy</td>
<td><strong>Institutions</strong> with oversight of electoral competition reputedly <strong>devoid of autonomy</strong> to act without favour.</td>
</tr>
<tr>
<td>Money-based factionalism</td>
<td><strong>Money-based factionalism</strong> threatening existence of parties &amp; undermining public confidence in politicians.</td>
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</table>
Why do Political Parties need Money anyway?
How Political Funds are spent

- Maintaining Permanent Offices
- Carrying Out Policy Research And Polls
- Political Education And Campaigns
- Running Advertising Campaigns On Policies
- Mobilising Voters
- Paying Party Workers
From Where do Politicians or Parties obtain their Funds?

Political financing is split into two categories: Private Financing and Public Financing. In Malaysia, political financing is privately-sourced.

<table>
<thead>
<tr>
<th>Private Financing</th>
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<tbody>
<tr>
<td>Donations</td>
</tr>
<tr>
<td>Donations (monetary or in-kind) from like-minded supporters</td>
</tr>
<tr>
<td>Membership fees</td>
</tr>
<tr>
<td>Regular fees collected from party members</td>
</tr>
<tr>
<td>Personal wealth</td>
</tr>
<tr>
<td>Financing of party activities using personal wealth of politicians</td>
</tr>
<tr>
<td>Business ownership</td>
</tr>
<tr>
<td>Financing from profit-making &amp; not-for-profit businesses</td>
</tr>
</tbody>
</table>

Membership fees constitute small share of party’s annual income. Reality is: parties rely heavily on donations, from people & businesses, to fund activities.
Issues Requiring Reform (1/2)

- Federal Constitution
- Election Offences Act (EOA) 1954
- Societies Act 1966

- Money-driven factionalism
- Patronage
- Rent seeking

- Election Commission (EC)
- Registrar of Societies (ROS)

Comments

- Three-pronged approach needed to strengthen transparent & accountable financing of politics.
  - Relevant laws to be reviewed to provide concrete framework & platform for better regulation.
  - Institutions must have autonomy & be empowered to monitor & enforce political funding framework.
  - Monitor internal party elections that are driven by money-based factionalism, rent-seeking & patronage that undermine the integrity of political parties.
Political Parties Act (PPA)

To be enacted to address weaknesses in current system

PPA to merge & repeal selected sections of Election Offences Act, EC Act and Societies Act. PPA to create a comprehensive & standardised framework to regulate political funding.

Legislations that will be affected:

- Federal Constitution
- Election Commission Act 1957
- Election Offences Act 1954
- Elections Act 1958
- Societies Act 1966
- Companies Act 1965

Political Parties Act (PPA) (will address 8 issues)

1. Governance of political parties
2. Limits on political funding contributions
3. Limits on political expenditure
4. Access to funding
5. Reporting requirements
6. Public disclosure requirement
7. Regulating financing of party elections
8. Guidelines for caretaker government
Political Parties Act: Governance

EC will become custodian of PPA & create a “Political Parties Division”

This new division will assume from ROS the role of registering & regulating party affairs.

### Proposed Political Parties Regulation Framework

- **Parliament**
  - Oversight Body
- **EC Commissioners**
  - Decision making
- **EC Chairman**
  - Custodian
- **Yang di-Pertuan Agong**
  - Protector
- **Secretariat**
  - Executive
- **Political Parties Division**
  - Executive

### Legislations requiring revision

**SA 1966**
- Amend Article 6 to exclude registration of political parties (as defined in Article 2) by ROS.
- Repeal Article 18A, 18B & 18C which will not be relevant.

**ECA 1958**
- Revise Article 9 by giving autonomy to the EC Chairman to publish relevant information pertaining to party affairs, which include annual reports & financial reports.

### Functions of EC Political Parties Division

- **Registration of political parties & TPAs in accordance with Constitution**
- **Oversee & facilitate party affairs (annual assemblies, financing, party elections)**
- **Receive, scrutinise & archive official documents submitted by political parties**
- **Publicly disclose information of political parties, e.g. annual reports**
- **Enforce & ensure compliance of PPA**
Political Parties Act: Contributions

1. Set up list of permissible & non-permissible donors
2. Parties & candidates must disclose identity of donors who donate > RM50 in a single or multiple donations
3. Place a limit of RM10,000 per donor a year
4. Place a limit of RM100,000 per corporation a year or RM500,000 from a group of companies owned by same majority shareholders
5. Place a cap of annual RM50,000 donation for third party actors (TPA)
6. Donations made to political parties must go directly into party’s account
7. Parties & individual candidates must issue receipts for all contributions
### Political Parties Act: Expenditures

<table>
<thead>
<tr>
<th>Non-election Period</th>
<th>Election Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Limit political party expenditure based on annual revenue received for any given year</td>
<td>Limit political party expenditure based on the number of candidates contesting in an election</td>
</tr>
<tr>
<td>Impose a &quot;no campaign&quot; expenditure window between the day parliament or state assembly is dissolved and nomination day</td>
<td>Introduce new spending regulation for candidates by taking into account number of voters &amp; geographical size of a constituency</td>
</tr>
<tr>
<td>TPAs are not allowed to spend more than 20% of revenue received by its affiliated party per annum</td>
<td>TPAs not allowed to spend more than 20% of expenditure incurred by its affiliated party per annum</td>
</tr>
</tbody>
</table>
**Political Parties Act: Access to Funding - Public Financing (2/2)**

PPA will introduce public funding to ensure transparent & accountable financing of politics

<table>
<thead>
<tr>
<th>Proposals</th>
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<tbody>
<tr>
<td><strong>Entitlement</strong></td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Distribution</th>
</tr>
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<tbody>
<tr>
<td>• Public funding to be distributed for running of party machinery &amp; during election campaigns</td>
</tr>
<tr>
<td>• Funding to be paid to parties, but can be paid directly to independent candidates</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting</th>
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<tbody>
<tr>
<td>• Recipients of public funding must submit annual audited account to EC</td>
</tr>
<tr>
<td>• The report will include a balance sheet detailing receipt &amp; expenditure</td>
</tr>
<tr>
<td>• Failure to report will result in loss of entitlement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Public Disclosure</th>
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</thead>
<tbody>
<tr>
<td>EC will make public financial report on public funding which can be accessed easily by the public</td>
</tr>
</tbody>
</table>
Political Parties Act: Access to Funding - Private Financing 1/2

Regulations to instil accountability & transparency in political contributions. Will cover monetary & in-kind contributions.

<table>
<thead>
<tr>
<th>Issues</th>
<th>Current State Analysis</th>
<th>Proposed Reforms</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permissible donors &amp; non-permissible donors</td>
<td>Current regulation does not contain any provision on this.</td>
<td>Set up a list of permissible donors: • Individuals on electoral roll • Malaysian-registered companies • Malaysian-registered societies / unions Non-permissible donors include GLCs &amp; unregistered bodies, e.g. organised crime</td>
</tr>
<tr>
<td>Anonymous contribution</td>
<td>Parties not required to disclose identity of donors. Individual candidates required to disclose donors identity, but its truthfulness is questionable</td>
<td>• Disclose identity of donors who contribute &gt;RM50 or cash-equivalent goods &amp; services • Disclose identity of donors whose total multiple donation is &gt;RM50 or cash-equivalent goods &amp; services</td>
</tr>
<tr>
<td>Personal contribution</td>
<td>No limit on amount of contribution permitted</td>
<td>Place a cap of RM10,000 per donor per annum</td>
</tr>
<tr>
<td>Corporate contribution</td>
<td>No limit on amount of contribution permitted</td>
<td>Place cap of RM100,000 per company or RM500,000 from group of companies owned by same majority shareholders per annum</td>
</tr>
<tr>
<td>TPAs</td>
<td>No limit on amount of contribution permitted</td>
<td>Cap of RM50,000 per organisation per annum</td>
</tr>
<tr>
<td>Recipient of contribution</td>
<td>Does not contain any provision on this</td>
<td>All contributions must go to party account</td>
</tr>
<tr>
<td>Issuance of receipt</td>
<td>• Parties must issue receipts for donations. But compliance is very poor • Does not require individual candidates to issue receipt on contributions</td>
<td>Parties &amp; individual candidates must issue receipts for all contributions. Receipt must contain date, name of donor &amp; recipient, purpose &amp; value (cash or cash-equivalent)</td>
</tr>
</tbody>
</table>
# Political Parties Act: Reporting Requirements

<table>
<thead>
<tr>
<th>Governance</th>
<th>• Parties, candidates &amp; TPAs to report to EC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Affected parties</td>
<td>• Parties, individual candidates &amp; TPAs will be required to report on financing</td>
</tr>
</tbody>
</table>
| Frequency of reporting | • Non-election time: Parties to report annually  
|                     | • Election period: Parties & candidates - daily summary reports & comprehensive reports 14 days after polling day |
| Reporting of information | • Disclose identity of donors who contributed RM500 or more in a single or multiple donations |
| Veracity of reports | • All reports must be audited by an independent auditor before submission to EC |
| Slush funds         | • Slush funds are not allowed |
**Political Parties Act: Disclosure Requirements**

- **Affected parties**
  - Public disclosure will include financial reports of parties & candidates

- **Victimisation of donors to opposition**
  - Against law for government to victimise donors of opposition parties

- **Method of disclosure**
  - Establish online registry of announcements by parties

- **Public disclosure**
  - **Governance**
    - EC will be made responsible for publicly disclosing financial reports
  - **Disclosure information**
    - EC to publicly disclose without tampering financial reports received

- **Non-election period**
  - Annual disclosure to be done within 31 days of the first month of the calendar year

- **Election period**
  - EC to disclose summary reports on daily basis & comprehensive disclosure within 31 days of polling day

**Electoral Commission**

- **Frequency of disclosure**
  - Non-election period: Annual disclosure to be done within 31 days of the first month of the calendar year
  - Election period: EC to disclose summary reports on daily basis & comprehensive disclosure within 31 days of polling day
  - EC will be made responsible for publicly disclosing financial reports
Regulating financing of party elections: crucial as party elections driven by money-based factionalism, rent seeking & patronage - exacerbates vote-buying & undermines integrity of parties

- Parties to submit audited financial reports of contestants to Election Commission
- Contribution limits for party election as per national elections
- Expenditure limits for party elections as per national elections
- Reporting requirements (during & after party elections) as per national elections
- Disclosure requirements (during & after party elections) as per national elections
Political Parties Act: Caretaker Government

PPA will prohibit caretaker government from announcing development programmes that can be construed as undue influence to buy votes

- EC will be made responsible as oversight body of caretaker government
- Prohibit caretaker government from launching development programmes as soon as parliament is dissolved
- Role of caretaker government

Governance
**Institutional Reforms: Enhance Autonomy & Impartiality of Key Institutions**

<table>
<thead>
<tr>
<th>Institutions</th>
<th>Issues</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>High-level Appointments</strong></td>
<td><strong>Autonomy and Impartiality</strong></td>
<td><strong>Monitoring Capabilities</strong></td>
</tr>
<tr>
<td><strong>Election Commission</strong></td>
<td><strong>Impartiality in high-level appointments questioned:</strong>&lt;br&gt;• In practice, PM exerts high influence over appointment of EC members&lt;br&gt;• ROS is a member of executive branch controlled by incumbent</td>
<td><strong>Absence of independent decision-making:</strong>&lt;br&gt;• EC seen as a government agency managing elections, rendering it subservient to incumbent government&lt;br&gt;• ROS is under ambit of Home Ministry</td>
</tr>
<tr>
<td><strong>Registrar of Societies</strong></td>
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</table>

EC & ROS now have little regulatory capacity to act independently against parties violating electoral & institutional regulations.
1 Strengthening the Election Commission: Appointment of EC Members

Formation of an **Election Commission Nomination Committee (ECNC):**

- The Prime Minister
- The leader of the Opposition
- The chair of the Parliamentary Select Committee for Electoral Matters
- The ranking Opposition member of the PSC
- The Chief Justice
- The Chairman of the Malaysian Human Rights Commission (Suhakam)
- A civil society representative who has knowledge of or practical experience in electoral matters. This Select Committee is not a permanent committee in Parliament.

**Nomination Process**

- ECNC will make public call for applications when vacancy arises
- Applicants screened for eligibility
- Public hearings held with shortlisted candidates; must be at least three for each vacancy
- ECNC will submit its chosen candidates to Parliament for approval, then to Agong for approval

2 Strengthening the Election Commission: Criteria for Candidates to the EC

<table>
<thead>
<tr>
<th>Legal Restrictions</th>
<th>a Is a member of a registered party</th>
<th>b Is an officer or employee of a registered party or of any accounting unit of such a party</th>
<th>c holds a relevant elective office</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Citizenship</td>
<td>d i Been such an officer or employee as is mentioned in paragraph (b)</td>
<td>ii Held such an office as is mentioned in paragraph (c)</td>
<td>iii Has been named a party donor in the register of donations</td>
</tr>
<tr>
<td>2 Impartiality</td>
<td>has at any time within the last ten years</td>
<td></td>
<td></td>
</tr>
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</table>
### Strengthening the Election Commission: Term of Office of EC Members

#### Limiting the Term of Office

**ADVANTAGE:**
Promotes constant generation of new ideas through new appointments

**DISADVANTAGE:**
Undermines institutional experience, if members’ terms coincide with a single electoral cycle

<table>
<thead>
<tr>
<th>Term of Office</th>
<th>Retirement Age</th>
</tr>
</thead>
<tbody>
<tr>
<td>6 years</td>
<td>70 years old</td>
</tr>
</tbody>
</table>

- Election Commissioners should have a **six-year term** with option for second term. No further extensions are allowed.
- Age of retirement shall be **70 years**
- Appointments should be staggered to allow for continuation of institutional memory

**Rationale:** Will allow Commissioners to see through a minimum of one full election cycle.

### Strengthening the Election Commission: Accountability of EC

**Establishment of a Parliamentary Select Committee (PSC)**

- To reflect composition of the House
- To receive reports submitted by the EC on an annual basis & after any state or federal level elections
- To receive expenditure reports
- To have inquiries into improvements to be made to electoral system & processes, with input from EC
- Of whom hearings & all findings should be made public