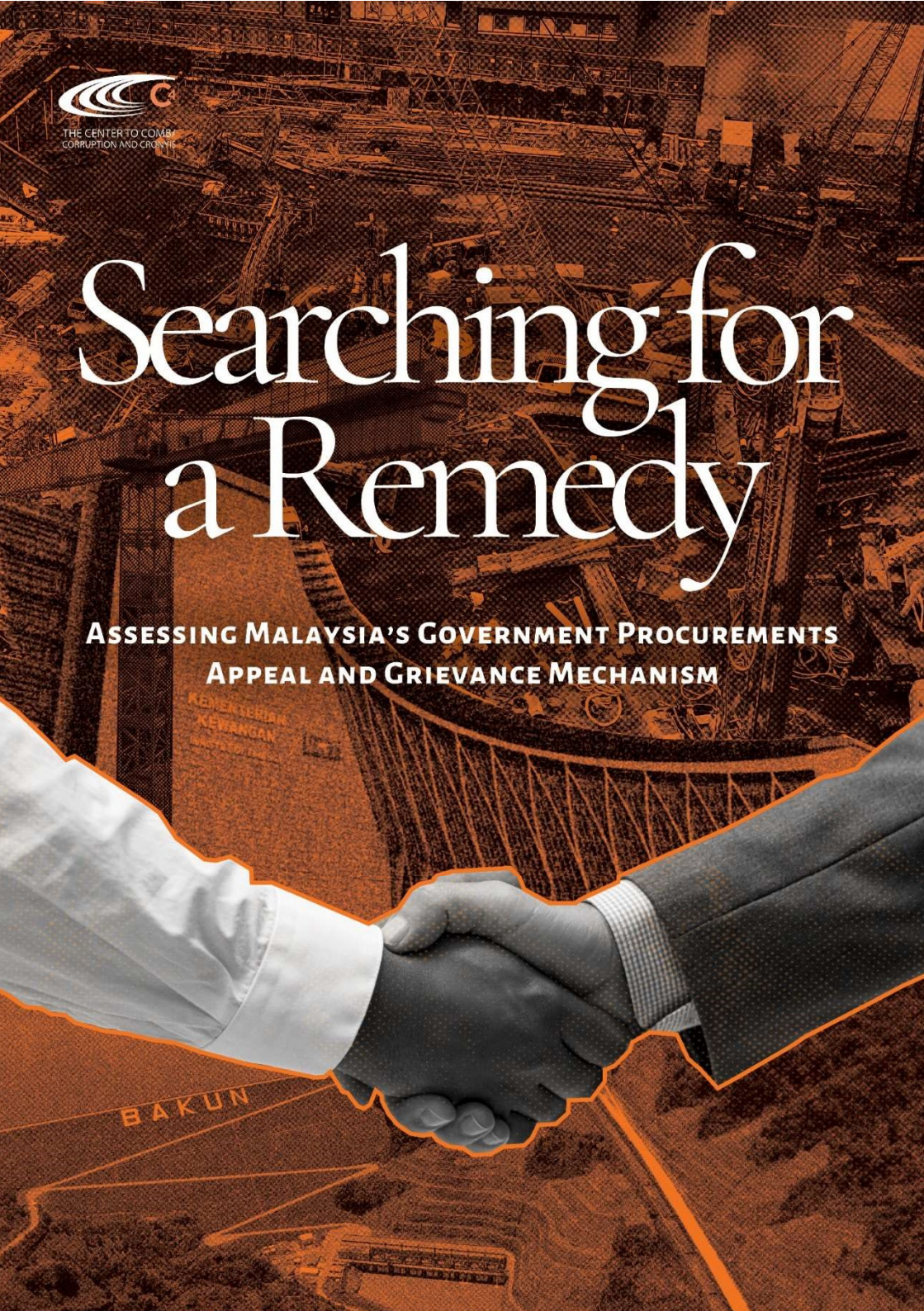
THE CENTER TO COMBAT
CORRUPTION AND CRONYIS
Searching for a Remedy
ASSESSING MALAYSIA'S GOVERNMENT PROCUREMENTS
APPEAL AND GRIEVANCE MECHANISM
KEMENTERIAN KEWANGAN
BAKUN

**Searching for a Remedy: Assessing Malaysia's Government Procurements Appeal and Grievance Mechanism**
The Center to Combat Corruption and Cronyism (C4 Center)

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# Searching for a Remedy

*Assessing Malaysia's Government Procurements Appeal and Grievance Mechanism*

The Center to Combat Corruption and Cronyism

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# Chapter 1: Introduction

On 25 August 2025, the Government Procurement Bill was tabled for its first reading in the Dewan Rakyat. Within a short span of time, it proceeded through its second and third readings, and was subsequently passed by both Houses of Parliament. The resulting Government Procurement Act (GPA) 2025 now awaits gazettement before it comes into force.

The passage of the GPA marks a significant development in Malaysia's procurement framework. For the first time, the legislation introduces a formalised structure for complaints, objections, and appeals, including the establishment of a Government Procurement Appeal Tribunal. This represents a shift from a system historically governed by Treasury Circulars towards a more rules-based framework.

At the same time, the introduction of a statutory appeals mechanism raises a number of important questions. These relate not only to the design and scope of the Tribunal, but also to how it will operate in practice, the extent of its independence, and the types of remedies it is able to provide. As the GPA has yet to be brought into force, and subsidiary legislation has not yet been developed, there remains a degree of uncertainty as to how these mechanisms will be implemented.

This report, *Searching for a Remedy: Assessing Malaysia's Government Procurement Appeal and Grievance Mechanism*, is intended as an exploratory assessment of this evolving framework. It does not seek to provide a definitive evaluation of the GPA. Rather, it aims to identify key issues, situate Malaysia's approach within broader international standards and comparative practice, and outline areas for further consideration as the system develops.

The report is guided by three core questions:

- What constitutes an effective procurement appeals mechanism in principle?
- How does Malaysia's current and proposed framework compare against these standards?
- What considerations should inform future reform, including the development of subsidiary legislation and implementation practices?

# Research approach and methodology

This report adopts a qualitative, desk-based research approach, supplemented by targeted stakeholder engagements. The analysis is structured across three main components.

First, a review of international standards was undertaken, focusing on key instruments including the United Nations Convention Against Corruption (UNCAC), the UNCITRAL Model Law on Public Procurement (2011), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). These frameworks provide a set of guiding principles against which procurement appeals mechanisms may be assessed.

Secondly, an analysis of Malaysia's existing and proposed procurement framework was conducted. This includes an examination of the current

system governed by Treasury Circulars, as well as the provisions of the GPA 2025 relating to complaints, objections, and appeals. The analysis focuses on the structure, powers, and limitations of the mechanisms established under the Act.

Thirdly, a comparative review of selected jurisdictions — namely the United Kingdom, Australia, and Singapore — was undertaken. These jurisdictions were selected due to their relevance as Commonwealth systems with established procurement regimes, offering useful points of reference for institutional design and practice.

In addition to the above, a series of stakeholder engagements were conducted with civil society organisations, a Member of Parliament, and representatives of the business community. While these engagements provided useful insights into broader governance concerns, limitations in participation and scope mean that they are not treated as comprehensive or representative. Instead, they are used to highlight recurring issues and inform areas for future research and policy development.

Overall, this approach reflects the exploratory nature of the report. The objective is not to provide an exhaustive account, but to develop a structured understanding of the issues at hand and to identify key areas where further clarity and reform may be required.

# Structure of the Report

The report is organised as follows:

**Chapter 2** outlines international standards and guiding principles relevant to procurement appeals mechanisms, drawing from UNCAC, the UNCITRAL Model Law, and the CPTPP.

**Chapter 3** examines Malaysia's existing procurement complaints and review framework, including both the current system under Treasury Circulars and the mechanisms introduced under the GPA 2025.

**Chapter 4** provides a comparative analysis of procurement appeals mechanisms in the United Kingdom, Australia, and Singapore, identifying relevant practices and limitations.

**Chapter 5** sets out recommendations for strengthening Malaysia's procurement appeals framework, with particular emphasis on independence, transparency, and the availability of meaningful remedies.

**Chapter 6** presents findings from stakeholder engagements and outlines broader considerations for future research, policy development, and implementation.

# Chapter 2: International Standards & Guiding Principles

## Introduction

This chapter sets out international standards that inform the design of effective government procurement appeals and grievance mechanisms. Rather than prescribing a single institutional model, these instruments collectively establish a set of minimum expectations that can be adapted within different domestic legal systems — particularly around independence, transparency, and the availability of meaningful remedies.

Three key frameworks are examined: the United Nations Convention Against Corruption (UNCAC), the UNCITRAL Model Law on Public Procurement (2011), and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP). Each operates at a different level of specificity and legal force. UNCAC articulates broad governance principles; the UNCITRAL Model Law provides a detailed legislative template; and the CPTPP establishes binding obligations for participating states, including Malaysia, within the context of international trade.

The sections that follow outline the key provisions of each instrument before drawing out their implications for assessing Malaysia's current procurement appeals framework.

## 2.1 United Nations Convention Against Corruption (UNCAC)

The United Nations Convention Against Corruption (UNCAC) is the primary global instrument governing anti-corruption standards, with near-universal state participation, including Malaysia.[1] As a legally binding convention, it establishes baseline obligations for public sector integrity, including in the management of public procurement systems. While UNCAC does not prescribe detailed institutional models, it sets out core principles that states are expected to operationalise within their domestic legal frameworks.

**Article 9.1** of UNCAC, "*Public procurement and management of public finance*", provides a baseline for how State Parties conduct their government procurement operations.

> "1. Each State Party shall, in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption. Such systems, which may take into account appropriate threshold values in their application, shall address, inter alia…"

[1] *United Nations Office on Drugs and Crime, United Nations Convention Against Corruption: Status of ratifications (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/Status_ratification_Reg_Groups_14June_2012.pdf >*

With respect to a government procurement appeals mechanism, **Article 9.1(d)** requires:

"An **effective system of domestic review**, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established pursuant to this paragraph are not followed."

This provision establishes that an effective review mechanism is integral to ensuring that procurement systems operate transparently, competitively, and based on objective decision-making, thereby contributing to the prevention of corruption.

The Technical Guide to the UNCAC provides additional substantiation for the need of such a domestic review procedure. In **Part II. Practical challenges and solutions**, sub-heading **II.1. Procurement**, **paragraph II.1.2**, it states that:

"...State parties should develop and publicise an effective system of domestic review, including an effective system of appeal, to ensure legal recourse and remedies in the event that the rules or procedures established are not followed. One consequence may be the debarment of contractors for proven non-compliance with the procurement processes or corrupt conduct..." [2]

This explicitly sets out further conditions on an effective domestic review system, including appeal and avenues for remedy, with consequences for those entities who do not adhere to procurement regulations. This also further demonstrates that the purpose of the domestic review system must be to work in accordance with State Parties' procurement systems in achieving the UNCAC's anti-corruption principles.

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[2] United Nations Office on Drugs and Crime, Technical Guide to the United Nations Convention against Corruption (2009), available at <https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf>

Overall, the UNCAC sets a foundational expectation – procurement systems must include sufficient safeguards against corruption and work towards minimising its risks.

## 2.2 UNCITRAL Model Law on Public Procurement (2011)

The United Nations Commission On International Trade Law (UNCITRAL) Model Law on Public Procurement provides a detailed example of the appeals process for flawed procurements and includes provisions detailing the processes that arise from a claim of non-compliance in the procurements process – this ranges from the complaint submission process to remedial solutions.

### 2.2.1 Right to challenge and appeal

**Article 64** on the "*Right to challenge and appeal*" establishes the principal basis that suppliers or contractors should be able to appeal procurement decisions:

1. A supplier or contractor that claims to have suffered or claims that it may suffer loss or injury because of the alleged non-compliance of a decision or action of the procuring entity with the provisions of this Law may challenge the decision or action concerned.
2. Challenge proceedings may be made by way of [an application for reconsideration to the procuring entity under article 66 of this Law, an application for review to the [name of the independent body] under article 67 of this Law or an application or appeal to the [name of the court or courts]].

In short, Article 64 grants the right of a supplier to bring challenge against a procuring entity to an independent review body for the entity's non-compliance of procurement policy.

### 2.2.2 Avenues for appeal

The "Guide to Enactment of the UNCITRAL Model Law on Public Procurement" further elaborates on potential avenues for aggrieved parties to submit appeals and request reviews of procurement decisions. Namely, **Paragraphs 10, 12 and 13** of "Chapter VIII. Challenge Procedures" illustrates potential avenues for appeal:

> 10. As a first alternative, an application for reconsideration may be presented to the **procuring entity itself** under Article 66, provided that the procurement contract is yet to be awarded. The purpose of providing for this procedure is to allow the procuring entity to correct defective acts, decisions or procedures.[3]
>
> 12. The second alternative is for an **independent, third-party review** of the decision or action of the procuring entity that the supplier or contractor alleges is not in compliance with the law. This independent review may operate as an administrative procedure. It is broader in scope than the peer system outlined above, because challenges can be submitted after the entry into force of the procurement contract (or framework agreement).[4]

[3] United Nations Commission on International Trade Law, Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2014), available at <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf>, p. 298
[4] Ibid.

13. The third alternative is an **application to a competent court**. The Model Law does not provide procedures for such proceedings, which will be governed by applicable national law.[5]

### 2.2.3 Scope of powers of independent body

**Article 67** of the Model Law, "*Application for review before an independent body*", goes into further detail about the procedures that should be adopted in the submission of complaint to an independent body including the channels to go through the requisite documentation need to be submitted. Paragraph 9 in particular goes into the methods of recourse that can be undertaken by the "independent body."

In relation to the procuring entity, the independent body is empowered to:

a) Prohibit it from acting or deciding against the Law;
b) Require it to act in accordance with the Law where it has failed to do so;
c) Wholly or partly overturn decisions where it has not complied with the Law;
d) Revise its decisions that have not been in compliance with the Law;
e) Confirm its decisions;

In relation to procurement processes, the independent body is also empowered to:

f) Overturn an award for procurement that has come into force but was not in compliance with the Law, and also order notice of the overturning to be published;
g) Order that the procurement proceedings be terminated;
h) Dismiss the application;

[5] Ibid.

i) Require payments of compensation for any costs, losses, or damages incurred by the supplier caused the by procuring entity's non-compliance with the Law (limited to costs related to submission or application or both);

j) Take alternative action as is appropriate in the circumstances.

### 2.2.4 Principles guiding government procurement

#### Independence

Paragraphs 24 and 25 of the "Guide to Enactment of the UNCITRAL Model Law on Public Procurement" under "Chapter VIII. Challenge Procedures" further elaborates on the notion of "independence" for the "independent body" meant to review procurement appeals. Para 24 and 25 of Part 3: Issues regarding implementation and use outline these principles.

> "24. The notion of "independence" in the context of chapter VIII **means independence from the procuring entity** rather than independence from the Government as a whole and **protection from political pressure**..."[6]

Paragraph 24 adds that the administrative bodies established by the State for administration and decision-making in relation to government procurement are not considered independent under the Model Law. Therefore, States should consider whether the independent body should include or be composed of outside experts, independent from the government.

[6] United Nations Commission on International Trade Law, Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2014), available at <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf>, p. 302

Paragraph 25 continues:

> "25. Enacting States are therefore encouraged, within the scope of their national systems, to provide the independent body with as much **autonomy and independence of action from the executive and legislative branches** as possible, in order **to avoid political influence and to ensure rigour in decisions** emanating from the independent body..."[7]

Particularly, the need for an independent mechanism is particularly critical in those systems where procurement entities are less likely to judge its own actions impartially and effectively.

## Transparency

Significantly, Paragraphs 10 and 11 of **Article 67** of the UNCITRAL Model Law on Public Procurement lays out key conditions upon the independent body's conclusion of its review and subsequent decision. Paragraph 10 elaborates that a decision by the independent body should issue a decision within a specified timeframe, after which the decision must be communicated to the procuring entity, applicant, and all other participants in the application for review and procurement proceedings.[8]

Paragraph 11 also stipulates that the decisions of the independent body shall be made in writing and shall state the action taken and the reasons for the action taken. These, along with the application received by the independent body, shall be made part of the record of procurement proceedings.[9]

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[7] Ibid.
[8] United Nations Commission on International Trade Law, UNCITRAL Model Law on Public Procurement (2011), available at <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/2011-model-law-on-public-procurement-e.pdf>, p. 72
[9] United Nations Commission on International Trade Law, UNCITRAL Model Law on Public Procurement (2011), available at

The Guide further elaborates that the purposes of these provisions are to ensure that "all decisions taken by the independent body during the review proceedings to be in writing, complete, reasoned and put on the record".[10] The Guide emphasises that the Model Law must set out "important transparency safeguards that also aim at ensuring efficient and effective review proceedings and possible further action by aggrieved suppliers or contractors in courts if need be".[11]

## 2.3 Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)

The Trans-Pacific Partnership Agreement (TPPA) was originally signed by 12 nations: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam in 2016, but was not ratified.[12] Subsequently, the United States withdrew from the agreement in 2017 and hence, the Agreement could no longer enter into force.[13] Ministers of the remaining 11 TPP countries reached an agreement on the core elements, the text of the agreement and way forward to implement the

<https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/2011-model-law-on-public-procurement-e.pdf>, p. 73

[10] United Nations Commission on International Trade Law, Guide to Enactment of the UNCITRAL Model Law on Public Procurement (2014), available at <https://uncitral.un.org/sites/default/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf>, p. 324

[11] Ibid.

[12] Ministry of Investment, Trade, and Industry, Trans-Pacific Partnership Agreement (TPP) & Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2023), available at <https://fta.miti.gov.my/index.php/pages/view/tpp_cptpp >

[13] Ibid.

TPPA, which was renamed as the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP).[14]

The CPTPP was signed by all 11 participating countries in 2018 – Malaysia being a signatory to the CPTPP meant that it agreed to ratify the provisions of the agreement in order to bring the provisions of the agreement into force at the local level.[15]

## 2.3.1 Establishing the complaints mechanism

**Chapter 15** (Government Procurement) within the Annex of the CPTPP provides for Domestic Review requirements under **Article 15.19**:

> "1. Each Party shall maintain, establish or designate at least one impartial administrative or judicial authority (review authority) that is independent of its procuring entities…"

The task of this authority is to review challenges made by a supplier in a non-discriminatory, time, transparent, and effective manner. The grounds for complaint a breach of the Chapter's provisions, or a failure of a procuring entity to implement measures under this Chapter where a supplier does not have a right to directly challenge a breach.

This arises in the context of a covered procurement, in which the supplier has, or had, an interest. The procedural rules for all complaints shall be in writing and made generally available.

## 2.3.2 Duties of a domestic review body

Furthermore, the Article goes on to elaborate on minimum standards for review procedures. Article 5 states:

[14] Ibid.
[15] Ibid.

5. Each Party shall ensure that, if the review authority is not a court, its review procedures are conducted in accordance with the following procedures:

    a) a supplier shall be allowed sufficient time to prepare and submit a complaint in writing, which in no case shall be less than 10 days from the time when the basis of the complaint became known or reasonably should have become known to the supplier;

    b) a procuring entity shall respond in writing to a supplier's complaint and provide all relevant documents to the review authority;

    c) a supplier that initiates a complaint shall be provided an opportunity to reply to the procuring entity's response before the review authority takes a decision on the complaint; and

    d) the review authority shall provide its decision on a supplier's complaint in a timely fashion, in writing, with an explanation of the basis for the decision.

### 2.3.3 Remedies

Article 6 states that pending the resolution of a complaint, each party shall adopt or maintain procedures that provide for prompt interim measures. These measures are intended to preserve the supplier's opportunity to participated in the procurement, ensuring that procuring entities comply with measure implementing this Chapter.[16]

Each part should also adopt or maintain procedures for corrective action that may include compensation under paragraph 4. Paragraph 4 refers to "compensation for the loss or damages suffered to either the costs

[16] Comprehensive and Progressive Agreement for Trans-Pacific Partnership (4 February 2016), arts 6

reasonably incurred in the preparation of the tender or in bringing the complaint, or both." A party is entitled to limit these compensations where the review authority has found a breach of terms in Chapter 15.

### 2.3.4 Exceptions to the application of the CPTPP

However, under the party-specific Annexes to the Chapter, specifically in this case, Annex 15-A, Schedule of Malaysia, Malaysia is granted access to the conditional exception to the ratification of specific provisions in the CPTPP. Paragraph 3 under Section J: Transitional Matters states:

> 3. Notwithstanding Article 15.19 (Domestic Review), Malaysia may delay application of its obligations under Article 15.19 for three years after the date of entry into force of this Agreement for Malaysia. During this transitional period, Malaysia shall use existing internal administrative procedures to address complaints, provided that it complies with Article 15.4.1 (General Principles) and Article 15.4.2.

According to the Ministry of Investment, Trade and Industry's website, the CPTPP's official entry into force in Malaysia began on 29 November 2022.[17] Malaysia's party specific annex stipulates that the state is not bound to incorporate Article 15.19 into domestic law until 29 November 2026.[18]

[17] Ministry of Investment, Trade, and Industry, Trans-Pacific Partnership Agreement (TPP) & Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) (2023), available at <https://fta.miti.gov.my/index.php/pages/view/tpp_cptpp >
[18] Ibid.

## 2.4 Analysis of international standards

The instruments above provide a starting point by which to assess government procurement appeals systems, highlighting the desirable elements of such systems.

The **UNCAC** provides a general desirable outcome for an "**effective system of domestic review**." This is expanded into further desirable outcomes which are an effective system of appeal that can ensure recourse and remedies. As a Convention, the UNCAC does not set out to provide exact policy proposals but is rather only meant to be a guidance in principle.

On the other hand, the **CPTPP** is a multi-lateral trade agreement that binds its signatories to adhere to the terms of the agreement signed. Malaysia, as a signatory, must implement the obligations under the CPTPP or it will not reap the agreement's benefits. While providing further elaboration than the UNCAC, the obligations to establish Domestic Review procedures under Article 15.19 are still somewhat general. While it does usefully highlight that the review authority must be independent from the procuring authority, the other paragraphs mainly highlight the need for timeliness and transparency in procedural conduct. Furthermore, the Article does not seem to designate any further avenues of recourse besides compensation, meaning there is no obligation for the domestic review body to make available other forms of remedy.

Finally, the **UNCITRAL Model Law** provides the most thorough framework for the establishment of a procurement appeals mechanism. It first prescribes multiple avenues for procurements to be reviewed and makes specific reference to challenges submitted to an independent, third-party review mechanism. Independence here is also outlined in two levels: independence from the procuring entity, and as protection from political pressure and influence. Political influence here is stated as autonomy from

both the executive and legislative branches as far as it is possible. The consideration that the body be staffed by independent body be staffed by experts external to the government is also of particular importance. This establishes a high minimum standard for independence as compared to the CPTPP, and calls into consideration the methods by which members of such review bodies are staffed and appointed to their positions.

The Model Law also prescribes that all decisions by the review body must be made transparent, including the reasons for such a decision to be made, recorded in writing, and communicated to all parties in the application for review. The transparency requirements here clearly extend beyond notification of a decision to including the rationale of such decisions – read together with the above point on independence, this demonstrates the need for the review body to maintain independence both in form and substance. The review body must be seen to be independent and must also act independently from external influences.

Notably, the third-party review is also empowered to heard challenges after the procurement contract is entered into force. In Paragraph 9 of Article 67 that the independent body is entitled to make decisions such as compelling the procuring entity to make decisions in accordance with the model law, prohibiting actions that are not in accordance with the law, and ordering the payment of compensation for costs and damages suffered. Furthermore, it is also empowered to overturn or revise a decision by a procuring entity, overturn the award of a procurement contract, and order the procurement proceedings be terminated. This scope of powers exceeds those in the CPTPP and allows to review body to serve a function beyond merely remedial within a balance sheet framework or cost and gain. The review body under the UNCITRAL is therefore able to make a qualitative judgement over the ways in which procurement contracts were disbursed and whether certain contracts should be carried out at all from a principled standpoint.

## 2.5 Key Implications for Malaysia

These instruments establish a set of minimum expectations for the design and operation of procurement appeals mechanisms. While differing in level of detail and legal force, they converge on several core requirements that are directly relevant to Malaysia's current framework.

In particular:

- **Independence of the review body**

  Review mechanisms must be institutionally independent from procuring entities and sufficiently protected from political or executive influence. This includes both formal independence in structure and practical independence in decision-making.

- **Transparency of process and decision-making**

  Appeals procedures must be conducted in a transparent manner, with decisions issued in writing, supported by clear reasoning, and made accessible to relevant parties. Transparency extends beyond outcomes to include the rationale underlying procurement decisions.

- **Availability of meaningful remedies**

  Review bodies should be empowered to provide effective recourse, including the ability to suspend procurement processes, overturn decisions, and in certain circumstances, set aside contracts or terminate proceedings. Limiting remedies solely to compensation may be insufficient to ensure accountability.

- **Timeliness and procedural fairness**

  Mechanisms must allow sufficient time for complaints to be brought, ensure that parties are given an opportunity to respond, and provide decisions within a reasonable timeframe.

- **Multiple avenues of review**

  Effective systems may include layered mechanisms, such as reconsideration by the procuring entity, independent administrative review, and access to courts, allowing flexibility depending on the stage and nature of the dispute.

- **Malaysia's CPTPP obligations and timeline**

  As a party to the CPTPP, Malaysia is required to establish or designate an independent and impartial domestic review authority under Article 15.19. However, under its transitional arrangements, Malaysia is permitted to delay implementation of these obligations until 29 November 2026. This creates a defined window for Malaysia to operationalise and refine its procurement appeals framework in line with international standards.

These considerations provide the basis for assessing Malaysia's existing and proposed procurement appeals mechanisms in the following chapter.

# Chapter 3: Malaysia's Public Procurement Appeals Mechanisms

## Introduction

Malaysia's government procurement system is currently in a transitional phase. While the GPA has been passed by Parliament, it has yet to be gazetted and brought into force. In the interim, procurement practices — including the management of complaints and grievances — continue to be governed primarily by Treasury Circulars issued by the Ministry of Finance.

This coexistence of an existing administrative framework and a forthcoming statutory regime presents an opportunity to examine how procurement appeals mechanisms are structured in practice, as well as how they are intended to evolve under the GPA. It also raises questions about continuity, institutional design, and the extent to which the new framework addresses longstanding gaps in accountability and oversight.

This chapter provides an overview of both systems. It first outlines the current complaints and review mechanisms under the Treasury Circulars, before examining the framework established under the GPA, including the internal review process and the proposed Government Procurement Appeal Tribunal.

Drawing on the principles identified in Chapter 2 — particularly independence, transparency, and the availability of meaningful remedies — this chapter assesses the extent to which Malaysia's existing and proposed mechanisms align with international standards. The analysis focuses not only on the formal provisions of the law, but also on how these mechanisms are likely to function in practice, including the distribution of decision-making authority and the scope of available recourse.

## 3.1 Treasury Department Circulars

### Overview

Until the GPA comes into force, the grievance and review mechanism for flawed procurements in Malaysia is governed under Treasury Circular PK 2.1 on General Information, first issued on 29 November 2022, the day the CPTPP officially entered into force in Malaysia. Paragraph 12 of PK 2.1 outlines "Management of complaints/objection regarding government procurement" and is subsequently divided into two main components – complaints/objections regarding government procurement that are not governed under Free Trade Agreements (FTA) (12.1) and complaints/objections that are governed under FTA (12.2).

**Paragraph 12.1** on complaints regarding government procurement not governed under FTA outlines the guidelines on submitting a complaint. It requires that the complaint be submitted alongside "strong evidence" within a given time period. After receiving a complaint from a supplier, the government agency involved is to set up a committee to consider the

complaint. Crucially, if the committee finds that the complaint has substantial basis, the tender must be cancelled and subject to re-tender according to reassessed specifications.

**Paragraph 12.2** on complaints regarding government procurement governed under FTA contain much more detail than the 12.1 provisions, stipulating the preparation of a Domestic Review Procedure (DRP), the establishment of a Review Body at the ministry/agency level, and the recognition of the authority of the Ministry of Finance or any other government-appointed body as the Review Authority to make final decisions to settle disputes regarding procurement contracts.

**Paragraph 12.2** also contains provisions for "Interim measures" in the event of a procurement dispute – these include a suspension/delay of the procurement process, an extension of the tender advertisement period, a postponement of the Letter of Acceptance (LOA), or other appropriate measures. A postponement of the LOA can only be considered by the Controlling Officer through the Procurement Public Interest Certificate (PPIC), with the decision to be informed to the Approving Authority. The government agency involved must be satisfied that there are sufficient grounds in favour of public interest, supported by strong and hard evidence certified by the Controlling Officer before issuing a PPIC for a particular procurement, such as in cases where it would have a direct effect on the health, safety, or welfare of the public.

## Analysis

The system of regulating all government procurements through Circulars has long been criticised – circulars issued by the Treasury are not binding documents that impose a legal duty of adherence on procuring entities and the officers who worked in these departments. This meant that violations of these guidelines would warrant little to no consequence for individuals who

commit violations, even on an administrative level which may contribute to procurement corruption and financial mismanagement.

While the GPA is meant to replace the Circulars completely, until it enters into force, the Domestic Review Procedure as stipulated in the Circulars remains the default system. The official portal by the Ministry of Finance for the publication of Treasury Circulars[19] is still publishing new circulars and amendments to previous ones in 2026, demonstrating that the Circular system is still being relied upon as the system of government procurement governance.

This transitional arrangement raises important questions regarding continuity and legal effect. In particular, the extent to which existing Circulars will be incorporated into, replaced by, or operate alongside subsidiary legislation under the GPA remains unclear. This uncertainty underscores the importance of examining whether the new statutory framework meaningfully addresses the structural limitations of the current system.

## 3.2 The Government Procurement Act (GPA) 2025

The grievance mechanism for government procurements under the GPA takes place in two phases: the first being internal to the government department or Ministry that is implementing the procurement, and the second being brought under jurisdiction of the Government Procurement

[19] Portal Pekeliling Perbendaharaan, Kementerian Kewangan, https://ppp.treasury.gov.my/

Appeal Tribunal. Both are provided for in the GPA sections that fall under *Part IX: Complaints, Objections, and Review.*

### 3.2.1 Complaints and objections to the procuring entity

The first phase is governed under **Section 61** of the GPA, in relation to "Administration of complaints, objections and reviews." **Section 61(1)** states:

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

**Section 61(2)** shares similar wording to (1):

> **61.** (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.

Both subsections share a similarity in granting "any person" locus standi to communicate a grievance to the procuring entity. However, while (1) operates to cover dissatisfactions against Government procurements "in general," (2) specifically addresses dissatisfaction against procurements within a specific cost-defined category that is determined by the Minister.

**Section 61(3)** sheds light on the difference in operation:

> **61.** (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.

The review panel mentioned in (3) is constituted under **Section 62** on "Establishment and administration of review panel," which requires a

controlling officer to establish and administer a review panel for the purpose of reviewing objections on matters relating to the administration and conduct of Government procurement by procuring entities.

**Section 61(4)** imposes an obligation on the review panel to submit a decision to the person making an objection in writing within a "reasonable period." **Section 61(5)** further states that if the decision in subsection (4) is still unsatisfactory, the person making the objection may then appeal the decision to the Appeal Tribunal within 14 days of receiving the decision by the review panel.

**Section 61(6)** further spells out the discretionary powers of the Minister to be able to 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.

## Analysis

The concern with this system is its **lack of independence**. Section 61 and its subsections (2) and (3), when read together, state that only objections to procurements above a certain value threshold (as determined by the Minister) can be heard by the procuring entity's review panel. In other words, the Minister is able to directly influence which procurements are heard by the procuring entity's review panel should an objection be raised (subsection

(2)) as opposed to complaints made "in general" that are not subject to the review panel's jurisdiction (subsection (1)).

If Section 61 subsections (2), (3), (4), and (5) are meant to be read together, this also likely implies that the Minister is able to narrow the category of procurements that are able to be objected to and subject to the review panel and the Appeal Tribunal by extension. Based on these provisions, the Minister may hold discretionary power to decide that only a certain value of procurements fall under these provisions, while any procurement below that value threshold would automatically fall under subsection (1), which does not carry with it any further avenues of appeal for the complainant. Moreover, Section 61(6) explicitly grants the Minister of Finance powers to prescribe procedures for how these complaints are administered entirely.

It is recognised that some degree of filtering within a procurement complaints system is necessary. Not all grievances can or should proceed through multiple layers of review, particularly where this may delay procurement processes or impose unnecessary administrative burdens. Mechanisms that distinguish between minor complaints and more substantive objections are therefore a common feature of procurement systems.

However, the manner in which this filtering is structured under Section 61 raises concerns. The distinction between "complaints" and "objections", coupled with the Minister's discretion to prescribe thresholds and procedures, creates a system in which access to further review is not determined by clear and objective criteria, but may instead be shaped by executive decision-making.

This introduces a structural risk that the filtering mechanism may operate not only to manage administrative efficiency, but also to limit the range of procurements that are capable of being independently reviewed. In effect, the design of the system allows for the possibility that access to the Appeal

Tribunal is constrained at an early stage, reducing its function as a meaningful avenue for accountability.

### 3.2.2 Government Procurement Appeal Tribunal

The GPA introduces the Appeal Tribunal [20] as an additional measure to hear complaints and objections regarding government procurements. **Section 67** on "Jurisdiction" outlines the scope and limits of the Appeal Tribunal, establishing firstly that it has jurisdiction to determine any appeal on matters relating to the decisions and process of the review panel's decisions.[21] However, subsection (2) also stipulates the various matters on which the Appeal Tribunal has no jurisdiction on, including matters relating to the contravention of the GPA,[22] those relating to the investigation and enforcement under Part VIII of the GPA,[23] and those arising after the issuance of a letter of acceptance by a procuring entity that is signed by the parties,[24] amongst others.

**Section 70** on "Exclusion of jurisdiction of court" also stipulates that the appeals lodged with the Appeal Tribunal that are within its jurisdiction must not be the subject of proceedings in court unless the court proceedings commenced before the appeal was lodged with the Appeal Tribunal or if the appeal before the Appeal Tribunal is withdrawn, abandoned, or struck out.[25]

[20] Section 63(1) of the Government Procurement Act 2025.
[21] Section 67(1) of the Government Procurement Act 2025.
[22] Section 67(2)(a) of the Government Procurement Act 2025.
[23] Section 67(2)(b) of the Government Procurement Act 2025.
[24] Section 67(2)(d) of the Government Procurement Act 2025.
[25] Section 70(1)(a) and (b) of the Government Procurement Act 2025.

"Powers of Appeal Tribunal" are listed in **Section 71**:

(a) to summon parties to the proceedings or any other person to attend 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 deemed necessary by the Appeal Tribunal;
(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 appeal;
(d) to administer any oath, affirmation or statutory declaration;
(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;
(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.

Finally, **Section 81** states that decisions by the Appeal Tribunal may be enforced in the same manner as a judgement or an order of the High Court if leave is granted.

## Appeals process

The general principle is stated in **Section 72**, which states that the Appeal Tribunal may adopt such procedure as it thinks is "fit and proper." This is further provided for in **Section 68** of the GPA on "Appeals to the Appeal Tribunal":

- **Subsection (1)** states that a person who is aggrieved or whose interest is affected by the decision of a review panel under Section 61 may appeal to the Appeal Tribunal by filing a notice.
- **Subsection (2)** goes on to say that this notice of appeal shall be made in writing within 14 days from when the review panel made a decision, and that the appellant must hand the notice to the relevant review panel.
- **Subsection (3)** stipulates the required details that must be included in the notice.

Under **Section 69** on "Suspension order against Government procurement," after the appellant has lodged a notice of appeal with the Secretary of the Appeal Tribunal, they may 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;[26] or
>
> (b) the implementation of any decision made while undertaking the procedures mentioned in paragraph (a).[27]

The appellant is required to provide an affidavit to state the reasonable grounds for such an order to be made,[28] while the procuring entity may file an affidavit to the Appeal Tribunal in response stating the reasons why an order of suspension should not be made[29] – this includes public interest reasons supported by a Procurement Public Interest Certificate issued under **Section 32**. After considering the affidavits from both sides, the Appeal

[26] Section 69(1) of the Government Procurement Act 2025.
[27] Ibid.
[28] Section 69(2) of the Government Procurement Act 2025.
[29] Section 69(4) of the Government Procurement Act 2025.

Tribunal will make a decision on whether to make an order to suspend the procurement or not, and the conditions attached to these decisions if deemed necessary by the Appeal Tribunal.[30]

The Appeal Tribunal is obligated not to make an order of suspension of government procurement on that bases that the suspension would be against public interest, or if the contract mentioned in Section 69(1)(a) has already been awarded by the date of hearing of the application of the suspension order.[31] The Appeal Tribunal must also give the grounds of a refusal to make an order of suspension in writing.[32]

"Decisions by Appeal Tribunal" are governed under **Section 80** – the Appeal Tribunal has the power to either affirm the decision of the review panel, vary that decision, or set aside that decision entirely and make a new decision.[33] A reason for the decision must be provided as well.[34]

Should the Appeal Tribunal decide to set aside the decision of the review panel and make a new one, it may make the following orders, depending on whether or not the government procurement was suspended or not:

a) In the case where the Government procurement was suspended in accordance with section 69, the Appeal Tribunal may order any decision or action taken by the procuring entity concerned which is the subject of the challenge to be set aside. The procuring entity may also be ordered to take one or more decision or action in place

[30] Section 69(5) of the Government Procurement Act 2025.
[31] Section 69(6)(a) and (b) of the Government Procurement Act 2025.
[32] Section 69(7) of the Government Procurement Act 2025.
[33] Section 80(3)(a), (b), and (c) of the Government Procurement Act 2025.
[34] Section 80(4) of the Government Procurement Act 2025.

of that which has been set aside in accordance with the relevant positions of the GPA.[35]

b) In the case where the Government procurement was not suspended and a letter of acceptance has not been signed by parties, the Appeal Tribunal may 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 matter being submitted to the Appeal Tribunal.[36]

c) In the case where the 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 to the appellant the costs of participation in the qualification of suppliers and contractors, or the costs of tender preparation that were reasonably incurred by the appellant for the purposes of the Government procurement.[37]

Lastly, **Section 79(1)** stipulates that all proceedings before the Appeal Tribunal are to be made public. However, where a respondent to an appeal makes an application, the Chairman of the Appeal Tribunal may make an order for the proceedings to be held in a closed session if he is satisfied that it would be against public interest for the proceedings to remain public.[38]

## Composition and conduct of membership

The Minister is empowered to appoint members of the Appeal Tribunal by order published in the Gazette, including the Chairman, the Deputy Chairmen, and no less than 5 other members of the tribunal of whom are recognised professions with integrity in the fields of law, finance, commerce,

[35] Section 80(5)(a) of the Government Procurement Act 2025.
[36] Section 80(5)(b) of the Government Procurement Act 2025.
[37] Section 80(5)(c) of the Government Procurement Act 2025.
[38] Section 79(2) of the Government Procurement Act 2025.

and so on.[39] Members of the Appeal Tribunal are able to hold office for a term not exceeding three years and shall be eligible for reappointment upon expiry of the term but shall not be appointed for more than two consecutive terms.[40] The Minister is also empowered to appoint a senior public officer as Secretary of the Appeal Tribunal to assist in its functions,[41] and also an indefinite number of public officers the Minister sees fit to assist the secretary.[42]

The GPA also covers the conditions such membership-related issues regarding the Appeal Tribunal including the "Resignation and revocation of appointment," which stipulates the conditions of which membership of the Appeal Tribunal can be revoked by the Minister[43] and "Vacation of office," which stipulates the conditions that result in an Appeal Tribunal membership to be considered "vacated" and what to do in that scenario.[44]

**Section 73** on "Disclosure of interest by Chairman and members of Appeal Tribunal" imposes such an obligation. The members of the Appeal Tribunal are required to disclose any interest to the Chairman, whilst the Chairman is required to disclose any interest to the Minister. Such "interests" may or may not be substantial but may nonetheless conflict with the duties of the Chairman and members.[45]

- When a member of the Appeal Tribunal discloses interest to the Chairman, and the Chairman is of the opinion that the interest conflicts with the member's duties, they are under an obligation to

[39] Section 63(2) of the Government Procurement Act 2025.
[40] Section 63(4) of the Government Procurement Act 2025.
[41] Section 74(1)(a) of the Government Procurement Act 2025.
[42] Section 74(1)(b) of the Government Procurement Act 2025.
[43] Section 64 of the Government Procurement Act 2025.
[44] Section 65 of the Government Procurement Act 2025.
[45] Section 73(1) of the Government Procurement Act 2025.

inform all parties to the matter of the conflict. If none of the parties object to the conflict, the member may continue their duties in that matter – this requires unanimous agreement. If even one party to the matter objects to the conflict, the member of the Appeal Tribunal must not be allowed to continue performing their duties in relation to that matter.[46]

- When the Chairman discloses interest to the Minister, and the Minister decides that there is a conflict of interest, the Minister may appoint any of the Deputy Chairmen as a replacement for the Chairman.[47]

Failure by the Chairman or any of the members of the Appeal Tribunal to disclose interest will result in the invalidation of decision of the Appeal Tribunal – unless all parties decide to be bound by it regardless – and revocation of appointment for the individual who failed to declare interest.[48]

## Analysis

In terms of **transparency**, the Appeal Tribunal moderately adheres to this consideration – when it refuses to make an order of suspension, it must declare the grounds for doing so in writing. The Tribunal must also provide a reason for either affirming, varying, or setting aside the decision by the review panel. However, while its proceedings are made public by default, the Chairman of the Appeal Tribunal is entitled to order proceedings to be conducted as closed sessions based on "public interest" considerations – public interest is not further defined, and this vague discretionary power undermines the transparency of proceedings.

[46] Section 73(2)(a) of the Government Procurement Act 2025.
[47] Section 73(2)(b) of the Government Procurement Act 2025.
[48] Section 73(4) of the Government Procurement Act 2025.

In terms of **recourse and remedy**, the Appeal Tribunal is limited. It is prohibited from suspending a government procurement if doing so would affect public interest – a term undefined – or if the contract has already been awarded. Where suspension does not take place, but a letter of acceptance has already been signed by the parties, the Tribunal can only order the procuring entity cover the costs incurred by the appellant. This limitation means the ability for the Tribunal to intervene in procurements that are conducted outside of established protocol are entirely contingent on circumstances that could easily change. This is especially so because the GPA necessarily prescribes that appeals cannot be brought directly to the Tribunal, but first through the initial review system – if a supplier has already made a complaint, but the contract in question was awarded pending referral to the Tribunal, it would be administered regardless even if it later emerged the contract was conducted against proper procedure.

To add to this, while Section 61 (complaints to the procuring entity) broadly states that a complaint can be "any person who is dissatisfied…" Section 68 seems to have specified the nature of the appellant to one whose interests are affected, in effect narrowing the categories of people who are able to utilise the Appeal Tribunal.

Issues regarding the **independence** of the Tribunal emerge in its composition. The Minister of Finance, as a member of the Executive, appoints every member of the Tribunal, without need for assent from any other individual. The lack of independence here is clear in that the Executive solely has control over the Appeal Tribunal but also that the Minister of Finance as an individual holds disproportionate power over the administration of government procurement. Even though additional criteria are stipulated to qualify these appointments, the Minister ostensibly assesses these qualifications unilaterally. This is further exacerbated by the granting of power to the Minister to be able to staff the entirety of the Tribunal as well.

The disclosure of interest in particular procurements does not need to be made public, even for the Chairman who leads the Appeal Tribunal. The Chairman's obligation to only disclose interest to the Minister alone – contrasted to the members of the Appeal Tribunal who are obligated to make disclosures to every party in the matter of the conflict – is a possible risk area given the sensitive nature of government procurements.

## 3.3 Conclusion

Malaysia's procurement complaints and appeals framework is currently characterised by a transition from an administrative system governed by Treasury Circulars to a statutory regime under the Government Procurement Act 2025. While the introduction of the GPA represents a significant development, the analysis above suggests that the shift is not merely institutional, but structural in nature.

Under the existing Circular-based system, the absence of legally binding obligations and enforcement mechanisms limits the effectiveness of grievance procedures, with accountability largely dependent on internal administrative processes. The GPA seeks to address this gap through the establishment of a formalised review structure, including the introduction of an Appeal Tribunal.

However, the design of the framework under the GPA raises several concerns. Access to independent review is mediated through internal processes that are subject to executive discretion, the independence of the Tribunal is constrained by the concentration of appointment and procedural powers in the Minister of Finance, and the scope of available remedies is limited, particularly once procurement contracts have been awarded. In addition, the absence of clear safeguards around transparency and the timing of review processes may further restrict the Tribunal's practical effectiveness.

These features suggest that while the GPA introduces a formal mechanism for procurement appeals, its ability to function as a robust system of accountability remains contingent on how these structural limitations are addressed, particularly through subsidiary legislation and implementation practices.

In this context, it is useful to consider how other jurisdictions have designed and operationalised procurement appeals mechanisms. The following chapter examines selected comparative systems in the United Kingdom, Australia, and Singapore, in order to identify alternative approaches and potential lessons for Malaysia.

# Chapter 4: Comparative Jurisdictions – UK, Australia & Singapore

## Introduction

This chapter examines selected comparative jurisdictions in order to identify how procurement appeals mechanisms are structured and implemented in practice. Building on the principles outlined in Chapter 2, the analysis focuses on how different systems address key issues relating to independence, transparency, and the availability of remedies.

The United Kingdom, Australia, and Singapore have been selected as points of comparison due to their shared common law foundations and established procurement frameworks. While each jurisdiction operates within its own institutional and legal context, they provide useful reference points for

understanding how procurement grievances may be managed through courts, administrative bodies, or hybrid systems.

The purpose of this comparative analysis is not to identify a single model for adoption, but to highlight different approaches, their limitations, and the trade-offs involved in designing procurement appeals mechanisms. These insights provide a basis for assessing Malaysia's framework and informing potential reforms.

# 4.1 United Kingdom (UK)

There is no singular procurement legislation for the entirety of the UK: the recently enacted Procurement Act 2023 and Procurement Regulations 2024 apply in England, Wales, and Northern Ireland, whereas an older regime derived from European Union (EU) law consisting of the Procurement Reform (Scotland) Act 2014 and other subsidiary legislation is applicable in Scotland. The remedy frameworks under these regimes shall be considered in turn.

## 4.1.1 England, Wales, and Northern Ireland

Part 9 of the Procurement Act 2023, titled "Remedies for Breach of Statutory Duty", establishes a duty for contracting authorities to comply with certain provisions of the procurement legislation, enforceable in civil proceedings.[49] This duty is owed to UK suppliers (suppliers established in, controlled, or mainly funded from the UK, a British Overseas Territory, or a Crown Dependency, which are not treaty state suppliers[50]) and treaty state suppliers (suppliers entitled to the benefits of listed international agreements under

[49] Section 100(1) of the Procurement Act 2023.
[50] Section 90(7) of the Procurement Act 2023.

Schedule 9 of the Procurement Act 2023[51]).[52] As such, a UK or treaty state supplier that has suffered, or is at risk of suffering, loss or damage in consequence of a breach of such duty may bring proceedings in court to remedy such loss.[53]

The Act does set out matters that are excluded from enforceability under this framework:

- In carrying out a "covered procurement",[54] a contracting authority's duty under Section 12(4) of the Procurement Act 2023 to have regard to the fact that small and medium-sized enterprises may face particular barriers to participation and to consider whether such barriers can be removed or reduced;[55]
- A contracting authority's duty to have regard to procurement policy statements according to Section 13(9) and Section 14(8) of the Procurement Act 2023;[56]
- A contracting authority's duty to not discriminate against treaty state suppliers in relation to "procurements"[57] (as opposed to "covered procurements") under Section 90 of the Procurement Act 2023;[58] and

[51] Section 89 of the Procurement Act 2023.
[52] Section 100(2) of the Procurement Act 2023.
[53] Section 100(3) of the Procurement Act 2023.
[54] Defined under Section 1(1)(b) of the Procurement Act 2023 as "the award, entry into and management of a public contract" (emphasis added).
[55] Section 100(5) of the Procurement Act 2023.
[56] Ibid.
[57] Defined under Section 1(1)(a) of the Procurement Act 2023 as "the award, entry into and management of a contract".
[58] Section 100(6) of the Procurement Act 2023.

- A supplier may not bring proceedings[59] on the grounds that certain types of decisions of a Minister of the Crown was unlawful i.e. a decision to enter a supplier's name on the debarment list, a decision relating to information included in an entry on the debarment list, or a decision not to remove an entry or revise information included in an entry on the debarment list.[60]

The Procurement Act 2023 imposes standstill periods before a contracting authority can enter into[61] or modify[62] a public contract. Where proceedings under Part 9 are commenced in relation to a public contract during the applicable standstill period and the contracting authority is notified of the fact, the entry into or modification of any such contract is automatically suspended.[63]

The powers afforded to the courts in regard to proceedings under this Part are divided into interim remedies, pre-contractual remedies, and post-contractual remedies.

| | |
|---|---|
| **Interim remedies**<br><br>*Section 102* | The court may make the following orders:<br><br>• Lifting or modifying the restriction on entry into or modification of contracts under Section 101(1) i.e. the automatic suspension during the applicable standstill periods.<br><br>• Extending the restriction or imposing a similar restriction. |

[59] Such matters are meant to be resolved in accordance with the appeals to debarment decisions procedure set out under Section 65 of the Procurement Act 2023.
[60] Section 100(7) of the Procurement Act 2023.
[61] Section 51 of the Procurement Act 2023.
[62] Section 76 of the Procurement Act 2023.
[63] Section 101(1) of the Procurement Act 2023.

| | |
|---|---|
| | • Suspending the effect of any decision made or action taken by the contracting authority in carrying out the procurement.<br>• Suspending the procurement or any part of it.<br>• Suspending the entry into or performance of a contract.<br>• Suspending the making of a modification of a contract or performance of a contract as modified.<br>In considering whether to make any such order, the court must have regard to questions of public interest (such as upholding the principle that public contracts should be awarded or modified in accordance with the law, and avoiding delay in the supply of goods, services, or works) and the interests of suppliers (such as whether damages are an adequate remedy for the claimant). |
| **Pre-contractual remedies**<br>*Section 103* | Where the court is satisfied that a contracting authority has made a decision or taken an action that breached an enforceable statutory duty, and the contract has *not yet been entered into or modified*, the court may make the following orders:<br>• Setting aside the decision or action.<br>• Requiring the contracting authority to take any action.<br>• Awarding damages.<br>• Any other order that the court considers appropriate. |
| **Post-contractual remedies**<br>*Sections 104, 105, and 106* | Where the court is satisfied that a contracting authority has made a decision or taken an action that breached an enforceable statutory duty, and the contract has *already been entered into or modified*, the court's powers are dependent on whether a "set aside condition" is met. |

| | |
|---|---|
| | These set aside conditions pertain to the question of whether the claimant was denied a proper opportunity to seek a pre-contractual remedy due to a list of procedural non-compliances (e.g. if the contract was entered into or modified before the end of the applicable standstill period), or where the breach of duty only became apparent at a stage where pre-contractual remedies would no longer be viable.<br><br>Where a set aside condition is met, the court must make an order setting aside the contract or modification, unless the court is satisfied that there is an overriding public interest in not doing so. In this case, the court may instead make an order reducing the term of the contract, or the goods, services, or works that are to be supplied under the contract.<br><br>The section gives explicit examples of what would amount to an overriding public interest: defence or security interests, or the continuing provision of public services. The section also provides that in deciding whether such an overriding public interest exists, the court:<br><br>• may only have regard to financial consequences in exceptional circumstances (in other words, purely monetary considerations would generally not suffice); and<br><br>• must disregard costs directly associated with the practicalities of setting aside the contract, e.g. awarding another contract, delays in performance, any legal obligations that may arise therefrom.<br><br>• Where a contract or modification is set aside, it will be treated as having no effect from the date of the order. |

*Table 1 – Remedies afforded under the United Kingdom's Procurement Act 2023*

A separate procedure is prescribed for appeals against debarment decisions. Under Section 62 of the Procurement Act 2023, a Minister may enter a supplier's name on the debarment list. This may occur where a mandatory or discretionary exclusion ground applies to the supplier, which are set out under Schedules 6 and 7 of the Procurement Act 2023 respectively. Examples of mandatory exclusion grounds include where a supplier or a connected person is convicted of offences such as corporate manslaughter, corporate homicide, terrorism offences, and slavery or human trafficking offences. Examples of discretionary exclusion grounds include where a supplier or a connected person has been convicted of an offence which caused or had the potential to cause environmental harm, or where a supplier or a connected person has become bankrupt or insolvent.

An appeal against a decision of the Minister regarding debarment may be made by a United Kingdom supplier or a treaty state supplier to the court, but only on the grounds that, in making the decision, the Minister made a material mistake of law. Proceedings must be commenced within 30 days of the supplier first knowing, or being ought to have known, about the decision.[64] In such proceedings, the court may make an order setting aside the Minister's decision and an order to compensate the supplier for any costs incurred in relation to the supplier's exclusion for a procurement selection process.[65]

## "Appropriate authorities" under the Procurement Act 2023

Additionally, the Procurement Act 2023 sets out a procurement oversight mechanism under Part 10. This empowers "appropriate authorities"[66] to

[64] Section 65(2) of the Procurement Act 2023.
[65] Section 65(4) of the Procurement Act 2023.
[66] Defined under Section 123 of the Procurement Act 2023 as either Ministers of the Crown, Welsh Ministers, or Northern Ireland departments.

investigate relevant contracting authorities' compliance with the Act.[67] In conducting a procurement investigation, the appropriate authority may issue a notice requiring a contracting authority to provide any relevant documents and other reasonable assistance.[68] The contracting authority must comply with the requirements of the notice with the period specified by the appropriate authority, which must be at least 30 days from the date of the notice being given.[69]

Once a procurement investigation has led to a determination that a relevant contracting authority is engaging in action resulting in, or is likely to result in, a breach of any requirement of the Act, the appropriate authority may issue a "section 109 recommendation" to the contracting authority.[70] A section 109 recommendation would contain recommended actions that ought to be taken to ensure compliance and the timing of such action.[71] A section 109 recommendation cannot relate to certain matters: compliance with section 12 on procurement objectives, national procurement policy statement or Wales procurement policy statement (sections 13 and 14), compliance with section 86 on the duty to consider small and medium-sized enterprises (SMEs) in regulated below-threshold contracts, or how the contracting authority should exercise their discretion in relation to a particular procurement.[72]

A relevant contracting authority must consider any section 109 recommendations issued to it in considering how to comply with the Act, and if the recommendation specifies, must also submit a progress report to the appropriate authority setting out any actions taken as a result of the

[67] Section 108(1) of the Procurement Act 2023.
[68] Section 108(2) of the Procurement Act 2023.
[69] Section 108(3) of the Procurement Act 2023.
[70] Sections 109(1) and 109(2) of the Procurement Act 2023.
[71] Section 109(2) of the Procurement Act 2023.
[72] Section 109(3) of the Procurement Act 2023.

recommendation or, if no such action has been taken, a statement to that effect.[73] Where no or different actions have been taken following a section 109 recommendation, the progress report must include the contracting authority's reasons for doing so.[74]

The appropriate authority may publish the contracting authority's progress report or, if the contracting authority fails to submit one, notice of this fact.[75] The results of a procurement investigation may also be published by the appropriate authority, including any section 109 recommendation issued.[76] Additionally, once a procurement investigation has been concluded, the appropriate authority may publish guidance detailing the lessons learned from the investigation for compliance with the Act by contracting authorities generally.[77] This sort of guidance must also be considered by contracting authorities in considering how to comply with the requirements of the Act.[78] This system of using specific cases to develop general guidance for other contracting authorities is commendable. No singular statute can be expected to cover all possible situations, and leveraging real world situations to identify gaps in understanding helps to ensure a more cohesive implementation of the Act.

## Analysis

While the Procurement Act 2023 sets out thorough processes in terms of managing complaints and remedies, the "appropriate authority" assigned to manage complaints made to it can only serve an advisory role, unlike the Tribunals. The effectiveness of such a system is questionable, given that

[73] Sections 109(5) and 109(6) of the Procurement Act 2023.
[74] Section 109(7) of the Procurement Act 2023.
[75] Section 109(8) of the Procurement Act 2023.
[76] Section 108(4) of the Procurement Act 2023.
[77] Section 110(1) of the Procurement Act 2023.
[78] Section 110(2) of the Procurement Act 2023.

procurement-related mismanagement has dire outcomes. Nonetheless, this system of using specific cases to develop general guidance for other contracting authorities is commendable. No singular statute can be expected to cover all possible situations, and leveraging real world situations to identify gaps in understanding helps to ensure a more cohesive implementation of the Act.

The courts are given a wide berth as to how it grants remedies under the Act, particularly with regards to the post-contractual remedies that lay out specific conditions that must be fulfilled before contracts can be set aside. The set aside conditions are in particular useful as they limit they degree by which contingency on external factors that would affect the complainant's outcomes, taking into account that the contract may have been signed during the standstill period, an issue not addressed by other jurisdictions. The court is also entitled to set aside the decisions by the Minister to debar certain suppliers, ensuring checks and balances on the Executive.

Despite the usage of public interest exclusion clauses that would negate the courts' ability to grant this remedy, the conditions that must be met to qualify "public interest" are also defined clearly, ensuring that arbitrary and discretionary invocation of public interest concerns are not used. Available alternatives to setting aside contracts such as shortening the length of contract duration also gives the courts flexibility to choose outcomes that are amenable to the complainant supplier, while balancing external concerns.

### 4.1.2 Scotland

Part 4 of the Procurement Reform (Scotland) Act 2014 sets out the procedure for remedies pertaining only to regulated procurements other than "higher

value regulated procurements".[79] Section 37(2) of the Act stipulates that a relevant person may bring proceedings against a contracting authority if:

- the person sought, seeks, or would have wished to be the person to whom the regulated contract is awarded;
- the contracting authority is not complying or has not complied with its duties under the Act (such as the general duty to conduct regulated procurements equally and transparently under Section 8, and the procedural requirements for the conduct of procurement exercises under Sections 23 and 27-29); and
- in consequence of that failure, the relevant person suffers, or risks suffering, loss or damage.

A "relevant person" is defined under Section 37(3) of the Procurement Reform (Scotland) Act 2014 as an economic operator[80] who is a national of, or is established in, the United Kingdom or Gibraltar – which limits the range of parties who can seek remedies under this Act.

Proceedings in court must be preceded by a notification by the relevant person to the contracting authority of the latter's failure to comply with a stipulated duty, and the relevant person's intention to bring proceedings accordingly.[81] A 30-day time limit is prescribed for proceedings to be brought, beginning on the day on which the relevant person first knew or ought to have known that the grounds for the proceedings had arisen, with

[79] Defined under Section 41 of the Procurement Reform (Scotland) Act 2014 as regulated procurements to which either the Public Contracts (Scotland) Regulations 2015 or Section 115A of the Procurement Act 2023 apply.
[80] Defined under Section 42(1) of the Procurement Reform (Scotland) Act 2014 as any person who offers the execution of works, the supply of products or the provision of services on the market.
[81] Section 38(2) of the Procurement Reform (Scotland) Act 2014.

an extension allowed for up to 3 months where the court finds it appropriate.[82]

Once proceedings have been commenced, the court may make interim orders to suspend the procedure relating to the award of the regulated contract, or the implementation of any decision or action taken by a contracting authority in relation to that procedure.[83] In deciding whether to grant an interim order, the court must decide whether the negative consequences of such an order are likely to outweigh the benefits, with regard to factors such as the probable consequences for all interests likely to be harmed and the public interest.[84]

Where the court finds that a contracting authority has indeed breached a specified duty, it may order the setting aside of the decision or action, order the contracting authority to amend any document, and award damages to the relevant person who has suffered consequential loss or damage.[85] However, where the regulated contract has already been entered into, the court can only make an award of damages[86] – meaning there is no power under this Act for a court to nullify a contract once entered into.

## Analysis

The Scottish procurement appeals system broadly reflects similar principles to those observed in other jurisdictions, particularly in balancing public interest considerations against the rights of suppliers bringing complaints. However, a key limitation lies in the absence of post-contractual remedies. Once a contract has been entered into, the court is restricted to awarding

[82] Section 38(3) of the Procurement Reform (Scotland) Act 2014.
[83] Section 39(2) of the Procurement Reform (Scotland) Act 2014.
[84] Section 39(3) of the Procurement Reform (Scotland) Act 2014.
[85] Section 39(4) of the Procurement Reform (Scotland) Act 2014.
[86] Section 39(5) of the Procurement Reform (Scotland) Act 2014.

damages, with no power to set aside the contract or intervene in its performance.

This significantly constrains the scope of recourse available to aggrieved suppliers and reinforces a broader pattern observed across jurisdictions, where the effectiveness of review mechanisms diminishes substantially after the award stage.

## 4.2 Australia

The Commonwealth of Australia is a federation of states and territories, with legislative and executive powers divided between the central Commonwealth Government and the respective State and Territory Governments. As a result, laws and regulation on procurement differ between the Commonwealth Government and the State and Territory Governments. This section shall focus solely on the relevant laws under the Commonwealth Government, i.e. the procurement legislation applicable at the federal level.

Commonwealth procurement regulations are primarily contained in the Commonwealth Procurement Rules (CPRs):[87] a written legislative instrument issued by the Minister of Finance in accordance with Section 105B(1) of the Public Governance, Performance and Accountability Act 2013. The CPRs are described as "the rules that officials must comply with when they procure goods and services", and they "also indicate good practice".[88]

[87] Department of Finance, Australian Government, Commonwealth Procurement Rules (17 November 2025), available at https://www.finance.gov.au/sites/default/files/2025-10/Commonwealth-Procurement-Rules-2025.pdf.

[88] Department of Finance, Australian Government, Commonwealth Procurement Rules (17 November 2025), available at https://www.finance.gov.au/sites/default/files/2025-10/Commonwealth-Procurement-Rules-2025.pdf, para 3.1.

On the other hand, the remedy mechanism is set out under the Government Procurement (Judicial Review) Act 2018. According to this Act, contravention of "relevant CPRs" may give rise to certain remedies, which shall be granted by the Federal Court or the Federal Circuit and Family Court of Australia (Division 2). This means that grounds for accessing remedies are limited and clearly enumerated under legislation. Further, the validity of a contract is not generally affected by the contravention of any CPR.[89]

The relevant CPRs are as follows:[90]

- Paragraph 4.18: "Relevant entities must not use third-party arrangements to avoid the rules in the CPRs when procuring goods and services."
- Paragraph 5.3: "Subject to these CPRs, potential suppliers to government must be treated equitably based on their commercial, legal, technical and financial abilities."
- Paragraph 6.8: "Officials undertaking procurement must seek to prevent corrupt practices by recognising and dealing with actual, potential and perceived conflicts of interest and not accepting inappropriate gifts or hospitality."
- Paragraph 7.2: "Officials must maintain for each procurement a level of documentation commensurate with the scale, scope and risk of the procurement."

[89] Section 23 of the Government Procurement (Judicial Review) Act 2018.
[90] Department of Finance, Australian Government, Commonwealth Procurement Rules (17 November 2025), available at https://www.finance.gov.au/sites/default/files/2025-10/Commonwealth-Procurement-Rules-2025.pdf, para 6.11.

- Paragraph 7.10: "Relevant entities must use AusTender[91] to publish open tenders and, to the extent practicable, to make relevant request documentation available."
- Paragraphs 7.13 – 7.18: Requirements for information transparency in relation to tenders.
- Paragraph 7.20: "All standing offers must be reported on AusTender within 42 days of the relevant entity entering into or amending such arrangements. Relevant details in the standing offer notice, such as supplier details and the names of other relevant entities participating in the arrangement, must be reported and kept current."
- Paragraphs 9.3 – 9.6: Requirements in relation to estimating expected value of procurements.

## Complaints

If a supplier has reason to believe that a relevant Commonwealth entity[92] (or an official thereof) has engaged, is engaging or is proposing to engage, in any conduct that contravenes a relevant CPR, and the interests of the supplier are affected thereby, the supplier may make a written complaint about the

[91] AusTender is the Australian Government's procurement information system, which provides centralised publication of government business opportunities, annual procurement plans, and contracts awarded.

[92] Defined under Section 4 of the Government Procurement (Judicial Review) Act 2018 as a non-corporate Commonwealth entity or a prescribed corporate Commonwealth entity.

conduct to the accountable authority[93] of the entity.[94] Once a supplier has made a complaint, the accountable authority must investigate the conduct which is the subject of the complaint and prepare an investigation report. However, if court proceedings are instituted in relation to the subject matter of the complaint and the continuation of the investigation would likely prejudice the proper administration of justice, the investigation must be discontinued.[95]

Where a complaint has been made in relation to a procurement and no public interest certificate is in force in relation to that procurement, the accountable authority must suspend the procurement.[96] A public interest certificate is a written certificate issued by an accountable authority which states that it is not in the public interest for a particular procurement to be suspended pending the investigation of a complaint or the consideration of an application for an injunction[97] (see below).

## Compensation

Where a relevant Commonwealth entity (or an official thereof) has contravened, is contravening, or is proposing to contravene any relevant CPRs, the court may make orders for compensation on the application of a supplier whose interests are thereby affected. The court may make an order directing the Commonwealth or the corporate Commonwealth entity (as the

[93] According to Section 12 of the Public Governance, Performance and Accountability Act 2013, each Commonwealth entity has an accountable authority who is either a person or a body. For a Department of State or a Parliamentary Department, the accountable authority is the Secretary of the Department. For a body corporate, the accountable authority is the governing body of the entity.
[94] Section 18(1) of the Government Procurement (Judicial Review) Act 2018.
[95] Section 19(3) of the Government Procurement (Judicial Review) Act 2018.
[96] Section 20 of the Government Procurement (Judicial Review) Act 2018.
[97] Section 22 of the Government Procurement (Judicial Review) Act 2018.

case may be) to pay an amount not exceeding the sum of reasonable expenditure incurred:

- in preparing a tender for the procurement;
- in connection with making a complaint under Section 18 about the contravention or proposed contravention; and
- in connection with making a reasonable attempt to resolve said complaint.[98]

## Injunctions

Where a relevant Commonwealth entity (or an official thereof) has engaged, is engaging or is proposing to engage in any conduct that contravenes the relevant CPRs, a supplier whose interest are affected by such conduct may apply to the court for an injunction restraining the entity or official from engaging in that conduct and requiring the entity to do something – termed a restraining injunction.[99] Similarly, where a relevant Commonwealth entity (or an official thereof) has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do something, and such refusal or failure would be a contravention of the relevant CPRs, a supplier whose interests are affected by the refusal or failure may apply to the court for an injunction requiring the entity or official to do that thing – termed a performance injunction.

The court may refuse to grant an injunction where a supplier who has applied for an injunction has also applied for a compensation order under Section 16, a public interest certificate is in force in relation to the procurement, *and* a contract has not yet been entered into with the supplier. In such cases the court must consider whether an injunction would significantly delay the

[98] Section 16 of the Government Procurement (Judicial Review) Act 2018.
[99] Section 9(1) of the Government Procurement (Judicial Review) Act 2018.

procurement, and if so, whether a compensation order would be a more appropriate remedy. If so, the court may refuse to grant the injunction on this ground.[100]

There are other limits imposed on the court's power to grant injunctions:

- The court must be satisfied that the applicant has made a complaint under Section 18 to the relevant accountable authority, and – if the court considers that it would have been reasonable for the applicant to have attempted to resolve the complaint – that the applicant has made a reasonable attempt to do so.[101]
- The application for the injunction must be made within 10 days of either the day on which the contravention occurred or the day on which the applicant became aware, or ought reasonably to have become aware, of the contravention (whichever is later).[102] The court may allow for a longer time limit if deemed necessary, but only if the applicant's failure to comply with the 10 day time limit is attributable to any reasonable attempt to resolve the complaint or if there are special circumstances warranting a longer period.[103]

## Analysis

Australia has not established an independent procurement appeals body, instead opting to move this function to the accountable authority of the entity and the courts. Procurements must be suspended after a complaint is made to the accountable authority. The accountable authority is seemingly a member of the civil service, being from the same government department of

[100] Section 10(1) of the Government Procurement (Judicial Review) Act 2018.
[101] Section 11(1) of the Government Procurement (Judicial Review) Act 2018.
[102] Section 11(2) – (4) of the Government Procurement (Judicial Review) Act 2018.
[103] Section 11(5) of the Government Procurement (Judicial Review) Act 2018.

which is the subject of a complaint by a supplier. While this demonstrates a lack of independence, this is somewhat kept in check by the involvement of the courts who possess jurisdiction over the administration of government procurements as well, being able to halt investigations by the accountable authority. However, the accountable authority themselves being able to issue a certificate of public interest to state that a procurement should not be suspended further interferes with the notion of independence.

The remedies afforded by the Australian courts are limited, and much like other jurisdictions examined here, contingent on whether or not the contract has already been entered into by the Commonwealth entity engaging in procurement. While the application window for an injunction by an applicant is flexible and subject to change depending on the court's discretion, it is unclear if these avenues for recourse are still available to the applicant at a post-contractual stage.

## 4.3 Singapore

Government procurement in Singapore is governed through its Government Procurement Act 1997, which came into force in 1998 shortly after Singapore joined the World Trade Organisation Agreement on Government Procurement in 1997. The entirety of Singaporean government procurement's appeals mechanism is provided for in "Part 3 – Challenge Proceedings" of the Government Procurement Act 1997.

### General principles

**Section 8** sets out of the basic principles the Tribunal to be called the **Government Procurement Adjudication Tribunal** that consists of the Commissioner or a Deputy Commissioner.[104] The rest of this section

[104] Section 8(1) of the Government Procurement Act 1997.

provides the appointment of the Commissioner and Deputy Commissioners, the criteria applied, conditions for revocation of appointment, and their remuneration, all of which is governed by the Minister of Finance.

The Minister of Finance may appoint a Registrar of the Tribunal and other officers if they deem necessary,[105] and the duties of the Registrar are determined by the Minister, subject to the Act and any other regulations.[106] **Section 10** on the Constitution of the Tribunal sets out that challenge proceedings are to be heard by a Tribunal consisting of a Commissioner or a Deputy Commissioner designated by the Commissioner[107] but are excluded from doing so if they have an interest in the procurement related to the proceeding that is being brought.[108] **Section 11** sets out that the parties to a challenge proceeding may be represented by an advocate and solicitor, and on the side of the government contracting authority, the representative can also be a legal officer.

## Procedure and powers of the Tribunal

Subject to the Act and other regulations, the Tribunal has the power to determine the procedure to be adopted for any challenge proceedings.[109] The Tribunal has the following additional powers:[110]

a) to summon to attend at any challenge proceeding any person whom it may consider able to give evidence in respect of the proceeding, to examine the person as a witness either on oath or otherwise and to require the person to produce such books,

[105] Section 9(1) of the Government Procurement Act 1997.
[106] Section 9(2) of the Government Procurement Act 1997.
[107] Section 10(1) of the Government Procurement Act 1997.
[108] Section 10(2) of the Government Procurement Act 1997.
[109] Section 22(1) of the Government Procurement Act 1997.
[110] Section 22(2) of the Government Procurement Act 1997.

records or documents as the Tribunal may think necessary for the proceeding;

b) to allow any person attending any challenge proceeding any reasonable expenses necessarily incurred by the person in so attending;

c) to fix the remuneration of any expert witness appointed by the Tribunal for any challenge proceeding;

d) with the consent of the applicant and the relevant contracting authority, to refer the parties for mediation by such person as the parties may agree on or failing such agreement, as the Tribunal may appoint;

e) all the powers of the Supreme Court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt;

f) to admit or reject any evidence adduced, whether oral or documentary, and whether admissible under the provisions of any written law for the time being in force relating to the admissibility of evidence;

g) to conduct its proceedings or any part of its proceedings in camera; and

h) Generally, to give any direction, or to do anything, necessary or expedient for the expeditious and just hearing and disposal of any challenge proceeding.

Where the Minister certifies that it is against public interest for any challenge proceeding to take place in public, the Tribunal must conduct the proceeding on camera.[111]

## Bringing a challenge proceeding

**Section 12** states that a supplier who wishes to bring a challenge before the Tribunal must, within 15 days from the date the facts constituting the basis of the challenge first took place:

a) lodge with the Registrar a notice of challenge (called in this Act the Notice of Challenge);
b) pay the Registrar the fee prescribed (if any) for bringing a challenge before the Tribunal; and
c) serve a copy of the Notice of Challenge on the contracting authority undertaking or who has undertaken the procurement that is the subject of the challenge.

At the time the Notice of Challenge is lodged with the Registrar of the Tribunal, the supplier, now known as an applicant, must enter a prescribed sum of money as a deposit.[112] If the applicant does not pay the deposit, they are deemed to have withdrawn their challenge.[113] The deposit is to be used by the Registrar to pay for any costs awarded by the Tribunal to the contracting authority,[114] and the costs are set at the discretion of the Tribunal.[115] If the deposit is insufficient to cover the costs, the contracting authority may recover the balance.[116]

[111] Section 22(5) of the Government Procurement Act 1997.
[112] Section 13(1) of the Government Procurement Act 1997.
[113] Section 13(2) of the Government Procurement Act 1997.
[114] Section 13(3) of the Government Procurement Act 1997.
[115] Section 21(1) of the Government Procurement Act 1997.
[116] Section 13(4) of the Government Procurement Act 1997.

Upon receiving a Notice of Challenge, the fee, and the deposit, the Registrar must forward a copy of the Notice to the relevant contracting authority, fix and time and place for the hearing of the challenge, and give 14 days' notice to both parties concerned.[117]

**Section 15** governs the **Preliminary hearing** that is concerned with deciding the validity of a challenge – the Tribunal may do so on its own motion or upon the application of the contracting authority.[118] The Tribunal must declare a challenge invalid if:[119]

a) the procurement which is the subject of the challenge is not a procurement subject to the Act;

b) the regulation made under section 6 which the contracting authority concerned is alleged to have breached is inapplicable to the procurement which is the subject of the challenge;

c) the regulation made under section 6 which the contracting authority concerned is alleged to have breached is inapplicable, by virtue of an order made under section 4, to the procurement or the act or measure in relation to a procurement, which is the subject of the challenge;

d) the procurement which is the subject of the challenge is a procurement which has been initiated before 13 May 2002 within the meaning of section 26;

e) the applicant is not a supplier entitled to bring a challenge under section 7(3);

f) the applicant did not lodge or serve the Notice of Challenge within the time prescribed by section 12(1), unless the Tribunal is satisfied

[117] Section 14 of the Government Procurement Act 1997.
[118] Section 15(1) of the Government Procurement Act 1997.
[119] Section 15(2) of the Government Procurement Act 1997.

that there has been no unreasonable delay on the part of the applicant; or

g) the Notice of Challenge does not comply with section 12(2).

**Section 6** covers the power of the Minister of Finance to make regulations, while **Section 4** covers the power of the Minister of Finance to declare any government body as a contracting authority, or any procurement to be subject to the Act.

**Section 7** covers the duty of contracting authorities to comply with regulations made under **Section 6** – this establishes that the applicant must have been owed a duty by the contracting authority, that a breach of duty took place, and that the applicant suffers or risks suffering loss or damage as a result of the breach.[120] The onus of proving such a breach of duty is on the applicant[121] and the applicant may not rely on any other breach of duty other than that identified in the Notice of Challenge, except with the consent of and subject to the conditions set by the Tribunal.[122]

## Suspension order

Under **Section 16**, after the applicant has fulfilled the conditions laid out in subsections 16(1)(a)-(c), pending disposal of the challenge, they may apply to the Tribunal for an order to suspend:

d) the procedure leading to the award of the contract for the procurement which is the subject of the challenge; or

e) the implementation of any decision made while undertaking the procedure mentioned in paragraph (d).

[120] Section 7(3) of the Government Procurement Act 1997.
[121] Section 17(1) of the Government Procurement Act 1997.
[122] Section 17(2) of the Government Procurement Act 1997.

The Tribunal may make this order conditionally or unconditionally as they see fit,[123] but must not do so if such suspension is against public interest[124] or if the contract has already been awarded at the date of hearing of the application of the order.[125] If the Tribunal refuses to make the suspension order, it must provide its reason for refusal in writing.[126]

If the Tribunal has made a suspension order, the contracting authority may apply to the Tribunal for the order to be varied or rescinded at any time before the determination on the challenge is made.[127] If the continuation of such an order would be against public interests, it must be rescinded[128] but otherwise, the Tribunal may choose to vary the order or rescind it unconditionally or under conditions as it sees fit.[129] The Minister may issue a certificate that the suspension, or the continuance of such suspension, in a particular case is against the public interest – such a certificate is conclusive evidence of the matters.[130]

## Determination on challenge

Under Section 18, the Tribunal must issue its determination on challenge within 45 days from the date of the Notice of Challenge being lodged by the applicant unless there are exceptional circumstances justifying an extension of time.[131] If the Tribunal makes a determination in favour of the applicant, the Tribunal may do one or more of the following:[132]

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[123] Section 16(2) of the Government Procurement Act 1997.
[124] Section 16(3)(a) of the Government Procurement Act 1997.
[125] Section 16(3)(b) of the Government Procurement Act 1997.
[126] Section 16(4) of the Government Procurement Act 1997.
[127] Section 16(5) of the Government Procurement Act 1997.
[128] Section 16(7) of the Government Procurement Act 1997.
[129] Section 16(6) of the Government Procurement Act 1997.
[130] Section 16(8) of the Government Procurement Act 1997.
[131] Section 18(1) of the Government Procurement Act 1997.
[132] Section 18(3) of the Government Procurement Act 1997.

a) order any decision or action taken by the contracting authority concerned in relation to the procurement which is the subject of the challenge to be set aside;

b) order the contracting authority to make a decision or take action, in accordance with the applicable regulations made under section 6, in place of that which has been set aside under paragraph (a);

c) order the contracting authority to amend any document pertaining to the procurement;

d) order the contracting authority to pay to the applicant the costs of participation in the qualification of suppliers, or the costs of tender preparation, reasonably incurred by the applicant for the purposes of the procurement.

However, if the Tribunal makes a determination in favour of the applicant and if the contract for the procurement has already been awarded, the Tribunal may only make an order under subsection (3)(d) – ordering the contracting authority to pay costs of participation – or award the applicant the costs of the challenge proceeding as per Section 21 if the applicant did not incur costs mentioned in (3)(d).[133]

Every determination must be given in writing, accompanied with a statement of reasoning for the determination.[134] The Registrar must send certified copies of the determination or order to the applicant and the relevant contracting authority.[135] While the contracting authority must comply with any order that has been made against it, it does not affect the

[133] Section 18(5) of the Government Procurement Act 1997.
[134] Section 19(1) of the Government Procurement Act 1997.
[135] Section 19(2) of the Government Procurement Act 1997.

right of the contracting authority to seek judicial review of a determination or order of the Tribunal.[136]

## Analysis

The degree of **transparency** within the Singaporean procurement appeals system is unclear due to the provisions that mandate documentation but none to obligate declaration. For example, even if proceedings are not to be made public based on public interest reasons, they will still be recorded on camera. However, there is no clarity as to whether these recordings will be made public. If the Tribunal chooses to make a suspension order, it must provide its reason for refusal in writing, although there is also no clarification as to whether this document is available to the public. Nevertheless, determinations made by the Tribunals must be in writing and accompanied by the reasoning for the decision that is then shared to the applicant, hence, there is at the very least a minimum basis of procurement transparency for supplier who launches the complaint.

The Singaporean procurement system shares with Malaysia's procurement system in its reliance on the Minister of Finance for the appointment of roles within its Government Procurement Adjudication Tribunal, already calling into question the **independence** of the Tribunal's operations.

The Tribunal is also unable to issue a suspension order if there are public interest concerns that override it, or if the contract has already been awarded at the hearing date. Like Malaysia, the ability of the Tribunal to carry out suspensions is heavily contingent on circumstances that may be entirely out of the supplier's control, severely hampering the effectiveness of the Tribunal. In addition to this, the contracting authority may apply for the suspension to be rescinded – rescindment is mandatory if continued

[136] Section 20(3) of the Government Procurement Act 1997.

suspension is against public interest. This calls into further question the independence of the Tribunal, seeing as the Minister makes the final and binding decision regarding public interest, allowing them control over procurement decisions indirectly.

Similar to Malaysia as well, the **recourse and remedy** avenues Singapore's Tribunal are to set decisions aside and order compensation for an applicant but only limited to the pre-contracting stage. If a contract has been signed, the Tribunal can only grant compensation to the applicant.

## 4.4 Cross-Jurisdictional Analysis of Key Issues

### Independence

International standards maintain that independence of the independent review body must be substantiated through its separation from the procuring entity itself (CPTPP, Chapter 15) and that it should also be protected from political pressure (Enactment Guide for UNCITRAL Model Law, Part 3, paras. 24 & 25).

Australia, Scotland, and the rest of the UK largely still depend on the courts to receive and manage complaints under their procurement systems. The exception to this is Singapore, which has its own Government Procurement Adjudication Tribunal. However, Singapore's Tribunal may be seen to lack independence due to the Minister of Finance being able to make appointments and decide on public interest concerns. In order for a Tribunal to be meaningfully independent, it should not be placed under the supervision or management of a government ministry.

It can be argued that the courts are sufficiently independent from the procuring entities and from political influence, since the judiciary in many jurisdictions are kept strictly separate from both the Executive and Legislative branches of government through a completely separate

appointments process. The courts in the UK are empowered to take a wide variety of actions in order to preserve the interests of the supplier bringing a complaint against a procuring entity, demonstrating the value of such independence.

An effective procurement Appeal Tribunal would necessarily desire the level of autonomy enjoyed by the judiciary – while none of the jurisdictions have adopted such an approach, it is possible to consider how this may apply in a Malaysian context.

## Transparency

The UNCITRAL Model Law on Public Procurement, Article 67, paras. 10 & 11 prescribe a high level of transparency in the government procurement appeals process, including for decisions made, its reasoning, while recorded in writing and communicated to all parties in the application for review.

The jurisdictions subject to analysis here match up to these standards modestly, as most if not all have a minimum basis for information disclosure. Australia's Commonwealth Procurement Rules (CPR) (paras. 7.13-7.18) include provisions that mandate information transparency in relation to tenders. The "appropriate authority" tasked with investigating procurement complaints in the UK may also publish the results of their investigations, using cases to create guidance documents for future participants in procurement. Singaporean law mandates keeping strict documentation of the appeals process as well, including reasons for determinations made by the Tribunals, and video documentation of appeals proceedings.

In terms of applying such best practices to Malaysia's procurement appeal mechanism, these are all useful examples to borrow from. Mandating strict documentation of the entire complaints and appeals process is necessary but must be supplemented with a minimum level of public disclosure as well,

without prejudice to the suppliers. Australia's use of the CPR to impose a standard of information transparency across the board for all procurement operations is a desirable policy outcome.

## Recourse and remedy

The UNCITRAL Model Law on Public Procurement, Art. 67, para. 9 sets out a list of actions that could optimally be undertaken by an independent review body to address the complaints brought forward by a supplier. These include wide powers to reverse decisions made on the basis of non-adherence with procurement rules.

Unfortunately, the jurisdictions examined here largely have not made strides in achieving this goal, with Australia, Scotland, and Singapore merely being able to offer interim measures at the pre-contracting stage. After the contract has been awarded, the avenues for remedy are merely in terms of compensation, similar to the system already prescribed in Malaysia. Procurement systems across jurisdictions seem hesitant to grant stronger powers to independent review bodies or even the courts to be able to reverse a contract already awarded. Often times, these avenues are foreclosed to the applicant due to narrow windows of time, with the contract possibly having been awarded even before they can bring a challenge beyond the request for an interim measure.

The one exception to this seems to be the United Kingdom, whose courts are granted powers to grant remedies even at the post-contractual stage. The courts are empowered, albeit in limited circumstances, to completely set aside the contract even after it has been awarded, taking into account whether the supplier was denied a proper opportunity to seek pre-contractual remedies. This system is much preferable to the independent review body merely acquiescing to allowing contracts that have been awarded by the procuring entity, even if they may have been entered into on the basis of non-compliance with procurement rules.

## 4.5 Conclusion

The comparative analysis above illustrates that there is no single model for the design of procurement appeals mechanisms. Across jurisdictions, different institutional arrangements are adopted, ranging from court-based systems to specialised tribunals and hybrid approaches. These variations reflect differing legal traditions, administrative structures, and policy priorities.

Despite these differences, several common patterns emerge. Most jurisdictions provide for some form of interim relief at the pre-contractual stage, allowing procurement processes to be suspended or decisions to be challenged before a contract is awarded. However, once a contract has been entered into, the scope of available remedies is often significantly reduced, with compensation being the primary — and in some cases, the only — form of recourse available. This reflects a broader reluctance to disrupt concluded contracts, even where procedural non-compliance may be established.

The United Kingdom presents a notable departure from this pattern, in that its courts are empowered, under defined conditions, to set aside contracts even at the post-contractual stage. This demonstrates that stronger forms of intervention are possible where supported by clear statutory safeguards and a well-defined approach to public interest considerations.

In relation to institutional design, the role of independence remains central. Systems that rely on the courts benefit from a high degree of institutional separation from procuring entities and the executive, while tribunal-based systems may face greater challenges in ensuring independence where appointment and procedural powers are concentrated within the executive. At the same time, several jurisdictions incorporate elements of administrative oversight alongside formal grievance mechanisms,

suggesting that appeals alone may be insufficient to address systemic issues in procurement governance.

These findings reinforce the importance of the principles identified in Chapter 2 — particularly independence, transparency, and the availability of meaningful remedies — in assessing the effectiveness of procurement appeals mechanisms. They also highlight the trade-offs involved in balancing efficiency, finality of contracts, and accountability.

These comparative insights provide a useful basis for evaluating Malaysia's framework and identifying areas where reforms may be necessary, particularly in relation to the scope of remedies, the timing of review processes, and the institutional independence of review bodies. The following chapter builds on this analysis in setting out recommendations for strengthening Malaysia's procurement appeals system.

# Chapter 5: Recommendations

These recommendations draw on the analysis of international standards, Malaysia's existing procurement framework, and comparative practices across selected jurisdictions. They are organised into broader structural reforms to procurement governance, and targeted improvements to the design and operation of the procurement appeals mechanism.

These reforms are particularly timely in light of Malaysia's obligation to implement domestic review mechanisms under Article 15.19 of the CPTPP by November 2026. As such, the recommendations below aim not only to strengthen the GPA, but to ensure that Malaysia's procurement system functions as a credible, transparent, and accountable regime in practice.

## Structural Reforms to Procurement Governance

1. **Adopt core design features of the UNCITRAL Model Law on Public Procurement (2011)**

To address gaps in independence, transparency, and remedial powers identified in the GPA, Malaysia's procurement framework should

incorporate key features of the UNCITRAL Model Law on Public Procurement (2011).

In particular, reforms should ensure:

- the establishment of a review mechanism that is meaningfully independent from procuring entities and protected from political influence;
- the availability of multiple avenues for review, including access to an independent body and, where appropriate, the courts;
- the requirement that all decisions be reasoned, documented, and communicated to relevant parties; and
- the availability of a wider range of remedies beyond compensation, including the ability to set aside or revise procurement decisions.

Rather than adopting the Model Law wholesale, these features should be adapted into Malaysia's legal and administrative context through both primary and subsidiary legislation.

**2. Ensure robust and effective subsidiary legislation is prepared before the GPA comes into force**

At present, the continued use of Circulars as the primary governance instrument limits enforceability and weakens accountability. Once the GPA is gazetted, it should be supported by a coherent framework of subsidiary legislation that:

- clearly defines procedures for complaints, objections, and appeals;
- standardises obligations across procuring entities; and
- ensures that decisions made by review bodies are legally binding and enforceable.

This transition should not simply replicate existing Circulars but should rationalise and consolidate them into a rules-based system aligned with the principles outlined in Chapter 2.

**3. Strengthen transparency through access to information reforms**

To address systemic information gaps that undermine accountability, procurement reform must be accompanied by broader transparency measures.

This includes:

- the introduction of a Freedom of Information law;
- the review of legal barriers to disclosure, including the Official Secrets Act 1972; and
- the establishment of proactive disclosure requirements for procurement-related information, including tender specifications, bidder details, and decision-making criteria.

Access to information is a precondition for the effective use of any appeals mechanism. Without visibility into procurement decisions, affected parties are unlikely to be able to identify, assess, or challenge potential irregularities.

## Targeted Reforms to the Appeals Framework

**1. Restructure the review process by the procuring entity to ensure independence**

To address the concentration of discretion in the Minister of Finance and procuring entities, the current multi-tiered review process should be restructured to ensure that access to independent review is not unduly restricted.

While an initial filtering mechanism at the procuring entity level may serve an administrative purpose, the GPA should:

- define clear and objective criteria governing which cases may proceed to the Appeal Tribunal; and
- limit the Minister's discretion to prescribe thresholds or procedures that may restrict access to review.
- Without such safeguards, the effectiveness of the Appeal Tribunal risks being undermined by structural bottlenecks at earlier stages of the complaints process.

**2. Expand the powers of the Appeal Tribunal, particularly post-award**

To address the most significant limitation in the current framework, the Appeal Tribunal should be empowered to grant meaningful remedies even after a contract has been awarded.

At present, remedies are largely limited to compensation once a contract has been signed. This creates a structural gap in accountability, as procurement decisions that may have been made in breach of established procedures are allowed to stand.

Reforms should provide for:

- the ability to set aside or vary contracts in defined circumstances;
- alternative remedies such as shortening the duration or scope of contracts; and
- clear criteria governing when such powers may be exercised, including where a supplier was denied a fair opportunity to challenge a decision.

Comparative experience, particularly from the United Kingdom, demonstrates that post-award remedies can be implemented in a manner that balances public interest considerations with the need for accountability.

### 3. Procurement reform and subsidiary legislation must include transparency measures and obligations

To address gaps in procedural transparency, the GPA and its subsidiary legislation should impose clear obligations on the Appeal Tribunal to disclose its decisions and reasoning.

This should include:

- mandatory publication of decisions and written grounds;
- communication of decisions to all parties involved in the procurement; and
- the development of a publicly accessible body of decisions that can serve as guidance for procuring entities and suppliers.

While provisions allowing closed proceedings on public interest grounds may be necessary, such exceptions should be narrowly defined and applied with clear justification.

### 4. Reform the appointment process to strengthen institutional independence

To address risks of perceived or actual political influence, the appointment process for members of the Appeal Tribunal should be revised.

While retaining executive involvement may be necessary within Malaysia's constitutional structure, additional safeguards should be introduced, such as:

- requiring parliamentary scrutiny or confirmation of appointments; or
- involving an independent selection panel in the nomination process.

These measures would help ensure that the Tribunal is not only independent in form but also perceived as independent by stakeholders.

### 5. Introduce safeguards against retaliation for complainants

The appeals framework should include protections against retaliation or disadvantage for suppliers who bring complaints.

This may include:

- confidentiality protections for complainants where appropriate;
- safeguards against exclusion from future procurement opportunities; and
- clear rules governing the conduct of procuring entities during and after the appeals process.

Without such protections, the availability of formal appeals mechanisms may not translate into actual usage.

# Chapter 6: Engagements & Future Considerations

## Introduction

This chapter draws on a series of stakeholder engagements conducted with civil society organisations (CSOs), policymakers, and representatives of the business community. These engagements were initially intended to generate structured input on the design and operation of Malaysia's government procurement appeals mechanism, including the proposed Appeal Tribunal under the Government Procurement Act (GPA).

However, limitations in participation mean that the findings cannot be treated as representative or sufficiently comprehensive to constitute empirical evidence for reform design. In several sessions, a significant portion of the discussion was also dedicated to clarifying the scope and function of the GPA itself, rather than engaging directly with the technicalities of appeals mechanisms.

Notwithstanding these constraints, the engagements highlighted a range of recurring concerns relating to transparency, accountability, access to information, and institutional clarity in government procurement. These

concerns are not limited to the design of appeals mechanisms, but instead reflect broader governance conditions that shape how such mechanisms would function in practice.

Accordingly, this chapter reframes the engagement findings as indicative of systemic issues and emerging priorities. These insights are used to highlight key areas for future research and the development of subsidiary legislation and implementation frameworks under the GPA.

# 6.1 Civil society organisations (CSOs)

Three engagement sessions were conducted with CSOs: one based in the Klang Valley, and one each in Sabah and Sarawak. Across all sessions, participants engaged with procurement primarily through the lens of governance, accountability, and community impact, rather than through the technical design of appeals mechanisms.

## 6.1.1 Klang Valley

CSOs based in the Klang Valley raised concerns primarily related to the opacity of procurement processes and the broader governance of public spending. Participants highlighted a lack of clarity regarding procurement procedures, including how decisions are made, how exceptions are applied, and how information is communicated to the public.

Key concerns included the interaction between the GPA and existing policy frameworks such as the prioritisation of Bumiputera contractors under the New Economic Policy (NEP), as well as the use of instruments such as the Procurement Public Interest Certificate. The latter, in particular, raised questions about whether procurement processes could be bypassed without sufficient transparency, and whether such decisions and their underlying rationale would be made publicly accessible.

Participants also raised questions regarding locus standi — specifically, who is entitled to bring a complaint under the GPA. Uncertainty remains as to whether this right is limited to participating bidders, or whether it may extend to members of the public affected by procurement outcomes.

More broadly, CSOs emphasised their role in "socialising" procurement-related information, highlighting the challenge of translating technical procurement processes into issues that are understandable and relevant to the public. Taken together, these discussions suggest that procurement governance remains insufficiently transparent at a basic procedural level, with uncertainty surrounding both access to information and eligibility to challenge decisions.

### 6.1.2 Sarawak

In Sarawak, participants focused on specific instances of procurement-related concerns, particularly involving large-scale infrastructure and service delivery projects. These included issues surrounding concession awards, public transportation initiatives, and the involvement of foreign firms in state-level development projects.

A recurring concern was the lack of publicly available information regarding how contracts were awarded, including the qualifications of selected contractors and the rationale behind procurement decisions. Participants also raised concerns about Government-to-Government (G2G) arrangements and foreign-financed projects, which were perceived to fall outside conventional procurement scrutiny.

Institutional ambiguity was another key issue. Participants questioned the respective roles of the GPA, the Sarawak Ombudsman, and any future Federal Ombudsman in addressing procurement grievances. In particular, there was uncertainty as to whether issues such as "unfair" contract awards would fall within the scope of maladministration.

Freedom of information emerged as a central concern, particularly in relation to "abandoned" or underperforming projects where public updates are limited. Participants also highlighted the absence of mechanisms to recover funds from failed or poorly executed contracts.

The discussions further revealed uncertainty regarding the respective roles of existing and proposed oversight institutions, particularly in relation to procurement-related grievances. This points to a broader issue of fragmented accountability, where overlapping mandates and gaps in jurisdiction may limit effective scrutiny of procurement decisions.

### 6.1.3 Sabah

Participants in Sabah highlighted systemic governance challenges in procurement, including unilateral decision-making, inflated project values, and limited transparency in tender board decisions. These issues were illustrated through a range of sector-specific examples, including infrastructure, environmental management, public health, and land use.

Several cases pointed to a disconnect between procurement expenditure and actual service delivery outcomes. Examples included underutilised public investments, poorly planned infrastructure, and procurement decisions made without adequate consultation with affected communities.

Participants also raised concerns regarding the role of government-linked companies (GLCs) and their increasing emphasis on profitability, potentially at the expense of public service objectives and fair market participation. The use of GLCs in large transactions was also linked to broader concerns around political financing and accountability.

A recurring theme was the limited ability of the public to engage with decision-makers, including local authorities, which were perceived to operate with minimal oversight or accountability. These concerns illustrate

how weaknesses in procurement governance are experienced not only as administrative issues, but as tangible failures in service delivery, infrastructure planning, and environmental management, particularly when decision-making is centralised and insufficiently scrutinised.

## Analysis of CSO engagements

Across all three regions, CSOs engaged with procurement primarily as a governance and accountability issue, rather than as a technical legal framework. While participants were able to identify numerous instances of problematic procurement practices, there was limited familiarity with the structure and function of formal appeals mechanisms under the GPA.

This suggests that appeals mechanisms, while important, are unlikely to be meaningfully utilised in the absence of baseline transparency and access to information. Without visibility into procurement decisions, affected parties may lack both the evidence and the confidence required to initiate complaints.

The engagements also highlight the importance of framing procurement issues in terms of their real-world impact, including cost of living, infrastructure quality, and access to essential services. CSOs play a critical role in bridging this gap, translating technical procurement failures into tangible public concerns.

At the same time, the engagements underscore the need for regionally contextualised approaches, particularly in Sabah and Sarawak, where procurement challenges are shaped by distinct institutional, political, and economic conditions. Addressing these issues will require continued engagement and a more granular understanding of how governance weaknesses manifest across different parts of the country.

## 6.2: Policymakers

An engagement was conducted with a Member of Parliament who is both part of the bloc that supported the passage of the GPA and a member of the Parliamentary Special Select Committee (PSSC) on Finance and Economy. Efforts were made to engage additional members of the PSSC; however, no further responses were received within the timeframe of this study. As such, the views reflected in this section are drawn from a single participant, though they provide useful insight into parliamentary perspectives on procurement reform.

The MP characterised the GPA as a necessary step towards a more rules-based procurement framework, particularly when compared to reliance on Treasury Circulars. While acknowledging that the legislation is not without flaws, the MP emphasised its role as a foundational framework for reform.

A key area of discussion was the concentration of decision-making authority in the Minister of Finance. While the MP agreed in principle that such concentration raises governance concerns, they also noted that the structure of public administration necessitates a central decision-making authority. The Ministry of Finance was described as a "supra-ministry" with oversight across government spending, resulting in procurement functions being effectively centralised.

The MP identified transparency reforms as critical to improving procurement governance, particularly through the introduction of a Freedom of Information Act and the reform or repeal of the Official Secrets Act 1972. Greater access to information — such as bidder qualifications, ownership structures, and decision-making criteria — was seen as essential for enabling public scrutiny.

The discussion also highlighted gaps in the scope of the GPA, particularly with respect to procurement-related arrangements such as joint ventures

and public-private partnerships, which may fall outside the Act's regulatory framework.

In relation to the Appeal Tribunal, the MP emphasised the need for sufficient powers, including the ability to overturn decisions and void contracts. Concerns were also raised regarding the appointment process for Tribunal members, with a suggestion that Parliamentary committees could play a role in screening candidates to mitigate risks of politicisation.

The discussion reflects an underlying tension between the need for administrative efficiency and the risks associated with concentrated decision-making authority. While centralisation may be seen as necessary within existing governance structures, it also underscores the importance of strengthening transparency mechanisms and institutional safeguards to ensure that such authority is exercised accountably.

## 6.3 Business Community

Perspectives from the private sector were collected through a survey disseminated by the British Malaysian Chamber of Commerce. The survey received four responses and is therefore not representative of the broader business community. The findings should be interpreted as indicative rather than conclusive.

Despite the limited sample size, several consistent themes emerged.

Respondents indicated that participation in government procurement is primarily motivated by long-term business opportunities with the government, suggesting that firms view procurement engagement as part of an ongoing commercial relationship rather than a one-off transaction. At the same time, concerns were raised regarding transparency in evaluation processes, limited feedback on unsuccessful bids, and the absence of effective avenues to challenge procurement decisions.

The findings suggest that the primary barrier to participation is not procedural complexity, but rather uncertainty regarding the fairness and integrity of decision-making. Respondents did not identify procurement procedures themselves as a significant obstacle, indicating that firms — particularly those with international experience — are generally able to navigate formal processes.

While views on the importance of an appeals mechanism were mixed, there was strong and consistent demand for greater transparency, particularly in the form of reasoned decisions and access to relevant procurement information. This reflects a preference for clarity and predictability in procurement outcomes, especially where firms seek to improve future bids.

Concerns regarding retaliation or commercial disadvantage were also identified as a significant factor influencing whether firms would utilise an appeals mechanism. This suggests that the availability of formal recourse alone may be insufficient if complainants are not adequately protected from adverse consequences.

Overall, the findings indicate that private sector confidence in government procurement is shaped less by the accessibility of procedures and more by the transparency, accountability, and perceived fairness of decision-making processes.

## 6.4 Conclusion and Future Considerations

The engagements suggest that the effectiveness of a procurement appeals mechanism is not determined solely by its legal design, but by the broader governance ecosystem in which it operates.

Across stakeholder groups, several recurring considerations emerge:

- **Access to information as a precondition for accountability** – Without sufficient disclosure of procurement decisions and their underlying rationale, both appeals mechanisms and broader oversight processes are unlikely to be meaningfully utilised.
- **Institutional clarity and coherence** – Overlapping mandates, gaps in regulatory coverage, and uncertainty regarding the roles of different oversight bodies may limit the effectiveness of grievance mechanisms.
- **Trust and perceived fairness of decision-making** – Confidence in procurement systems is shaped not only by formal procedures, but by the credibility and transparency of outcomes.
- **Protection for complainants** – Concerns regarding retaliation or commercial disadvantage may deter the use of appeals mechanisms, even where formal avenues for recourse exist.

These themes are reflected differently across stakeholder groups. Civil society organisations require access to information to identify and communicate procurement failures, businesses rely on transparency to assess and respond to tender outcomes, and policymakers recognise the need for institutional safeguards to ensure accountability within existing administrative structures.

At the same time, questions of institutional clarity and coherence remain significant. Overlapping mandates, gaps in regulatory coverage, and uncertainty regarding the roles of different oversight bodies may limit the effectiveness of grievance mechanisms. This is particularly evident in relation to procurement arrangements that fall outside the core scope of the GPA, as well as the interaction between procurement oversight and other accountability institutions.

Finally, trust in the procurement system is shaped by both procedural fairness and substantive outcomes. This includes not only the availability of appeals, but also the credibility of decision-making processes, the

independence of review bodies, and the presence of safeguards against retaliation or abuse of discretion.

These considerations point towards several areas for future work. Further research is needed to examine how access to procurement information can be institutionalised, including through freedom of information legislation and proactive disclosure requirements. The development of subsidiary legislation under the GPA should also clarify key issues such as locus standi, the scope of reviewable decisions, and protections for complainants.

Ultimately, procurement reform must be situated within a broader governance agenda. Appeals mechanisms can play a critical role in ensuring accountability, but their effectiveness will depend on the extent to which they are embedded within a transparent, coherent, and trusted system of public administration.

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