



PRIME MINISTER'S DEPARTMENT
NATIONAL CENTRE FOR GOVERNANCE, INTEGRITY AND ANTI-CORRUPTION

MACC ACT SECTION 17A

ADEQUATE PROCEDURES

BEST PRACTICE HANDBOOK



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In Collaboration With:



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TERMS AND DEFINITIONS



ABBREVIATIONS

ABMS	Anti-Bribery Management System
AML	Anti-Money Laundering
AMLA	Anti-Money Laundering Act of 2001
BOD	Board of Directors
CCRIS	Central Credit Reference Information System
CEO	Chief Executive Officer
CSR	Corporate Social Responsibility
CTOS	CTOS Data Systems Sdn Bhd
HR	Human Resource
HOD	Head of Department
KPI	Key Performance Indicator
LOA	Limits of Authority
MACC	Malaysian Anti-Corruption Commission
MD	Managing Director
OACP	Organisational Anti-Corruption Plan
PDRM	Royal Malaysian Police (Polis Diraja Malaysia)
Q&A	Question and answer
SOP	Standard Operating Procedure
SSM	Companies Commission of Malaysia (Suruhanjaya Syarikat Malaysia)

DEFINITIONS

Business associate(s) An external party with whom the organisation has, or plans to establish, some form of business relationship. This may include clients, customers, joint ventures, joint venture partners, consortium partners, outsourcing providers, contractors, consultants, subcontractors, suppliers, vendors, advisers, agents, distributors, representatives, intermediaries and investors. A business associate may also be referred to as a third party, particularly if the associate is acting on behalf of the organisation.

Corruption The abuse of entrusted power for private gain (Transparency International). It may be classified as grand, petty or political, depending on the amounts of money lost and the sector where it occurs.

Corrupt practices involve the receiving, obtaining or soliciting, offering, promising, giving, directly or indirectly, anything of value ('gratification') to improperly influence the action(s) of another party, by misusing the authority of their position.

Offences under the MACC Act 2009 include:

- a) Accepting/receiving/soliciting gratification (Section 16(a) and 17(a))
- b) Offering/giving gratification (Section 16(b) and 17(b))
- c) Making false claim (Section 18)
- d) Using public office or position for gratification (Section 23)
- e) Companies using gratification to win or retain business, or to secure an advantage in business (Section 17A)

Forms of corruption include bribery, kickbacks, facilitation payments, conflict of interest, charitable donations and sponsorships, political donations, patronage, cronyism, nepotism, entertainment/ hospitality, bid rigging, discounts, commissions, rent seeking, false claims and abuse of position.

Corruption Perception Index (CPI) The Corruption Perception Index (CPI) by Transparency International scores and ranks countries/territories based on how corrupt a country's public sector is perceived to be. It is a composite index combining information from 13 data sources from 12 different institutions. The CPI is the most widely used indicator of corruption worldwide.

Corruption Risk Assessment (CRA) A diagnostic tool to identify weaknesses within a system that may present opportunities for corruption to occur. (Transparency International). Details of specific risks are also often included.

Corruption Risk Management (CRM)	A management process which helps to identify structural weaknesses that may facilitate corruption, provides a framework for all staff to take part in identifying risk factors and treatments, and embeds corruption prevention within a well-established governance framework. (Independent Commission Against Corruption, New South Wales, Australia).
Corruption Risk Management (CRM)	The discipline by which any organisation in any industry assesses, controls, exploits, finances and monitors risk from all the sources for the purpose of increasing organisations short-term and long-term value to its stakeholders.
Facilitation payment	Any payment made as a bribe to secure or expedite the performance of a routine or necessary action to which the payer of the facilitation payment has legal or other entitlement. Facilitation payment is also commonly known as 'duit kopi' or 'under-the-table money'.
Gratification	Stated in Section 3 of the MACC Act to be anything of value which can be offered, given, requested or received to illicitly influence the actions of a person in a position of trust within an organisation as an act of corruption.
Key Results Area (KRA)	A strategic factor that is either internal to the organisation or external. An area that is identified as important or crucial where a result will assist in the achievement of the set objectives or goals. Key Result Areas are sometimes known as "critical success factors" or "key drivers of success".
Limits of Authority (LOA)	The organisation's internal framework regulating levels of approval for various transactions.
Management	Person or group of people who directs, controls and makes decisions for or on behalf of an organisation.
No gift policy	Policy that prohibits the giving and receiving of gifts to and from third parties having business dealings with the organisation. It may be absolute, or have limited (usually stated) exceptions.

Non-Disclosure Agreement (NDA)	A legally binding contract that establishes a confidential relationship between signatories allowing them to share sensitive information on a controlled basis.
Operational Risk Management (ORM)	Application of the risk management process to operational risk which treats a broader spectrum of risks than traditional risk management but a more limited set of risks than Management (ERM).
Organisation	Person or group of people that has its own functions with responsibilities, authorities and relationships to achieve its objectives. The concept of organisation includes, but is not limited to: sole-trader, company, corporation, firm, enterprise, statutory body, authority, partnership, charity or institution, or part or combination thereof, whether incorporated or not, public or private.
Organisational Anti-Corruption Plan (OACP)	An organisational anti-corruption policy document that addresses weak governance, integrity and corruption issues in the organisation.
Personnel	Any person who is in the employment in an organisation which includes expatriates, secondees, interns and individuals on contract or part-time hire.
Stakeholder	Person/organisation that can affect, be affected by or perceive itself to be affected by a decision or activity of the organisation.
Third party	Person, business or other entity that is independent of the organisation.
Top-level management	The Board and/or top executives ('C-Suite') of a company.
Whistleblower	A person who reports on a person or organisation regarded as engaging in an unlawful or immoral activity.
Whistleblowing	Deliberate, voluntary disclosure or reporting of individual or organisational malpractice by a person who has or had privileged access to data, events or information about an actual, suspected or anticipated illegal or immoral act.

INTRODUCTION

This handbook is intended to assist commercial organisations in understanding what is required for the adequate procedures in more detail, based on industry practices that can be implemented to help prevent the occurrence of corrupt practices.

This Adequate Procedures Best Practice Handbook was developed to complement the existing Guidelines on Adequate Procedures published by the Prime Minister's Office of Malaysia in December 2018. This handbook is intended to assist commercial organisations in understanding what is required for the adequate procedures in more detail, based on industry practices that can be implemented to help prevent the occurrence of corrupt practices.

The Guidelines were structured on the basis of five 'TRUST' principles which may be used as reference points for the anti-corruption programme implemented by the company:

- 4.1 **T**op Level Commitment
- 4.2 **R**isk Assessment
- 4.3 **U**ndertake Control Measures
- 4.4 **S**ystematic Review, Monitoring and Enforcement
- 4.5 **T**raining and Communication

The Guidelines were designed to be high-level rather than detailed and prescriptive, suitable for any size of company while leaving room for adaption and innovation by individual enterprises. This new handbook is designed to help companies achieve that end, using the experience of those directly involved in setting up and running anti-corruption systems for Malaysian companies.

For the development of the handbook, workshops were conducted by the Business Integrity Alliance (BIA) with a total of 40 industry practitioners from the anti-corruption field. Details of the participants are included at the end of the booklet.

Brainstorming sessions were held to document their inputs on best practice they have found useful for the implementation of adequate procedures, using the TRUST principles as the framework. Their contributions and ideas have been incorporated here using the same structure.

This handbook also includes the text of the actual Guidelines at the beginning of each section. These are followed by the recommendations provided by industry practitioners. The sets of recommendations are presented in the form of the questions which were used in the workshops, followed by the answers given by the practitioners. Note that the information provided has been processed, edited and enhanced by the handbook production team to remove duplicate entries, improve the flow and maximise its usefulness.

It is important to note that the items recorded are **recommendations only**. They should not be taken as legal requirements, but rather as best practice suggestions for other companies to consider.

The handbook may be amended and republished from time to time as may be deemed necessary to suit the policy direction of the Government of Malaysia on governance, integrity and anti-corruption.

With this publication, the BIA is pleased to support the National Centre for Governance and Anti-Corruption in establishing another milestone on the journey of corporate Malaysia towards excellence in business integrity and anti-corruption practices.

Dr Mark Lovatt
Secretary-General
The Business Integrity Alliance



ADEQUATE PROCEDURES PRINCIPLES



PRINCIPLE I: TOP-LEVEL COMMITMENT

The following are components from the Guidelines on Adequate Procedures:

- 4.1.1. *The top-level management is primarily responsible for ensuring that the commercial organisation:*
- (i) *Practices the highest level of integrity and ethics;*
 - (ii) *Complies fully with the applicable laws and regulatory requirements on anti-corruption; and*
 - (iii) *Effectively manages the key corruption risks of the organisation.*
- 4.1.2. *The top-level management must be able to provide assurance to its internal and external stakeholders that the organisation is operating in compliance with its policies and any applicable regulatory requirements. This may include establishing the organisation's "tone from the top" (i.e. the organisation's general stance against the use of corrupt practices in relation to its business activities), and spearheading the organisation's effort to improve upon the effectiveness of its corruption risks management framework, internal control system, review and monitoring, and training and communication.*
- 4.1.3. *Thus, for this purpose, commercial organisations should carry out the following:*
- (i) *Establish, maintain, and periodically review an anti-corruption compliance programme which includes clear policies and objectives that adequately address corruption risks;*
 - (ii) *Promote a culture of integrity within the organisation;*
 - (iii) *Issue instructions on communicating the organisations' policies and commitments on anti-corruption to both internal and external parties;*
 - (iv) *Encourage the use of any reporting (whistleblowing) channel in relation to any suspected and/or real corruption incidents or inadequacies in the anti-corruption programme;*
 - (v) *Assign and adequately resource a competent person or function (which may be external to the organisation) to be responsible for all anti-corruption compliance matters, including provision of advice and guidance to personnel and business associates in relation to the corruption programme;*
 - (vi) *Ensure that the lines of authority for personnel tasked with responsibility for overseeing the anti-corruption compliance programme are appropriate; and*
 - (vii) *Ensure that the results of any audit, reviews of risk assessment, control measures and performance are reported to all top-level management, including the full BOD, and acted upon.*

ADDITIONAL GUIDANCE AND RECOMMENDATIONS

PRINCIPLE I: TOP-LEVEL COMMITMENT

Q1: How should the top-level management establish the organisation's "tone from the top"?

1. The top-level management, consisting of the BOD and C-Suite of the organisation, can show its commitment by establishing the anti-corruption programme for the company which comprises of the following methods:
 - a) Endorse all anti-corruption policies established by the organisation;
 - b) Implement adequate procedures or ISO37001:2016 ABMS programme;
 - c) Authorise and endorse the OACP for the company;
 - d) Establish a proper function or person-in-charge to assist Management and the Board to manage corruption risk through the Anti-Bribery and Corruption programme; and
 - e) Have anti-corruption and ethics as a standing item on the BOD and Executive Committee ('Exco') agendas.
2. The top-level management should consistently communicate the company's position on anti-corruption both internally and externally, ensuring the communication reaches all personnel and key business associates within a targeted time frame. Methods may include:
 - a) Publish the anti-corruption commitment on the website;
 - b) Show video clips featuring integrity messages from key leaders of the organisation;
 - c) Post integrity messages on the company intranet;
 - d) Conduct townhall sessions with live sharing by key leaders of the organisation, emphasising the importance of integrity;
 - e) Include regular articles in the company newsletter from top management explaining what integrity means and why it matters;
 - f) Release press statements to the mainstream media emphasising the top management's commitment to zero tolerance of corruption and stating actions being taken to strengthen the company's integrity. Information on the whistleblowing channel for external parties to flag corruption issues may also be included; and
 - g) Include Integrity Statement from the BOD and top management, with details of the anti-corruption programme, in the Annual Report and Sustainability Report.
3. The top-level management should establish specific committees and / or persons-in-charge to drive the anti-corruption programme. Actions may include:
 - a) Establishing an anti-corruption governance structure that provides clarity of roles and responsibilities in managing corruption risk and its related programs;
 - b) Appointing a designated Chief Integrity Officer or Compliance Officer to manage the programme with proper and sufficient resources, including people with the right experience and capacity to carry out the intended role;
 - c) Having a Whistleblowing Committee in charge of handling whistleblowing reports. The Committee should be independent from the management and accountable to an Independent Non-Executive director;

- d) Having an Anti-Corruption Management Committee which functions as a working committee for the programme; and
- e) Endorsing the anti-corruption framework, which provides a single, dedicated overarching structure to manage standardisation and consistency across the organisation, including policies, procedures, systems, technology and culture.

Q2: How should a commercial organisation promote a culture of integrity within the organisation?

1. A culture of integrity within the organisation should start at the top and cascade downwards. The top-level management holds the responsibility of cultivating a culture of integrity first within themselves before expecting the organisation to adopt the culture. Some examples that should be emulated by the top-level management include:
 - a) Making use of opportunities during board and other committee meetings to discuss the anti-corruption programme and how it can be further improved;
 - b) Showing a personal attitude of zero-tolerance towards corruption and at all times be seen as an example for all personnel to follow;
 - c) Seeking to comply with all relevant laws and regulations at all times and emphasise on the importance of compliance throughout the organisation; and
 - d) Communicating actively and regularly on integrity and anti-corruption with their subordinates as a constant reminder of its importance to the company and themselves personally.
2. An efficient way to foster a culture of integrity within the organisation is through effective communication on integrity and governance as well as implementing the anti-corruption programme. Several ways to ensure that communication reaches the internal and external staff are:
 - a) Ensure that communication materials such as bulletins, newsletters, announcements, posters or emails are clearly visible, in prominent places and well-designed in order to gain the attention of targeted audiences;
 - b) Ensure that the language(s) used is/are easily understood throughout the whole organisation and across all levels both internally and externally; and
 - c) Regularly invite external parties such as the MACC or industry experts to give talks and presentations to the personnel on combatting corruption.
3. The organisation should regularly conduct programmes, activities and training as part of their implementation process to promote a culture of integrity. Examples of items that could be conducted within an organisation include:
 - a) Holding an annual integrity event to raise awareness on integrity and anti-corruption advocated by the organisation's CEO or MD. Personnel can receive company merchandises such as t-shirts, door gifts and goodie bags complete with integrity messages as prizes for activities or games. This light-hearted event can carry the anti-corruption message across effectively;
 - b) Conducting Corruption Risk Assessments (CRA) regularly to remind personnel to be mindful of corruption risks in the company;
 - c) Providing statistics and examples from the industry and the company (if relevant) of actual cases which have been exposed and/or resulted in a prosecution;
 - d) Using Integrity Surveys to assess and monitor the integrity and anti-corruption awareness of personnel. Preferably this should be done by an external service provider, and conducted anonymously so that people give an accurate picture of the integrity level of the organisation. The results of this survey could be used to analyse ways to improve the culture of the organisation;

- e) Making integrity and anti-corruption training compulsory for all personnel upon employment as well as annually. Training should be a continuous effort with the purpose of shaping the culture of integrity within the organisation. Organisations can consider good-quality e-learning as an effective platform for reaching personnel. Personnel should be able to complete the modules at their own pace, with post-training testing to gauge the effectiveness;
 - f) Requiring all personnel to sign an integrity pledge, from the top management down. The organisation may also make a public commitment by signing a Corporate Integrity Pledge with the MACC in a public signing ceremony; and
 - g) Encouraging 'self-responsibility to report' any misconduct observed using available channels within organisation, to promote and demonstrate whistleblower protection and confidentiality.
4. The organisation is recommended to show public recognition of good integrity and ethics to personnel which may be done in the following ways:
- a) Acknowledge model personnel who have shown high levels of integrity by awarding them with a "Person of Integrity" award or similar. This can be done by conducting a staff survey to identify exemplary personnel;
 - b) The organisation should also publicise examples of integrity and ethics done by personnel via email, the intranet or company newsletter as a form of encouragement to other people to emulate them; and
 - c) The organisation may award special benefits to personnel who display great efforts of integrity such as a privileged parking space, free meals for a month at the canteen, etc.
5. The culture of integrity within an organisation depends on how serious the organisation tolerates corrupt behaviour. When people within the organisation are aware of the serious consequences of corrupt behaviour, this will encourage them to act with integrity. The organisation is recommended to:
- a) Ensure that action will be taken against anyone who is involved in a corrupt act. This may include automatic termination of contract and reporting to the authorities where corruption has been proved to have occurred;
 - b) Ensure that all whistleblowing reports are taken seriously with appropriate and necessary action taken; and
 - c) Publicise the results of successful investigations, including lessons learnt and actions taken. This will prove that the company will prosecute anyone involved in corruption, regardless of their position. Note that legal advice should be sought before releasing sensitive information, and the personal details of those involved should not be disclosed to avoid defamation suits.
6. It is highly recommended for all organisations to ensure that all personnel and business associates take the Integrity Pledge to demonstrate their commitment towards creating a transparent and fair business environment that is free from corruption. This can be done yearly or once every few years.

Q3: What should be the reporting line of the person in charge of the anti-corruption programme?

1. The person in charge of the anti-corruption programme should report directly to the Board or a BOD-level independent committee such as the Audit or Risk Management Committee as determined by the Board, and administratively to the CEO or MD. This is to ensure their independence from the management's opinions or interests. There must not be any interference from the top level management regarding reports made to the Board or Board committee on a corruption-related matter.
2. The performance review and annual appraisal of the person in charge should be managed by an Independent Non-Executive director or equivalent to ensure the person is able to do their job without interference from the Top Management.
3. The appointment of the person in charge of the anti-corruption programme should be decided (or at least endorsed) by the BOD. This includes any decision on remuneration, performance, promotion and resignation of the person.

Q4: How often do you report the results of audit, reviews of risk assessment, control measures and performance to all top-level management and BOD?

1. For corruption-related matters, the results of audits, along with reviews of the risk assessment, control measures and performance should be a regular item on the agenda of the top-level management and BOD meetings. The recommended frequency for reporting to the appropriate parties are:
 - a) Quarterly reporting to top-level management and BOD; and
 - b) More frequent (e.g. monthly) reporting on high risk or sensitive red flag issues, material changes in situations which result in increased corruption risks, outcomes of investigations, etc.

Q5: Who/which committee(s) do you report to?

1. The appropriate BOD-level and management committees for anti-corruption-related matters include:

BOD-level:

- a) Audit Committee;
- b) Risk Management Committee;
- c) Audit and Risk Management Committee;
- d) Audit & Examination Committee;
- e) Compliance Committee; and
- f) Board Integrity Committee.

Top-management level:

- a) Audit and Risk Management Committee;
- b) Risk, Integrity Management Committee;
- c) Management Risk Control Committee;
- d) Group Management Committee;
- e) Management Compliance Committee; and
- f) Whistleblowing Committee
(for whistleblowing matters only).

Q6: How do you manage follow-up to ensure action is taken?

1. The HOD/person-in-charge of the action task should be tasked with monitoring their respective actions plans and report any deviation from the plan to the person in charge of the anti-corruption programme.
2. The integrity or compliance unit should monitor action plans proactively on a regular basis. For action plans to mitigate high risks, immediate action should be required, while action plans for medium risks should be carried out within three (3) to six months (6). For low risks, action plans should be carried out within six (6) to 12 months.
3. Consequential action such as impacting KPI or bonuses should be taken against risk owners who fail to execute the action plans according to the timeline, especially where the actions relate to reducing high risks.
4. Surprise checks or spontaneous audits can be conducted to check on the implementation of Anti-Bribery and Corruption (ABC) policies and procedures to support the zero tolerance stand on ABC and encourage a compliance culture.
5. It is recommended that integrity champions or integrity liaison officers be appointed within the business units to assist in adopting initiatives, implementing the anti-corruption programme and doing ongoing monitoring. The integrity champions should continue to report directly to their HODs, but report indirectly to the person in charge of the programme on matters relating to corruption.
6. The organisation could implement a requirement for assurance letters to be signed by all HODs to ensure they take responsibility for the anti-corruption programme affecting their sectors.

PRINCIPLE II: RISK ASSESSMENT



The following are components from the Guidelines on Adequate Procedures:

- 4.2.1. *A Corruption Risk Assessment should form the basis of an organisation's anti-corruption efforts. As such, the commercial organisation should conduct corruption risk assessments periodically and when there is a change in law or circumstance of the business to identify, analyse, assess and prioritise the internal and external corruption risks of the organisation. This risk assessment should be used to establish appropriate, processes, systems and controls approved by the top level management to mitigate the specific corruption risks the business is exposed to.*
- 4.2.2. *For this purpose, it is recommended that a comprehensive assessment done every three years, with intermittent assessments conducted when necessary. The assessment may include the following:*
- (i) Opportunities for corruption and fraud activities resulting from weaknesses in the organisation's governance framework and internal system/procedures;*
 - (ii) Financial transaction that may disguise corrupt payments;*
 - (iii) Business activities in countries or sectors that pose a higher corruption risk;*
 - (iv) Non-compliance of external parties acting on behalf of the commercial organisation regarding legal and regulatory requirements related to anti-corruption. Note that, given the wide definition of an associated person, a commercial organisation can be liable for the acts of such third parties; and*
- (v) Relationships with third parties in its supply chain (e.g. agents, vendors, contractors, and suppliers) which are likely to expose the commercial organisation to corruption.*
- 4.2.3. *The risk assessment for corruption can be done on a stand-alone basis, but is recommended that the assessment be incorporated into the general risk register of the commercial organisation.*

ADDITIONAL GUIDANCE AND RECOMMENDATIONS



PRINCIPLE II: RISK ASSESSMENT

Q1: How should the periodic CRA be carried out?

1. The CRA should be coordinated or facilitated by the integrity, compliance or risk department of the organisation with support from all relevant departments. Each HOD of the organisation should update their corruption risk register regularly. The organisation may choose to engage a suitably qualified external expert to assist them, or an official Government body such as the MACC.

Medium and low risk items may be re-assessed less frequently, for example annually. It should also be done if there is a serious corruption incident, or whenever there is a significant change of circumstances such as entering a new market or commencing a major project.
2. It is recommended that an organisation implements Corruption Risk Management (CRM), with a comprehensive organisation-wide risk assessment with action plan produced at least once every three years and preferably more often.
3. Re-assessment of the corruption risks should be in accordance with the company risk policy and SOP, and at least twice a year for high risk items. Some companies may look at high risk items more frequently, for example on a monthly basis.
4. The organisation should have proper written guidelines and procedures for conducting the CRA.
5. The integrity, compliance or risk department should constantly monitor the progress of the action plans. Some organisations may opt to automate the tracking of the corruption risk using suitable software.
6. The results of the CRA should be reviewed by the integrity, compliance or risk department and the results reported to the appropriate BOD-level committee with the action plans included.

Q2: How should a comprehensive CRA be carried out and what should be covered in the assessment?

1. A comprehensive CRA should cover all functions and departments across the organisation including the CEO office. The focus should be on high risk jobs or high risk areas where there are greater tendencies and opportunities for corruption.
2. It is important to ensure that the risk template is shared across all functions and departments, and the risks are registered based on their operations.
3. High-risk positions ('Hot Jobs') particularly exposed to corruption should be identified.
4. Corruption risks may be generally categorised as outbound or inbound. Any (outbound) Section 17A corruption risks identified should be mitigated quickly and effectively.
5. All risks categorised as high risk and above should be presented to the appropriate board committee such as the Audit and Risk Management Committee at the earliest opportunity.
6. The risk matrix, risk appetite and risk parameters to be used for bribery and corruption must be established and endorsed by the BOD. They can be the same as or similar to those used for the general Enterprise Risk Management (ERM) programme.
7. An organisation may opt to separate the corruption risk register from the main register. However, a single consolidated risk register is preferred.
8. Key Risk Indicators (KRIs) should be determined for the organisation. Examples of KRIs include the number of whistleblowing reports lodged, number of convicted cases, and so on. KRIs may be allocated to specific departments to manage, and/or allocated to the top management, middle management, general employees, etc.

Q3: What system weaknesses could give rise to opportunities for corruption?

1. Weaknesses in the organisation's internal procedures and processes could give rise to opportunities for corruption. Organisations should pay close attention to the following:
 - a) Weak procurement processes which allow contracting with corrupt third parties;
 - b) Weak investment processes which result in corrupted decisions, for example where strong conflicts of interest result in overpayment on major acquisitions;
 - c) Weak credit approval processes which allow loans for unsuitable customers in exchange for gratification;
 - d) Weak project management processes and procedures which allow a delay in projects and cost overruns;
 - e) Weakness in detecting repeat Variation Orders (VOs) and other cost escalators;
 - f) Lack of consequential action for violations of the Code of Conduct which creates indifference towards abiding by the Code;
 - g) Lack of practicality in actual policies that results in personnel ignoring or overriding them;
 - h) Weaknesses in the due diligence and conflicts of interest management which creates opportunities for corruption;
 - i) Weakness in monitoring the action plan particularly when it is self-regulated, e.g. the risk owner not accurately stating or updating the control effectiveness, risk likelihood and impact; and
 - j) Weakness in establishing fit and proper controls, which allow management overrides.
2. Organisations that set unrealistic KPIs can result in personnel circumventing SOPs or worse, engaging in a corrupt act to achieve their KPIs.
3. A lack of monitoring and review, such as conducting audits and other checks, creates the risk of corruption incidences as the problem may go unidentified and unchallenged. It can then become a cultural norm in the organisation. This is particularly the case for organisations that implement the anti-corruption programme as a paper exercise but lack the continuous monitoring and improvement of the programme needed to make it effective.
4. A lack of regular communication on the anti-corruption policies may cause failure in getting the anti-corruption agenda across to all personnel and business associates. It would not be sufficient to communicate only once, for example after the approval of the new anti-corruption policies. Organisations ought to communicate on a regular basis, at least yearly.
5. Organisations that fail to publicise or be transparent about any corruption incidents they have may encourage an increase in corrupt activities, as personnel and business associates may not realise it is a real issue for the company and are unlikely to take the anti-corruption agenda seriously.

**Q4: How might you identify financial transactions which may be corrupt payments?
What characteristics might they have?**

1. Some examples of characteristics or red flags in financial transactions which may be corrupt payments include:
 - a) High frequency of a similar transaction made, e.g. of just below a Limits of Authority level;
 - b) Transaction with a high amount which is not linked to specific deliverables;
 - c) Irregular or suspicious transaction;
 - d) Request for payment with unjustified deliverables;
 - e) Unverified progress payments;
 - f) Transactions with no or insufficient supporting documents;
 - g) Misuse of authority limit;
 - h) Authority limit with a mismatch between competency and authority;
 - i) Urgent requisition cases that lead to misappropriation of financial transactions;
 - j) Variation orders approved by sole signatory;
 - k) Donations and sponsorships without sufficient information;
 - l) Provision of free services, goods or properties; and
 - m) Payment to individual or personal accounts.
2. In order for an organisation to mitigate risks of corrupt financial transactions, the organisation should have in place the following:
 - a) Proper petty cash management;
 - b) A transaction monitoring mechanism designed to detect suspicious transactions. This may include the use of data analytics and artificial intelligence;
 - c) Frequent financial audits focusing on suspicious transactions;
 - d) Proper SOPs to verify the source of transactions; and
 - e) Whistleblowing reporting to enable financial personnel to report suspicious transactions.

Q5: How would you identify if a country or sector should be considered high-risk for corruption?

1. One effective method of identifying if a country or sector is considered high-risk is by conducting comprehensive due diligence. Examples of sources that could be used in the due diligence process includes the following:
 - a) Corruption Perception Index (CPI) by Transparency International;
 - b) Corrupt person information from the MACC website;
 - c) External systems such as Dow Jones for Country Risk;
 - d) Reliable sources such as OECD, MACC, World Bank or relevant resources from the government for Sector Risk;
 - e) Reports from Fitch Solutions, Foreign Corrupt Practices Act (FCPA) Tracker, BakerTilly or Refinitiv; and
 - f) Compliance to AMLA.
2. Information found in the public domain could also provide relevant information to identify any high risk country or sector such as news articles on any active decisions made at parliament or any misuse of execution of power at ministry level.

Q6: How might you assess specific third parties for non-compliance risk?

1. Information found in the public domain could also provide relevant information to identify any high risk country or sector such as news articles on any active decisions made at parliament or any misuse of execution of power at ministry level.
2. An organisation should put in place appropriate measures for assessing business associates and ensure that such measures are adhered to. Examples of measures for business associates include:
 - a) Contractual provision prohibiting the business associate from committing any corrupt practices in relation to the organisation's work, for example via a Non-Disclosure Agreement (NDA) or letter confirming adherence to the Business Code of Conduct;
 - b) Include specific contract clauses to observe the anti-corruption policy, with exit clauses for failure;
 - c) Actively communicate the anti-corruption policies to the business associates, for example by a registered letter or email requiring a confirmation to remain on the Vendor List;
 - d) Conduct a risk assessment on business associates and have particular measures for those identified as being high-risk;
 - e) Evaluate the vendor/supplier's performance on an annual basis based on the set criteria agreed by both parties so that non-performing parties can be screened out for future contracts; and
 - f) Compulsory signing of Integrity Pledge (for individuals/sole traders) and Integrity Pact (for companies) by the business associates.

PRINCIPLE III: UNDERTAKE CONTROL MEASURES

The following are components from the Guidelines on Adequate Procedures:

4.3.1. *The commercial organisation should put in place the appropriate controls and contingency measures which are reasonable and proportionate to the nature and size of the organisation, in order to address any corruption risks arising from weaknesses in the organisation's governance framework, processes and procedures. These should include the following items:*

a) *Due diligence*

The commercial organisation should establish key considerations or criteria for conducting due diligence on any relevant parties or personnel including as BOD, agents, vendors, contractors, suppliers, consultants and senior public officials, prior to entering into any formalised relationships. Methods may include background checks on the person or entity, a document verification process, or conducting interviews with the person to be appointed to a key role where corruption risk has been identified.

b) *Reporting channel -*

The commercial organisation should:

- (i) *Establish an accessible and confidential trusted reporting channel (whistleblowing channel), which may be used anonymously, for internal and external parties to raise concerns in relations to real or suspected corruption incidents or inadequacies of the anti-corruption programme. For smaller organisations, the reporting channel can be as simple as a dedicated e-mail address;*
- (ii) *Encourage persons to report, in good faith, any suspected attempted*

or actual corruption incidents;

- (iii) *Establish a secure information management system to ensure the confidentiality of the whistleblower's identity and the information reported; and*
- (vi) *Prohibit retaliation against those making reports in good faith.*

4.3.2. *Furthermore, the commercial organisation should establish policies and procedures to cover the following areas:*

- (i) *A general anti-bribery and corruption policy or statement;*
- (ii) *Conflicts of interest;*
- (iii) *Gifts, entertainment, hospitality and travel;*
- (iv) *Donations and sponsorships, including political donations;*
- (v) *Facilitation payments;*
- (vi) *Financial controls, such as separation of duties and approving powers or multiple signatories for transactions;*
- (vii) *Non-financial controls, such as a separation of duties and approving powers or a pre-tendering process;*
- (viii) *Managing and improving upon any inadequacies in the anti-corruption monitoring framework; and*
- (ix) *Record keeping for managing documentation related to the adequate procedures.*

4.3.3. *In this regard, the organisation's policies should be:*

- (i) *Endorsed by top-level management;*
- (ii) *Kept up-to-date;*
- (iii) *Publicly and/or easily available; and*
- (iv) *Suitable for use where and when needed.*

ADDITIONAL GUIDANCE AND RECOMMENDATIONS

PRINCIPLE III: UNDERTAKE CONTROL MEASURES

Q1: What key consideration or criteria are important for conducting due diligence on relevant parties/personnel prior to entering any formalised relationship?

1. The relevant parties/personnel should be required to provide essential information such as company profile, business activities, country of establishment, works list, competency, management information and financial status of the company in order for the organisation to conduct a risk assessment and evaluation of the relevant parties/personnel as well as to determine the level of any additional due diligence required. It may be necessary for the relevant parties/personnel to complete an integrity questionnaire and conflicts of interest declaration to obtain additional information.
2. Examples of key considerations or criteria when conducting due diligence on relevant parties/personnel prior to entering a formalised relationship include:
 - a) List of convicted persons found in MACC or PDRM website;
 - b) Check against Office of Foreign Assets Control (OFAC), United Nations (UN) or other relevant Sanctions List;
 - c) Company profile and financial strength found in SSM or CTOS;
 - d) Check on compliance with AMLA rules and regulations;
 - e) Check on ownership structure and beneficial owners of the company;
 - f) Check on any relationship with government or Government Officers;
 - g) Check on lawsuits or legal proceedings of the company/personnel;
 - h) Check on ABC policy/handbook and training conducted; and
 - i) Check on any previous employment/business with the organisation for issues encountered.
3. The organisation should have in place proper personnel and third party screening guidelines. If an organisation is unable to conduct these due diligence checks internally, they may consider hiring external due diligence service providers, especially for high-risk business associates or employment positions.

Q2: How do you ensure the accessibility of the whistleblowing channel?

1. The whistleblowing channel should be visible and accessible enough for personnel or external parties to report any concerns. Recommendations include:
 - a) Publishing details of the whistleblowing channel on the company's website;
 - b) Displaying posters with information of the whistleblowing channel in highly visible areas such as corridors or walkways, and in departments which have been identified as high-risk;
 - c) Making channels easily accessible and active, preferably outside working hours. They can include a hotline, email address, online form or via direct contact with the person designated to receive such reports; and
 - d) Setting up an independent and reputable service provider to manage the reporting channel, with details well-publicised.
2. It is important for the whistleblowing channel to be handled by a specific person approved by the BOD who actively reads incoming messages and responds quickly to concerns raised. This will increase the trust of the whistleblower and create a good reputation for the channel, encouraging others to report as well.

Q3: How do you ensure the confidentiality of the whistleblower's identity and information reported?

1. As whistleblowers need to have confidence in the confidentiality of their identity and the information reported, the organisation should publish the whistleblowing procedure with clear guidelines and full assurance of protection for whistleblowers.
2. It is of utmost importance for organisations to protect the identity of the whistleblowers and the information provided by keeping it confidential. The whistleblowers should also be given immunity from any civil, criminal or disciplinary action due to the revealing of the act of corruption. This would encourage whistleblowers to report concerns without fear of their identity or information about them being exposed to hostile parties.
3. Organisations should also comply with the relevant sections of the Whistleblower Protection Act 2010 such as Sections 10, 13, 18 and 19.
4. It is recommended for organisations to minimise the number of persons in charge of the whistleblowing channel. This will ensure that only key trusted personnel are provided with information such as the whistleblower's identity and details of the report. The key personnel in charge must be required to sign NDA and be people of high integrity, trusted within the organisation and approved by the management and BOD.
5. The whistleblowing system must be highly secure and password-encrypted. Only the designated key personnel should be provided with the secure identification (ID) and password to access the reports lodged.
6. The report should be processed immediately by the designated person managing the system. The report should be tagged "confidential" at all times to avoid any information exposure to parties not authorised to read the report. Any investigation conducted must be done strictly as per the investigation procedure. The investigation may be conducted by a designated internal or external investigator or by a qualified member of the whistleblowing committee.

Q4: What are some key points that should be included in the general anti-bribery and corruption policy or statement?

1. In general, the anti-bribery and corruption policy should clearly state the scope and objectives of the programme. There should be an emphasis on the company's stand on anti-corruption as well as integrity values to uphold.
2. The company requires compliance with the anti-bribery and corruption policy, and with all anti-bribery and corruption laws that are applicable to the organisation. Compliance is required from all personnel and business associates working with the company. The policy should also highlight the serious implications of non-compliance to the policy with reference to MACC Act 2009.
3. The organisation should set boundaries such as to avoid doing business with, or having any affiliation with, parties who fail to accept the organisation's core values and policies, or parties who may harm the company's reputation.
4. The policy should also include the responsibilities of all personnel and business associates of the organisation such as:
 - a) Abiding by all internal policies, procedures and regulations relating to anti-corruption at all times;
 - b) Attending training and awareness sessions;
 - c) Maintaining proper and accurate books and records for all business dealings; and
 - d) Reporting any concerns via the whistleblowing channel.
5. The language used for the policy should be clear, simple and concise in order for it to be effective. Where necessary, organisations should provide it in dual language or translate it into the local language of personnel or business associates.
6. It is also vital to emphasise the company's commitment to continual improvement and to conduct periodic reviews of all anti-corruption related policies and procedures.
7. The policy should also state the company's commitment to the ongoing monitoring and auditing of the anti-corruption programme.
8. The policy should explain the authority and independence of the person in-charge of the anti-bribery and corruption programme.
9. The policy should be available as documented information and available to both internal and external stakeholders.

Q5: What are some key points that should be included in the conflicts of interest policy?

1. The conflicts of interest policy should include the definition of conflicts of interest be they actual or potential (or perceived), as well as examples of such situations in order to provide a clear understanding on the matter to personnel and business associates.
2. The organisation should clearly inform all personnel and relevant third parties of their duty to report any conflicts of interest related to family, financial or other connections directly or indirectly linked to their work.
3. There should be clear guidelines on when to declare such conflicts of interest. Conflicts of interest should be declared -
 - a) During the organisation's mandatory annual declaration; and
 - b) As and when a conflict arises.
4. The organisation should assess any conflicts of interest declared to identify any potential for corruption to occur or any possibility of the organisation's business being jeopardised, for example:
 - a) When the organisation's sales manager is related to a customer's procurement manager; or
 - b) When an organisation's line manager has a personal financial interest in a competitor's business.
5. The organisation should decide how to manage the conflicts effectively and practically, based on the risks identified.

By all staff:

- a) During the organisation's mandatory annual declaration; and
- b) As and when a conflict arises.

In addition, by staff in high-risk positions:

- c) During the recruitment process;
- d) Before any tender or bidding process; and
- e) Before participating in an investment or major trading activity.

6. All conflicts of interest declarations and decisions made to mitigate any risks arising should be recorded for future reference.

Q6: What are some key points that should be included in the gifts, entertainment, hospitality and travel policy?

1. The organisation should set out the purpose, definition and clear guidelines of acceptable and non-acceptable gifts, entertainment, hospitality and travel.
2. Organisations are recommended to avoid paying cash for gifts, entertainment, hospitality and travel as they are difficult to monitor and may pass through unrecorded.
3. There should be clear guidelines on acceptable limits and frequency of such gifts, entertainment, hospitality and travel that are allowed, appropriate to the business of the company and industry norms.
4. It should be distinctly stated that any form of gift, entertainment, hospitality, travel or promotional expense should never be provided or accepted in order to gain competitive advantage which could be recognised as a bribe.
5. Organisations should make it compulsory for all personnel to declare and document any gift, entertainment, hospitality or travel given or received exceeding any limits stated in the company policy. Such declarations should be verified and approved by the Head of Departments or appropriate personnel according to the LOA. Where necessary, it should be reviewed by the Head of compliance or integrity or someone of a similar role. If the item is found to be against the policy or creates suspicion of corruption, appropriate follow-up action should be taken such as returning the gift or require the personnel to bear the cost themselves.
6. Where possible, organisations should implement a "No Gift Policy", perhaps with certain limited exceptions stated clearly such as allowing gifts where refusal is likely to seriously offend. Any gifts then received must be reported for transparency reasons.
7. The organisation should provide clear guidelines or criteria when offering and providing gifts to public officials based on *Pekeliling Perkhidmatan Bilangan 3 Tahun 1998* (a link to the circular is included in Section 5 of this handbook below).

Q7: What are some key points that should be included in the donations and sponsorships policy, including political donations?

1. The organisation should state the type of donations and sponsorships that are allowed, with specific criteria needed for the request or application to be considered.
2. There should be a clear statement particularly regarding political donations. If allowed at all, political donations should be approved by the BOD.
3. No form of Corporate Social Responsibility (CSR), donation and sponsorship must be used as a conduit to circumvent, avoid or evade anti-corruption laws or facilitate fraud, illegal payments or money laundering activities.
4. All contributions should have proper documentation with information such as the recipient, purpose and other necessary disclosures by the persons involved in arranging and receiving the contribution. There should be no exemptions or special waivers for any parties.
5. The policy should clearly state the responsibilities of the person in charge of handling such donations, sponsorships and political donations. In some organisations, a special committee may be formed for such purpose.
6. The organisation must ensure that all such contributions be carefully evaluated for legitimacy, such as conducting due diligence on the beneficiary and the purpose of the programme to ensure it meets the intended objectives. Contributions should not be made to any beneficiary found to be controlled or influenced by any political party or political officials.
7. All donations and sponsorships must be made in accordance with the organisation's approval limits. It is recommended that such contributions be approved by the CEO, MD or BOD subject to the amount and type of donation or sponsorship. All political contributions, if allowed at all, should be approved only by the BOD.

Q8: What are some key points to be included in the facilitation payments policy?

1. The facilitation payments policy should include a clear definition and meaning of a facilitation payment.
2. Organisations should prohibit facilitation payments being made.
3. The exception may be given in the case of a life-threatening situation which should be promptly reported to the personnel's head of department, compliance or integrity department or any other relevant person in the organisation. A police report should also be made.
4. If any personnel received a demand for a facilitation payment, they must immediately report the incident to the compliance or integrity department, with a brief summary of the incident or allegation.

Q9: What are the important points to be included in financial controls (separation of duties and approving powers or multiple signatories for transaction)?

1. The organisation should establish appropriate Limits of Authority to provide a proper framework for expenditure approvals and approval of business documents.
2. The organisation should put in place proper financial SOPs for the payment system, and where possible should migrate from a manual system to a computer-based system, with a high level of automation where possible. This will increase the efficiency and lower the risks of corruption due to late payments or system manipulation.
3. Payments should require a minimum of two (2) signatories, especially for higher value payments.
4. The financial controls should be approved by the BOD, with a periodic review by external experts arranged by the management.
5. Accounts descriptions should be accurate and clear with a regular independent audit conducted.
6. All transactions must be attached with relevant supporting documentation for verification by the authorised party.
7. Any exceptions or discrepancies found should always be reported to the relevant parties such as compliance or audit for further review and investigation.
8. The use of cash should be restricted to the minimum.

Q10: What source documents have you found which would be useful for assessing the financial controls? Are there specific checklists you use, or items you have included which you would recommend?

1. Examples of source documents that would be useful for assessing financial controls include:
 - a) Recommendations for improvement of processes in internal and external audit reports, reports from external experts, etc.;
 - b) Bank Negara Malaysia AML guidelines for existing or new customers;
 - c) Ministry of Finance Circulation;
 - d) Reports from the National Audit Department; and
 - e) Reports from State Treasury Department.

Q11: What are the important points to be included in non-financial controls, such as separation of duties and approving powers or pre-tendering process?

1. Organisations should establish a procedure for procurement to require a minimum of three quotations/bids for tender in order to select the best contractor or vendor in the market.
2. Direct awards should be limited to specialist areas where three quotations are difficult to obtain, and should be approved by committee.
3. The organisation should establish appropriate Limits of Authority to provide a framework for delegation of power and authority.
4. There should be clear separation of duties, for example, the personnel who approve the final placement of a contract differs from the personnel originally requesting the goods and services. They should be from a different department or function from those managing the contract or approving work done.
5. The organisation should have clear pre-tendering processes for larger spends. At this stage, it might be important to conduct analysis such as a Feasibility Study Report or a benchmarking study to see if the proposed spending is really as required at this time.
6. As part of the pre-qualification process, the organisation should conduct due diligence on the parties wishing/expected to bid, to screen out unsuitable candidates. The due diligence may be conducted by an internal or external party.
7. For tendering there should be a competitive and transparent process that involves a specific or designated procurement committee. All sensitive information should be restricted to authorised personnel only. Organisations are advised to require all relevant third parties and those involved in the tender process to declare any conflicts of interest.
8. All relevant stakeholders should be briefed on the organisation's anti-corruption policies at an early stage in the process.
9. Tender committee members should be required to complete and sign a Conflicts of Interest declaration for the Chairman of the committee to review prior to each tender meeting commencing. Members must also be informed they must immediately declare any conflicts which they become aware of during the tendering exercise. Guidelines should be provided for the Chairman on how to manage any conflicts declared, e.g. the person must abstain from voting, step out from meeting immediately, etc.
10. Organisations should conduct independent audits on the non-financial controls on a regular basis. In addition, an external specialist review should be conducted on the procurement system to identify weaknesses which create opportunities for corruption.
11. For larger companies, using data analytics and artificial intelligence to identify corrupt or fraudulent behaviour should be considered.

Q12: What source documents have you found which would be useful for assessing the non-financial controls? Are there specific checklists you use, or items you have included which you would recommend?

1. Examples of source documents that would be useful for assessing non-financial controls include:
 - a) Recommendations for improvement of processes in internal and external audit reports, reports from external experts, etc.;
 - b) Data governance control such as Personal Data Protection Act 2010, Confidential Business Information/Trade secret, etc.;
 - c) Bank Negara Malaysia AML guidelines for existing or new customers;
 - d) Ministry of Finance Circulation;
 - e) Reports from the National Audit Department; and
 - f) Reports from State Treasury Department.

Q13: What are the important key points for record keeping for managing documentation related to the adequate procedures?

1. It is recommended that the record keeping policy for managing documentation related to the adequate procedures comply with regulators. Government agencies may be subject to the National Archives Act 2003.
2. Documents should be clearly categorised and complete with relevant information such as date and owner. Examples of information that should have proper record keeping include the following:
 - a) All anti-bribery and corruption related policies and procedures;
 - b) Training materials and attendance lists;
 - c) Minutes of meetings;
 - d) Gift and entertainment logs; and
 - e) Conflicts of interest declarations.
3. The recommended retention period for documents is seven (7) years as set out by Bank Negara Malaysia. However, organisations should always follow the more stringent requirement, if any.
4. All anti-bribery and corruption related record keeping should be under the purview of the compliance or integrity department or a department of similar function.
5. Organisations should consider migrating all manual record keeping processes to online such as the intranet. They should establish a well-structured management system, with all information backed up securely. Accessibility to confidential or sensitive information must only be allowed for specifically authorised personnel on a need-to-know basis.

PRINCIPLE IV: SYSTEMATIC REVIEW, MONITORING AND ENFORCEMENT

The following are components from the Guidelines on Adequate Procedures:

- 4.4.1. *The top-level management should ensure that regular reviews are conducted to assess the performance, efficiency and effectiveness of the anti-corruption programme, and ensure the programme is enforced. Such reviews may take the form of an internal audit, or an audit carried out by an external party.*
- 4.4.2. *The reviews should form the basis of any efforts to improve the existing anti-corruption controls in place in the organisation.*
- 4.4.3. *For this purpose, the commercial organisations should consider the following:*
- (i) Plan, establish, implement and maintain monitoring programme, which covers the scope, frequency, and methods for review;*
 - (ii) Identify the competent person(s) and/or establish a compliance function to perform an internal audit, in relation to the organisation's anti-corruption measures;*
 - (iii) Conduct continual evaluations and improvements on the organisation's policies and procedures in relation to corruption;*
 - (iv) Consider an external audit (for example MS ISO 37001 auditors) by a qualified and independent third party at least once every three years to obtain assurance that the organisation is operating in compliance with its policies and procedures in relation to corruption;*
 - (v) Monitor the performance of personnel in relation to any anti-corruption policies and procedures to ensure their understanding and compliance with the organisation's stance in their respective roles and functions; and*
 - (vi) Conduct disciplinary proceedings against personnel found to be non-compliant to the programme.*

ADDITIONAL GUIDANCE AND RECOMMENDATIONS

PRINCIPLE IV: SYSTEMATIC REVIEW, MONITORING AND ENFORCEMENT

Q1: How does your organisation ensure that regular reviews of the programme are conducted?

1. Organisations should put in place an annual plan for the anti-corruption programme by optimising all available resources. Examples of programmes as part of the annual plan may include:
 - a) CRA/CRM/ERM Assessment;
 - b) Business Impact Analysis of the Operational Risk Management (ORM);
 - c) Vendor declaration documentation assessment;
 - d) Management tender committee review; and
 - e) Survey on the effectiveness of the anti-corruption programme. This may be done by interviewing relevant people, conducting online surveys, conducting audits, etc.
2. Regular reviews of the anti-corruption programme may be conducted by one or more independent parties such as:
 - a) Internal audit department;
 - b) Compliance or integrity department;
 - c) Risk management department;
 - d) Any special working committee for such purposes which may comprise of relevant heads of department; and
 - e) External experts with the right background and experience, including ISO 37001 specialists and the MACC.
3. An internal audit of the programme should be conducted at least once a year by the internal audit department or personnel equipped with the necessary skills and experience. Organisations may choose to perform a self-audit or cross audit (inter-department).
4. Internal audits may be conducted using a thematic approach, i.e., the scope may be based on the following:
 - a) High risk areas and their respective controls;
 - b) OACP-related requirements;
 - c) ISO 37001 certification scope;
 - d) Specific anti-bribery and corruption policies and procedures; and
 - e) Results of audits, whistleblowing reports or assessments conducted by expert reviewers.
5. A useful method to understand or identify any areas of improvement for the anti-corruption programme is to conduct a gap analysis. This may be done internally or by an external party.
6. The organisation may choose to conduct a benchmarking exercise against other companies that are successful implementers of the programme or against international best practice to further improve the programme.
7. Another useful assessment is the Risk and Control Self-Assessment (RCSA) to assess operational risks and effectiveness of controls used to mitigate them.

8. It is recommended for organisations to engage a competent party, preferably an external subject-matter expert to conduct the first review six (6) to 12 months after the implementation of the programme to ensure that the programme is on the right track. Thereafter, a planned review of the overall programme may be conducted annually, or every two to three years by the integrity, compliance or other department of similar function, and/or by engaging the services of an external expert. Involving an external subject-matter expert provides additional assurance to the BOD and top management that the programme is in line with best practice, and can introduce new ideas and techniques to maximise the effectiveness of the programme.
9. Organisations may conduct integrity surveys among personnel or third parties to measure the level of integrity within the organisation.
10. The results of any review, assessment, analysis or audit conducted should be used to improve the anti-corruption programme or uncover any elements of corruption within the organisation. The organisation should take into account any statistics of corruption cases, non-compliances as well as whistleblowing reports.

Q2: How often should Internal Audit review the programme? 6-monthly/yearly/once in x years/ other?

1. Organisations may choose to conduct a risk based audit. For organisations or departments that are high risk, the audit should be conducted at least once a year, while others may choose to conduct an audit at least once every two or even three years, depending on the nature of the business.
2. If there are urgent non-compliant matters to manage, the internal audit department should conduct monthly review meetings.
3. It is important for the internal assessment by the compliance or integrity unit to be aligned with the audit to be conducted by internal audit department.
4. It is recommended for the internal audit department to conduct quarterly reporting to the BOD, and if necessary report any serious offences to the MACC following approval from the BOD, top management and integrity or compliance unit.

Q3: How does your organisation plan, implement and maintain the monitoring of the anti-corruption programme?

1. The monitoring of the anti-corruption programme should be a continuous effort to ensure that the programme is running as planned.
2. It is important for organisations to set an appropriate timeline and framework to complete any action plans, measures or new initiatives and update the board committees or BOD accordingly.
3. Organisations should monitor whether all anti-corruption policies and procedures are practical for the organisation to work with, by engaging with internal stakeholders and gathering feedback.
4. Organisations should monitor all subsidiaries and business units to ensure that they adopt the necessary initiatives.
5. The organisation may appoint the integrity, compliance, risk or other relevant departments/ functions to conduct the monitoring of the system. Some organisations may choose to form a special committee for this purpose.
6. Depending on the nature of the business, organisations may also be monitored externally by the relevant regulators such as Bank Negara Malaysia or certain governmental ministries.
7. Public listed companies should monitor the programme to ensure that it meets the time frame stipulated in its OACP as well as whether the programme meets the expectations of Bursa Malaysia Regulations.
8. For organisations with a larger scale anti-corruption programme, the monitoring work should be delegated to dedicated staff in specific functions that would be able to support the programme. All monitoring activities should be prioritised based on the plan and timeline set by the management.
9. Organisations could form a network of Risk Champions from various business units, departments or divisions to ensure that the anti-corruption programme is streamlined throughout the organisation. Organisations may choose to create a framework for the anti-corruption programme with collaboration from various departments.
10. The results of the monitoring activities should be reported on the following basis:
 - a) To the BOD and respective integrity or compliance board committees on a quarterly basis, or more often if necessary;
 - b) By all business units on a quarterly basis to integrity or compliance departments. Reports should include performance against any KPIs and any non-compliance incidents or trends identified;
 - c) The organisation's CEO or MD should also report annually to the BOD with an overall summary of the programme, with recommendations for improvement; and
 - d) External stakeholders such as the MACC, appropriate ministries, regulators or other bodies should be updated as and when necessary.

Q4: How should monitoring of the programme be conducted? In particular, how would the organisation divide the roles and responsibilities up between the departments involved (IGU/ Compliance/Internal Audit/others)?

1. The organisation should first identify the relevant stakeholders of the programme. Examples are:
 - a) Compliance or integrity;
 - b) Human Resources (HR);
 - c) Legal;
 - d) Communication;
 - e) Internal Audit;
 - f) Risk Management;
 - g) Finance; and
 - h) Procurement.
2. The organisation should put in place a comprehensive monitoring programme framework and require all relevant stakeholders to be engaged. Where necessary, the organisation should establish clear Terms of Reference (TOR) for the respective stakeholders to detail the segregation of duties between functions. There should be regular meetings between the different heads of department to avoid any duplication or redundancy of work. Examples of responsibilities of each department include:
 - a) The integrity or compliance unit should set the integrity standards for the organisation and be in overall charge of the anti-corruption programme. Their role should include continuous evaluation and improvement of the procedures. If separate, the compliance function should ensure the overall compliance of the organisation to the standards set by the integrity unit;
 - b) The HR department should assist the integrity or compliance unit in anti-corruption training for personnel and assist in other areas such as managing conflicts of interest issues;
 - c) The legal department should look into the control measures in terms of the governance and compliance with all anti-corruption laws, rules and regulations;
 - d) The communication department should be in charge of the communication of the anti-corruption programme to all personnel and business associates. They should receive direction from the integrity or compliance unit;
 - e) The internal audit department should be in charge of conducting audits on the anti-corruption programme of the organisation at least once a year or as may be deemed appropriate;
 - f) The risk management department should conduct the CRA of the organisation as to the likelihood and impact of any non-compliance or corruption risk, based on the standard set by the integrity or compliance unit;
 - g) The finance department has an important role to play in ensuring that the organisation adheres to all financial controls to avoid any corrupt transactions; and
 - h) The procurement department should adhere to all non-financial controls in their daily responsibilities and practice self-monitoring to maximise compliance to the processes.

3. The organisation should ensure that there are clear guiding principles when setting up the monitoring framework. This can be done with the assistance of an external specialist if required.
4. The organisation may choose to monitor the programme by benchmarking against other companies to assess how well the anti-corruption programme is positioned against best practice.
5. The organisation may monitor the progress of the anti-corruption programme by conducting surveys to obtain feedback from personnel on the anti-corruption programme. This would enable the organisation to identify improvements to be made.
6. The results of the monitoring process should be reported to the top management and BOD.
7. Where applicable, the results of the risk assessment and analysis should be formalised into policies or procedures to improve the anti-corruption programme.
8. The organisation should monitor the progress and impact of the anti-corruption training and awareness programme, for example via feedback received from the trainees in order to work on any improvements needed.
9. Any whistleblowing report received should be analysed to see if there are any gaps in the system that created an opportunity for corrupt behaviour.

Q5: How can the effectiveness of the programme be tested?

1. It is best to conduct effectiveness testing of the programme six (6) to 12 months after implementing the programme to gauge the overall success of the programme.
2. If the system was developed internally, it is advisable to have an external specialist conduct the assessment. This should include a gap analysis to identify if there are any areas of the system needing further work to make it effective.
3. The organisation may wish to conduct adequacy scoring for the anti-corruption programme using the five T.R.U.S.T principles as the framework, to identify areas which need enhancement.
4. Conduct post-training tests as part of the training programme to gauge their understanding of the company's position in key areas.
5. Conduct regular (e.g. annual) integrity surveys or questionnaires to measure the success and effectiveness of the programme on an ongoing basis, and track the results over the years. An anonymous survey conducted by an experienced external party is likely to produce the most accurate result.
6. Conduct a benchmarking exercise with peer organisations based on the result of pre- and post-anti-corruption programme assessments to compare any changes in the integrity culture of the organisation after implementing the programme.
7. Analyse the statistics of whistleblowing reports, non-compliances and misconducts in the company and compare results with previous years to see if the system is improving and where further enhancements can be applied.
8. Use data analytics to assess compliance to the specific processes put in place to prevent corruption, identify potential rogue actions, payments which could be related to corrupt activities, etc.
9. Engage an external party to conduct an assessment such as the MACC or an experienced anti-corruption specialist.

Q6: What qualities or qualifications should an external party have to be considered suitable to conduct an external audit?

1. All external parties conducting an audit on the anti-bribery and corruption programme should have one or more the following qualities:
 - a) Reputable person or company that is an independent and well versed in ABMS requirements;
 - b) Accomplished track record in the area of implementing/managing/auditing integrity and anti-corruption systems;
 - c) Widespread, longstanding exposure to corruption risk or integrity issues at an organisation level;
 - d) Being a recognised government body such as the MACC or The Malaysian Institute of Integrity;
 - e) Qualified on the following basis:
 - (i) Certified as an auditor by a recognised body, e.g. Institute of Internal Auditors, Malaysian Institute of Accountants or similar;
 - (ii) Certified as an ISO37001:2016 auditor by a professional body such as PECB, SIRIM, TUV SUD, etc.; and
 - (iii) Certified by a national or internationally recognised body in the field of integrity, anti-corruption or ethics.

Q7: How do you monitor the performance of personnel in relation to anti-corruption?

1. The organisation may monitor the performance of personnel using the annual performance review or KPI review. This can be done by including a separate section or requirement on developing a culture of integrity for each person. The respective head of department may review their personnel based on their observation and competency in this area via the Key Results Area (KRA). Any substantiated complaints received pertaining to their personnel may also affect the overall performance review.
2. The performance of personnel can be tracked by checking whether they have completed the following (depending on what the company has in place):
 - a) Attended all compulsory anti-corruption training;
 - b) Completed all e-learning anti-corruption programmes;
 - c) Made a scheduled conflicts of interest declaration;
 - d) Made a scheduled Integrity Pledge; and
 - e) Signed a Code of conduct and anti-bribery and corruption policy acknowledgement.
3. The organisation may also monitor the performance of personnel in terms of delivery of the OACP. This can help track if personnel are performing up to required standard.
4. The organisation may conduct a survey or questionnaire to track the personnel's understanding of the programme across the organisation. This can also be done to track the progress of personnel individually and identify training needs, etc.
5. Where possible, the organisation may utilise data analytics to check for any irregularities, for example, using the Enterprise Resource Planning utilisation to crosscheck LOA execution.

PRINCIPLE V: TRAINING AND COMMUNICATION

The following are components from the Guidelines on Adequate Procedures:

4.5.1. *The commercial organisation should develop and disseminate internal and external training and communications relevant to its anti-corruption management system, in proportion to its operation, covering the following areas:*

- (i) *Policy;*
- (ii) *Training;*
- (iii) *Reporting channel; and*
- (iv) *Consequences of non-compliance*

Communication of Policies

4.5.2. *The organisation's anti-corruption policy should be made publicly available, and should be appropriately communicated to all personnel and business associates.*

4.5.3. *When planning strategies for communicating the organisation's position on anti-corruption, the organisation should take into account what key points should be communicated, to whom they should be communicated, and the timeframe for conducting the communication plan. The organisation should also consider what languages the materials will be communicated in.*

4.5.4. *The communication of the organisation's policies may be conducted in a variety of formats and mediums. These may include, but are not limited to:*

- (i) *Messages on the organisation's intranet or website;*
- (ii) *Emails, newsletter, posters;*
- (iii) *Code of business conduct and personnel' handbooks;*
- (iv) *Video seminars or messages; and*
- (v) *Town-hall sessions.*

Training

4.5.5. *The commercial organisation should provide its personnel and business associates with adequate training to ensure their thorough understanding of the organisation's anti-corruption position, especially in relation to their role within or outside the commercial organisation.*

4.5.6. *The training may be conducted in a variety of formats, including but not limited to:*

- (i) *Induction programs featuring anti-corruption elements;*
- (ii) *Role-specific training, which is tailored to corruption risks the position is exposed to;*
- (iii) *Corporate training programs, seminars, videos and inhouse courses;*
- (iv) *Intranet or web-based programs;*
- (v) *Retreats; and*
- (vi) *Out-reach programs.*

ADDITIONAL GUIDANCE AND RECOMMENDATIONS

PRINCIPLE V: TRAINING AND COMMUNICATION

Q1: What are the key points to communicate to personnel?

1. All personnel should be equipped with the necessary information on the implementation of the anti-corruption programme to create awareness and to cultivate a culture of integrity within the organisation.
2. Examples of key points to communicate to personnel include:
 - a) Definition of bribery, corruption, integrity, governance and ABMS;
 - b) Anti-corruption laws, rules and regulations including corporate liability and consequences of non-compliance, including criminal proceedings;
 - c) Current corruption risks due to external factors such as politics, economy or health issues
 - d) Briefing on the Guidelines on Adequate Procedures, the TRUST principles;
 - e) Anti-corruption principles and the company's stand on zero-tolerance for corruption;
 - f) Specific company policies and procedures, including the anti-bribery and corruption policy, policy on gifts, entertainment, hospitality and travel, whistleblowing policy and procedure, etc.;
 - g) The organisation's initiatives regarding the anti-corruption programme;
 - h) The importance of cultivating a culture of integrity;
 - i) The outcome of the integrity survey (if conducted);
 - j) The role of personnel in complying with all anti-corruption policies and combatting corruption in the organisation;
 - k) Common integrity mistakes identified from audit reports, cases reported to the Integrity Unit, high risks identified;
 - l) Integrity benefits and best practice;
 - m) Examples of real life experiences or case studies of corruption offences in the news;
 - n) How and when to use the whistleblowing channel; and
 - o) Organisation's assurance of taking whistleblowing reports seriously.
3. The organisation should conduct communications focused on specific topics suited to the targeted audiences, particularly departments or business units exposed to high corruption risks.

Q2: How often do you communicate the anti-corruption policies to personnel?

1. In general, organisations should ensure consistent and frequent reminders of the anti-corruption policies to personnel. The organisation should send e-mail blasts to all personnel on a monthly or quarterly basis, or at minimum, once a year. The emails could cover different aspects or topics on anti-bribery and corruption. Ideally, these emails should be timed at crucial periods such as near festive seasons, to get the maximum impact.
2. Organisations may opt to send out integrity messages more frequently at the beginning of the programme, then maintain it at on a periodic basis after a few months.
3. Organisations may place the anti-bribery and corruption policy along the office corridors or walls using posters, brochures or buntings as a daily reminder to personnel.
4. As personnel actively use emails daily, it would be ideal to embed the organisation's integrity or anti-corruption message or slogan at the bottom of every internal email. This would serve as a daily reminder.
5. Some organisations may decide to use social media platforms, SMS/WhatsApp, or other electronic mediums to communicate integrity messages to their staff as it is instant and easily reaches the recipient.
6. It is important to ensure that messages sent are clear, noticeable and engaging to the recipient. Hence, it is encouraged for organisations to incorporate infographics or videos in their communications. These may be uploaded on to the intranet, company's website or quarterly online newsletter, or played on TV screens in the lobby, lift area, canteen etc.
7. It is recommended for organisations to remind personnel on the company's stand on anti-corruption and their responsibilities by making it compulsory to sign an Integrity Pledge annually and/or attending annual integrity day programmes, talks or training.
8. Organisations may also communicate the integrity message during town hall sessions, meetings with senior management or departmental meetings.
9. All organisations should implement a comprehensive education programme which could be done either face-to-face or via an online platform. This education programme should cover various core elements of the anti-corruption programme such as compliance, risk management, investigation and audit.

Q3: What are the key points to communicate to business associates?

1. Organisations should highlight the anti-bribery and corruption policy to business associates with a strong emphasis of the organisation's stand on cultivating a culture of integrity.
2. Organisations should issue a statement of zero tolerance of corruption to all business associates.
3. The organisation should provide awareness, training, briefing or email to all relevant business associates on the following details:
 - a) Anti-bribery and corruption policy;
 - b) Company's stand on gifts, entertainment, hospitality and travel;
 - c) Anti-corruption laws, rules and regulations such as MACC Act 2009 and Section 17A;
 - d) How and when to report acts of corrupt and other forms of serious misconduct, with details of the whistleblowing channel;
 - e) Assurance of confidentiality, protection and prompt action when reporting concerns via the whistleblowing channel;
 - f) Consequences of non-compliance with policies and implications to the business;
 - g) The integrity function of the organisation, who to contact for help and information;
 - h) Company commitment to fair and transparent tendering and procurement;
 - i) Message from the organisation's top management on integrity to emphasise the commitment of tone from the top;
 - j) Supplier or vendor's code of conduct; and
 - k) The organisation's OACP, if applicable.

Q4: How often do you communicate the anti-corruption policies to business associates?

1. The organisation should communicate on integrity matters to business associates at the entry point of business such as during engagement or onboarding. Organisations are also recommended to make it compulsory for business associates to sign a Vendor's Letter of Declaration or Integrity Pact to comply with the company's anti-bribery and corruption policies at this stage.
2. The organisation may communicate the anti-corruption policies to business associates via a statement, letter, email, briefing or programme during the following times:
 - a) Public announcement of the project;
 - b) New registration;
 - c) Tender submission;
 - d) Contract negotiations;
 - e) Contract renewal;
 - f) Project closure; and
 - g) Annually as part of periodical communication to all business associates which can be ideally timed at crucial periods such as near festive seasons to get the maximum impact.
3. The business associates should also be updated when there are new laws and policies or changes to policies.
4. In order to communicate more effectively to business associates, organisations may perform an "Intervention Level Risk Assessment" to determine the suitable frequency of communication. The business associates can be segregated between High, Medium or Low levels of intervention required and an Intervention Level matrix can be formulated based on the results. The frequency of communication for each business associate will be dependent on the matrix. Organisations should identify effective approaches in communicating to business associates rather than simply increasing the frequency.

Q5: Do you have specific suggestions or recommendations on how to maximise the effectiveness of the communications?

1. It is recommended for organisations to deploy different types of communication such as:
 - a) Using attractive and interactive mediums such as e-learning modules, videos, sketches, or animation to make it simple and understandable;
 - b) Utilising social media to communicate the message;
 - c) Publishing messages through desktop screensavers; and
 - d) Using online training with tests at the end and a reward or certificate of participation.
2. It is important for personnel and business associates to be well informed of actual corruption cases or examples, which can be done by incorporating scenarios or case studies into an integrity kit or as part of the training module.
3. Communication can also be done effectively by early exposure of the integrity programme to new hires during their induction programme. Thereafter, these integrity programmes can be done annually. Organisations should keep track of the attendance of such programmes and conduct sweep-up exercises to ensure a high level of completion by personnel. Including course attendance as a mandatory requirement to obtain their annual increment and bonus can be very effective to reach 100% take-up.
4. Communication can be more effective where there is continuous support from the top management, and with help from other support functions which can provide the skills and resources needed for an effective communication programme.
5. To have better impact, organisations may choose to involve authorised parties such as the MACC or an anti-corruption subject matter expert to perform the integrity briefing or anti-corruption training. External experts may also provide additional input and perspective on how to best communicate the programme.
6. It is essential to ensure that the language used for communication is suitable and understandable for all personnel and business associates. Where necessary, translate statements or policies into the local or preferred language of the target audience.
7. Request feedback from external parties to ensure that the programme is being communicated effectively to them. This may be done during the vendor awareness programme or session or other methods such as a questionnaire. Recommendations on how to improve may also be requested.
8. The organisation may test the effectiveness of the communication by conducting a pre- and post-communication awareness assessment. Such reviews should be done twice a year or as and when necessary.

Q6: How do you identify personnel that require general training on anti-corruption?

1. The organisation should prioritise the following personnel for training:
 - a) BOD and top-level management;
 - b) Heads of department as they are in charge of managing others and should be equipped with the necessary understanding first;
 - c) Key persons from each business unit who hold important roles;
 - d) Critical positions with high risks such as personnel from procurement, finance or those that often deal with third parties and stakeholder engagements;
 - e) Positions identified as high risk based on CRA or personality tests; and
 - f) Personnel recommended by their supervisors to be equipped with anti-corruption knowledge.
2. All new hires should undergo general training on anti-corruption during their induction programme to be equipped with knowledge of the anti-bribery and corruption policy as well as the company's stand on anti-corruption.
3. All personnel including the BOD should attend the general anti-corruption training at least once when the programme is launched, and subsequently on a yearly basis or when necessary.
4. Organisations may consider giving anti-corruption training to personnel when they change role, especially if they are moving into a high corruption risk position.

Q7: How do you identify positions requiring role-specific training tailored to the corruption risks identified?

1. In general, positions with frequent dealings with third parties, government or stakeholders are exposed to corruption risk and need role-specific training.
2. Personnel with a high position in the organisation such as management, senior management and BOD would also require role-specific training, depending on the nature of the business.
3. Personnel working in high corruption risk areas or places prone to corruption, such as a country with a very low CPI would need role-specific training.
4. Positions requiring role-specific training can be identified by the following methods:
 - a) Conducting a risk assessment based on the job description;
 - b) Feedback or requests from managers;
 - c) Personality assessment of personnel;
 - d) Conducting a Training Need Analysis on personnel; and
 - e) Conducting interviews on personnel to understand their regular external interactions and scope of work.

Q8: Should you conduct training for business associates? If yes, how do you identify business associates that require adequate training? If no, give your reasons.

1. With online platforms, it is possible to conduct training to many more business associates than previously. For organisations with sufficient resources, they should provide training to all business associates with active status.
2. For high risk business associates, which can be identified by a risk assessment or due diligence, briefing or training should be compulsory.
3. For organisations that are unable to provide training to all business associates, they may prioritise the following business associates:
 - a) Those that deal with the government agencies, authorities on behalf of the company;
 - b) Those involved in high value projects; and
 - c) Those involved in sales and marketing.
4. Training for business associates may be conducted during onboarding, procurement meetings or via vendor engagement programmes periodically.
5. Some organisations may not have sufficient funds or expertise to conduct training to business associates. However, it is recommended for such organisations to specifically state in their legal documents requiring business associates to conduct their own anti-corruption training and awareness programme.

Q9: How might the training be done without over-burdening either your own team or the associates?

1. With the online platforms available, organisations may record the training using video, slides or pictures and place the course online for personnel to attend the training virtually. Organisations may also establish e-learning modules either in-house or outsourced. Personnel can then complete the virtual training or self-learning at their own pace. This reduces the need for a trainer or facilitator to be directly involved in each session.
2. The organisation may incorporate videos such as clips from the MACC into the training course to reduce their preparation time and effort.
3. Organisations with a lack of in-house trainers may choose to outsource the training to an external party who is a subject matter expert.
4. The compliance or integrity unit can collaborate with the HR training unit to provide training.
5. The training schedule should be planned early in order to source for the right trainers, and modules should be prepared well ahead of time.

Q10: How do you conduct effective training for personnel to ensure their thorough understanding of the organisation's anti-corruption position?

1. It is important for the organisation to explain the need for personnel to understand the impact of corruption on their own lives and the organisation. The organisation could invite someone from the top level management to provide the opening statement to emphasise the tone from the top. The organisation should instil a sense of duty and pride to personnel by informing them of their responsibilities in combatting corruption. For the top level management, it would be best to highlight the repercussions of MACC Act Section 17A to them and the organisation to gain their attention.
2. Anti-corruption training may be a dry subject hence it is important to keep the training simple, concise and easy to understand. The trainer should use layman terms where possible and avoid any overly technical words.
3. The organisation should be mindful of any language barrier. It is essential to ensure that the language used for communication is suitable, understandable and appropriate to the audience. If necessary, during training, interpret to the local language or conduct a separate session in the local language of the audience. The organisation may also where necessary translate statements or policies into local language.
4. Effective training for personnel can be conducted by incorporating interesting elements to suit the audience such as:
 - a) Quizzes during the training session;
 - b) Graphics, animation, videos or simulation to get the message across;
 - c) Games, puzzles or competitions;
 - d) Group activities or small group discussion;
 - e) Local and international case studies; and
 - f) A test at the end of the training.
5. The trainer should keep the training session as interactive as possible with two-way communications, including encouraging personnel to ask questions.
6. The organisation is recommended to produce a user-friendly guide of the policies with scenarios and FAQs to accompany the training. This would increase the knowledge retention of the trainees.
7. The organisation is encouraged to conduct face to face training for high risk personnel as much as possible because physical engagement proves to be more effective than online training.
8. Organisations may conduct their training in small groups if they have sufficient resources. This will allow more time for interaction and Q&A.
9. After each training, the organisation should conduct an evaluation using the feedback provided by the participants. They can then improve on any areas of weaknesses and increase the effectiveness of the subsequent training sessions.



This concludes the input provided by the industry practitioners.



MACC ACT 2009: SELECTED SECTIONS INCLUDING 17A

Section 16: Offence of accepting gratification

1. Any person who by himself, or by or in conjunction with any other person–
 - a) corruptly solicits or receives or agrees to receive for himself or for any other person; or
 - b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,any gratification as an inducement to or a reward for, or otherwise on account of–
 - A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or
 - B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned, commits an offence.

Section 17: Offence of accepting gratification

1. A person commits an offence if–
 - a) being an agent, he corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
 - b) he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

Section 17A: Offence by commercial organisation

1. A commercial organisation commits an offence if a person associated with the commercial organisation corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent:
 - a) to obtain or retain business for the commercial organisation; or
 - b) to obtain or retain an advantage in the conduct of business for the commercial organisation.
2. Any commercial organisation who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter Malaysian Anti-Corruption Commission 29 of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.

3. Where an offence is committed by a commercial organisation, a person:
 - a) who is its director, controller, officer or partner; or
 - b) who is concerned in the management of its affairs, at the time of the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.
4. If a commercial organisation is charged for the offence referred to in subsection (1), it is a defence for the commercial organisation to prove that the commercial organisation had in place adequate procedures to prevent persons associated with the commercial organisation from undertaking such conduct.
5. The Minister shall issue guidelines relating to the procedures mentioned in subsection (4).
6. For the purposes of this section, a person is associated with a commercial organisation if he is a director, partner or an employee of the commercial organisation or he is a person who performs services for or on behalf of the commercial organisation.
7. The question whether or not a person performs services for or on behalf of the commercial organisation shall be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between him and the commercial organisation.
8. For the purposes of this section, "commercial organisation" means—
 - a) a company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;
 - b) a company wherever incorporated and carries on a business or part of a business in Malaysia;
 - c) a partnership:
 - (i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or
 - (ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or
 - d) a partnership wherever formed and carries on a business or part of a business in Malaysia.

Section 18: Offence of intending to deceive principal by agent

1. A person commits an offence if he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material particular, and is intended to mislead the principal.

Section 19: Acceptor or giver of gratification to be guilty notwithstanding that purpose was not carried out or matter not in relation to principal's affairs or business

1. Where in any proceedings against any agent for any offence under paragraph 17(a) it is proved that he corruptly solicited, accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that the gratification was solicited or offered as an inducement or a reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, he commits an offence under that paragraph notwithstanding that—
 - a) he did not have the power, right or opportunity so to do, show or forbear;
 - b) he accepted the gratification without intending so to do, show or forbear;
 - c) he did not in fact so do, show or forbear; or
 - d) the act, favour or disfavour was not in relation to his principal's affairs or business.

2. Where in any proceedings against any person for any offence under paragraph 17(b) it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or a reward for doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person having reason to believe or suspect that the agent had the power, right or opportunity so to do, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business, he commits an offence under that paragraph notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his principal's affairs or business.

Section 20: Corruptly procuring withdrawal of tender

A person—

- a) who, with intent to obtain from any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing the tender; or

- b) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for such contract,

commits an offence.

Section 21: Bribery of officer of public body

Any person who offers to an officer of any public body, or being an officer of any public body solicits or accepts, any gratification as an inducement or a reward for—

- a) the officer voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to the public body;
- b) the officer performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;
- c) the officer aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- d) the officer showing or forbearing to show any favour or disfavour in his capacity as such officer, commits an offence, notwithstanding that the officer did not have the power, right or opportunity so to do, show or forbear, or accepted the gratification without intending so to do, show or forbear, or did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the affairs of the public body.

Section 22: Bribery of foreign public officials

Any person who by himself, or by or in conjunction with any other person gives, promises or offers, or agrees to give or offer, to any foreign public official, or being a foreign public official, solicits, accepts or obtains, or agrees to accept or attempts to obtain, whether for the benefit of that foreign public official or of another person, any gratification as an inducement or reward for, or otherwise on account of—

- a) the foreign public official using his position to influence any act or decision of the foreign state or public international organisation for which the official performs any official duties;
- b) the foreign public official performing, having done or forborne to do, or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any of his official duties; or
- c) the foreign public official aiding in procuring or preventing the granting of any contract for the benefit of any person,

commits an offence, notwithstanding that the foreign public official did not have the power, right or opportunity so to do, show or forbear, or accepted the gratification without intending so to do, show or forbear, or did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the scope of his official duties.

Section 23: Offence of using office or position for gratification

1. Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.
2. For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.
3. For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a State shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution or Laws of the Constitution of that State.
4. This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

Section 24: Penalty for offence under sections 16, 17, 18, 20, 21, 22 and 23

1. Any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to—
 - a) imprisonment for a term not exceeding twenty years; and
 - b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.
2. Any person who commits an offence under section 18 shall on conviction be liable to—
 - a) imprisonment for a term not exceeding twenty years; and
 - b) a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

Section 25: Duty to report bribery transactions

1. Any person to whom any gratification is given, promised, or offered, in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or police officer.
2. Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.
3. Any person from whom any gratification has been solicited or obtained, or an attempt has been made to obtain such gratification, in contravention of any provision of this Act shall at the earliest opportunity thereafter report such soliciting or obtaining of, or attempt to obtain, the gratification together with the full and true description and if known, the name of the person who solicited, or obtained, or attempted to obtain, the gratification from him to the nearest officer of the Commission or police officer.
4. Any person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

Section 26: Dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence

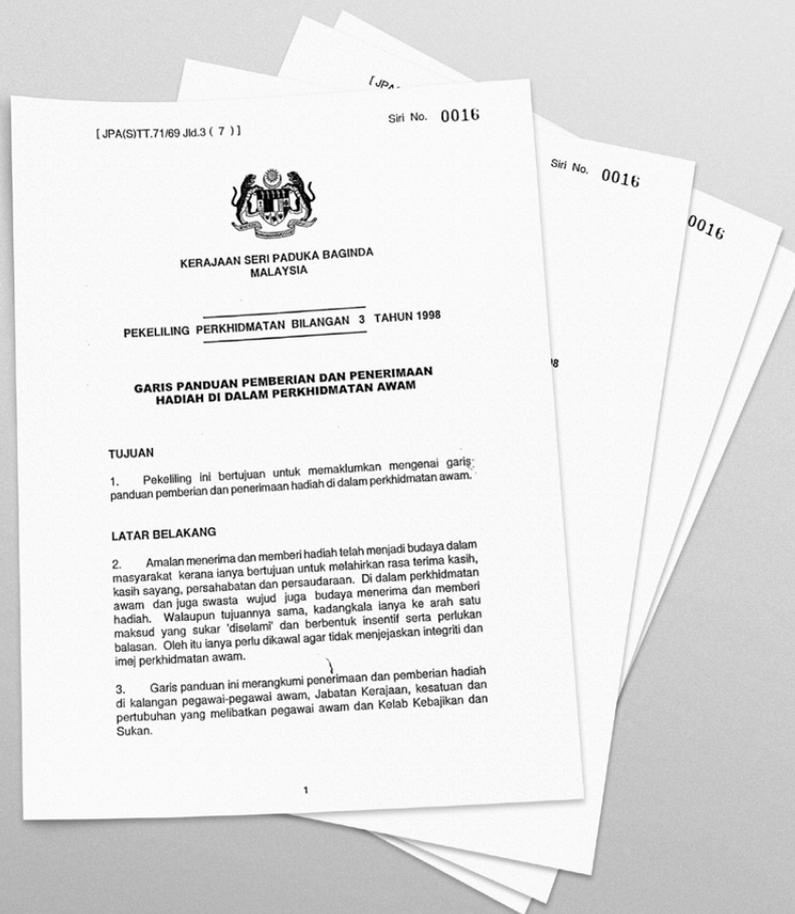
Any person who, whether within or outside Malaysia, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject matter of an offence under section 16, 17, 18, 20, 21, 22 or 23 commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

Section 50: Presumption in certain offences

Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

Section 66: Liability for offences outside Malaysia

1. The provisions of this Act shall, in relation to citizens and permanent residents of Malaysia, have effect outside as well as within Malaysia, and when an offence under this Act is committed in any place outside Malaysia by any citizen or permanent resident, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia.
2. Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence, outside Malaysia.



PEKELILING PERKHIDMATAN BILANGAN 3 TAHUN 1998

The main Government circular regarding gifts and hospitality for Government officials can be found at JPA website.

Clarification Note On Gifts & Hospitality for Public Officials

Following the publication of the original Best Practice Handbook in March 2021, the BIA has been in discussion with various parties seeking clarity on the matter of the provision of gifts, entertainment and hospitality for public officials, Government Departments and organisations involving public officials including Welfare and Sports Clubs. The GIACC has been most helpful in providing further clarification, particularly in relation to Pekeliling Perkhidmatan Bilangan 3 Tahun 1998 (PP Bil.03/1998), a service circular which sets out the Government's position on this matter. Penal Code Sections 161, 162 and 165, and the MACC Act Sections 16, 17, 21, 22, and 23 are also directly relevant to the provision of gifts and hospitality ('gratification') to public officials. Other Sections of the MACC Act, including Section 25, Duty to report bribery transactions, should also be taken into account.

On that basis please note the following:

GIFTS AND HOSPITALITY

- Based on PP Bil.03/1998 - Guidelines on Giving and Receiving Gifts in Public Service, a public officer is prohibited from accepting or giving a gift of any kind if it is related to his public duties.
- The definition of gift includes money, movable or immovable property, vehicles, free fares, stocks, lottery tickets, travel facilities, entertainment, services, club memberships, any form of discount or commission, hampers, jewellery, ornaments, any gifts, souvenirs, or anything of value given to or received by the officer, spouses or any other person on his behalf.

This means that **all forms of gifts and hospitality provided for a public official by any party within the course of his official duties, for example a lunch treat or taking the official to a coffee shop is prohibited.**

There are situations where gifts can be accepted if for example it is given publicly to the official and refusal would create severe embarrassment, thus it must be reported by the official in writing to their Head of Department as soon as practicable.

However, for circumstances which have no connection to the duties of the public official, there is a provision which allows public officials to receive gifts from colleagues, members of their immediate family and close friends for engagement of the officer, wedding, birthday party or any event related to religion and cultural belief or receiving gifts of perishable items such as fruits, cakes, drinks, flowers and so on.

SOLICITATION OF GIFTS AND CONTRIBUTIONS FOR WELFARE AND SPORTS CLUBS BY PUBLIC OFFICIALS

The circular states that Government Welfare and Sports Clubs are not allowed to contact directly or indirectly private companies or the public to obtain financial assistance in any way to fund their activities. Any contributions to be made to Welfare and Sports Clubs by private companies and the public shall be channelled to the Malaysian Government Members' Welfare and Sports Council (MAKSAK). Welfare and Sports Clubs of any Government's Department or Agencies can make an application to MAKSAK to obtain their respective allocations.

The MACC Act 2009 and the Penal Code

Any officer of a public body using his position for any gratification for himself, his relative or associate commits an offence under **Section 23 of the MACC Act, Offence of using office or position for gratification**. The term “gratification” is very broad and covers anything of value, including gifts, hospitality, entertainment, offer of employment, property or interest in property, discount and any other valuable thing.

Similarly, **Section 21** states that any person who offers to an officer of any public body, or being an officer of any public body solicits or accepts, any gratification as an inducement or a reward to act in favour to the giver, commits an offence. Potentially, this clause may also trigger corporate liability under **Section 17A** of the Act.

Section 16 of the Act is also a factor. This covers the behaviour of individuals in terms of offering, giving, requesting or receiving gratification with corrupt intent. Where offering or giving is done by a person with the intention to win or retain business or secure an advantage in business for the commercial organisation they are acting on behalf of, also creates corporate liability under **Section 17A**.

It is also important to note that **MACC Act Section 25 (3)** states that it is a requirement to report all attempts at the solicitation of gratification to the MACC or the police. Failure to do so without reasonable excuse is a criminal offence. It is therefore strongly recommended that any public officials who attempt to gain gratification for themselves in relation to their duties are reported to the MACC or the police. Whistleblower protection is provided for those who do so.

Note further that the **Penal Code Section 165** prohibits public officials receiving any valuable thing from a party they have official duties with. This offence includes a fine and/or jail sentence for the public official.

These factors must be taken into account by companies interfacing with public officials where the risk of the official requesting gratification for themselves, a relative or associate is high. With corporate liability now in force under Section 17A, companies should avoid at all costs the provision of gratification to Government officials in relation to the work and position the official holds with the company's operations.

The scenarios in the following pages have therefore been modified in accordance with this clarification exercise.



EXAMPLES OF CORRUPTION SCENARIOS

The following scenarios have been prepared to help companies navigate through common corruption scenarios involving Government officials.

They may be used to help formulate policies and procedures and prepare training exercises.

1. GOLFING REQUEST

EXAMPLE OF SCENARIO

A Government Officer you work with requests you to meet him for golf at a prestigious golf club, where you will be expected to pay for the game and refreshments.

HOW SHOULD YOU RESPOND

- Provision of any form of gift or hospitality to a public official you work with is prohibited, as per Pekeliling 3/1998 and Penal Code Section 165. You should politely remind the official of the Government circular's instruction and inform him that regretfully you are unable to assist him in this matter.
- Please note that under the MACC Act Section 25 (3), it is a requirement to report all attempts of solicitation of gratification to the MACC or the police. In fact, failure to do so without reasonable excuse is a criminal offence. It is therefore strongly recommended that any public officials who attempt to gain gratification for themselves, their relatives or associates in relation to their duties are reported to the MACC or the police. Whistleblower protection is provided for those who do so.

2. GIFTS REQUEST

EXAMPLE OF SCENARIO

A Government Officer requests an expensive watch for his approaching birthday. The Officer is in a position to ensure your invoice payments are held up for long periods and can create many other problems for your ongoing contract if he chooses to do so.

HOW SHOULD YOU RESPOND

- Provision of any form of gift or hospitality to a public official you work with is prohibited, as per Pekeliling 3/1998 and Penal Code Section 165. You should politely remind the official of the Government circular's instruction and inform him that regretfully you are unable to assist him in this matter.
- You may explain that your company now has a policy on Gifts and Hospitality, which prevents you from providing such gifts, especially for public officials. You can explain that non-compliance to the policy is a serious matter and may result in you undergoing disciplinary procedures, and ask for his understanding on this matter.
- You should also notify your company's Compliance Officer regarding the request. The Compliance Officer will then decide the next action e.g. submit a formal complaint to the Government Department's Integrity Unit or any authorized department/division/unit or officer.
- Note that under the MACC Act Section 25 (3), it is a requirement to report all attempts at the solicitation of gratification to the MACC or police. In fact, failure to do so without reasonable excuse is a criminal offence. It is therefore strongly recommended that any public officials who attempt to gain gratification for themselves, their relatives or associates in relation to their duties are reported to the MACC or the police. Whistleblower protection is provided for those who do so.

3. SPEEDING UP GOVERNMENT APPROVAL

EXAMPLE OF SCENARIO

A Regulatory Officer suggests you pay a 'fast track' fee to a special account or in cash so you can skip the lengthy standard processes and speed up the approval process.

HOW SHOULD YOU RESPOND

- The 'fast track fee' is very likely to be a 'facilitation payment' to speed up an approval process of a certain request - a type of bribe which is illegal and carries Section 17A corporate liability of the MACC Act. You should politely decline the suggestion saying the company is fine to follow the normal procedure. Although the process will take longer and take more follow-up work, it is not worth risking a prosecution which could result in you and other people going to jail.
- You should also make a report to your company's Compliance Officer. The Compliance Officer will then decide the next action e.g. submit a formal complaint to the Government Department's Integrity Unit (IU) or any authorized department/division/unit or officer.

4. FACTORY INSPECTOR REQUEST

EXAMPLE OF SCENARIO

During a factory inspection, the Regulatory Officer identifies a minor issue, then threatens to stop the operation of your factory/building for non-compliance unless a payment is made immediately to a designated account.

HOW SHOULD YOU RESPOND

- A public official using his position in an attempt to secure gratification for himself, a relative or associate in relation to his duties commits an offence under Section 23 of the MACC Act 2009 and a violation of Pekiiling 3/1998. Furthermore, it would be an offence for a representative of the company to make the payment under Section 16 of the MACC Act. Under Penal Code Section 165 is also an offence for the official to make the request.
 - Is there an appeal process you can use to hold off the supposed closure till the matter has been reviewed more thoroughly?
- You may also want to contact his office, explain the issue and ask for further information on the process. Informing the Officer that you will be doing this may be enough to change the situation and result in the closure being averted.
- The company should report the request to the MACC or police, including full details of the official making the request, date, time, location and any payment details provided. The MACC or police can then take the appropriate action.
- You may also check whether the action of the Regulatory Officer is following the proper procedures and processes of the regulator:
 - Does the Regulatory Officer have the authority to instruct/order you to stop your operation?
 - Has the Regulatory Officer followed the correct procedures and processes to order you to stop the operation?
 - Is the minor non-compliance in fact sufficient to close the operation? What do the regulations actually say?
 - Does the payment for non-compliance really have to be made immediately? What account is it to be paid to? Is it a Government account or something else? What receipt will be given?

5. CONFLICT OF INTEREST

EXAMPLE OF SCENARIO

Your company recently awarded a contract to a new vendor to provide goods and services to your department. However, the vendor is now seriously under-performing, to the extent that your job and your department's performance is being harmed. When you raise it with your boss, he seems indifferent and nothing changes. Then you hear from a colleague that the vendor is your boss' brother-in-law's company. What would be your best course of action?

HOW SHOULD YOU RESPOND

- You should raise the matter confidentially through the whistleblowing channel of the company, providing as much factual information as possible. Ideally you should at least provide a means for your company to contact you as they may need more information to proceed.
- The custodian of the whistleblowing channel should process the report. If there are indicators that the report is genuine, an investigation should be conducted. To protect the whistleblower, an ad hoc audit of the department might be conducted, with information the audit exposes used to conduct a more thorough investigation.
- Depending on the outcome of the investigation, the company may choose to report the case to the MACC for their further action.

6. HIRING PROCESS

EXAMPLE OF SCENARIO

A senior public official who you frequently liaise with, asks you to help his relative to secure a good position at your company.

HOW SHOULD YOU RESPOND

- A public official using his position in an attempt to secure gratification for himself, his relative or associate is an offence under Section 23 of the MACC Act 2009. A contract of employment is a form of gratification, so what the official is requesting is illegal. The request should be politely refused. If the official persists, he should be made aware of the provisions of the Act and advised not to pursue the matter. His request may also be reported to the MACC, the police, or the head of the IU of the official's department or any authorized department/division/unit or officer for further action to be taken.

7. DIRECT AWARD

EXAMPLE OF SCENARIO

You have a major contract with a Government department. The senior Government Officer in charge of that department tells you that you should 'consider' a specific company he has in mind to be a subcontractor for the job as they are 'very suitable' and will help make sure everything goes smoothly.

HOW SHOULD YOU RESPOND

- Direct award should be limited to special circumstances such as the impossibility of finding any other bidder in the same category. Contracts should be awarded in a fair and transparent manner without undue influence on the decision-making process by any party, internal or external.
- You should be aware that this direct award may cause the company to be at risk of participating in a corrupted deal.
- Explain to the Government Officer that the company's tendering procedure requires three quotations and that the contract will undergo the usual tendering process in order to select the best bidder.
- Explain that with the enforcement of Section 17A MACC Act 2009 on 1 June 2020, the company has put tightened the procurement policies to ensure compliance with Adequate Procedures Guidelines.
- You should flag this issue to the Compliance Officer for any further action and due care in this matter.

8. DONATIONS

EXAMPLE OF SCENARIO

You receive a visit from a Government enforcement body (e.g. Immigration or Police), during which or soon after, they suggest you to provide a donation to a specific charitable organisation they have in mind.

HOW SHOULD YOU RESPOND

- Under the provision of Pekeliling 3/1998, it is not permissible for them to make this request. Contact the IU of the Government department making the request to check the official position and explain the arising matter.
- Also consider the following steps:
 - Ask them to submit the request in writing on their organisation's letter head, signed by their Head of Department.
 - Conduct a due diligence to check if the charitable organisation is legal under the laws of Malaysia, and whether there is any conflict of interest.
 - Inform the management about this request and go through the normal approval procedures for this donation.
 - If the due diligence result shows any red flags such as non-existence of the organisation or the organisation being owned by a Government Officer, you should not proceed with the donation.
 - If you voluntarily proceed to help the organisation, it is recommended that the in-kind donation should be provided according to the need, for example, school books etc., but not cash donation.

9. SPONSORSHIP

EXAMPLE OF SCENARIO

You receive a request from a Government department your business interacts with to provide sponsorships for their 'Family Day' event.

HOW SHOULD YOU RESPOND

- Request an official letter signed by the Head of Department making the request.
- Inform the Government department that this request will go through the normal approval procedures for this sponsorship.
- Ask them to provide the details on which other companies are providing donations, so you can match their contributions.
- Only consider sponsoring if it is not a subterfuge for bribery or made to illicitly influence any decision-making, and you have proof that this sponsorship is genuine. It has the potential to be a Section 17A offence and should be handled with great care.
- Consider factors such as whether this sponsorship may be seen as influencing the Government departments or whether it may be seen as a bribe to the Government departments to ensure smooth approvals.
- If it is found to be harmless, then proceed with the sponsorship if it is in line with your CSR policy. Otherwise, inform them that your new company policy prohibits such sponsorships since Section 17A came into force, and you are not able to help at this time.

10. ENTERTAINMENT AND HOSPITALITY

EXAMPLE OF SCENARIO

A Government authority inspecting your premises requests for sponsored hotel stays and meals during the inspection period.

HOW SHOULD YOU RESPOND

- Note that Pekeliling 3/1998 prohibits public officials receiving any form of gift or hospitality from a party they have official duties with. The Penal Code Section 165 is also relevant as they must not request or receive any valuable thing from a party they have official duties with. The official should be reminded of these provisions and the request should also be politely refused. You may also state the company policy on hospitality for public officials if you have one in place. If the official is persistent or threatens to exercise his authority to the detriment of the company due to the company's refusal to cooperate with his request, full details of the demand should be recorded and the incident reported to the MACC or police at the earliest opportunity.



FURTHER GUIDANCE FROM THE MACC: FAQS ON GIFTS



*Additional advice and guidance on these matters
can be found on the MACC website.*

What Is A Gift?

For the purposes of Service Circular No. 3 of 1998 (PP 3/1998), prizes include money, free fare, shares, lottery tickets, travel facilities, entertainment, services, club membership, any form of commission, hamper, jewellery, any valuable thing given to be received by the officer. (Refer to Paragraph 4 - PP 3/1998)

Is Giving A Hamper Of Small Value Considered A Bribe?

Acceptance or gift giving no matter how small or large the value is an offense of bribery if the employee who has an employer receives or gives a gift for a service or official assignment from the supplier. (Refer to Paragraph 12 - PP 3/1998) Note: This situation also includes civil servants, the private sector and the general public.

Can Civil Servants Receive Gifts During The Festive Season?

Public officials may not accept or accept gifts in any form such as hampers, Mandarin Lime, Ang Pau and others related to his official duties. (Refer to Paragraph 5 PP 3/1998)

Can A Civil Servant Receive A Gift That Has Nothing To Do With His Official Duties?

Acceptable but must match that is the value less $\frac{1}{4}$ than the emolument or less RM500.00 for the purpose of the gift given. If it does not match that is more than emoluments or more than RM 500.00, then it is necessary to report to the Head of Department for approval through Form Appendix A PP 3/98. However, if the value exceeds RM 500.00 it can be accepted in certain circumstances such as gifts received from friends in conjunction with retirement, exchange, officer engagement and officer marriage. (Refer to Para 7 PP 3/1998) If the public officer is still in doubt then it can report the receipt of the gift to the Head of Department. (Refer to Paragraph 8 PP 3/1998)

What To Do If A Gift Such As A Hamper Or A Bouquet Of Flowers Is Placed On The Officer's Desk Or In A House Where The Giver Is Unknown?

In such a situation, the officer is advised to report to his Head of Department to make a decision. Such actions are intended to save officers from being accused by certain parties. (Refer to Paragraph 6 PP 3/1998)

Can Civil Servants Receive Gifts Such As Duit Raya And Ang Pow During The Official Ceremony?

Referring to the Public Officers (Conduct and Discipline) Regulations 1993 Regulation 8 (1), a public officer may not accept or give or through other parties related to his official duties. However, in a situation that is difficult to reject, and feel hesitant then as soon as possible report in writing to the Head of Department for permission. (Refer to Para 9 PP 3/1998)

What If The Value Of The Gift Received Is Less Than RM 100.00?

If the value is less than RM 100.00 it is necessary to report without permission through appendix B. (Refer to Paragraph 10, 11 PP 3/1998)

Can Gifts Be Given To Politicians By A Government Department?

Yes. Should be provided in the form of inexpensive plaque, pennant, departmental handicrafts or departmental printing materials.

A Private Company Has Been Given A Tender To Supply Office Equipment To Government Departments. Can The Department Involved Receive Donations In The Form Of Gifts To Celebrate The Department's Family Day.

The Head of Department has certain conditions to give permission such as Appendix C PP 3/1998. As the Government Department has received it and is hesitant to accept it, then the recipient should report to the Head of Department in writing for approval. If the Head of Department is also in the notice, then it should refer to his top management for permission. (Refer to Para 6 PP 3/1998) If the value of the contribution of each gift is less than RM 10,000.00 with permission from the Secretary General or the Controlling Officer. If every single gift is worth RM 10,000.00 Treasury Permission. Subject to Appendix D PP 3/1998. (Refer to Paragraph 18 PP 3/1998)

A Public Official Received An Invitation For The Iftar Ceremony From A Hotel. Can He Attend?

If there is no official business, the officer can attend. However, if the officer or department has official business, the department should be referred to the Head of Department for permission so as not to cause harm. In this case, it is in the form of entertainment and not a gift. (Refer to Paragraph 14 PP 3/1998)

Can The Department Sports And Welfare Club Request And Receive Any Donations In The Form Of Goods Or Ringgit Money From Outside Who Have No Official Contact?

Sports and Welfare Clubs may not solicit or accept any donations directly from donors whether individuals or private individuals. It needs to go through the Sports and Welfare Council (MAKSAK), which then distributes their respective contributions or allocations. (Refer to Paragraph 21 PP 3/1998)

Can A Gift In The Form Of A Souvenir Be Given To The Speaker Of A Civil Servant?

Can be given but not recommended. If you want to give available in the form of inexpensive plaques, pennant, departmental handicrafts or departmental printing materials. (Refer to Paragraph 20 PP 3/1998)

A Government Official Has Received Cash Worth RM500.00 During The Festive Season From Individuals Who Often Deal Officially With The Department And In Difficult Circumstances. He Then Reported To His Head Of Department. What Should The Head Of Department Do.

The action of the Government Officer is in line with the Provision of PP 3/1998. In terms of the actions of the Head of Department, he needs to think about it in terms of the importance of the department as a whole. As the value does not match and is related to official duties, then the Head of Department can order the officer to return it to the giver.

Can A Statutory Body Officer Receive A Hamper-Shaped Gift From An Individual Who Often Deals Officially With His Office?

The Statutory Body is also subject to PP 3/1998. It is not acceptable because it is related to official duties and in difficult circumstances should be reported to the Head of Department.

Can Public Officials Receive Free Flight Ticket Fares Related To Official Duties?

Not because it leads to criminal offenses where in return for a job that has been given. (Refer to Paragraph 12 PP 3/1998)

CONTACT DETAILS OF GOVERNMENT DEPARTMENT IGUs

The contact details of Integrity and Governance Unit in ministries, regulators, law enforcement bodies, local authorities and state councils are available from the GIACC website. Below is the IGU Directory list link at the time of publication:

<https://giacc.jpm.gov.my/wp-content/uploads/2020/10/Senarai-Direktori-Pegawai-di-IGU.pdf>

ADDITIONAL INFORMATION

LINK TO MACC ACT LEGISLATION:

MACC Act 2009, updated to include Section 17A

<https://www.sprm.gov.my/admin/files/sprm/assets/pdf/penguatkuasaan/akta-A1567-bi.pdf>

LINK TO THE GUIDELINES ON ADEQUATE PROCEDURES:

<https://giacc.jpm.gov.my/wp-content/uploads/2019/01/Eng-Garis-Panduan-Tatacara-Mencukupi.pdf>

LINK TO GIACC WEBSITE:

<http://giacc.jpm.gov.my>

LINK TO MACC WEBSITE:

<https://www.sprm.gov.my>

LINK TO MACC FAQs:

General Enquiry

https://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=481

Gift Enquiry

https://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=522

Enquiry on the MACC Act

https://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=1524

Note: Hyperlinks stated in this handbook are valid at the time of publication.

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ABOUT THE BUSINESS INTEGRITY ALLIANCE



The Business Integrity Alliance (BIA) was established in 2016 to provide a platform for companies to address corruption challenges arising from doing business in Malaysia. The BIA is a not-for-profit organisation, with Partner companies supporting the Alliance and working together to resolve the corruption issues they are facing. The BIA organises best practice sharing sessions amongst its members and other activities related to business integrity. We invite all companies seeking to strengthen their business integrity practices to join us and participate in our work.

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Mr Joseph Chong

More information about the BIA, our work and how to join can be found at our website:

www.business-integrity-alliance.org

A close-up, low-angle photograph of several wooden gavel heads, likely from a court. The gavel heads are arranged in a row, with the one in the foreground being the most prominent. The wood has a warm, reddish-brown tone and a visible grain. The background is blurred, showing more of the same wooden surface. A white curved shape is visible in the top right corner of the image.

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In Collaboration With:

**THE NATIONAL CENTRE FOR GOVERNANCE,
INTEGRITY AND ANTI-CORRUPTION (GIACC)**