2 CONFLICT OF INTEREST
CONFLICT OF INTEREST:
PREVENTING POLITICAL PATRONAGE AND CORRUPTION IN MALAYSIA
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CHAPTER I: INTRODUCTION

Conflict of interest (COI) and political patronage have dominated our country’s economic and political landscape for decades, permeating every level of government and society. While practices such as government procurement, award of contracts and appointments to certain position are legal due to public policies and laws, they are by no means ethical.

The task to dismantle the six-decade-old issue of COI and political patronage is a monumental one. So deeply entrenched are the way things are done, even the new Pakatan Harapan (PH) government appear to have not escaped from the same old issues.

At Parti Peribumi Bersatu Malaysia’s (BERSATU) second annual general meeting late last year, there were calls for projects to be given to division leaders to ensure the party remains in power after the next general election. This suggestion is telling of the mindset of certain leaders, who continue to subscribe to the old system, which itself led to numerous cases of serious corruption. However, these PH politicians ought to be mindful that voters no longer tolerate the old ways of doing things. This resulted in the Barisan Nasional (BN) government being voted out of office at the 14th General Election last year.

How did Malaysia get to this stage where COI and political patronage are the norm? The genesis of this issue can be traced to the introduction of affirmative action under the New Economic Policy (NEP), following the racial riots of 1969. The NEP’s primary objective was to achieve national unity through the reduction of poverty regardless of race and restructuring of society to correct the economic imbalances. While the spirit of NEP was to ensure equitable development, the policy’s implementation saw elites, who were politically connected to the ruling party, emerge as the biggest beneficiaries.

COI issues and political patronage was allowed to spread through most sectors of economy. The most obvious example is in the construction industry where Class F contractors are Bumiputera and mostly UMNO members. ¹ Contracts for government projects are given to them as a form of reward for ensured support from the grassroots in all parts of the country.

Politicians from the ruling parties were appointed to various positions in government-linked companies (GLCs) and government bodies as a form of patronage and also control by the government over those entities. Many politically-linked companies, especially UMNO-linked companies, were beneficiaries of government projects and contracts starting from the 1980s onwards.

Ironically, both former Prime Minister Najib Razak and his predecessor, Abdullah Ahmad Badawi, had declared their own public wars against corruption.

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¹ Today, Class F contractors are now classified as G1 contractors. They are allocated contracts valued below RM200,000.
Abdullah sailed into office in 2004, having won handsomely after campaigning on his “clean” image and a pledge to combat corruption. Abdullah introduced the National Integrity Plan (NIP), envisioned to run for a period of five years, from 2004–2008. The Plan sought to establish a fully moral and ethical society, whose citizens are strong in religious and spiritual values, and imbued with the highest ethical standards.

One of the NIP’s key rallying calls was to effectively reduce corruption, malpractices and abuse of power. However, even with the NIP, the government could not counter the corruption that was plaguing the public sector and elected and appointed representatives.

Transparency remained an issue, where the government’s day-to-day conduct came under intense scrutiny, especially in procurement processes. The Auditor General, who serves as the internal auditor for the public sector, found ample examples of corrupt procurement practices every year. It was not uncommon to read of cases where public procurement of everyday supplies, such as screwdrivers and pencils, were done at an over-inflated price. Although notifications for tenders were made public, the selection criteria and selection process were shrouded in secrecy. The continued secrecy of the terms of concession agreements also did not encourage confidence in the government, all while the practice of political patronage lingered.

This continued even under the Najib Razak administration. At the start, Najib too declared war against corruption and pledged to transform the government. He unveiled the Government Transformation Plan (GTP) to much fanfare and made fighting corruption one of the six priority areas or National Key Results Areas (NKRA). Government agencies and corporates lined up to sign Corporate Integrity Pledges. Najib appointed a Minister in the Prime Minister’s Department to look into the combatting of corruption.

Initially, the GTP and Najib’s pledges were well-received by the public. It had seemed that the government was finally willing to concede the need to address these shortcomings and transform the mode of governance. But very quickly, it became abundantly clear that the GTP and all the sloganeering were merely just strategic moves to improve the mere public perception of clean governance than to actually get rid of corruption. It remains uncertain what impact any of these initiatives had.

But undeniably, Najib’s two-term administration contributed to entrenching corruption and political patronage in Malaysia’s political and economic system. Look no further than the 1Malaysia Development Bhd (1MDB) scandal that eventually cost Najib his top job.
HAS THE SCENE CHANGED POST-14TH GENERAL ELECTION?

In the run up to the historic 14th General Election on May 9, 2019, the PH coalition campaigned on the premise of fighting corruption and political patronage that dogged the country for decades. In recognising the matter of COI, one of the pledges that PH made was there would be no political appointments to the boards of directors of GLCs and public institutions. It was on this premise of a new form of governance that PH swept into power.

However, almost right off the bat, PH began to put its people at various agencies. Maslan Aliman and Faiz Fadzil of AMANAH and Wan Saiful Wan Jan of BERSATU were made chairmen of Lembaga Pertubuhan Peladang (Farmers' Organization Authority), Lembaga Kemajuan Ikan Malaysia (Fisheries Development Authority of Malaysia) and Perbadanan Tabung Pendidikan Tinggi Nasional (National Higher Education Fund Corporation, PTPTN) respectively. These appointments invited scorn as they were nothing short of rewarding loyalty and also exerting control over the agencies or bodies. This trend was a reminder that little had changed in spite of the fall of UMNO.

The political appointments aside, the PH government went on to promise better governance and transparency. For a start, in tabling the maiden budget in October 2018, Finance Minister Lim Guan Eng had announced that the government will introduce a Government Procurement Act to promote transparency and competition in procurement processes.

Then, during the mid-term review of the 11th Malaysian Plan, the government introduced six pillars to provide a new developmental focus to further boost economic growth. Under Pillar One, the government is committed to reforming governance towards greater transparency and enhancing efficiency of public service. The government plans to enhance its anti-corruption agenda, improve transparency and inculcate noble values and ethical work practices.

In January 2019, Prime Minister Dr Mahathir Mohamad launched the National Anti-Corruption Plan (NACP) 2019-2023. The five-year plan, which is a part of the PH election manifesto, outlined six strategies and 115 initiatives to rid areas such as politics, public procurement, law enforcement, public sector administration, legal and judicial services as well as corporate government of corruption.

Based on complaints received by the Malaysian Anti-Corruption Commission (MACC) from 2013 to 2018, wrongdoing involving procurement (42.8%) topped the list of sectors prone to corruption, followed by enforcement at 23.9%, administration at 13.4%, and licensing and permits at 8.6%. The survey also revealed that 63.3% of complaints involved the public sector, making it the most vulnerable sector to corruption.

Under the NACP, plans are afoot to legislate political funding to ensure transparency in the financing of political parties.
In public sector administration, the enforcement of mandatory job rotation for public servants holding sensitive posts will be implemented. The civil service would also tighten its involvement and appointment of senior government officials as board members in state-owned enterprises and statutory bodies, while the vetting process of appointing officials to high-risk positions would be overhauled.

For procurement matters, the Finance Ministry will introduce a policy on disclosure of COI during the procurement process.

As for law enforcement, the much awaited Independent Police Complaints and Misconduct Commission is expected to be set up within this five-year period. The Home Ministry is expected to rein in the misconduct in the Immigration Department through internal controls, and to address the problems in the Foreign Workers Centralised Management System.

The NACP also includes the setting up of a separate parliamentary select committee to oversee the MACC, Ombudsman Malaysia (previously known as the Public Complaints Bureau) and the Election Commission.

While some initiatives are in place, such as an asset declaration policy by PH lawmakers and members of the administration, a policy limiting gift taking and parking the National Audit Department under Parliament, the current government faces an uphill battle of moving away from the practices of the previous administration. There are high expectations from party supporters to be rewarded for their years of loyalty. PH is not doing itself any favours by this series of political appointments.

Meanwhile, the current government must also deal with serious cases of corruption and abuse of power by UMNO, as demonstrated in the cases of Felda, the Scorpene corruption scandal and Taman Rimba Kiara as discussed in this report. These cases showed a clear breach of COI and political patronage principles, and these cases are bound to happen again if the government does not initiate urgent reforms. The PH government needs to act fast and decisively to deal with the deeply entrenched COI and patronage system that has plagued the country for decades.
CHAPTER II: CASE STUDIES AND ANALYSIS

CASE STUDY 1: GOVERNMENT LINKED COMPANIES—FELDA AND EAGLE HIGH PLANTATION DEAL

툶 The Deal

The Federal Land Development Authority (Felda), through its special purpose vehicle, FIC Properties Sdn Bhd (FPSB), signed an agreement to purchase a 37% stake in Eagle High Plantation (EHP), owned by the Indonesia-based Rajawali Capital, for US$505.4 million in 2016. The agreement included a put option which allowed Felda to sell the stake back at the original purchase price with a 6% annual interest charge to be borne by the Indonesian company.

The Rajawali Group is owned by Peter Sondakh who was said to be close to former Prime Minister Najib Razak who was also the minister-in-charge of Felda. There were speculations back in 2015 that Sondakh would invest into 1Malaysia Development Bhd’s (1MDB) Tun Razak Exchange (TRX) in the light of Felda’s acquisition into EHP. Sondakh, however, denied any intention to invest in TRX.

盹 Felda White Paper Findings

In a White Paper released by the government on April 10, 2019, it was revealed that Felda had significantly overpaid the Rajawali Group when it acquired the 37% stake in EHP. The acquisition of EHP shares at US$505 million (US$0.043/IDR584 per share) on Dec 23, 2016 was way higher than two independent valuation prices of US$264 million and US$404 million. The acquisition price was 95.86% higher than EHP’s market price on the date of the acquisition.

Another finding by the White Paper was that when Felda’s board of directors had approved the acquisition of EHP shares via a special-purpose vehicle on Dec 7, 2017 the acquisition price was US$241 million higher than its market price from the assessment report. Shares in EHP had dropped 41.6% from June 11, 2015 to October 15, 2015.

The White Paper further revealed that the board of directors in Felda had approved the investment in EHP despite knowing that the boards of Felda Global Ventures Holdings Bhd and Felda Investment Corp Sdn Bhd (FIC) did not support this acquisition, due to EHP’s high share valuation.

Malaysia’s central bank, Bank Negara, had also issued numerous questions about the investment structure, benefits of the acquisition and usage of capital in the equity acquisition. Despite knowing the risks involved, the minutes of Felda’s board meeting indicates that approval of the investment was done without additional due diligence, while no explanation was recorded for taking this decision.
The Ministry of Finance (MoF), led by the then Prime Minister Najib Razak, was also involved in this investment process, as it gave advice on the structuring of the investment. The acquisition was paid via a loan amounting to RM2.3 billion from Govco Holdings Bhd, a company owned by the MoF.

Despite the misgivings from Bank Negara and from various reports (including some from FGV itself, which in turn was initially slotted to take on the acquisition), Felda’s board disregarded all advice and went ahead with the acquisition. This brings to question the power of the Prime Minister and Finance Minister, who have jurisdiction over Felda. Clearly, if there was any check and balance mechanism in place, it was not strong enough to withstand the power of the Prime Minister and Finance Minister.

The investment in EHP also went against Felda’s investing principles. This is because the acquisition of EHP shares, even with the put option, would have only given a return of 6% a year. Felda’s investing principles call for a minimum return that is higher than the average market return rate. Besides, the net return of 1.05% a year was also lower than the minimum fixed rate of 1.15% set by Felda’s board for the deal. As of Dec 31, 2017, that net return had dropped to 0.9%.

Felda director-general Datuk Dr Othman Omar had on April 8 2019 lodged a police report, claiming that Najib had pushed them into investing US$505 million (RM2.07 billion) in EHP. This was revealed in a finance ministry letter to Felda dated December 8, 2015. EHP had total debts of US$547.4 million in 2014 and its liabilities stood at US$676.9 million in 2016.

Othman also alleged that he had tried to get several agencies, including FGV Holdings Bhd, the Malaysian Plantation Oil Board and the Malaysian Rubber Board, to purchase these EHP shares. Felda was ‘forced’ to acquire this EHP equity when it failed to get these agencies on board in this investment venture.
He said the Felda/FPSB purchase was against the consultancy advice Felda had obtained, including by KPMG Malaysia (dated February 16 and November 11, 2016), BDO Malaysia in an evaluation report (April 29, 2016), an Indonesian law firm Hiswara Bunjamin (November 10, 2016), as well as JPMorgan’s slides tabled on Dec 23, 2016.

Table 1: Peter Sondakh connection to MOF Inc

<table>
<thead>
<tr>
<th>Individual</th>
<th>Role and COI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prime Minister &amp; Finance Minister</td>
<td>• As Prime Minister and Finance Minister, Najib had control over Felda</td>
</tr>
<tr>
<td>Najib Razak</td>
<td>• Appointed Isa Samad to head Felda and FGV</td>
</tr>
<tr>
<td>Felda and FGV chairman</td>
<td>• Close ally of Najib</td>
</tr>
<tr>
<td>Isa Samad</td>
<td>• Made a series of acquisitions that had caused loss to both Felda and FGV. Isa would not have been able to make such an acquisition without the approval of Najib.</td>
</tr>
<tr>
<td>Peter Sondakh</td>
<td>• Owner of Rajawali Group which owns Eagle High Plantation</td>
</tr>
<tr>
<td></td>
<td>• A close friend of Najib</td>
</tr>
</tbody>
</table>

Graph 2: Peter Sondakh connection to MOF Inc

He said the Felda/FPSB purchase was against the consultancy advice Felda had obtained, including by KPMG Malaysia (dated February 16 and November 11, 2016), BDO Malaysia in an evaluation report (April 29, 2016), an Indonesian law firm Hiswara Bunjamin (November 10, 2016), as well as JPMorgan’s slides tabled on Dec 23, 2016.
Othman also suspected that the EHP agreement, which eventually resulted in losses for Felda, was due to Najib’s direct instruction to this statutory body to acquire Sondakh’s interests in EHP. Othman further suspected that Sondakh used his influence on Najib, resulting in Felda purchasing the stake at an inflated price. Othman also claimed that several senior MoF officials, along with the Second Finance Minister, wielded their influence over Felda to ensure the acquisition of the EHP equity.

This case study clearly showed a series of conflicts of interest (COI).

1. Najib was both Prime Minister and Finance Minister who had control over Felda via both portfolios. Technically, one portfolio made the decision on acquisition, while the other provided the funds needed for the acquisition. The White Paper clearly found that the Finance Ministry was involved in the investment process by giving advice on the structuring of investment. This acquisition showed how powerful the office of the Prime Minister and when coupled with the position of the Finance Minister. There was clear abuse of power and taxpayers’ money. Unfortunately, while the current Prime Minister does not hold the dual position of Finance Minister, they still can call the shots on many decisions and there must be mechanisms in place to ‘short-circuit’ any potential abuse of power as such.

2. Isa Samad was the chairman of Felda at the time of acquisition. An UMNO warlord who was once suspended from the party due to money politics, Isa was also the former Menteri Besar of Negeri Sembilan and a close ally of Najib. Felda voters were considered the vote bank for Barisan Nasional so Najib had installed his trusted man to oversee the settlement. During his tenure as Felda and FGV chairman, Isa made a series of acquisitions that had caused loss to both the authority and listed company. Isa would not have been able to make such acquisition without the blessings or approval of Najib.

What are the lessons here?

1. Government-linked companies (GLCs), listed or otherwise, are under the control of the Minister of Finance who can abuse his powers even when mechanisms are in place to check such malpractice. Although red flags were aplenty that the acquisition of EHP was not a sound investment, yet it was pushed through. This indicates that important institutional reforms are imperative to enforce checks and balances in the employment of GLCs under the control of the Prime Minister or his cabinet ministers.

2. The board of directors of Felda, as well as other GLCs, must be empowered to counter any pressure by politicians to make decisions that are not in the interest of the company.

3. This case indicates that there was enormous concentration of power in the office of the Prime Minister. There must be an oversight committee or Parliamentary select committee that can vet through major acquisitions or projects made by government statutory bodies, foundations or GLCs to prevent future abuse/lapses such as this and to reduce the control of MoF. The Parliamentary select committee must also be given power to call GLCs and government authorities as and when they deem fit to do so.
CASE STUDY 2: DEFENCE PROCUREMENT

In defence procurement, this case study is regarding the Scorpene submarine scandal that transpired in 2002.

Table 2: Conflict of interest in the Scorpene submarine scandal


<table>
<thead>
<tr>
<th>Individual/Company</th>
<th>Role and COI</th>
</tr>
</thead>
</table>
| **Abdul Razak Baginda**                   | • Defence advisor to then Deputy Prime Minister and Defence Minister Najib Razak in 2002.  
• Obtained the contract via Perimekar also due to wife's close association with DPM and Defence Minister Najib Razak's wife, Rosmah Mansor.  
• Controls KS Ombak Laut that is part of Perimekar Sdn Bhd.  
• Also owns Terasasi Sdn Bhd and Terasasi (Hong Kong) Ltd. |
| **Mazlinda Makhzan**                      | • Wife of Abdul Razak Baginda, a close associate of Rosmah Mansor, the wife of Najib Razak.  
• Controls KS Ombak Laut.                                                                          |
| **DPM and Defence Minister Najib Razak**  | • Approved purchase of two Scorpene-class submarines from DCNS, French state-owned shipbuilding company.  
• Demanded DCNS to pay Perimekar USD 1 billion for its representative to continue negotiations on the purchase of submarines on 14 July 2001.  
• UMNO is identified as a beneficiary of the Scorpene submarine deal.                            |
| **Lodin Wok Kamaruddin**                  | • CEO of LTAT which was part of Perimekar Sdn Bhd.  
• A close associate of Najib.                                                                       |
| **Perimekar Sdn Bhd**                     | • Established in 2001 to provide support and coordination services for submarines and is jointly owned by Armed Forces Fund Board (LTAT), Boustead Holdings Bhd and KS Ombak Laut Sdn Bhd. |
| **KS Ombak Laut**                         | • Controlled by Razak Baginda and wife Mazlinda Makhzan.                                                                                  |
| **Terasasi Sdn Bhd and Terasasi (Hong Kong) Ltd** | • Shell companies that were used as intermediaries to transfer funds.  
• They are jointly owned by Abd Razak Baginda and his father, Abdullah Malim Baginda.           |
Scorpene Submarine Scandal Analysis

It is noteworthy that the Scorpene corruption scandal shows that conflict of interest, in respect to defence procurement, manifests itself in different forms. The manifestations of conflict of interest in this particular scandal are:

(1) The Use of Shell Companies as Conduits to Create Proxies and Funnel Illegal Funds

The previous Malaysian government confirmed in Parliament in 2008 that €114 million (RM570 million) was paid to Perimekar for the purchased Scorpene submarines. What was missing from this explanation were pertinent facts related to the man behind Perimekar and other shell companies set up as conduits to create proxies to mask the involvement of the former Minister and facilitate money transfers and various illegal transactions and payments that took place in secret.

It is important to note that Perimekar was controlled by the former Prime Minister’s aide, Razak Baginda and wholly owned by another company called KS Ombak Laut Sdn Bhd (KS Ombak Laut)—a company also controlled by Razak Baginda. KS Ombak Laut’s principal shareholder was Mazlinda Makhzan, Razak Baginda’s wife.

€114 million (RM570 million) was paid to Perimekar for “coordination and support services”, even though it did not have the financial means nor the expertise to perform the terms and conditions spelt out in the procurement agreement. It bears reiterating that Perimekar was registered only a few months before the agreement was signed.

Document C, which was seized by the French police from DCNS and Thales offices, reveals the existence of another shell company that was involved in the procurement deal. The company was registered as Terasasi Sdn Bhd (Terasasi), and its principal shareholder was Razak Baginda. Document C also exposes a request made by Razak Baginda to Thales for the payment of €359,450 to be made to Terasasi as ‘success’ or ‘support fee’ associated with the purchase of the submarines.

Terasasi’s involvement in the procurement deal and the payment of this so-called ‘success’ or ‘support fee’ were never explained by the previous Malaysian government after the corruption scandal hit the public domain. This fact only came to light after SUARAM gained access to the seized documents in 2012.

The indictment of Dominique Castellan, the former CEO of DCNS in 2016, exposes another two transactions involving a contract known as ‘C5’, between DCNS and Thint Asia, and a consultancy contract between Thint Asia and Terasasi. In the latter, the amount of €30 million was transferred to Terasasi (Hong Kong) Ltd in November 2002. Razak Baginda and his father were identified as the beneficial owners of Terasasi (Hong Kong) Ltd.

The money trail further extended to Malta and Luxembourg, where French companies were set up to facilitate the payment of kickbacks and commissions, in order to circumvent the OECD

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2 The court documents referred above (Documents A, B, and C) have been renumbered as the official numbering is confidential.
Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. This Convention was signed by the French government in 2002.

The foregoing clearly shows how shell companies such as Perimekar, Terasasi, and Terasasi (Hong Kong) Ltd were set up and used solely as conduits to deviously funnel the illegal commissions and kickbacks from the various transactions associated with the procurement deal. It is also unsurprising that these shell companies were controlled by Razak Baginda, the man who had a strong political connection to those in power and was integral to the procurement negotiations.

The strong political connection Razak Baginda had with the country’s top leadership, in particular, the former Prime Minister had enabled him to divert the ill-gotten funds through numerous shell companies with impunity. The existence of this strong political connection was noted in seized document B.  

Document B reads:

“On the contrary, Razak Baginda maintained excellent ties with the Minister of Defence and the Prime Minister. Furthermore, his wife is a close friend of the Minister of Defence’s wife. Therefore, Baginda became the centre of the network: Terasasi is linked to Baginda while Perimekar was initially controlled by Mohd Noor.”

Document B also states that consultants (company agents) are often used as political network agents to facilitate these monetary transfers and to receive commissions from their mediators. Document B further explains that by early 2001, Mohd Ibrahim Mohd Noor’s influence began to decline following the fall from power of the former Minister of Finance, Daim Zainuddin. This resulted in the disappearance of Mohd Ibrahim’s name from Perimekar, both as shareholder and director, and was later replaced by people from Razak Baginda’s network. Razak Baginda eventually became the main point of reference for the political network to facilitate the various money transfers.

(2) The Collusion and Complicity of the Top Leadership

The Scorpene corruption scandal also reveals evidence of collusion and complicity within the top leadership of this country, in particular, the former Prime Minister who at the material time was the Defence Minister. As the then Defence Minister, it would be preposterous to assume that Najib did not have any knowledge of the syphoning of hundreds of millions out of the procurement deal given that he was the signatory.

Former Prime Minister Najib’s involvement in the Scorpene corruption scandal is reflected in Document A. It states:

“Mr. Dupont detailed out the chronology of visits and future actions during the journey in Malaysia of which there were various planned undertakings in particular negotiation meetings with the Ministry of Defence and the management members of Perimekar during which two contract proposals would be mentioned (from DCN to Perimekar as well as between Perimekar and the Malaysian Government). He finally indicated a meeting with Dato’ Sri Najib in France on 14 July 2001 on the condition that DCN offers a maximum sum of USD1billion for Perimekar’s stay (in France)."
This shocking revelation involving the former Prime Minister’s demand that US$1 billion be paid for a meeting to be fixed to negotiate the purchase of the submarines demonstrates that the procurement deal is a premeditated scheme to steal from Malaysian taxpayers.

One of the seized documents highlights the fact that Razak Baginda was also handpicked because of his wife’s (Mazlinda Makhzan) close relationship with Najib Razak’s wife (Rosmah Mansor).

The collusion and complicity of those in positions of power and their associates and family members in the commission of this heinous crime have posed significant obstacles to the quest for accountability.

(3) Ruling Party as the Biggest Beneficiary

Document B exposes that the former Prime Minister’s ruling party, the United Malay National Organization (UMNO) is the biggest beneficiary of the illegal kickbacks and commissions. Document B states explicitly that:

‘In a document tagged “Malaysia”, there is a confidential report regarding Perimekar and Terasasi. The report includes a note on “Retracing the background of negotiations”.’

The note states that pursuant to the major defence contracts between France and Malaysia, there is a requirement that substantial transfers of monies have to be channelled to individuals and political organisations.

The note specifically states that apart from individuals, the ruling party (UMNO) is the biggest beneficiary. This particular document is concrete proof that UMNO—a political party that is key to ensuring the former Prime Minister’s political survival—was one of the beneficiaries of this grand corruption scandal.

(4) Misuse of Public Bodies

Lodin Wok Kamaruddin, another close associate of former Prime Minister Najib Razak, was also named in the Scorpene corruption scandal. Lodin Wok Kamaruddin was the chief executive of the Lembaga Tabung Angkatan Tentera (LTAT)—the armed forces pension fund. Lodin Wok was Boustead Holdings Berhad’s deputy chair when the company held a 20% stake in Perimekar along with LTAT. Lodin Wok Kamaruddin was a director of Perimekar, the go-between company involved in the submarine procurement deal and he also sat on the board of Affin Bank Berhad, one of Perimekar’s bankers. It is important to note that he oversaw the transfer of money amounting to €114 million (RM570 million) into Perimekar's account.

The French Court proceeding reveals how public bodies such as the LTAT and Lembaga Tabung Haji (pilgrimage fund)—public bodies charged with managing public funds were misused to channel and generate illegal commissions and kickbacks associated with the Scorpene deal.
CASE STUDY 3: LAND DEALS

In this example, the case of the Taman Rimba Kiara land grab is highlighted.

Chart 1: Taman Rimba Kiara (TRK) Land Grab

Taman Rimba Kiara (TRK) comprises 25 acres of state land, known as Lot 55118. This is documented fact and evidenced by Land Office searches dating back to 2010. Situated within this are a Hindu temple (0.6 acres), the Bukit Kiara longhouses (4.4 acres), and green parkland (20 acres).

In 2014, Yayasan Wilayah Persekutuan (YWP) somehow procured the issuance of a title to itself (PT 9244) for 12 acres out of the 25 acres. This was a purported transfer of state land to YWP.

On April 7, 2014, YWP entered into a joint venture development with Memang Perkasa Sdn Bhd to develop the “carved out” land with an expected gross development value (GDV) more than RM3.0 billion.

This development involves the construction of eight blocks of 42–54 storey high-end service apartments and only one 29-storey block of 350 units for the current residents of the Bukit Kiara longhouse community.
Yayasan Wilayah Persekutuan (YWP) is a foundation that was established to provide services in improving the socio-economic situation of low-income groups. Tengku Adnan who was the former Federal Territories (FT) Minister, was also the former Chairman of YWP as a result of his ministerial position.

**Companies with Stakes in Memang Perkasa Sdn Bhd**

A search at the Companies Commission of Malaysia (SSM) website shows the following:

**Chart 2: Companies linked to Memang Perkasa Sdn Bhd**
Table 3: Individuals involved in TRK Land Grab

<table>
<thead>
<tr>
<th>Company</th>
<th>Shareholders</th>
<th>Directors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Memang Perkasa Sdn Bhd</td>
<td>● Tegap Dinamik Sdn Bhd (90.9%)</td>
<td>● Mohd Khairuddin Bin Hj Nawawi</td>
</tr>
<tr>
<td></td>
<td>● Malton Berhad (0.1%)</td>
<td>● Ahmad Lazri Bin Long Ahmad Zainal Abidin</td>
</tr>
<tr>
<td></td>
<td>● Regal Marvel Construction Sdn Bhd (9.0%)</td>
<td>● Lim Siew Fai</td>
</tr>
<tr>
<td></td>
<td><em>(as at June 2016)</em></td>
<td>● Hong Lay Chuan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Chua Thian Teck</td>
</tr>
<tr>
<td>Malton Berhad</td>
<td>● property developer in Malaysia</td>
<td></td>
</tr>
<tr>
<td></td>
<td>● Tan Sri Desmond Lim is the Non-Executive Chairman and a major shareholder.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>● He is also the Chairman and Non-Independent Executive Director of Pavilion</td>
<td></td>
</tr>
<tr>
<td></td>
<td>REIT Management Sdn Bhd, the Manager of Pavilion Real Estate Investment</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trust (Pavilion REIT) and Executive Chairman of WCT Holdings Berhad.</td>
<td></td>
</tr>
<tr>
<td>Tegap Dinamik Sdn Bhd</td>
<td>● Mohd Khairuddin Bin Hj Nawawi (49%)</td>
<td>● Mohd Khairuddin Bin Hj Nawawi</td>
</tr>
<tr>
<td></td>
<td>● Ahmad Lazri Bin Long Ahmad Zainal Abidin (30%)</td>
<td>● Ahmad Lazri Bin Long Ahmad Zainal Abidin</td>
</tr>
<tr>
<td></td>
<td>● Rosmanira Binti Junoh (21%)</td>
<td>● Rosmanira Binti Junoh</td>
</tr>
<tr>
<td>Regal Marvel Construction Sdn Bhd</td>
<td>● wholly owned by Malton Berhad</td>
<td>● Hong Lay Chuan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Chua Thian Teck</td>
</tr>
<tr>
<td>Aman Ikhtisas Sdn Bhd</td>
<td>● Rosmanira Binti Junoh (1%)</td>
<td>● Rosmanira Binti Junoh</td>
</tr>
<tr>
<td></td>
<td>● Mejar Ismail Bin Ahmad (Rtd) (48%)</td>
<td>● Mejar Ismail Bin Ahmad (Rtd)</td>
</tr>
<tr>
<td></td>
<td>● Mej (B) Hj Zainal Bin Bador (51%)</td>
<td></td>
</tr>
<tr>
<td>Dataran Hartajaya Sdn Bhd</td>
<td>● Aman Ikhtisas (33.3%)</td>
<td>● Mejar Ismail Bin Ahmad (Rtd)</td>
</tr>
<tr>
<td></td>
<td>● Tadmansori Holdings Sdn Bhd (66.7%)</td>
<td>● Mej (B) Hj Zainal Bin Bador</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Tengku Rethwan Bin Tengku Mansor (Tengku Adnan’s brother)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Tengku Daud Shah Bin Tengku Adnan (Tengku Adnan’s son)</td>
</tr>
<tr>
<td>Tadmansori Holdings Sdn Bhd</td>
<td>● Tengku Adnan (major shareholder)</td>
<td>● Tengku Rethwan Bin Tengku Mansor</td>
</tr>
<tr>
<td></td>
<td>● Tengku Rethwan (owns four shares only)</td>
<td>● Tengku Daud Shah Bin Tengku Adnan</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Tengku Iqbal Munawwir Bin Tengku Adnan (Tengku Adnan’s son)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>● Anggraini Binti Sentiyaki (Tengku Adnan’s wife)</td>
</tr>
</tbody>
</table>
### Table 4: Individuals involved in TRK Land Grab

<table>
<thead>
<tr>
<th>The Players</th>
<th></th>
</tr>
</thead>
</table>
| **Tengku Adnan Tengku Mansor** | • a major shareholder of Tadmansori Holdings  
• has an effective ownership interest of 66.7% in Dataran Hartajaya |
| **Rosmanira**             | • has an effective ownership interest of 19.09% in MEMANG PERKASA SDN BHD and 0.33% in Dataran Hartajaya  
• a director for Motif Budi Sdn Bhd, which is located at Pavilion Tower  
and Pavilion Tower belongs to Pavilion REIT |
| **Mejar Ismail**          | • has an effective ownership interest of 16.0% in Dataran Hartajaya  
• the Managing Director of Tegap Dinamik  
• a director of Lumayan Indah Sdn Bhd which was involved in developing Tan Sri Desmond Lim’s Banyan Tree Signatures Pavilion Kuala Lumpur project  
• a shareholder of Kekal Kirana Sdn Bhd, which is wholly owned by WCT Holdings Berhad |
| **Lim Siew Fai**          | • Managing Director of Malton Berhad since 15 December 2015  
• a sibling of Tan Sri Desmond Lim  
• a non-independent non-executive chairman and a major shareholder of Malton Berhad |
| **Chua Thian Teck**       | • director of Regal Marvel Construction  
• Executive Director of Malton Berhad as well as the director for many of Malton’s subsidiaries |
| **Lim Mei Yoong**         | • company secretary for Rosmanira’s Tegap Dinamik, Rosmanira’s Aman Ikhtisas, Tengku Rethwan’s Dataran Hartajaya and Tan Sri Desmond Lim’s Pavilion REIT |

Memang Perkasa Sdn Bhd, Tegak Dinamik, Regal Marvel, Malton, Aman Ikhtisas and Dataran Hartajaya seem to share almost the same registered address and business address, i.e. at the Pavilion Tower and Menara Goldstone (formerly known as Menara ING).
Taman Rimba Kiara — Analysis

It is noteworthy that the Taman Rimba Kiara scandal shows that the blatant land grab and money transfers were chiefly manoeuvred by the former FT Minister, Tengku Adnan Tengku Mansor.

(1) The Collusion and Complicity of the Top Leadership

Tengku Adnan, who was then Federal Territories Minister, was also the Chairman of YWP as a result of his ministerial position. He had direct oversight of Kuala Lumpur City Hall (DBKL) and the then Kuala Lumpur Mayor, Mhd Amin Nordin.

Under the Barisan Nasional administration, YWP was reported to have been involved in the transfer of the state land in the Federal Territory. Part of the Taman Rimba Kiara land was alienated by the Federal Territories Land Executive Committee Secretariat which includes Tengku Adnan and the former Deputy Minister, Loga Bala. Both Loga Bala and Mhd Amin Nordin were also part of the Board of Trustees for YWP.

(2) The Use of Companies as Conduits to Create Proxies and Form Joint Ventures

Tengku Adnan, via YWP, had then entered into a joint venture with Malton Berhad’s subsidiary, Memang Perkasa. It is important to note that Memang Perkasa has links to Tengku Adnan’s private company, Tadmansori Holdings via Aman Ikhtisas and Dataran Hartajaya.

In November 2018, Tengku Adnan was charged with two counts of receiving RM3 million from property developers. On the first count, he was charged in his position as a public servant with accepting RM1 million from a developer as an inducement and the second charge, he was alleged to have received RM2 million, and the sum was allegedly deposited into his Tadmansori Holdings’ account.

The Minister was in a position which allowed him to abuse his power by acting in favour of his family’s private company. This constitutes a clear case of conflict of interest given his ministerial position which can be used to assert control or influence over the affairs related to the Ministry and foundation he was in charge of, in particular, the awarding of government joint ventures.

(3) Conflict of Interest: A Definition

Based on the three cases discussed, the definition of COI would include the appointment of political allies; the conduct of business with close friends; the setting up of covert or proxy companies to funnel money from government procurement contract; the abuse of powers in making decisions which will favour self and business partners; the use of foundations as a conduit for funding or joint venture with companies for projects, and; the collusion and complicity of those in positions of power. These series of actions would show instances of COI, which ultimately result in personal gain.
CHAPTER III: INTERNATIONAL STANDARDS

A Conflict of Interest (COI) situation is where it puts a person or an organisation in a position to reap benefits by exploiting his or her professional or public capacity.

Instances of COI are also unique to its locality as one has to take into account prevailing social, cultural, political and economic practices. What may be an outright COI situation in one society may not be understood as a straightforward COI situation in another. However, it is without a doubt a precursor to corruption; hence it must be identified and dealt with from the very start.

The Organisation for Economic Co-operation and Development (OECD) deems COI to have occurred when an individual or a corporation (either private or governmental) is in a position to exploit his or their professional or official capacity in some way for personal or corporate benefit. It is, in essence, a breach of trust of the person or organisation in question.

According to the OECD, policymakers constantly face new COI challenges in light of new forms of partnerships between government and the private sector. Hence there is a need to strike a balance, which will enable a public-private partnership to take off and not deter a person from entering public service. In anticipation of potential COI, the public sector or government needs to: identify the potential risks; prohibit unacceptable forms of private interest; raise awareness of circumstances where conflict can arise, and; provide an effective procedure to resolve COI situations.

Malaysia, in this period of transition, must prioritise its management of COI in its effort to fight corruption. COI management must be adopted as part and parcel of the anti-corruption approach, while creating awareness and understanding of COI.

The Malaysian government could adopt practices and recommendations by the OECD and also look to Indonesia as a model, since Indonesia is the closest to Malaysia in terms of culture and tradition norms. Indonesia established its Anti-Corruption Commission in 2003, which continues to fight an uphill battle against corruption. Like us, Indonesia’s corruption has multiple contributing factors, such as cultural practices of money gifts for help or support, salary gaps between the private and public sector and also resistance even from its lawmakers who want to curtail the powers of the commission.

Even though Indonesia faces different challenges in fighting graft, some lessons can be learned so that Malaysia can avoid the same pitfalls.

In charting its management of COI, the government must be mindful that no one size fits all, but instead produce a framework for COI that is uniquely Malaysian, coupled with universally accepted values and practices. The PH government has this one window of opportunity to shape the fight of corruption and the urgency is real. The civil society must be galvanised to help the government to push through the initiative and also keep those in powers in check.
**Chart 3: Types of Conflict of Interest**

- **ACTUAL**: Direct conflict between a public official’s current duties and responsibilities and existing private interests.

- **PERCEIVED**: Exists where it is perceived or appears that a public official’s private interests could improperly influence the performance of their duties whether or not this is in fact the case.

- **POTENTIAL**: Arises where a public official has private interests that could conflict with their official duties in the future.

**Chart 4: Categories of Conflict of Interest**

- **Pecuniary Interests**: Involve actual or potential financial gain.

- **Non-Pecuniary Interests**: Lack the financial component and normally may have family interests.
**Table 5:** Scenarios of potential conflicts of interest

<table>
<thead>
<tr>
<th>Tendering and purchasing</th>
<th>Staff recruitment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Secondary employment</td>
<td>Dealing with former public officials</td>
</tr>
<tr>
<td>Gifts, benefits and hospitality</td>
<td>Local government planning approvals</td>
</tr>
<tr>
<td>Licensing</td>
<td>Elected officials</td>
</tr>
</tbody>
</table>

**Chart 5:** Linkage of conflict of interest with corruption

- **Corruption**
- **Use of public office for private gain**
- **Conflict of Interest**
  - Performance of public duties where public official has a personal interest that is or appears to be in conflict with their official duties
### Table 6: Areas of Conflict

<table>
<thead>
<tr>
<th>Areas of Conflict of Interest</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-dealing</td>
<td>Taking action in an official capacity that involves dealing with oneself in private capacity and benefits oneself</td>
</tr>
<tr>
<td>Accepting benefits</td>
<td>Soliciting, accepting transfers of economic value, from a person whom they have contact in an official capacity</td>
</tr>
<tr>
<td>Trading influence</td>
<td>The practice of soliciting benefit in exchange for one's official authority or influence</td>
</tr>
<tr>
<td>Government property usage</td>
<td>Usage of government facilities for personal use.</td>
</tr>
<tr>
<td>Using confidential information</td>
<td>The use of information gained as a public official for private use</td>
</tr>
<tr>
<td>Outside employment</td>
<td>Engaging or promising to accept private employment or render services for private interests when such employment creates conflict or impairs proper discharge of duties</td>
</tr>
<tr>
<td>Post-employment</td>
<td>The latest area of COI. Public officials cannot act after they leave public office in a manner where they have an improper advantage</td>
</tr>
<tr>
<td>Personal conduct</td>
<td>It refers to whether a public official's conduct would make the official vulnerable to pressure and misuse the public office. The conduct of the official discredits the government or department and thereby undermines public trust.</td>
</tr>
</tbody>
</table>
**Self-dealing**
Taking action in an official capacity that involves dealing with oneself in personal capacity and benefitting from it. A prime example would be the case of the Scorpene corruption scandal where the then Defence Minister colluded and demanded payment to ensure negotiations for the submarines continued.

**Accepting benefits**
The solicitation and acceptance of transfers of money or valuables from a person whom they have a relationship in an official capacity. This incident can be seen in the Sabah Water Department case where authorities seized goods valued at RM114 million (including cash, luxury cars, watches, handbags and jewellery) from the department’s director and deputy director, who gave out water-related contracts.

**Trading Influence**
The practice of soliciting benefit in exchange for one’s official authority or influence can be seen in the case of 1MDB where former Prime Minister Najib Razak’s official position in the sovereign wealth fund gave assurance for millions of bonds issued.

**Government property usage**
Usage of government facilities for personal use was much talked about during the tenure of former Prime Minister Najib Razak. His wife Rosmah Mansor had used a government jet for her travel to Qatar to attend a forum in a personal capacity.

**Using confidential information**
The use of information gained as a public official for private use was seen in the case of the Scorpene corruption scandal, where Abdul Razak Baginda had used information from the Royal Malaysian Navy to ensure the French company would have the edge over the contract.

**Outside employment**
Engage or promise to accept private employment or render services for private interests when such employment creates conflict or impairs proper discharge of duties.

**Post-employment**
Public officials cannot act after they left public office in a manner where they have an improper advantage.

**Personal conduct**
It refers to whether a public official’s conduct would make the official vulnerable to pressure and misuse the public office. The conduct of the official discredits the government or department and thereby undermines public trust. This is demonstrated in the recent case of Romli Ishak, an aide to Deputy Prime Minister Dr Wan Azizah Wan Ismail, who issued a support letter for a company bidding for a catering contract for a hostel in a secondary school in Sabah.
CHAPTER IV: ANALYSIS AND RECOMMENDATIONS

ANALYSIS

Conflict of Interest (COI) and political patronage with its many facets such as accepting benefits, reward for loyalty, self-dealing and trading influence has dominated most aspects of the country for decades that it has become the norm even though the government and ruling parties were heavily criticised.

Looking at the three cases discussed in this report, there is an urgent need to put in key reforms in areas of ministerial powers over government-linked investment companies (GLICs), government-linked companies (GLCs) and statutory bodies, procurement processes and land re-designation. Incidences of COI and political patronage were prevalent, and these areas continue to be vulnerable to such abuses.

In the case of Felda’s acquisition of Eagle High Plantation (EHP), all the ingredients were perfectly placed to enable COI to occur: from a Prime Minister who was also the Finance Minister and had the portfolio of Felda under one ministry; to structuring the investment in another; to a trusted ally as the chairman of Felda and a close friend and advisor who owns EHP. There were no check and balances to push back the power of the Prime Minister and Finance Minister, which was held by one person.

The powers of Prime Minister and ministers must be kept in check. Although they do have inherent powers, there must be processes put in place to ensure their powers are kept in check and are exercised judiciously. Civil servants must be empowered to ‘throw the book’ at the ministers when they are out of line. There is also an imminent necessity to establish a Parliamentary select committee to look into the business activities of GLICs, GLCs and statutory bodies in order to prevent abuse by those in government who oversee them.

Similarly, in procurement processes, the use of middlemen or holding companies must be banned. All procurement and negotiation processes must be made on one-to-one basis, which the government and ministries are more than well-equipped to do. Even in the case of defence procurement, as in the case of Scorpene corruption scandal, the procurement processes ought to be in open tender, while the negotiations can remain private and confidential.

The government also needs to put in reforms and new processes in land re-designation matters. Again in the case of the Taman Rimba Kiara land grab, too much power was accorded to the Federal Territories Minister which allowed him to alienate the land for a project which he stood to benefit from. There needs to be an independent committee that looks into this and should not be at the prerogative of a few, especially the minister in charge. The government also needs to put a stop to developers and individuals creating layers of companies and
appointing similar persons to sit as directors in these companies as conduits and proxies for projects. A project owner whether it is a joint venture or otherwise, should be known upfront and not hidden with a series of companies.

Land re-designation issue is not merely a federal issue, but is also very much a state matter, as states have full jurisdiction on land matters. Hence, it is imperative that reforms are put in place to ensure land is never re-designated to benefit only a select few throughout Malaysia.

The key to keeping COI at bay is to institute reforms and ensure their enforcement. There are existing mechanisms already in place, such as open tender processes, but are often bypassed for one reason or another. The Malaysian Parliament, now at its most balanced composition after the 14th General Election, has an opportunity to initiate a series of select committees (which should include MPs from both sides of the divide) that will serve as a check and balance or sounding board for the government.

Political patronage and the reward for loyalty system has been deeply entrenched by UMNO and Barisan Nasional in the past 60 years. It was common to see someone appointed to a particular position because of his or her ties to UMNO or the ruling coalition. One need only look at the chairmen of GLICs, GLCs and statutory bodies to realise that many are either practicing or retired politicians from UMNO and Barisan Nasional. The two individuals mentioned in this report were Isa Samad in Felda and Abdul Azeer Abdul Razah in Lembaga Tabung Haji, whose close ties to former Prime Minister Najib Razak saw them helming important institutions.

Similarly, contracts are given to certain companies because of their ties to the ruling coalition. An often quoted example is the Class F (now classified as G1) contractors who are allocated jobs valued below RM200,000. These jobs were given specifically to Bumiputera contractors who usually had ties to UMNO.

The patronage system is not one that can be easily removed with the change of government. It is so deeply entrenched that even the new government was, and is seen to be, treading down a similar path.

The series of appointments of Pakatan Harapan’s (PH) party members to various positions in government agencies have sparked controversy, as those appointments were seen as political patronage and a form of control by the minister/government in that respective agency. It mirrors the workings of the previous government, and this perception does not bode well for the PH government.

PH’s coalition parties have appointed their party members to positions in various government agencies namely: Wan Saiful Wan Jan (BERSATU) as Perbadanan Tabung Pendidikan Tinggi Nasional (PTPTN) chairman; Faiz Fadzil (AMANAH), who is the Permatang Pasir assemblyman, as the Chairman of Lembaga Kemajuan Ikan Malaysia; Mazlan Aliman (AMANAH) as the Chairman of Lembaga Pertubuhan Peladang; and Tan Kok Wai (DAP) who is also Member of Parliament for Cheras appointment as Special Envoy to China. Another example is the appointment of Health Minister Dr Dzulkefly Ahmad’s daughter Nurul Iman Dzulkefly to the board of Amanah Ikhtiar Malaysia (a government microcredit trust fund) which did not go down well with the public.
According to Lembah Pantai MP Fahmi Fadzil, the patronage system is cloaked in cultural norms and expectations:

“There was a culture and political economy that UMNO was very comfortable with and this operated vastly at the grassroots level. Now we are seeing a transition period where those who left UMNO to join PH have an expectation to have that access again.

Political appointments have become an essential way to continue political patronage while maintaining political support of the lower-rung leaders. It has become somewhat of a culture that is accepted,” he said. He added that this was tied to the Malay practice of budi, or gratitude, that would take decades to solve.

His colleague Permatang Pauh MP Nurul Izzah Anwar was against political appointments. She has stuck to her principles by resigning from party and government appointed positions in recent months.

“We have to be held to higher standards especially we pledged to have no political appointees,” said Nurul Izzah, adding that political appointments are tied to support and funding.

However, an individual should not be penalised by virtue of family ties to the administration or membership to any political parties. Instead, a fair middle ground would be to subject these individuals to more stringent appointment criteria and tests, since the perception and probability of COI and political patronage is strong for them. This is also to create a level playing field for those who are competing for positions against them.

There was no doubt that the series of scandals such as 1MDB, Scorpene, Lembaga Tabung Haji and Felda, marred with COI situations and political patronage, played a part in the change of government. The PH government ought to steer clear of such path no matter how unpopular it may seem.

The PH government and its coalition members have much work to do in the area of COI and political patronage. Immediate steps must be taken to shun such practices. Civil society must remain vigilant to push for reforms and keep the government in check. The need to reform these areas are dire and urgent, and there are only a few short years to do so before the country heads back to the polls.

The following 12 recommendations are concrete steps in which the PH government can take to reduce the frequency of COI situations and the likelihood of corruption.
RECOMMENDATIONS

_recommendation 1: Appointment of Chairperson or CEO of GLICs and Major Acquisitions through Parliamentary Hearing_

Any appointment to the positions of Chairman or Chief Executive Officer in a Government-linked Investment Company (GLIC) should go through scrutiny by the Public Account Committee or a special select committee of Parliament. The hearing would allow not just the lawmakers to question the candidates and the respective GLIC, but also to make the appointment process transparent. All findings from the inquiry should be made public, and in the event that the GLIC insists on the appointment (even after and Parliament committee differs in their opinions), the GLIC ought to explain its reason for doing so.

In light of Felda’s acquisition of Eagle High Plantation (which resulted in massive losses), a Parliament select committee ought to be established to scrutinise major deals by GLICs, GLCs and statutory bodies. This is to serve as a check and balance against the entities, and also the Prime Minister and Finance Ministry who continue to have a firm grip on GLICs and GLCs. Their powers need to be checked to ensure that deals cannot be pushed through without proper consideration.

_recommendation 2: Politicians must not be appointed to head Government-linked Investment Companies, Government-linked Companies or statutory bodies._

The previous ruling government had a practice to appoint its political party members to various positions in GLIC or GLCs or statutory bodies. Appointments such as these are not merely a form of reward, but serve as a form of control by the government over such entities. These appointments open up opportunities for potential abuse and conflict of interest.

The cases of Felda and Lembaga Tabung Haji were clear examples that such appointments must be stopped. In the case of Felda, its chairman, Isa Samad, was a close ally of former Prime Minister Najib Razak. When Felda came under the portfolio of PM’s Department and under Isa’s watch, Felda went on a series of acquisitions that had caused the authority and its companies to suffer massive losses. Isa would not have made these acquisitions without the approval of Najib.

Similarly, Lembaga Tabung Haji’s former chairman, Abdul Azeez Abdul Rahim, was Member of Parliament for Baling and has close ties with former prime Najib and his wife Rosmah Mansor. He was implicated in a series of misuse of funds, allegations of kickbacks and creative accounting where it used its reserves to pay bonuses.
**Recommendation 3: End the Use of Middleman for Government Procurement Contracts**

The case of the Scorpene corruption scandal showed how money was funnelled through middlemen and a series of Malaysian and foreign shell companies. Abdul Razak Baginda, friend and aide of the then Defence Minister Najib Razak, controlled a series of companies involved in the negotiations and funneling of funds. Interestingly, some of the companies were set up just a few months before their contract negotiations started.

While it is understood that defence procurement matters (such as defence equipment) are sensitive in nature and that the negotiations ought to be done in private and confidential manner, the tender must go through an open tender process. There is no need for a middleman company or a holding company, as it only gives room for abuse and conflict of interest as demonstrated in the case of Scorpene corruption scandal. All procurement should be conducted directly either government-to-government, or government-to-company providing the equipment. This method should be uniform across the board in government, and not limited to defence procurement. Most ministries already have a functioning tender board which will be able to award tenders to deserving contractors or providers.

In the event the government needs consultation or expertise in certain procurement matters such as for defence equipment, there ought to be an open tender for consultancy. Consultancies bidding for a position ought to have a proven track record, and no recommendations ought to come from the minister or any officials of the ministry.

**Recommendation 4: Politicians Must Not Be Allowed to Establish or Head Foundations**

The land deal case of Taman Rimba Kiara showed that state land was transferred to Yayasan Wilayah Persekutuan (YWP), a foundation which was controlled by the Federal Territories Minister Tengku Adnan Mansor. The YWP then went into a joint venture with Memang Perkasa Sdn Bhd which was linked to Tengku Adnan via a series of companies.

Foundations are a very common vehicle for politicians to solicit and channel funds in Malaysia. A foundation may have a charitable purpose, but they are often used to shore up political favours for politicians. The potential of conflict of interest is very possible. Former Deputy Prime Minister Ahmad Zahid Hamidi has been charged with 45 counts under the Malaysian Anti-Corruption Commission Act and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act for misappropriation of funds under his foundation Yayasan Akal Budi.

The government ought to forbid politicians and their family members from establishing foundations when they are in public service. Politicians do not only run the risk of channelling funds through the foundation which will bring in political favours or points, but it would also put pressure on corporate bodies to donate to such foundations.
Recommendation 5: Disclose Beneficial Ownership of Company Directors

There is a need to disclose the beneficial ownership of company directors to address the problem of created proxy companies. This would enable the exposure of shell companies set up to cover up corrupt practices. As in the case of the Scorpene corruption scandal, many shell companies were created as proxies and were used to channel illicit funds. Abdul Razak Baginda created companies with his wife and father.

Similarly, Tengku Adnan Tengku Mansor in the case of Taman Rimba Kiara also created a family company which benefitted from the land deals. This case also saw a series of companies set up by both the developer and Tengku Adnan with several individuals holding multiple directorships in these companies.

Recommendation 6: Moderate the Power of Land Re-designation from Ministers

In the case of the Taman Rimba Kiara land grab, Tengku Adnan Tengku Mansor was the Federal Territories Minister and also the chairman of Yayasan Wilayah Persekutuan (YWP). YWP was involved in the transfer of state land in the Federal Territories. Tengku Adnan was also a member of the Federal Territories Land Executive Secretariat which alienated the Taman Rimba Kiara Land. The re-designation of that piece of land was clearly a case of conflict of interest as Tengku Adnan would stand to benefit from it, by virtue of his company which has a hand in the development.

Ministers must not be given such broad rights when it comes to land matters. There ought to be an independent oversight committee in place to scrutinise land re-designation. There must be public hearings to gather the opinions of those living in the area near said land. Ample notice must be given for hearings, and not one that was hastily put together for the sake of formality.


The government ought to come up with a stringent code of ethics exclusive for the appointments of political party members and family members to positions in government and government agencies. This can be done with the help of prominent civil society members. The code of ethics should also be made available to the public. No political party members or their family members should be appointed without going through proper and strict scrutiny by a special commission or parliamentary select committee. For political party members, a recommendation from the party should never be sufficient.

Any intention of appointment ought to be made known publicly first, before going through a stringent interview. If the government or the hiring agencies chose to go through with the appointment or hiring upon the interview/hearing process, then it ought to explain its reasons for doing so.
The government ought to look at the New Zealand State Services Commission appointment/hiring guidelines as a model. These rather stringent and comprehensive guidelines were designed to assist departments, state agencies, ministers and their offices with making effective appointments to the boards of a wide range of agencies and bodies. One of the interesting steps in recruiting for a particular board includes asking the minister concerned for an indication of the likely extent of his or her direct involvement in the process.

**Recommendation 8: Implement Disclosure Rules for Politicians and Family Members in Doing Business**

Members of the administration should neither own any business nor do business with the government. Any family members of the administration or any Members of Parliament and their family ought to disclose their relationships when bidding for projects at any level in the government whether federal, state or local. This is to ensure transparency and fair competition for those who are involved in the process.

**Recommendation 9: Implement Interim and General Guidelines for Political Funding**

While the laws on funding for political parties are still being formulated, there should be interim guidelines on the forms of funding to political parties and the government. Donations or funds from corporate companies towards big events or projects ought to be disclosed for the sake of transparency. It should also be communicated that the donors would not be reaping any form of benefits in return.

It is also recommended that any company that has benefited, directly or indirectly, from the award of a government project be restricted from giving donations to the ruling party or any party in a ruling coalition. The case in point is Malton which has benefitted from the Taman Rimba Kiara project.

In the case of the Scorpene corruption scandal, covert private firms were used to channel funds to UMNO, while a similar situation prevailed in the 1MDB scandal. There, a company was used as a mechanism to raise funds for former Prime Minister Najib Razak and not UMNO. Hence, government leaders should not be allowed to create covert political funds through proxies and proxy companies.

**Recommendation 10: Auditor General to Be Given More Room to Audit**

Presently, the Auditor General (AG) has quite a huge range of power to investigate but there are instances where they need the consent of the Minister of Finance to commence an audit, as stipulated in Section 5 of the Audit Act 1957. This requirement ought to be removed as it has the potential of COI for the minister. The National Audit Department, which is now parked under the auspices of Parliament, ought to be able to carry out their duties without having to seek permission from the Minister of Finance on certain matters.

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Recommendation 11: Improve Whistle Blower Protection Policy

There ought to be a policy or method to make whistleblowing safer and easier, especially for civil servants. Presently, Section 6 of the Whistleblower Protection Act 2010 provides that any improper conduct or wrongdoing can only be reported to an enforcement agency. Whistleblowers are only protected if they tip off enforcement agencies such as the police, MACC, Bank Negara and the Securities Commission. While this is the correct method, it is also a deterrent for whistleblowers to go to an enforcement agency.

An Institute for Democracy and Economic Affairs (IDEAS) report on the effectiveness of the Whistleblower Protection Act 2010, published in 2017, found that out of the 8,953 complaints received by the Malaysian Anti-Corruption Commission (MACC), only a measly 28 complaints were courtesy of whistleblowers.\(^4\)

The current Act also criminalises anyone who reveals official secrets, even to the MACC and police if the information was marked classified or secret. This makes it impossible for any civil servants to make any meaningful complaints of corruption or abuse of powers against their colleagues or superiors.

A simpler method ought to be made available, where a civil servant could make a report without exposing his identity. However, mechanisms must be put in place to ensure that the complaint must be genuine and not made out of malice.

Recommendation 12: Increase Awareness of Corporate Liability

Section 17(A) Malaysian Anti-Corruption Act 2009

Section 17(A) of the Malaysian Anti-Corruption Act 2009, which was gazetted last year, will come into force in June 2020. This will hold corporate companies liable for the corrupt practices of persons associated to them. This means the directors are now liable for the corrupt actions of a company’s employees, such as being involved in paying a bribe.

The days of company directors or senior employees cosying up to government officials through trips, golf games or gifts could be a thing in the past, as those could be seen as a conflict of interest.

The government should start creating greater awareness of the gravity of contravening this particular Act. Companies should be encouraged to start implementing or reviewing their practices in preventive measures, such as risk assessments, consistent monitoring and review, due diligence, communications including training, and top level commitments. Initiatives such as the Anti-Bribery Management System (ABMS) ISO 37001 and the Corruption Risk Management (CRM) instrument should also be considered while companies must also engage civil society in this process.

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CONCLUDING STATEMENT

Malaysia is in dire need of reform in this area of COI and political patronage as billions of Ringgit have been lost to such entrenched practices. The government must act now to start dismantling this entrenched practice, which has only enriched and empowered politicians and politically connected segments of society. The BN government thrived in the rot and saw itself booted out in the 14th General Election. The PH government must show the new and right way of doing things and not allow the old ways to continue to fester.
The Center to Combat Corruption and Cronyism (C4 Center) is a policy advocacy, non-profit center, dedicated to fighting corruption, cronyism and its related problems at all levels of government.

We seek to open governments and change the culture of governance by placing accountability, transparency and integrity at the heart of public policy and administration.

C4 Center works with public institutions, governments, political parties, and civil society organisations to build our vision of a corruption-free and open society.

**MAJOR ADVOCACY AREAS**

**Political Financing and Cross-Border Corruption:** We initiate political-legal research to publicly publishing reports on public mismanagement, push government agencies to be independent and accountable, and spearhead a good governance agenda programme.

**Freedom of Information (FOI):** We work towards embedding the culture of transparency in government, establishing a Federal FOI Law, increasing the proactive publication of data, strengthening whistle-blower rights and aiding communities in using their rights to access public information.

**Procurement and Conflict of Interest:** We work towards a transparent and accountable public procurement policies at all levels of government to ensure better value for the country. We have also initiated awareness the problems associated with conflict of interest in contracts and employment which can lead problems of corruption and abuse of power.

**Closing Civic Spaces:** Authorities are increasingly narrowing civic spaces where citizens are free to exercise their right to demand accountability. We take on digital, alternative and innovative methods to engage with publics to ensure their voices are heard – through board games, apps and websites.

**International Initiatives:** We work with the UNCAC Coalition and the Conference of State Parties in support of the UN Convention Against Corruption and are driving asset recovery advocacy for laundered funds originating from Malaysia.

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