



Introduction To

Section 17A

Malaysian Anti-corruption Commission Act 2009

OFFENCE BY COMMERCIAL ORGANIZATION



***DATUK TPj MOHD ZAKI BIN HASSAN
PENGARAH
BAHAGIAN PENYIASATAN TATAKELOLA
IBU PEJABAT SPRM
PUTRAJAYA***

**Ibu Pejabat SPRM Putrajaya
Bahagian Penyiasatan Tatakelola**

SPRM Sarawak

SPRM Terengganu

SPRM Selangor

**Ibu Pejabat SPRM Putrajaya
Bahagian Operasi Khas
Cawangan Tindakan Khas
Cawangan Siasatan Awam
Bahagian Operasi Khas
Timb Pengarah Siasatan (sektor swasta)**

BPR Kelantan

BPR Sarawak

BPR Melaka



INTRODUCTION

Malaysian Anti-Corruption Commission (Amendment) Act 2019 [Act A1567] has been tabled in the Parliament of Malaysia, and passed as follows:

- Dewan Rakyat (House of Representatives) on 04 April 2018.
- Dewan Negara (Senate) on 05 April 2018.

A new **Section 17A – Offence By Commercial Organization** has been added to the Act, and will have the force of law once the Government announce a date for the new section come into force.



LAWS OF MALAYSIA

Act A1567

MALAYSIAN ANTI-CORRUPTION COMMISSION
(AMENDMENT) ACT 2018



OBJECTIVES

The **aim** of this new section is **to foster the growth of a business environment that is free of corruption**, and **to encourage** all commercial organizations to take the **reasonable and proportionate measures** to ensure their businesses **do not participate in corrupt activities** for their advantage or benefit.

Two years grace period (expected until June 2020) has been given to the commercial organizations to equip themselves with **Adequate Procedures**.

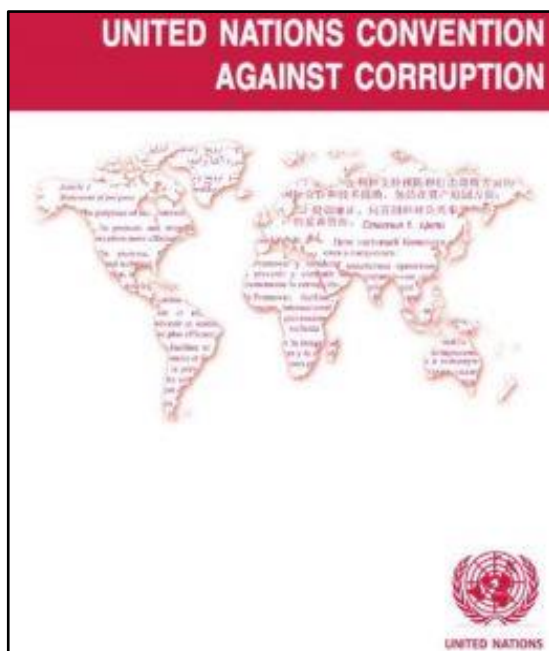




INTERNATIONAL RESPONSIBILITY

United Nations Convention Against Corruption (UNCAC) :

- Article 26 – Liability of Legal Persons.



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

- Chapter 26 – Transparency & Anti-Corruption.

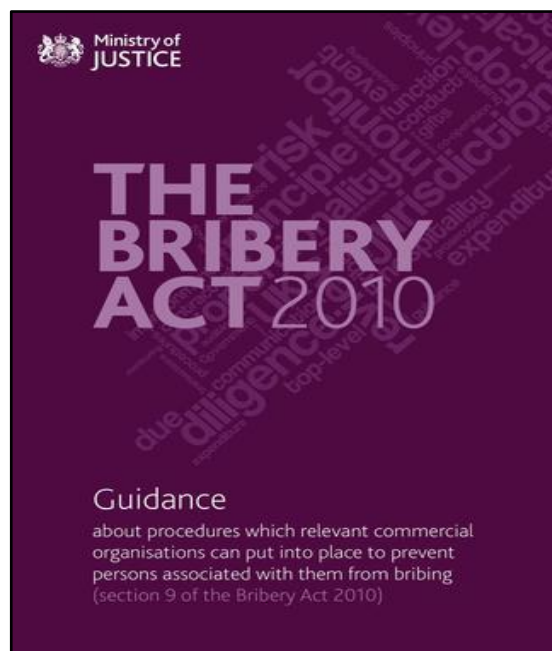




REFERENCE

UK Bribery Act 2010 :

- Section 7 – Failure of Commercial Organizations to Prevent Bribery.



Foreign Corrupt Practices Act of 1997 (FCPA) :

- 15 U.S. Code § 78dd–1. – Prohibited Foreign Trade Practices by Issuers.





SECTION 17A

OFFENCE BY COMMERCIAL ORGANIZATION

Rolls-Royce pays £671 MILLION to settle CORRUPTION CLAIMS

ROLLS-ROYCE has agreed to pay £671 million to British, US and Brazilian authorities to settle bribery and corruption claims.





Ethics in International Business

SIEMENS BRIBERY SCANDAL

SIEMENS



Alcatel•Lucent

- The settlement of US\$137 million (RM413 million) by Alcatel-Lucent SA (AL) with the US Securities and Exchange Commission and the Justice Department of charges of bribery of government officials in Costa Rica, Honduras, Taiwan and Malaysia, is damaging to the image of Malaysia.

Rasuah: Bekas Eksekutif Akaun Pelanggan Alcatel Dipenjara Dan Didenda

KUALA LUMPUR: Bekas eksekutif akaun pelanggan Alcatel Network Systems (M) Sdn Bhd dijatuhi hukuman penjara dua tahun dan denda RM125,000 selepas didapati bersalah oleh Mahkamah Sesyen di sini terhadap pertuduhan memberi suapan kepada Penolong Pengurus Perolehan, Telekom Malaysia Berhad.

Radziah didakwa memberikan suapan dalam bentuk cek milik syarikat telekomunikasi antarabangsa berkenaan kepada Mohd Asri Idris, 42, bagi mendapatkan tender, "for the supply of Widerband Code Division Multiple Access (WDCMA) Mobile Communication System and the Provision of Works phase II".

Dalam penghakimannya, **Rozilah berkata mahkamah mendapati pembelaan yang dikemukakan hanya bersifat penafian semata-mata, tidak konsisten dan tidak munasabah.**



SUB-SECTION 17A (1) – *OFFENCE*

A commercial organization commits an **offence** if a **person associated** with the **commercial organization** 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 organization; or
- (b) to obtain or retain an advantage in the conduct of business for the commercial organization.



Under table money ?

Projects or benefits ?



SUB-SECTION 17A (2) – *PENALTY*

Any commercial organization who commits an offence under this section shall on conviction be liable to a **fine** not less than **ten 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 to of pecuniary nature, or **one million ringgit**, whichever is the higher, or to **imprisonment** for a term not exceeding **twenty years** or to **both**.

10x

or RM1.0 million fine

OR



OR BOTH



SUB-SECTION 17A (3) – *OFFENCE & DEFENCE*

Where an offence is committed by a commercial organization, a person –

- (a) who is its director, controller, officer or partners; 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.



SUB-SECTION 17A (4) – *DEFENCE*

If a commercial organization is charged for the offence referred to in subsection (1), it is a defence for the commercial organization **to prove** that the commercial organization had in place **adequate procedures** to prevent persons associated with the commercial organization from undertaking such conduct.

SUB-SECTION 17A (5) – *GUIDELINES*

The Minister shall issue **guidelines** relating to the **procedures** mentioned in subsection (4).



**Adequate
Procedures**

AND



**Execute &
Monitor**



SUB-SECTION 17A (6) – *PERSON ASSOCIATED*

For the purposes of this section, a person is associated with a commercial organization if he is a **director, partner** or an **employee** of the commercial organization or he is a **person who performs services for or on behalf of the commercial organization**.

SUB-SECTION 17A (7) – *QUESTION OF FACTS*

The question whether or not a **person performs services for or on behalf** of the commercial organization shall be **determined by reference to all the relevant circumstances** and not merely by reference to the nature of the relationships between him and the commercial organization.

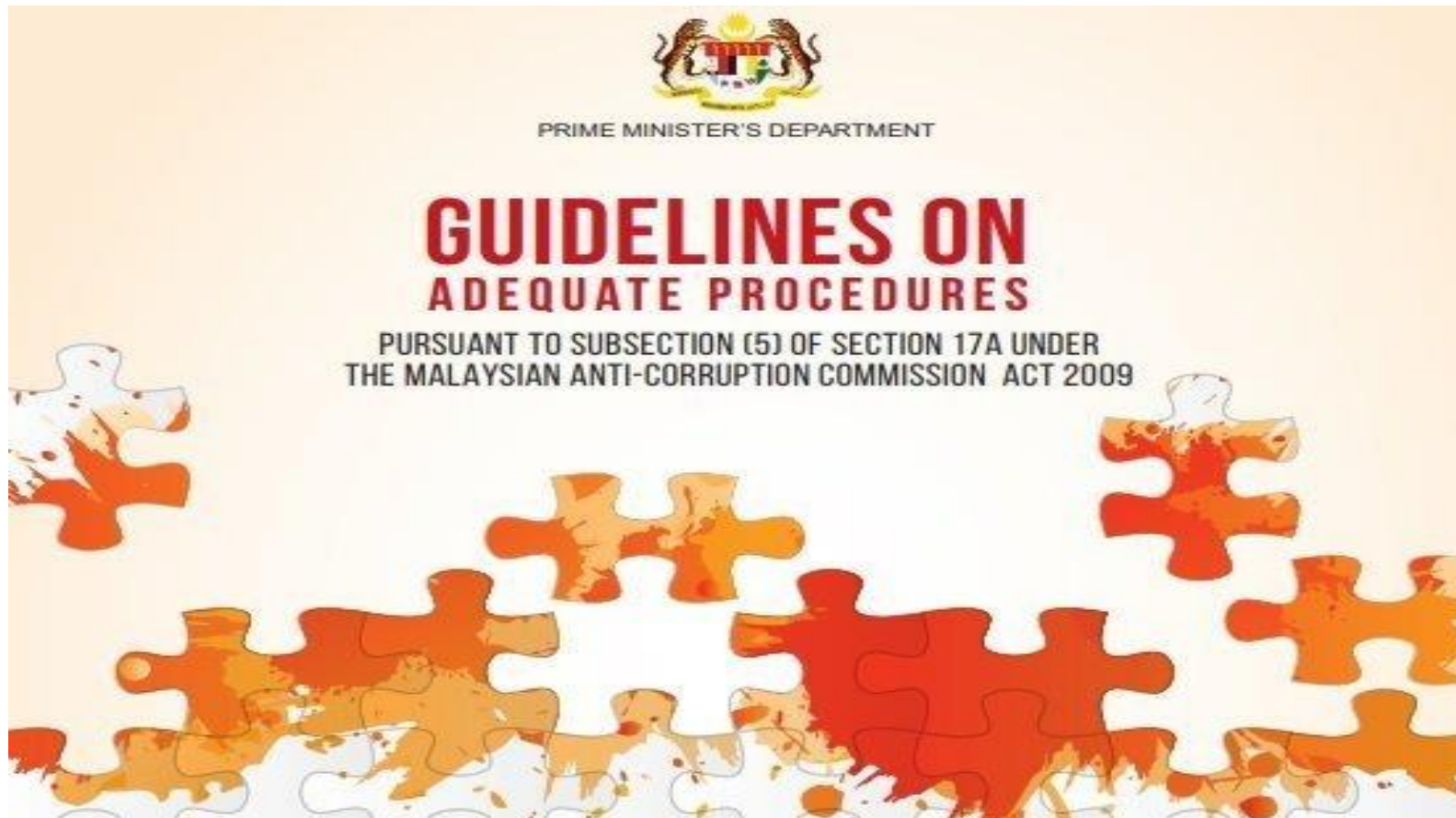




SUB-SECTION 17A (8) – *COMMERCIAL ORGANIZATION*

For the purposes of this section, “commercial organization” means –

- (a) a **company incorporated** under the **Companies Act 2016** [Act 777] and carries on a **business in Malaysia or elsewhere**; (*e.g. Sdn Bhd, Berhad*)
- (b) a **company wherever incorporated** and carries on a **business or part of a business in Malaysia**;
- (c) a **partnership** – (*e.g. & Co, & Partners*)
 - (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 Partnership 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**.



Pursuant To

Section 17A

Malaysian Anti-corruption Commission Act 2009

GUIDELINES ON ADEQUATE PROCEDURES



OBJECTIVES

The objective of these guidelines is to **assist commercial organizations** in understanding what are the **adequate procedures** that should be **implemented to prevent** the occurrence of **corrupt practices** in relation to their business activities.

These guidelines have been formed on the basis of **five principles** which may be used as reference points for any anti-corruption policies, procedures and controls the **organization may choose to implement** towards the goal of having **adequate procedures** as required under the above **statutory provision**.

The guidelines are designed to be principles-based and for general application by any commercial organization of any size and industry.

This guidelines are not intended to be prescriptive and it should not be assumed that “one-size-fits-all”. They should be applied practically, in proportion to the scale, nature, industry, risk and complexity of the organization.



ADEQUATE PROCEDURES PRINCIPLES : T.R.U.S.T.

Principle I : **T**op Level Commitment

Principle II : **R**isk Assessment

Principle III : **U**ndertake Control Measures

Principle IV : **S**ystematic Review, Monitoring & Enforcement

Principle V : **T**raining & Communication





I : **T**OP LEVEL COMMITMENT

Top level management is primarily responsible for ensuring that the commercial organization:

- (i) **practices** the highest level of **integrity and ethics**;
- (ii) **complies** fully with the applicable **laws and regulatory** requirements on **anti-corruption**;
- (iii) effectively **manages** the **key corruption risks** of the organization.

Commercial organizations should carry out the following:

- (i) establish, maintain, and periodically review an anti-corruption compliance program which includes clear policies and objectives that adequately address corruption risks;
- (ii) promote a culture of integrity within the organization;



- (iii) issue instructions on communicating the organizations' 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 compliance program;
- (v) assign and adequately resource a competent person or function (which may be external to the organization) to be responsible for all anti-corruption compliance matters, including provision of advise and guidance to personnel and business associates in relation to the corruption program;
- (vi) ensure that the lines of authority for personnel tasked with responsibility for overseeing the anti-corruption compliance program are appropriate; and
- (vii) ensure that the results of any audit, review of risk assessment, control measures and performance are reported to all top level management, including the full Board of Directors, and acted upon.



Tone from the top is
not what you say,
it's what you do



BERKUALITI WATU PENCEGAHAN RASUAH



II : **RISK** ASSESSMENT

Corruption risk assessment should be **conducted periodically** as and when there is a change in law or circumstance of the business to identify, analyze, assess and prioritize the internal and external corruption risk of the organization.

Comprehensive corruption risk assessment is recommended to be done **every three years**, which may includes the following:

- (i) opportunities for corruption and fraud activities resulting from weaknesses in the organization's governance framework and internal systems/procedures;
- (ii) financial transactions 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 organization regarding legal and regulatory requirements related to anti-corruption.

*Note that, given the wide definition of an associated person, **a commercial organization 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 organization to corruption.





III : **U**NDERTAKE CONTROL MEASURES

Commercial organization should put in place the **appropriate controls and contingency measures** which are reasonable and proportionate to the **nature and size of the organization**, in order to address any corruption risks arising from weaknesses in the organization's governance framework, processes and procedures.

- (a) **Due Diligence** – The commercial organization should establish key considerations or criteria for conducting due diligence on any relevant parties or personnel prior to entering into any formalized relationships (*e.g. background check, document verification, and interview*).
- (b) **Reporting Channel** – The commercial organization should:
 - (i) establish an accessible and confidential trusted reposting channel (whistleblower channel);
 - (ii) encourage persons to report, in good faith, any suspected, attempted or actual corruption incidents;

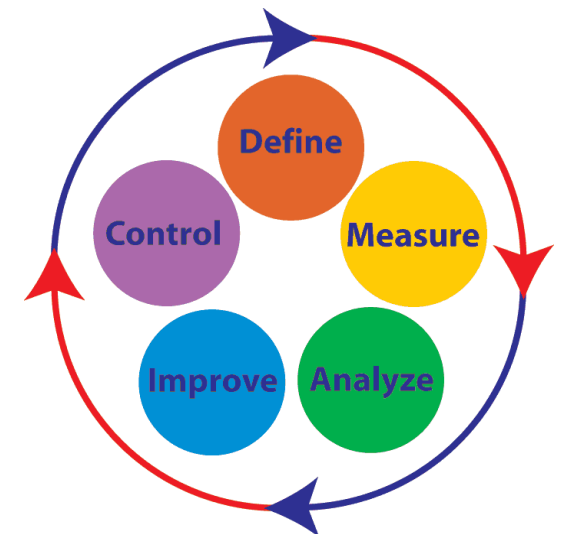


Corporate Liability & Adequate Procedures

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

Commercial organization 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;





Corporate Liability & Adequate Procedures

- (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.



Corporate Liability & Adequate Procedures





IV : **S**YSTEMATIC REVIEW, MONITORING & ENFORCEMENT

Top level management should ensure that regular **reviews are conducted** to assess the performance, efficiency and effectiveness of the anti-corruption program, and ensure the **program is enforced**.

Commercial organizations should consider the following:

- (i) **plan, establish, implement and maintain a monitoring program**, 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 organization's anti-corruption measures;
- (iii) conduct **continual evaluations and improvements** on the organization's policies and procedures in relation to corruption;



- (iv) consider an **external audit** by a qualified and independent third party at least once every three years to obtain assurance that the organization 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 organization's stance in their respective roles and functions; and
- (vi) conduct **disciplinary proceedings** against personnel found to be non-compliant to the program.



PROPERTY SECURITY EXECUTION MONITOR
SEQUENCE SYSTEM ENFORCEMENT
OUTPUT CFI
POLYMER RESULT DEFINITION
ADVICE TYPE PROGRAM
APPLICATION METHOD
INPUT ACTION CONTROL TARGET
CODE LANGUAGE AUTOMATA
FUNCTION MEMORY VALUE



V : **T**RAINING & COMMUNICATION

Commercial organization should develop and disseminate **internal and external training and communications** relevant to its anti-corruption management system, in proportion to its operation, covering: **policy, training, reporting channel, and consequences of non-compliance.**

(a) Communication of Policies – Organization's anti-corruption policy should be made publicly available, and should also be appropriately communicated to all personnel and business associates. Communication of the organization's policies may be conducted in a variety of formats and mediums, include but are not limited to:

- (i) messages on the organization'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.





(b) Training – Commercial organization should provide its employees and business associates with adequate training to ensure their thorough understanding of the organization’s anti-corruption position, especially in relation to their role within or outside the commercial organization, include but are 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 in-house courses;
- (iv) intranet or web-based programs;
- (v) town hall sessions;
- (vi) retreats; and
- (vii) out-reach programs.





workplace communication
training

leadership

teambuilding

change

conflict resolution

communication skills

interpersonal skills

trust

supervisory skills

listening

customer service

motivation

experiential learning

management skills

soft skills

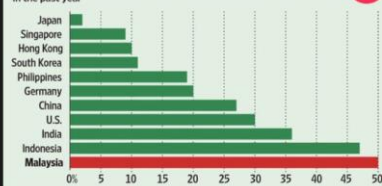
relationship building skills

Wall Street Journal : Malaysia Ranked No 1 Most Corrupted Country In The World For Doing Business

19 November, 2024 110 Views 0 Shares

Cost of Doing Business

Percentage of companies that say a competitor's bribery has cost them business in the past year



Source: Transparency International

The Wall Street Journal

Transparency International said Malaysia scored worst in the 2012 Bribe Payers Survey. It asked about 3,000 executives from 30 countries whether they had lost a contract in the past year because competitors paid a bribe—and in Malaysia, 50% said yes. Second on the dubious honor roll was Mexico, at 48%.

Japan ranked as the world's least-corrupt place to do business, with just 2% of respondents saying they had lost out due to bribery; Malaysia's neighbor Singapore was second-cleanest, at 9%. Even Indonesia, with a long-standing reputation for corruption, fared better than more-developed Malaysia: Southeast Asia's largest economy came in at 47%. By comparison, 27% of respondents in China said they thought bribes had cost them business.

"It shows the attitude of private companies in Malaysia, indicating that bribery in the public sector could be systemic and in a sense institutionalized," said Paul Low, president of the Malaysian chapter of Transparency International.



