

How can Malaysia's Asset Declaration System be improved to help combat corruption?

By Shaza Onn



Introduction

Despite the steps taken by Tun Abdullah Badawi when he was Prime Minister, and the recent suggestions by Tengku Razaleigh Hamzah, the matter of asset declaration continues to be an issue. While Malaysia has an existing asset declaration system, it is **not comprehensive**.

Studies however show that an effective asset declaration system can curb corruption and perception of corruption. Provided that it is backed by legal norms, is publicly available, and it adopts certain rules.

This brief proposes methods to improve the Malaysian system by looking at practices in other countries.

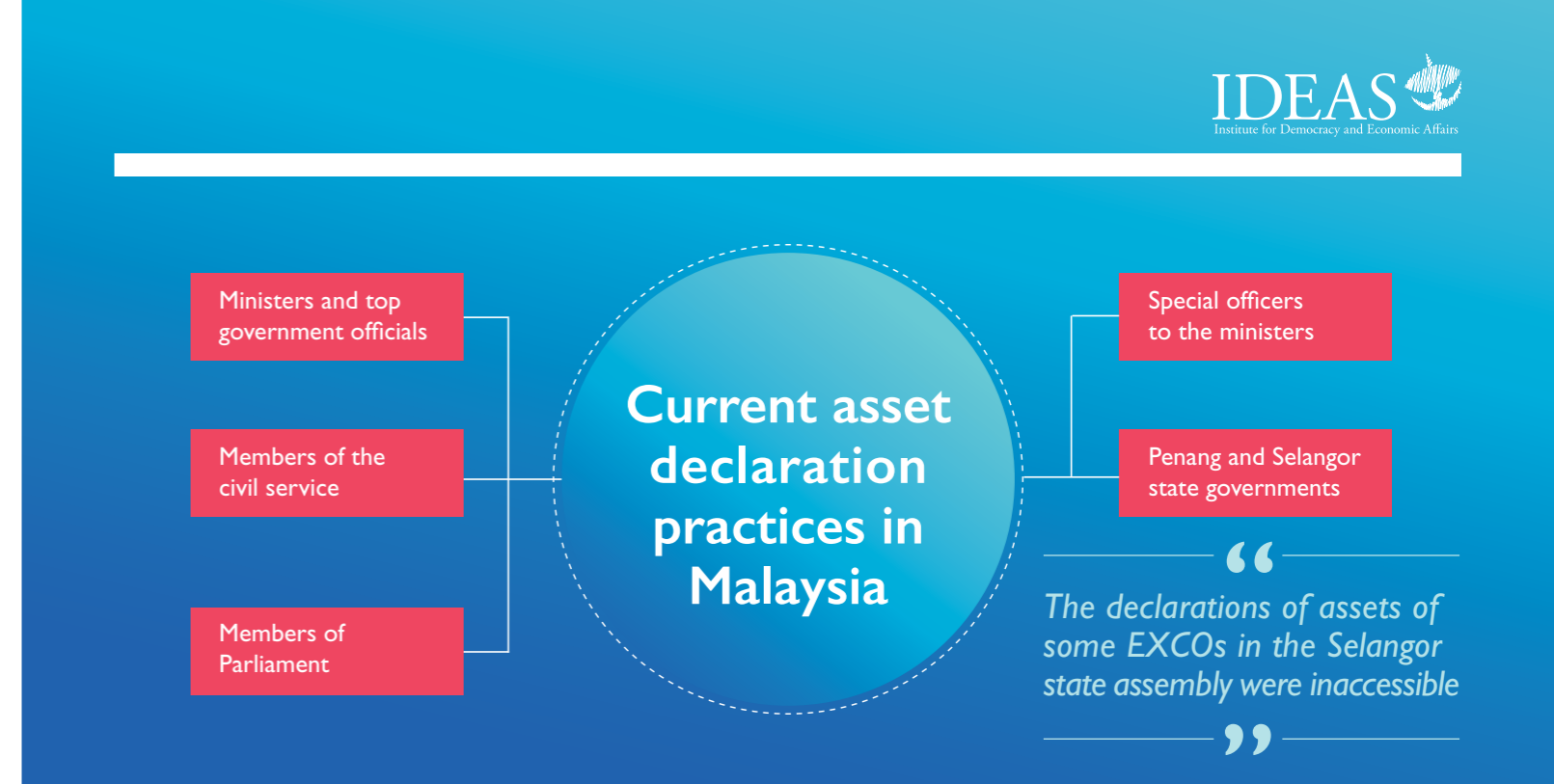
Why an asset declaration system is necessary

Those in government have immediate control over public assets and funds, and they manage the award of government contracts.

An effective asset declaration system can prevent conflict of interest and detect abuses.

For example, both the Slovenian Prime Minister and Opposition leader were demanded to resign after they hid high-value assets and did not declare conflicts of interest in business deals. (Transparency International, 2013)

Furthermore, government can build trust by having the opportunity to clarify the origins of officials' personal wealth.



01

Ministers and top government officials

Annually, top Malaysian government officials are required to confidentially declare assets to the Prime Minister. These reports are accessible to the Chief Commissioner of the Malaysian Anti-Corruption Commission (MACC).

“Members of parliament are not legally required to declare their assets”

03

Members of Parliament

Members of parliament are **not legally required to declare their assets**.

However, a **Code of Ethics**, approved by the Cabinet, requires that members **declare assets every two years** including local and overseas bank accounts, landed property, vehicles, jewellery, direct or proxy stakes in companies and equities held (MACC, 2012).

Some members of Parliament have declared assets of their own accord. An example, **MP Rafizi Ramli** recently made a statutory declaration of his assets, citing his nett worth of RM1.56 million along with his sources of income (The Malaysian Insider, 2015).

02

Members of the civil service

There are related rules in Service Circular Number 3/2002 – Ownership and Declaration of Asset by Public Officials.

Additionally, Section 4 of the Public Officers Regulations (Conduct and Discipline) 1993 states that **officers are not allowed to have private interests come into conflict with public duties**. While Section 10 of the same regulation provides that **members of the civil service and their immediate family must declare all assets to their respective Heads of Departments** within a period of not more than five (5) years of the date of declaration.

04

Special officers to the ministers

The Delivery Task Force (DTF) on Anti-Corruption National Key Results Area (NKRA) decided that **all ministerial special officers must declare assets to the MACC**.

The declaration format is similar to the circular provided for civil servants. As of April 2015, only three Special Officers have reportedly declared their assets to the Chief Commissioner. They were: **Mohd Naaim Mahmod**, special officer to the Deputy Prime Minister; **Khairuel Azlee**, Special Officer to the Minister of Information Communication and Culture, and **Izhar Moslim**, special officer assistant to the Minister in the Prime Minister's Department Datuk Seri Idris Jala.

05

Penang and Selangor state governments

Selangor and Penang have **no state regulations** on asset declaration but some state assemblymen and Executive Council members (EXCOs) have **voluntarily declared their assets**.

At the time of this research in April 2015, the asset declarations of Penang assemblymen and EXCOs were available in the Penang government's official website and according to the Malaysian Insider (2013), were audited by KPMG. However, the declarations of assets of some EXCOs in the Selangor state assembly were inaccessible.

Features of an effective asset declaration system

There is no internationally recognised standard of practice and the implementation varies from one place to another. However, the following were found to be features of an effective asset declaration system:

FEATURE 01

The asset declaration system adopts dual objectives of detecting both conflict of interests (COI) and illicit enrichment.

Detecting COI means that the asset declaration system is designed to prevent situations when a **public official may have conflicting roles** (e.g. when a public official is both the director of a company and the awardee of a contract).

Detecting illicit enrichment means the asset declaration system **monitors and detects unexplained gains in wealth** (Stolen Assets Recovery Initiative, 2012).

Generally, countries that adopt dual roles gain the benefits of both objectives.

FEATURE 02

The system is backed by a legal framework

Asset declaration systems are more successful when **anchored in a set of legal norms** (World Bank, 2013). It can be the **constitution** (e.g. Philippines) or **primary law and executive decree** (e.g. Indonesia). Laws can be a specific **asset declaration law** or be embedded in **other anti-corruption laws**.

These laws will serve as a **crucial reference** in enforcing the system.

FEATURE 03

It applies to all branches of the government *annually* and to a large scope of assets.

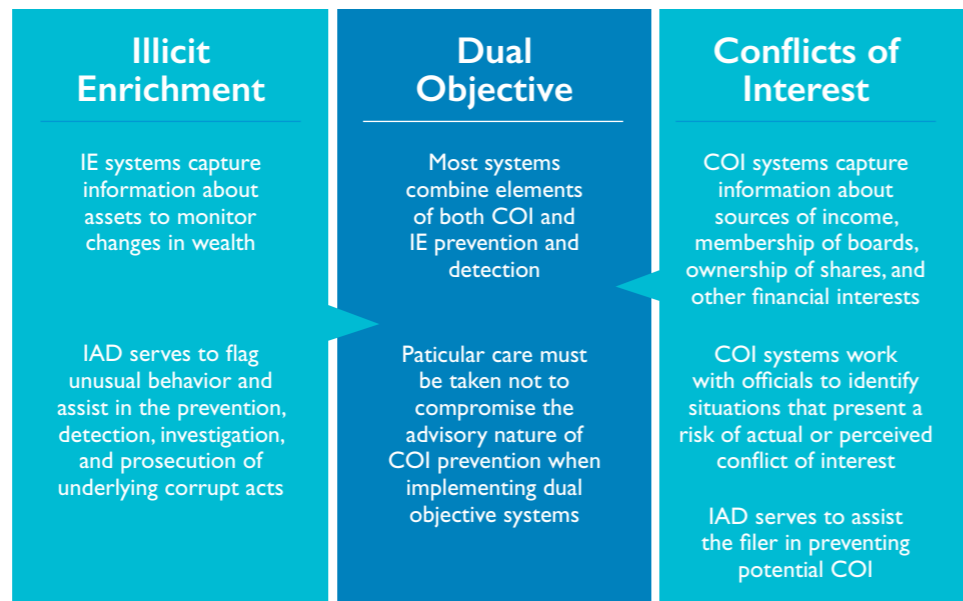
The Stolen Asset Recovery Initiative (2012) states that an effective asset declaration system covers the **executive, legislative body, judiciary and members of the bureaucracy**.

A tiered approach (i.e. more stringent requirements for high-level officials) or a targeted approach could be adopted depending on the level of risk and exposure to conflicts of interest (e.g. procurement officers).

Additionally, **family members and close associates** should also be subject to the same requirements for asset declarations (OECD, 2011).

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Detecting illicit enrichment means the asset declaration system monitors and detects unexplained gains in wealth (Stolen Assets Recovery Initiative, 2012).
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Figure 1: Asset Declaration systems can have different objectives



Source (Stolen Assets Recovery Initiative, 2012)

FEATURE 04

The system has an effective monitoring and verification mechanism

Asset declaration systems are more effective if the **monitoring and verification task is given to an independent body**, separate from the body that enforces it. For example, Parliament may establish a **Parliamentary Standing Commission**, to independently review assets declared by MPs where other branches of government can establish a similarly independent body to verify assets declared.

There is an option of a **centralised or decentralised system**. A centralised system is preferable for countries that have not developed a mature system of integrity.

Verification is an important rule, as it ensures the accuracy of the information. This allows the data presented to become meaningful towards anti-corruption purposes.

Verification processes clearly defined in the law are more effective. (OECD, 2011).

The **risk-based verification** process is based on the exposure to potential conflict while the **ex officio based verification** is a detailed verification of high levels members of government and on suspected violations (OECD, 2011).

Additional support for verification purposes may also come from **tax administrators, public registers and other financial control bodies** (Stolen Asset Recovery Initiative, 2012).

FEATURE 05

The system has an effective and enforced sanctions mechanism

Sanctions for non-compliance ensure that asset declarations are submitted in a timely and accurate manner.

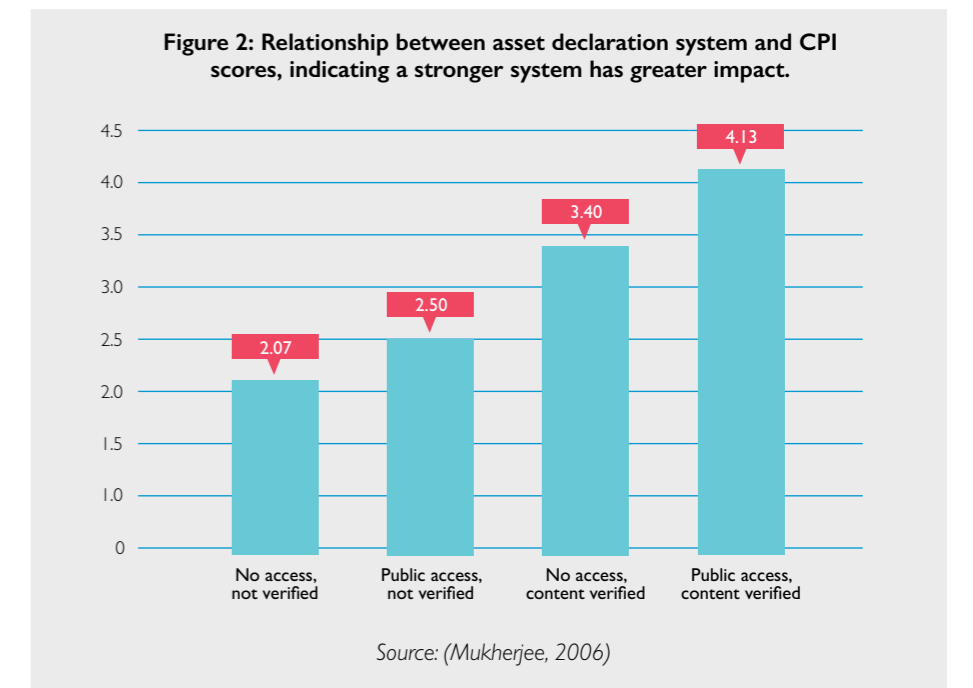
It can come in the forms of **criminal sanctions** (e.g. the United States of America), which stipulates a fine and imprisonment, **administrative sanction** via a fine or **disciplinary sanctions** like reduced remuneration or dismissal (OECD, 2011).

FEATURE 06

The system allows public access of assets declared

Countries with **well-established asset declaration laws with public access** enjoy significantly **lower levels of corruption** and perceptions of corruption, as seen in its Corruption Perception Index. Countries that embed public access and good verification system in their asset declaration system enjoy higher CPI scores (Mukherjee and Gokcekus, 2006).

“
Annual declarations are most effective in providing enforcement officers sufficient and timely data.
”



Asset declaration practices in the US and HongKong

Asset Declaration System in the United States of America (U.S.)

The asset declaration system in the U.S. is a highly regarded model that has high compliance rates due to its **comprehensiveness and transparency** (*Transparency International, 2013*).

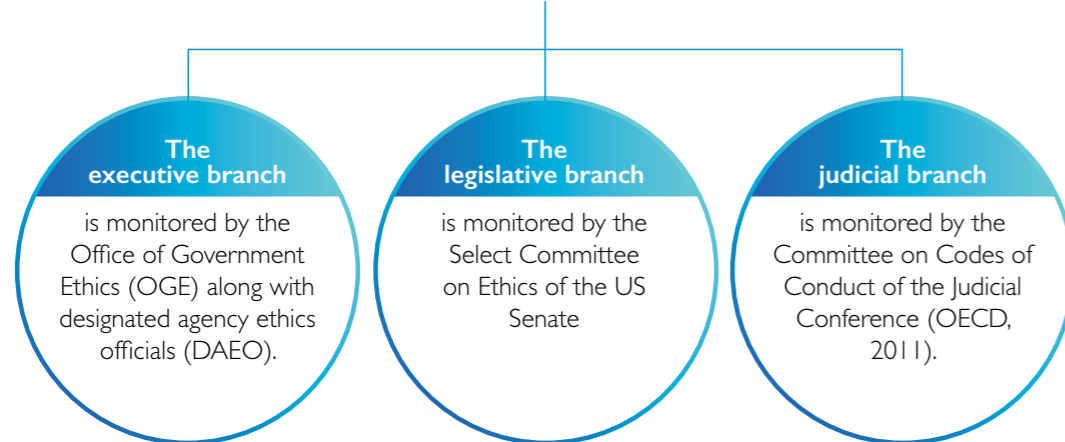
Its main purpose is to detect potential conflicts of interest.

The Ethics in Government Act of 1978 sets disclosure requirements for all branches of government (i.e. the judicial, legal and executive body) and provides for the jurisdiction of the **Office of Government Ethics (OGE) to supervise, monitor and ensure compliance of the executive branch** (*World Bank, 2013*).

The U.S. system is unique in its adoption of a **multi-layered approach to efficiently address different branches of government**. Wealth declaration requirements differ in scopes from the federal to local government, and in general, focus on high-level officials.

Compliance and investigative functions are conducted by separate bodies. Annually, officials submit declarations to the agency that they work in for review.

Each branch of government has separate systems



The OGE and ethics officers act as a secondary reviewer that ensure completeness and potential for conflicts of interest, but does not verify its accuracy.

If conflicts are detected, the case is referred to the Office of the Inspector General, the Federal Bureau of Investigation, or the Public Integrity Section of the Department of Justice (*World Bank, 2013*).

Submissions by executive branch members (including senior officials) are made to the DAEO where the individual is employed.

The President and Vice-President reports to the Director of the OGE, whereas presidential and vice-presidential candidates declare assets to the Federal Election Commission, which is then reported to Director of the OGE to be reviewed and certified (*World Bank, 2013*).

Public accessibility to asset declarations has created an impetus for reform. In 2008, Governor Bobby Jindal launched the **ethics reform package** after the Centre for Public Integrity gave the state of Louisiana a low ranking for asset declaration transparency, which led to improvements. (*Centre for Public Integrity, 2008*).

Its main purpose is to detect potential conflicts of interest

The Asset Declaration System in Hong Kong (HK)

The asset declaration system in HK initially monitored illicit enrichment by public officials (*OECD, 2011*) and later evolved to focus solely on detecting conflicts of interest.

The asset declaration system is successful due in part to a comprehensive anti-corruption system and effective joint efforts amongst the Civil Service Bureau, government agencies, the Independent Commission Against Corruption and individual filers (*World Bank, 2013*).

The asset declaration system is overseen by the Civil Service Bureau (CSB), similar to Malaysia's public service commission (JPA), where the ICAC provides strategic advice to both the CSB and individual agencies.

The CSB is tasked with preventing conflicts of interest amongst public officials and monitoring the implementation of asset declaration systems

adopted by agencies in government via a decentralised system.

Designated ethics officers are tasked with the implementation and verification of assets declared under the direction of the CSB (*World Bank, 2013*).

Legal requirements on asset declaration is set by the Civil Service Code along with a series of circulars such as CSB Circulars No.2/2004 "Conflict of Interest" and No.8/2006 revised as CSB Circular Memorandum No. 14/2008 "Declaration of Investments by Civil Servants".

Under Appendix B Civil Service System on Prevention of Conflict Of Interest specifies "Under the existing rules (Circular No. 8/2006 and the Circular No. 14/2008), civil servants in all directorate posts and designated senior posts (categorized into Tier I and Tier II posts) are required to declare, on appointment and thereafter at prescribed intervals, their

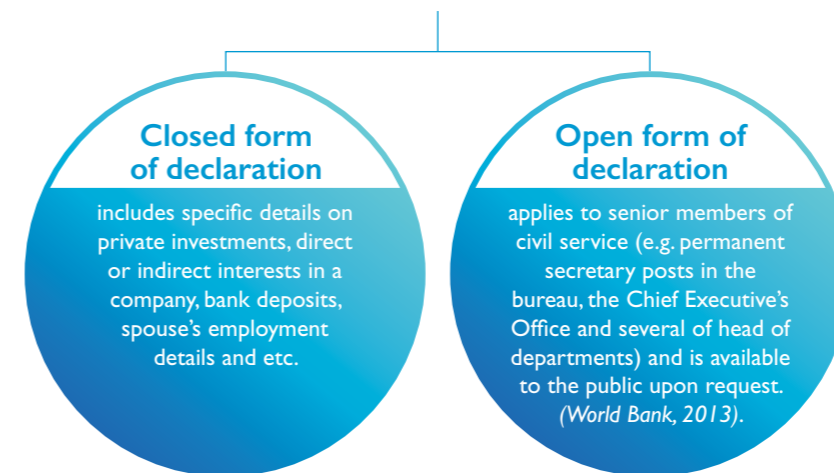
private investments in and outside HK and the occupation of their spouse.

They are required to declare investment transactions exceeding \$200,000 or three months' salary in value, whichever is less, within seven days of the transaction.

Annually, senior civil servants must declare financial interests including shareholding of more than 1%, directorships or partnerships of a company, land, and property.

Public officials may make private investments but may be investigated by the ICAC should any conflicts arise between the government and private interests (*World Bank, 2013*).

There are two forms of declarations:



The CSB is tasked with preventing conflicts of interest amongst public officials and monitoring the implementation of asset declaration systems adopted by agencies in government via a decentralised system

They are required to declare investment transactions exceeding \$200,000 or three months' salary in value, whichever is less, within seven days of the transaction

How can Malaysia's Asset Declaration System be improved?



Lessons for Malaysia

A good asset declaration system considers the country's current conditions and limitations (OECD, 2011). We must take into consideration our current legal and institutional capacities, existence of political will, and availability of funds and resources to implement the practice.

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The legal basis for their asset declarations are currently not strong and clear. This should be addressed by making it equally stringent with requirements for civil servants.
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How can Malaysia's Asset Declaration System be improved?

<p>! Make it mandatory by law for ministers and members of parliament (including senators) to declare their assets.</p> <p>Politicians have immediate control over the management of public assets and funds, however, the legal basis for their asset declarations are currently not strong and clear. This should be addressed by making it equally stringent with requirements for civil servants.</p> <p>The practice of Ministers declaring assets to the Prime Minister should stop.</p> <p>All elected Members of Parliament and Senators should be legally bound to declare their assets to a parliamentary committee that is independent from The Executive.</p> <p>“ <i>The MACC should verify the declarations made by both politicians to the parliamentary committee and by civil servants to their ministry</i> ”</p>	<p>⚖️ Current practice for civil servants should be strengthened</p> <p>The asset declaration by civil servants are currently verified internally. This should change. The MACC should take over the role of verifying the declarations.</p> <p>👁️ The MACC should be given the mandate to verify and monitor asset declaration</p> <p>The compliance on asset declaration can be secured by the existence of an independent body that oversees, verifies and monitors the process.</p> <p>The MACC can play this role and be authorised to work with agencies like the Inland Revenue Board and Unit Perisikan Kewangan at Bank Negara.</p> <p>The MACC should verify the declarations made by both politicians to the parliamentary committee and by civil servants to their ministry.</p>	<p>👥 Allow public access to assets declared</p> <p>Making information on assets declared publicly available (particularly for high-level officials) is key to improving the perception of corruption.</p> <p>Once verified, the MACC should make all information available publicly. The information can be made automatically available. However, for protecting privacy, the information can be made available by request.</p> <p>If the information is only made available to the public by request, parliament should look seriously into introducing a Freedom of Information Act.</p> <p>“ <i>If the information is only made available to the public by request, parliament should look seriously into introducing a Freedom of Information Act</i> ”</p>
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