

INSTITUTE OF INTERNAL AUDITORS MALAYSIA (“IIAM”)

CORPORATE LIABILITY ON CORRUPTION UNDER SECTION 17A OF THE MALAYSIAN ANTI-CORRUPTION COMMISSION ACT 2009 (AMENDED 2018)

WHAT INTERNAL AUDITORS SHOULD KNOW, INCLUDING THEIR ROLES

(A) Purpose of Article

This Article is written with the aim of providing objective guidance and assistance to internal auditors of commercial organisations to carry out a review of their organisations’ preparedness in complying with the requirements set out under Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (amended 2018) [“MACC Act”] as well as assessing the adequacy and operating effectiveness of the organisations’ adequate procedures deployed in mitigating corruption risks. Accordingly, this Article is NOT, and should NOT be construed as, an Internal Audit Programme to conduct internal audit assignments pertaining to an organisation’s Anti-Bribery and Corruption Framework/Plan.

To enable internal auditors understand what Section 17A of the MACC Act is all about, including the Ministerial Guidelines on Adequate Procedures (“Ministerial Guidelines”), this Article is written to put into perspectives what Section 17A entails, its ramifications to commercial organisations and those charged with governance and management as well as the contents of the Ministerial Guidelines. Sections D, E and F of this Article set out the roles of Internal Audit, overview of the Ministerial Guidelines, and the suggested focus areas for Internal Auditors to consider vis-à-vis the key contents of Principles in the Ministerial Guidelines, including pertinent questions they should be posing to Management, in their audit coverage respectively.

(B) Background Information

The Malaysian Anti-Corruption Commission (Amendment) Act 2018 (“Amendment Act”), comprising 11 sections, was published in the Federal Gazette on 4 May 2018 to amend the Malaysian Anti-Corruption Commission Act 2009.

The main thrust of the amendments is the introduction of a new and far-reaching Corporate Liability Provision on corruption, namely Section 17A, which is fashioned largely after Section 7 of the UK Bribery Act 2010. Whilst the implementation date for 10 of the 11 sections in the Amendment Act has been determined as 1 October 2018, the implementation date for Section 17A, which comprises eight (8) subsections, has been gazetted on 21 May 2020 and the Government has announced that this Section would take effect from **1 June 2020**.

Section 17A (1) provides that *“a commercial organisation commits an offence if any 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 to obtain or retain business for the commercial organisation or obtain or retain an advantage in the conduct of business for the commercial organisation”*.

In reading the above provision, it can be seen that corporate liability on corruption applies only to **“outbound” commission of corrupt gratification**, i.e. corruptly gives, agrees to give, promises or offers to any person any gratification. For **“inbound” corrupt gratification**, e.g. persons associated with the commercial organisation corruptly receive or accept a gratification, the commercial organisation is unlikely liable to a fine. However, the individuals giving and receiving the corrupt gratification may be liable under Sections 16 and 17 of the MACC Act and, if convicted, may face a fine AND jail sentence.

By now, one would be asking “What do corruption and gratification mean since Section 17A (1) mentions **“corruptly gives, agrees to give, promises or offers to any person any gratification”**? Unfortunately, the MACC Act does not specifically provide a definition of corruption. However, we can

draw reference from Transparency International (the global coalition against corruption) which defines corruption as *“the abuse of entrusted power for private gain - it can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.”*

As for gratification, **Section 3** of the MACC Act defines it as:

- a) Money, donation, gift, loan, fee, reward, valuable security, property or interest in property, whether movable or immovable, financial benefit, or any other similar advantage;
- b) Any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;
- c) Any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- d) Any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- e) Any forbearance to demand money or money’s worth or valuable thing;
- f) Any other service or favour of any description, including protection from penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- g) Any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f).

From the said definition, it can be seen that gratification is not constrained to just monetary considerations.

Whilst a commercial organisation, under **Section 17A (8)**, comprises:

- a company incorporated under the Companies Act 2016 and carries on business in Malaysia or elsewhere;
- a company wherever incorporated and carries on business or part of a business in Malaysia;
- a partnership under the Partnership Act 1961 or a limited liability partnership registered under the Limited Liability Partnerships Act 2012 and carries on business in Malaysia or elsewhere; and
- a partnership wherever formed and carries on business or part of a business in Malaysia;

a person associated with the commercial organisation, under **Sections 17A (6) and (7)**, consists of a Director, a Partner, an Employee, or a person who performs services for or on behalf of the commercial organisation.

Section 17A (3) provides where an offence has been committed by a commercial organisation, a person who is a Director, Controller, Officer or Partner or who is concerned in management of the commercial organisation’s affairs at the time of commission of offence is deemed to have committed that offence.

The onus is now shifted to the commercial organisation, its Directors, Partners and Management to demonstrate that they had put in place Adequate Procedures to prevent persons associated with the organisation from committing the offence.

The penalties, upon conviction, under **Section 17A (2)**, comprise:

- a fine of not less than ten (10) 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 pecuniary nature, or RM1 million, whichever is higher; AND/OR
- a jail sentence not exceeding twenty (20) years.

Whilst this Section provides for a maximum limit to the jail sentence, it is silent on the minimum duration, and this is where the Government has agreed to look into as part of its strategies under the National Anti-Corruption Plan (2019-2023) to plug the gap.

Section 17A (4) states that, “If charged for the offence, it is a defence for the commercial organisation to prove that it had in place adequate procedures to prevent persons associated with it from undertaking such conduct”. In view of the hefty penalties, it is crucial for Directors, Partners and Management to have systems in place to demonstrate diligence in preventing such offences.

Section 17A (5) provides that, “The Minister shall issue guidelines relating to the procedures mentioned in Section 17A (4)”. Accordingly, the Government has issued Guidelines on Adequate Procedures (“Ministerial Guidelines”) for this purpose to assist commercial organisations establish and maintain anti-corruption measures (policies and procedures) as lines of defence against offences on corrupt gratification. The Ministerial Guidelines enumerate the following five (5) guiding Principles under the acronym of “T.R.U.S.T.” to be implemented by commercial organisations when developing Adequate Procedures:

- **T** – Top-level Commitment;
- **R** – Risk Assessment;
- **U** – Undertake Control Measures;
- **S** – Systematic Review, Monitoring and Enforcement; and
- **T** – Training and Communication.

(C) More recent developments

For listed issuers, Bursa Malaysia Securities Berhad (Bursa Securities”), on 18 December 2019, announced the following amendments to the Main Market and ACE Market Listing Requirements, which are to take effect from 1 June 2020:

Paragraph 15.29 of the Main Market (**Paragraph 15.28** of the ACE Market) Listing Requirements on Anti-Corruption and Whistle-blowing states:

- 1) A listed issuer and its Board of Directors must ensure that:
 - a) the following are established and maintained for the listed issuer and its subsidiaries (“Group”):
 - i. policies and procedures on anti-corruption that are, at a minimum, guided by the **Guidelines on Adequate Procedures** (“Ministerial Guidelines”) issued pursuant to **Section 17A (5)** of the Malaysian Anti-Corruption Commission Act 2009; and
 - ii. policies and procedures on whistle-blowing.
 - b) the policies and procedures in subparagraph (a) above are reviewed periodically to assess their effectiveness, and, in any event, at least once every 3 years; and
 - c) corruption risk is included in its annual risk assessment of the Group.
- 2) A listed issuer must also publish on its website:
 - a) its policy on anti-corruption; and
 - b) its policy and procedures on whistle-blowing.

Based on Bursa Securities' Questions and Answers section of the Listing Requirements, a listed issuer may adopt other recognised standards or systems on anti-corruption, such as the **Anti-Bribery Management System (MS ISO 37001)**, when formulating its anti-corruption policies and procedures provided that the listed issuer ensures that its anti-corruption policies and procedures comply with the Ministerial Guidelines as well.

(D) Involvement of the Internal Audit Function ("IA Function")

Let us start by first understanding what Internal Auditing is before mapping the roles of the IA Function against Section 17A of the MACC Act. The International Professional Practices Framework of the Institute of Internal Auditors defines Internal Auditing as *"an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance processes"*.

This same definition of Internal Auditing is echoed in **Paragraph 28** of the *Statement on Risk Management and Internal Control – Guidelines for Directors of Listed Issuers*, which is a publication of Bursa Securities.

In view of the prescriptions under the MACC Act and Listing Requirements of Bursa Securities, it is natural for those charged with governance, i.e. the Board of Directors, Risk Committee, Audit Committee, or their equivalents, and Management to look to the independent IA Function to provide advisory input as well as render assurance to them on the adequacy of procedures (including controls) and their operating effectiveness to achieve intended purposes. While it is mandated by Bursa Securities for listed issuers and Bank Negara Malaysia for licensed banks and financial institutions to have in place an independent IA Function, non-listed commercial organisations are exempted from having such a function although they may well establish one to assist those charged with governance.

The question that invariably arises is, ***"Are internal auditors prepared to provide relevant advisory input and assurance on whether adequate procedures implemented by commercial organisations, which accord with the Ministerial Guidelines, are indeed adequate and operating as intended to achieve their intended purpose"?***

This Article, which does not profess to be an exhaustive reference **NOR an internal audit programme**, seeks to elucidate pertinent matters associated with Section 17A of the MACC Act and the Ministerial Guidelines, including inherent challenges that may be faced by the IA Function to be the "eyes and ears" to those charged with governance. The key objectives of this Article are 2-fold, namely to:

- 1) Familiarise internal auditors on Section 17A and the Ministerial Guidelines and, by extension, their roles in providing advisory and/or assurance; and
- 2) Provide some suggestions that the IA Function may focus on when it conducts its activities to provide advisory or assurance to commercial organisations pertaining to Adequate Procedures implemented by the commercial organisations.

In short, this Article doubles up as an *"aide memoire"* to assist Internal Auditors, who may find it challenging on auditing Adequate Procedures.

Exclusion: It must be emphasised that this Article does not delve specifically into how the IA Function conducts its activities in commercial organisations which are accredited with ISO37001:2016 Anti-Bribery Management System. This will necessitate a separate paper as such accreditation mandates a periodic independent audit by the accrediting bodies or organisations.

(E) Overview of the Ministerial Guidelines on Adequate Procedures (“Ministerial Guidelines”)

(Source: https://f.datasrv.com/fr1/119/75252/Prime_Ministers_Department_-_Guidelines_on_Adequate_Procedures.pdf)



Let us start by examining existing literature and guidance which commercial organisations may refer to in developing procedures mandated under Sections 17A (4) and (5) of the MACC Act as lines of defence against corruption prosecution.

As mentioned earlier in this Article, the Government, in December 2018, issued the Ministerial Guidelines on Adequate Procedures to assist commercial organisations develop such procedures.

This 18-page Guidelines (8 pages of which are intentionally left blank) set out the following five (5) Principles that undergird Adequate Procedures envisaged under Section 17A (4) of the MACC Act:

- Principle I - Top-Level Commitment;
- Principle II - Risk Assessment;
- Principle III - Undertake Control Measures;
- Principle IV - Systematic Review, Monitoring and Enforcement; and
- Principle V - Training and Communication.

The remaining 10 pages of the Guidelines focus largely on **what** Adequate Procedures commercial organisations should develop. Guidance is lacking on **“why” and “how”** such Adequate Procedures may be drafted. As such, this Article explores the following literature and materials that a commercial organisation may consider as a means to augment its preparation of Adequate Procedures:

1. Compare and contrast against the UK Bribery Act 2010

As mentioned earlier in this Article, Section 17A of the MACC Act is fashioned largely after Section 7 of the UK Bribery Act 2010, the similarities of which are tabled below:

MACC Act		UK Bribery Act 2010	
S17A (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: <ul style="list-style-type: none"> 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. 	S7(1)	A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending: <ul style="list-style-type: none"> a) to obtain or retain business for C, or b) to obtain or retain an advantage in the conduct of business for C.
S17A (4)	If a commercial organisation is charged for the offence referred to in subsection (1), it is a defence for the commercial organisation to	S7(2)	But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons

	prove that the commercial organisation had in place adequate procedures to prevent persons associated with the commercial organisation from undertaking such conduct.		associated with C from undertaking such conduct.
S17A (5)	The Minister shall issue guidelines relating to the procedures mentioned in subsection (4).	S9	1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 7(1).

The UK Ministry of Justice has, in March 2011, issued a Guidance about procedures which relevant commercial organisations under the UK jurisdiction should consider putting into place to prevent persons associated with them from bribing (Section 9 of the UK Bribery Act 2010). This UK Guidance sets out the following six (6) Principles which commercial organisations under the UK jurisdiction need to consider in developing Adequate Procedures:

- Principle 1 – Proportionate Procedures;
- Principle 2 – Top-Level Commitment;
- Principle 3 – Risk Assessment;
- Principle 4 – Due Diligence;
- Principle 5 – Communication (including Training); and
- Principle 6 – Monitoring and Review.

Transparency International UK has also issued a Guide ("**TI UK Guide**") on the UK Bribery Act 2010 Adequate Procedures, wherein structured checklists of 231 questions covering the six (6) Principles of the UK Guidance are set out to assist commercial organisations under the UK jurisdiction carry out a Gap Analysis of their existing procedures vis-à-vis the six (6) Principles of the UK Guidance. Such checklists are meant to augment the UK Guidance.

2. Mapping the five (5) Principles in our Ministerial Guidelines against the six (6) Principles under UK Guidance on Adequate Procedures

The following table shows how the five (5) Principles of the Ministerial Guidelines can be mapped neatly against the six (5) Principles of the UK Guidance:

Ministerial Guidelines on Adequate Procedures		Guidance on UK Bribery Act 2010 Adequate Procedures	
Principle I	Top-Level Commitment	Principle 2	Top-Level Commitment
Principle II	Risk Assessment	Principle 3	Risk Assessment
Principle III Undertake Control Measures		Principle 1	Proportionate Procedures
		Principle 4	Due Diligence
Principle IV	Systematic Review, Monitoring and Enforcement	Principle 6	Monitoring and Review
Principle V	Training and Communication	Principle 5	Communication (including Training)

In view of the similarities between Section 17A of the MACC Act and Section 7 of the UKBA 2010, including the guiding Principles on Adequate Procedures between the two (2) jurisdictions, it will not be unreasonable for commercial organisations in Malaysia to refer to literature and guidance in UK as supplementary materials to the Ministerial Guidelines.

However, care and caution have to be exercised as there are certainly areas of differences between the 2 legislations, some examples of which are as follows:

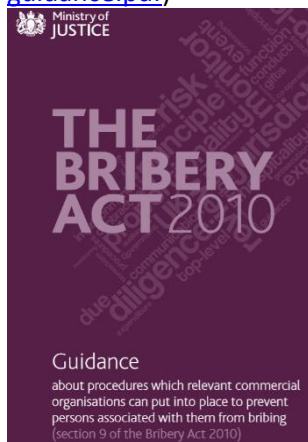
- In Malaysia the focus is on corruption, i.e. corrupt gratification, whereas in the UK, the focus is on bribery; and
- The MACC Act has a deeming provision, i.e. Section 17A (3) which states “where an offence has been committed by a commercial organisation, a person who is a Director, Controller, Officer or Partner or who is concerned in management of the commercial organisation’s affairs at the time of commission of offence is deemed to have committed that offence”. The UK Bribery Act 2010 does not have such a deeming provision.

3. Relevant reference materials and tools that commercial organisations should consider in developing Adequate Procedures under S17A (1), (4) and (5) of the MACC Act

As the Ministerial Guidelines focus largely on “What” Adequate Procedures are and lack comprehensive guidance on the “Why” and “How to”, a commercial organisation may consider the following reference materials and tools to assist it in developing Adequate Procedures – being measures to deter the commission of corrupt acts:

- UK Guidance about procedures which relevant commercial organisations under the UK jurisdiction can put into practice to prevent persons associated with them from bribing (“UK Guidance)**

(Source: <http://www.justice.gov.uk/downloads/legislation/bribery-act-2010-guidance.pdf>)



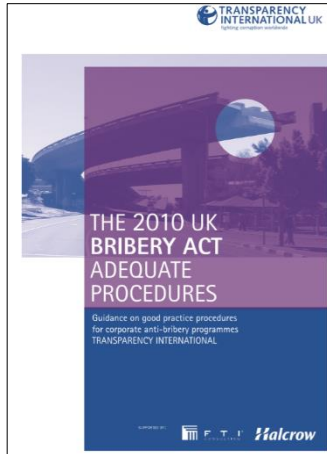
This UK Guidance was issued in March 2011 to assist commercial organisations under the UK jurisdiction develop Adequate Procedures under Sections 7(2), 9(1) and (9(2) of the UK Bribery Act 2010 which are relatively similar to Sections 17A (4) and (5) of the MACC Act. Apart from explaining the rationale to penalise commercial organisation for acts of bribery committed by persons associated with the organisation, this UK Guidance also provides simulated case studies involving bribery and corruption as well as suggested responses for commercial organisations under the UK jurisdiction.

These simulated cases revolve around the following six (6) Principles that a commercial organisation, under UK jurisdiction, should consider in developing its Adequate Procedures:

- Principle 1 – Proportionate Procedures;
- Principle 2 – Top-Level Commitment;
- Principle 3 – Risk Assessment;
- Principle 4 – Due Diligence;
- Principle 5 – Communication (including Training); and
- Principle 6 – Monitoring and Review.

ii. **The 2010 UK Bribery Act 2010 Adequate Procedures - Guidance on good practice procedures for corporate anti-bribery programmes by Transparency International UK (“TI UK Guide”)**

(Source: <https://www.transparency.org.uk/publications/adequate-procedures-guidance-to-the-uk-bribery-act-2010/>)



This TI UK Guide was issued in July 2010 to assist commercial organisations under UK jurisdiction develop Adequate Procedures under Sections 7(2), 9(1) and (9(2) of the UK Bribery Act 2010 which are relatively similar to Sections 17A (4) and (5) of the MACC Act.

Apart from explaining the rationale of the UK Bribery Act 2010 to penalise commercial organisations in UK for acts of bribery committed by persons associated with the organisations, this Guide provides structured checklists to assist commercial organisations develop adequate procedures.

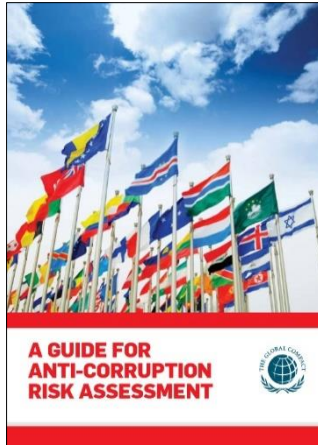
These checklists cover 26 key aspects of a typical commercial organisation’s business activities with 231 pertinent questions to be used for a comprehensive gap analysis to be conducted by an organisation under UK jurisdiction against the six (Principles) enunciated in the UK Guidance mentioned in **Paragraph E (3) (i)** above.

This Guide also has annexes that provide insights into the following:

- Business Principles for Countering Bribery;
- Clean Business is Good Business: The Business case for Countering Bribery;
- Global Compact-TI Reporting Guidance on the 10th Principle against Corruption;
- TI Corruption Perceptions Index;
- TI Bribe Payers Index;
- OECD Good Practice Guidance Internal Controls, Ethics and Compliance; and
- Resisting Extortion and Solicitation in International Transactions.

iii. **United Nations Global Compact – A Guide for Anti-Corruption Risk Assessment (“UNGC Guide”)**

(Source: https://d306pr3pise04h.cloudfront.net/docs/issues_doc%2FAnti-Corruption%2FRiskAssessmentGuide.pdf)



Principle II of the Ministerial Guidelines covers Risk Assessment and what a commercial organisation should address in corruption risk assessment.

Unfortunately, the Guidelines do not provide comprehensive guidance on how bribery and corruption risks may be identified, evaluated and controlled vis-à-vis the risk tolerance of a commercial organisation.

Furthermore, there is no discussion about risk tolerance, including how this concept is defined and deliberated by the commercial organisation.

This UNGC Guide for anti-corruption risk assessment, which was issued in 2013 and may be applied by any business organisation, provides structured guidance for a typical organisation to formalise its corruption risk management, which encompasses, inter-alia, corruption risk assessment to identify, evaluate, control, report and monitor corruption risks faced by the organisation in its business.

As a snapshot, this UNGC Guide addresses the following salient elements normally found in a typical corruption risk management framework:

- Establish the Assessment Process, including risk tolerance;
- Identifying Risk Factors, Risks and Schemes;
- Rating the Probability and Potential Impact of each Corruption Scheme (matrix of parameters, i.e. measuring metrics, which are financial and non-financial in nature, for probability and impact of risk);
- Identifying Mitigating Actions, Controls and Processes;
- Rating Mitigating Controls and Processes (Management’s assessment of rating);
- Calculating Residual Risk;
- Corruption Risk Response Plans (taking into consideration risk tolerance);
- Summarising and Reporting the Results of an Anti-Corruption Risk Assessment, including heat maps; and
- Appendices which set out samples and specimens of documentation on corruption risk assessment and reporting.

This Guide is useful for commercial organisations which do not have formalised risk management activities, unlike listed issuers or regulated bodies, e.g. banks, financial institutions, stock brokers, etc., which are more mature and advanced in risk management initiatives and activities.

(F) Suggested focus areas that the IA function may consider in assessing the Adequate Procedures developed by commercial organisations under S17A (4) and (5) of the MACC Act

This table sets out in detail how the IA function is involved, and the suggested focus areas it should consider in rendering advisory and assurance to commercial organisations based on the five (5) Principles of “T.R.U.S.T.” of the Ministerial Guidelines as the criteria:

Ministerial Guidelines on Adequate Procedures – Requirements expected of Commercial Organisations and suggested focus areas to be considered by the IA Function to provide advisory and assurance, as the case may be, to those charged with governance in the Commercial Organisations	
Principle	Key features of Adequate Procedures under the Principle
Principle I – Top-Level Commitment	1) Responsibilities: Ensure the commercial organisation: <ul style="list-style-type: none"> i. Practises the highest level of integrity and ethics; ii. Complies with applicable laws and regulatory requirements on anti-corruption; and iii. Effectively manages key corruption risks.
	Suggested focus areas to be considered by IA function:
	1) Consider the following for review and assessment: <ul style="list-style-type: none"> a) The process implemented by the organisation to identify and communicate the relevant laws and regulations on corruption, including changes thereto and emergence of new requirements; b) The Board Charter or its equivalent (the Board of Directors [“BOD”] or its equivalent may directly oversee the adequacy and operating effectiveness of the Anti-Bribery and Corruption Framework OR delegate this responsibility to Board Committees with periodic updates communicated to the BOD or its equivalent); c) The Audit Committee Charter or its equivalent (this Committee is normally entrusted to oversee internal controls, including anti-corruption mitigating measures); d) The Risk Committee Charter or its equivalent (this Committee is normally entrusted to oversee risk management, including corruption risk management); and e) The Governance Committee Charter or its equivalent (this Committee is normally entrusted to oversee governance, i.e. tone from the BOD and Board Committees).
	Key features of Adequate Procedures under the Principle
	2) Provide assurance to stakeholders on: <ul style="list-style-type: none"> i. Compliance with the organisation’s policies and any applicable regulatory requirements; ii. Establishing the organisation’s “tone from the top” (i.e. organisation’s stance against use of corrupt practices in its business activities); and

	<p>iii. Spearheading efforts to improve the effectiveness of the organisation’s corruption risks management framework, internal control system, review and monitoring, and training and communication.</p>
	<p>Suggested focus areas to be considered by IA function:</p>
	<p>2) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The Code of Ethics and Conduct for Directors and employees; b) The Code of Business Ethics, including how such ethics are communicated to business partners, associates, service providers, agents, consultants, contractors and other intermediaries; c) The process on how the organisation, via its BOD or equivalent (collectively known as “BOD Equivalent”), communicates assurance to stakeholders on compliance with policies and procedures, including requirements regulating anti-corruption; d) The process on how the BOD Equivalent obtains assurance on the effective outworking of the organisation’s policies and procedures, covering the following pertinent questions to be posed to Management to determine the “tone from the top”: <ul style="list-style-type: none"> <i>i. Is there a public policy of “zero tolerance of bribery” endorsed by the BOD Equivalent?</i> <i>ii. Is there a high-level public statement, e.g. Corporate Values statement, which includes commitment to business integrity?</i> <i>iii. Is there a Code of Ethics and Conduct (or its equivalent) for employees and persons associated with the organisation, setting out an explicit statement on “no-bribes” or “no corrupt gratification” policy?</i> <i>iv. Is there an Anti-Bribery and Corruption Policy (“ABC Policy”), approved by the BOD Equivalent, which includes values, policies and procedures to prevent bribery or corrupt gratification in all activities of the organisation?</i> <p>For more questions that provide corroboration of “tone from the top”, the IA function may refer to the TI UK Guide mentioned in Paragraph E3(ii) above; and</p> e) Assurance by the BOD (in respect of listed issuers in Malaysia) on compliance with regulatory requirements on anti-corruption is normally provided via the annual Statement on Risk Management and Internal Control, Sustainability Statement (where anti-corruption and bribery is a material sustainability matter), the Corporate Governance (“CG”) Overview Statement and the CG Report. <p>In such cases, consider the factual accuracy of assertions made by the BOD Equivalent for appropriate corroboration.</p>
	<p>Key features of Adequate Procedures under the Principle</p>
	<p>3) Activities undertaken:</p> <ul style="list-style-type: none"> i. Establish, maintain and periodically review anti-corruption compliance programme with clear policies and objectives that address corruption risks; ii. Promote a culture of integrity within the organisation;

	<ul style="list-style-type: none"> iii. Issue instructions on communicating the organisations' policies and commitments on anti- corruption to internal and external parties; iv. Encourage the use of reporting (whistleblowing) channel in relation to suspected or real corruption incidents or inadequacies in the anti-corruption compliance programme; v. Assign and adequately resource a competent person or function (may be outsourced) to be responsible for all anti-corruption compliance matters, including advice and guidance to personnel and business associates on the corruption programme; vi. Ensure the lines of authority for personnel tasked to oversee anti-corruption compliance programme are appropriate; and vii. Ensure the results of any audit, reviews of risk assessment, control measures and performance are reported to Top-Level Management.
	<p>Suggested focus areas to be considered by IA function:</p>
	<p>3) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The Anti-Bribery and Corruption Framework (endorsed by the BOD Equivalent) that addresses key elements of the five (5) Principles of Top-Level Commitment; Risk Assessment; Undertake Control Measures; Systematic Review, Monitoring and Enforcement; and Training and Communication for completeness of coverage; b) Minutes of meetings of the BOD Equivalent, Risk Committee, Audit Committee, Governance Committee or their equivalents – whether corporate liability provision on corruption has been an agenda item with the issues deliberated, including pertinent action plans to improve the process. The governance activities in the Board room normally include the tabling and discussion of reports by the Internal Audit Function, the Risk Officer and Compliance Officer, including any non-compliances and remedial measures; c) The hierarchical reporting structure in the organisation chart on segregation of duties, job description and discretionary limits of authority; d) The qualifications and experience of Officers who helm the compliance function – professional and academic qualifications, including industry experience – to determine competence (e.g. Certified Integrity Officers, those trained in ISO 37001:2016 Anti-Bribery Management System, etc.). The terms of reference, including lines of reporting for such role, should be commensurate with the requirements under Principle I Top-Level Commitment and Principle IV Systematic Review, Monitoring and Enforcement; e) Comprehensiveness of the whistle-blowing policies and procedures, for example allowing access to the public to report, in good faith, on actual or suspected misconduct, including safeguarding their identity and refraining from retaliatory actions or reprisals against those who report; and f) The communication process to disseminate the organisation's ABC Policy to employees and business associates, including customers, vendors, agents, consultants, contractors, service providers, etc.

Principle	Key features of Adequate Procedures under the Principle
Principle II – Risk Assessment	<p>1) 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 Top-Level Management to mitigate the specific corruption risks the business is exposed to.</p>
	<p>Suggested focus areas to be considered by IA function:</p>
	<p>1) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The process on how the organisation identifies, evaluates, controls, reports and monitors corruption risks inherent in the various business units or business processes (Note: The MACC Website provides an illustration of how corruption risk assessment is carried out, including the relevant documentation and how corruption residual risks may be responded – see https://www.sprm.gov.my/index.php/en/arkib-tender-sebutharga/142-knowledge/769-anti-corruption-framework-guidelines-and-corruption-risk-management-crm?templateStyle=22); b) Whether the concept of risk tolerance on corruption is defined and endorsed by the BOD Equivalent; c) The organisation’s Corruption Risk Management (“CRM”) framework, which could be an extension of its Enterprise Risk Management framework (for listed issuers, it is common for the organisations to already have an ERM framework) and whether the framework is holistic enough to prioritise corruption risks, including anti-corruption measures to mitigate the organisation’s exposure to corruption; d) Whether the CRM Framework has been endorsed by the BOD Equivalent (including approval for any amendments or revisions); and e) Corruption Risk Reports that have been tabled before the BOD Equivalent or Board Committees, as the case may be, including action plans proposed by Management and the status of such action plans.
	<p>Key features of Adequate Procedures under the Principle</p> <p>2) It is recommended that a comprehensive risk assessment is done every three (3) years, with intermittent assessments conducted when necessary. The assessment may include the following:</p> <ul style="list-style-type: none"> i. opportunities for corruption and fraud activities resulting from weaknesses in the organisation’s governance framework and internal systems or procedures; ii. financial transactions that may disguise corrupt payments; iii. business activities in countries or sectors that pose a higher corruption risk; iv. external parties acting on behalf of the commercial organisation regarding legal and regulatory requirements related to anti-corruption. Given the wide definition of an associated person, a commercial organisation can be liable for the acts of such third parties; and

	<p>v. relationships with third parties in its supply chain (e.g. agents, vendors, contractors, consultants, business associates, suppliers, etc.) which are likely to expose the commercial organisation to corruption.</p> <p>Suggested activities to be considered by IA function:</p> <p>2) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The risk methodology deployed by the organisation in corruption risk assessment, i.e. whether the methodology is comprehensive enough to enable corruption or bribery risks to be identified, evaluated, controlled, reported and monitored; b) Whether corruption risk assessment is extended to all business units in the organisation as a group; c) Whether the organisation considers the nature of its operations, including operations in jurisdictions where vulnerability to the risk of corruption is inherently higher, for example operations in countries where such countries rank lowly in the Corruption Perception Index compiled by Transparency International (a global coalition against corruption); d) Arising from this assessment, whether gaps identified are addressed by remedial measures to be meted out; e) The measuring metrics, i.e. risk parameters, which are financial and non-financial in nature, used to quantify corruption risks so that they may be rated accordingly; f) Internal controls to mitigate risks - assess whether pertinent controls are mapped against the root causes on corruption and bribery, in particular the corruption schemes that may come about in the organisation's engagement and interaction with service providers, vendors, customers and government authorities (especially licensing authorities); g) The risk treatment responses to mitigate corruption risk to acceptable levels vis-à-vis the organisation's risk tolerance approved by the Board of Directors or its equivalent; and h) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management: <ul style="list-style-type: none"> i. <i>Does the Board of Directors or its equivalent or its designate oversee the corruption risk management process?</i> ii. <i>Are there are policies and procedures for regular risk assessment and reporting on bribery or corrupt gratification for all operations under the organisation's control?</i> iii. <i>Does the risk assessment follow a structured methodology (e.g. ISO31000:2018 Risk Management Guidelines, COSO Enterprise Risk Management – Integrating Strategy and Performance 2017, UN Global Compact Anti-Corruption Risk Assessment Guidance 2013, ISO 37001:2016 Anti-Bribery Management System, etc.)?</i> iv. <i>Do the risk assessment procedures identify and prioritise corruption risks in terms of likelihood and impact of occurrence based on</i>
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	<p><i>financial and non-financial metrics to quantify the likelihood of risk and its impact thereof?</i></p> <p>v. <i>Has the Board of Directors or its equivalent established a risk tolerance on corrupt gratification to guide personnel on measures to mitigate the exposure?</i></p> <p>Key features of Adequate Procedures under the Principle</p> <p>3) Risk assessment for corruption can be done on a stand-alone basis – it is recommended that the assessment be incorporated into the General Risk Register of the commercial organisation.</p> <p>Suggested focus areas to be considered by IA function:</p> <p>3) Consider the following:</p> <ul style="list-style-type: none"> a) The frequency of corruption risk assessment, including the relevant documentation associated with the process; b) The risk profile (summary of corruption risks according to prioritisation) for reporting to the Board of Directors or its equivalent; and c) The risk register on the adequacy of risk information documented, including how corruption risks are being rated and the risk treatment response to mitigate the risks to levels within the organisation’s risk tolerance.
<p>Principle</p>	<p>Key features of Adequate Procedures under the Principle</p>
<p>Principle III – Undertake Control Measures</p>	<p>1) A commercial organisation should put in place 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, covering the following:</p> <ul style="list-style-type: none"> a) Due diligence <p>Establish key considerations or criteria for conducting due diligence on relevant parties or personnel (such as Board members, employees, agents, vendors, contractors, suppliers, consultants and senior public officials) before entering into any formalised relationship. The methods may include:</p> <ul style="list-style-type: none"> i. Background checks on the person or entity; ii. A document verification process; and iii. Conducting interviews with the person to be appointed to a key role where corruption risk has been identified. b) Reporting channel <ul style="list-style-type: none"> i. Establish accessible and confidential reporting channel (i.e. whistleblowing channel), used anonymously for internal and external parties to raise concerns on real or suspected corruption incidents or inadequacies of the anti-corruption programme. For smaller organisations, the reporting channel can be a dedicated e-mail address;

	<ul style="list-style-type: none"> ii. Encourage persons to report, in good faith, suspected, attempted or actual corruption incidents; iii. Establish a secure information management system to ensure confidentiality of the whistle-blower's identity and the information reported; and iv. Prohibit retaliation against those making reports in good faith.
	Suggested focus areas to be considered by IA function:
	<p>Due diligence on anti-corruption is a pivotal activity that underpins how an organisation engages with onboarding Directors, employees and parties external to the organisation. It encompasses research, investigation, assessment and monitoring conducted on business relationships to ensure the organisation is associated with business partners, associates and personnel who behave in a manner consistent with the organisation's Anti-Bribery and Corruption Programme.</p> <p>As a typical organisation has numerous business relationships, it is imperative to apply a process to decide the extent (in coverage and depth) of due diligence for each. This may range from in-depth due diligence on all service providers appointed in countries susceptible to corruption to selective (limited) due diligence assessed on the significance of a vendor to the continuity of business. Due diligence may be conducted by the organisation or consultants or a combination of both. The process checks the capabilities of business partners/associates, adequacy of their anti-bribery and corruption programmes and whether there are any known concerns or 'red flags' such as a history of past corrupt practices.</p> <p>1) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The due diligence process deployed by the organisation, including appropriateness of criteria adopted to determine if an in-depth due diligence or limited due diligence is to be conducted before onboarding service providers or vendors; b) Documentation of the process to verify documents submitted for due diligence; c) Interview notes, outcomes of the interview process and approvals to be sought, according to the organisation's discretionary limits of authority; d) The reporting channel process, including the policies and procedures that streamline the whistle-blowing mechanism and the protocols involved – assess if this process is robust enough to achieve its intended outcome; e) How this reporting channel is made known to employees and external parties, including whether the organisation is leveraging its corporate website for this purpose; and f) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management: <ul style="list-style-type: none"> <i>i. Are there policies and procedures for due diligence to be carried out before entering into a business relationship with business partners or associates and for the due diligence to be repeated periodically?</i>

	<ul style="list-style-type: none"> ii. <i>Is there a procedure to carry out due diligence on 'legacy risks' for mergers and acquisitions?</i> iii. <i>Does the organisation carry out due diligence on its significant investments, including joint ventures before entering into them?</i> iv. <i>Is there a procedure to check whether there is a valid business case for appointing agents, consultants or other intermediaries?</i> v. <i>Is it the organisation's policy to undertake due diligence before appointing agents, consultants or other intermediaries?</i> vi. <i>Do agreements with Third Parties require prior approval, with limits endorsed by the BOD Equivalent or its designate?</i> vii. <i>Are third parties required to contractually agree to comply with the organisation's ABC Policy?</i> viii. <i>Is there a contractual right of termination in the event third parties commit acts of corrupt gratification or act in a manner inconsistent with the organisation ABC Policy?</i> ix. <i>Is there a policy stating that no employee will suffer demotion, penalty or other adverse consequences for refusing to pay bribes even if such refusal may result in the organisation losing business?</i>
Key features of Adequate Procedures under the Principle	
	<p>2) A commercial organisation should establish policies and procedures to cover the following areas:</p> <ul style="list-style-type: none"> i. 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 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 Adequate Procedures.
Suggested focus areas to be considered by IA function:	
	<p>2. Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The comprehensiveness and clarity of the organisation's ABC Policy and its associated policies covering conflict of interest, gifts, entertainment, hospitality, travel, donations (including political donations), payment of referral/introducer fees, sponsorship and facilitation payment (which is prohibited);

	<p>b) Appropriateness of limits of such expenditure, approval matrix (including mandate), frequencies of incurrence;</p> <p>c) Segregation of key functions;</p> <p>d) The process to improve upon any weaknesses noted in the policies;</p> <p>e) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management:</p> <ul style="list-style-type: none"> i. <i>Are there policies and procedures on gifts, hospitality, entertainment and travel?</i> ii. <i>Are policies, procedures or guidelines covering the offer or payment of discounts, referral fees, rebates, introducer fees, incentives, etc. in place?</i> iii. <i>Are thresholds, frequency limits, authorisation matrix and reporting procedures for such payments clearly set out in those policies?</i> iv. <i>Are there policies and procedures on, including the definition of, facilitation payments?</i> v. <i>Are there procedures in place to prevent such facilitation payments since such payments are generally prohibited?</i> vi. <i>Are there guidelines and training provided to assist employees in handling the giving or receiving of such items?</i> vii. <i>Are policies on such receipts and payments communicated in writing and in a timely manner to third parties like business partners, associates, customers, consultants, agents, vendors and other intermediaries acknowledged by the recipients?</i> viii. <i>Are such items received/paid reported, documented and reviewed by the Management periodically for unusual trends or amounts?</i>
	<p>Key features of Adequate Procedures under the Principle</p> <p>3) The policies should be:</p> <ul style="list-style-type: none"> 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. <p>Suggested focus areas to be considered by IA function:</p> <p>3) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The process on approving the ABC Policy, its associated policies and limits on gifts, entertainment, hospitality, travel, donations (including political donations), payment of referral/introducer fees, sponsorship and facilitation payment (which is prohibited); and b) The process on upkeeping the various policies (e.g. intranet servers, web-based, corporate website, hard-copies, use of standard templates for ease of use, etc), including approval for amendments.
Principle	Key features of Adequate Procedures under the Principle
Principle IV – Systematic	1) Top-Level Management should ensure regular reviews are conducted to assess the effectiveness of the Anti-Corruption Programme and ensure the

<p>Review, Monitoring and Enforcement</p>	<p>Programme is enforced. Such reviews include internal audit or audit carried out by an external party. The reviews should form the basis of any efforts to improve existing Anti-Corruption controls.</p> <p>For this purpose, a commercial organisation should consider the following:</p> <ul style="list-style-type: none"> i. Plan, establish, implement and maintain a monitoring programme, which covers the scope, frequency and methods for review; ii. Identify competent person(s) and/or establish a compliance function to perform an internal audit on the organisation’s anti-corruption measures; iii. Conduct continual evaluations and improvements on the organisation’s policies and procedures in relation to corruption; v. Consider external audit (for example, MS ISO 37001 auditors) by a qualified and independent third party at least once every three (3) years to obtain assurance that the organisation is operating in compliance with its policies and procedures on anti-corruption; vi. 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 vii. Conduct disciplinary proceedings against personnel found to be non-compliant to the Programme.
	<p style="background-color: #e91e63; color: white; padding: 2px;">Suggested focus areas to be considered by IA function:</p> <ul style="list-style-type: none"> 1) Consider the following for review and assessment: <ul style="list-style-type: none"> a) The process to monitor compliance with the Anti-Bribery and Corruption Framework, including the frequency and how non-compliances are dealt with (for example, pertinent disciplinary measures, which may include termination of service, for internal parties and termination of contracts and removal of service providers from the approved panel); b) The outcome of internal audit (may also be conducted by the Compliance Officer), including findings and remedial measures with ascribed personnel to dispense the action plans within prescribed timelines. This applies to the outcome of an ISO37001:2016 audit, its consequential Non-Conformance Reports and Corrective Actions; c) The scope and timeliness of work undertaken by the Compliance Officer to ensure the organisation’s Anti-Bribery and Corruption Framework is effective and working as intended; d) The process deployed to improve the Anti-Bribery and Corruption framework; and e) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management: <ul style="list-style-type: none"> i. <i>Is there a Board Committee (e.g. Risk Committee, Audit Committee, Governance Committee, etc.) that oversees internal controls, financial reporting processes and related functions, including countering corrupt gratification?</i>

	<ul style="list-style-type: none"> ii. Are there procedures to discuss the results of internal audits of the ABC policy with relevant Senior Management, Board Committee and BOD Equivalent? iii. Are weaknesses in the ABC Policy and its associated controls addressed with documented corrective action plan and timelines for action? iv. Are internal control systems, in particular, accounting and record keeping practices, subject to regular internal audits to provide assurance that they are effective in countering corrupt gratification?
Principle	Key features of Adequate Procedures under the Principle
Principle V – Training and Communication	<p><u>Communication</u></p> <p>1) A 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:</p> <ul style="list-style-type: none"> i. Policy; ii. Training; iii. Reporting channel; and iv. Consequences of non-compliance. <p>The organisation’s Anti-Corruption Policy should be made publicly available and should also be appropriately communicated to all personnel and business associates. When planning strategies for communicating its position on anti-corruption, the organisation should consider what key points are to be communicated, to whom they should be communicated, how they will be communicated and the timeframe for conducting such communication plan. The organisation should also consider what languages the materials will be communicated in.</p> <p>Communication of the organisation’s policies may be conducted in a variety of formats and mediums, including:</p> <ul style="list-style-type: none"> i. Messages on the organisation’s intranet or website; ii. Emails, newsletters, posters; iii. Code of business conduct and employee’s handbooks; iv. Video, seminars or messages; and v. Town-hall sessions. <p>Suggested focus areas to be considered by IA function:</p> <p>1) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The communication process to disseminate the organisation’s ABC Policy and its associated policies to internal and external parties, including training and the consequences of non-compliance; b) The comprehensiveness, appropriateness and timeliness of contents disseminated, including the use of media, language and intended recipients of the communication; and

	<p>c) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management:</p> <ul style="list-style-type: none"> i. <i>Are employees required to sign that they have read and understood the requirements and guidelines of the ABC Policy and its associated policies to prevent corrupt gratification?</i> ii. <i>Is the communication of policies and procedures on corrupt gratification and whistle-blowing channel to Third Parties, including customers, business partners and associates, made with acknowledgement in writing from the recipients?</i> <p>Key features of Adequate Procedures under the Principle</p> <p><u>Training</u></p> <p>2) A commercial organisation should provide employees and business associates with adequate training to ensure a thorough understanding of the organisation’s Anti- Corruption position, especially on their roles within or outside of the organisation.</p> <p>Training may be conducted as follows:</p> <ul style="list-style-type: none"> i. Induction programs featuring Anti-Corruption elements; ii. Role-specific training, tailored to corruption risks the position is exposed to; iii. Corporate training programmes, seminars, videos and in-house courses; iv. Intranet or web-based programmes; v. Town hall sessions; vi. Retreats; and vii. Out-reach programmes. <p>Suggested focus areas to be considered by IA function:</p> <p>2) Consider the following for review and assessment:</p> <ul style="list-style-type: none"> a) The training programme, including the process to enable personnel (and where appropriate, third parties) to be apprised of the implications of Section 17A of the MACC Act, including the organisation’s ABC policy and its associated policies on gifts, entertainment, hospitality, travel, donations (including political donations), payment of referral/introducer fees, sponsorship and facilitation payment (which is prohibited); b) The comprehensiveness, appropriateness and effectiveness of training programmes; and c) In addressing the above focus areas, the following are some pertinent questions that may be posed to Management: <ul style="list-style-type: none"> i. <i>Are training for Directors, Managers and Employees (and, where appropriate, third parties) in place so that they may clearly understand the ABC Policy, know the organisation’s expectations and sanctions in the event of violation?</i> ii. <i>Is the training programme tailored to role-specific participants, for example those in Sales and Marketing where outbound corrupt</i>
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	<p><i>gratification is the focus; in Purchasing where inbound corrupt gratification is the focus; in the department which liaises with government or licensing authorities where outbound gratification is the focus, etc.?</i></p> <p><i>iii. Are there assessments or evaluation tests to ensure the participants understand what corrupt gratification is all about and its implications, including the Adequate Procedures to be put in place as mitigating measures?</i></p> <p><i>iv. Is refresher training done periodically for employees?</i></p> <p><i>v. Are employees required to sign that they have read and understood the requirements and guidelines of the ABC Policy to prevent corrupt gratification?</i></p>
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