
ADEQUATE PROCEDURES

PURSUANT TO SUBSECTION (5) OF SECTION 17A UNDER
THE MALAYSIAN ANTI- CORRUPTION COMMISSION ACT 2009:

THE CASE STUDIES

The following case studies illustrate the scenarios on how the principles of TRUST can be applied by the commercial organisation in preventing corruption. The case studies are provided for illustrative purposes only and must be read together with the ministerial guidelines relating to the adequate procedures under section 17A of Act 694.

The Government of Malaysia shall not be responsible for the consequences of its use for other purposes or in other contexts outside the scope of Act 694 and in no circumstance shall the Government of Malaysia be liable or responsible for any damages whatsoever, including without limitation, special, indirect, or consequential arising out of or related to the use or reliance of the information contained in it, whether by action in contract, tort or otherwise howsoever. The illustrated case studies should not be construed as a recommendation, endorsement, opinion or approval of any kind by the Government of Malaysia. This guidance has been produced for illustration only and should not be relied on for legal purposes. If a corruption incident should occur, it would be a matter for the courts to decide whether the commercial organisation truly established the necessary safeguards which should have prevented the offence from happening.

CASE STUDY 1:

The Need for Trust



The guidelines provided in this document are designed to be principle-based and for general application by any commercial organisation of any size and industry. These 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 organisation.

Company A, a small supplier company plans to supply their goods through a network of sales throughout the country and internationally. However, Company A is concerned that corruption risks in the market might affect the trust of regulators and stakeholders towards the company’s reputation. Company A is also aware of its obligation to promote sound governance by upholding the value of good governance and promote the culture of integrity, in which it believes these values can lead to better financing opportunities and profitable investments. Due to lack of resources and no specialist in risk assessment expertise, Company A is unsure on how to manage the corruption risk(s) of entering the new market network.

Company A could consider any or a combination of the following:

Top Level Management Commitment

- a. Set up a policy of zero-tolerance of corruption (for example: No Gift Policy, No Facilitation Payment Policy).
- b. Establish a policy statement to articulate zero-tolerance of corruption through the company’s business motto or code of conduct.

Risk Assessment

- a. Conduct a regular checking on financial documents to identify any financial transactions that may disguise corrupt payments.

- b. Refer general country assessment's report published by government or non-governmental organisations on business activities in countries or sectors that pose a higher corruption risk.
- c. Seek advice from relevant government agencies or private organisations to assist the company to conduct corruption risks assessment.

Undertake Control Measures

- a. Ensure record keeping for managing documentations related to the anti-corruption policy, efforts and procedures.
- b. Establish an accessible reporting channel which may be used for internal and external parties can be as simple as a dedicated email.

Systematic Review, Monitoring and Enforcement

- a. Monitor the performance of personnel or business associates to ensure their compliance with the organisation's stance on zero tolerance on corruption.
- b. Report any irregularities in business activities in relation to real or suspected corruption incidents to the relevant authorities.

Training and Communication

- a. Company's anti-corruption efforts, anti-corruption policy, procedures and collaborative actions (with NGOs, business organisations, collective action initiatives, etc.) can be made publicly available on the company website, newsletter, emails or any other forms of company's documents.
- b. Seek advice from relevant government agencies or private organisations to assist the company on how to comply with the anti-corruption laws and regulations.

CASE STUDY 2:

Dealing with Third Parties: Preventing “Under-the-Table-Money”

2

Section 17A of the MACC Act 2009, a commercial organisation can be liable for the acts of such third parties that leads to corruption..

*As a construction company, Company C’s operation **relies heavily on third parties, such as contractors, suppliers and joint ventures.** Company C recognizes that it can be exposed if any third party behaves in an illegal, unsafe or unethical way, for example the third parties offer or pay bribes to officials to get work certified and paid. In undertaking control measures, Company C could consider any or a combination of the following:*

Top Level Management Commitment

- a) Communicate the organisations anti-corruption policies and commitments to both internal (such as the personnel of procurement division) and external parties (such as contractors, suppliers and joint ventures).

Risk Assessment

- a) Assess corruption risks in the business conduct with third parties.
- b) Be alert to the possibilities of corruption by observing the relationships of the personnel of organisation with the third parties in its supply chain which are likely to expose the commercial organisation to corruption.

Undertake Control Measures

- a) Conduct due diligence to identify any peculiarity or inappropriate business conduct that could possibly lead to corruption.
- b) Conduct third party vetting via various sources:
 - i) Third party financial statement;

- ii) Audit reports;
- iii) Governmental reports on the corruption risk in a certain type of industry;
- iv) Research on corruption cases in a particular industry or company;
- v) Undertake interviews and surveys; and
- vi) Referral to other sources to identify the third party company's ethical reputation.

Systematic Review, Monitoring and Enforcement

- a) Monitor the personnel and third parties compliance to anti-corruption policies and procedures.
- b) Ensure that due diligence was carried out appropriately and accurately before entering into any business dealing.
- c) Review the company's internal control and risk management.

Training and Communication

- a) Communicate anti-corruption policy to third parties and where appropriate, provide training.

CASE STUDY 3:

Mitigating moral hazard in gifts and hospitality

3

The commercial organisation may be liable whether or not its top level management and/or representatives had actual knowledge of the corrupt acts of its employees and/or associated persons.

Company E supplies medical product to hospitals and clinics using 50 marketing agents to sell the products and in return the agents receive commission from Company D. Agent E as one of the marketing agents provides cash incentive, gift voucher and travel expenses to the Head of Departments of hospitals and clinics to encourage them to prescribe the Company D's medical products.

Company E does not regulate the sales and marketing strategy of its agent particularly in giving gifts and hospitality. The strategy of Agent E is putting Company D at corruption risk. To address this risk, Company E should educate all its agents that any gifts must be lawful, authorised and appropriate. The provision, offer or acceptance of any gift that serves inappropriately in any business decision and affects business judgment is not permitted. In no case is it acceptable to give gift in cash or in any other forms as part of an agreement to do something in return.

Top Level Management Commitment

- a) Establish a policy and procedure that provides clear guidance about gifts and hospitality.
- b) Demonstrate leadership commitment to the organisation's gifts and hospitality policy by ensuring all levels of personnel to comply and practice appropriate behaviour.
- c) Initiate the development of mechanism for managers to monitor employees/ agents adhering to the policy set on gifts and hospitality.

Risk Assessment

- a) A corruption risk assessment should identify when gifts and hospitality can become a potential risk in the sales and marketing areas.
- b) Therefore, the assessment should be able to identify some or all of the following:
 - i) when a gift or hospitality is offered or accepted in secret and on a regular basis;
 - ii) decisions can be made in relation to the person or organisation offering the gift or hospitality;
 - iii) a gift in terms of cash or in-kind that can easily converted to cash;
 - iv) a gift which may pose an integrity risk, for example, misappropriate management of fund.

Undertake Control Measures

- a) In managing the risk, the organisation can consider the following control measures:
 - i) Set out a policy and procedure on gifts and hospitality.
 - ii) Establish a mechanism for employees/ agents to declare and record both offers and acceptance gifts and hospitality through an online or centralised register.
 - iii) The records should include information such as the frequency, value and giver of the gifts and hospitality received.
- b) To address the corruption risks arising from the gifts and hospitality, company should conduct awareness programme for the employees/ agents on the kind of gift or hospitality that could be considered as corruption and the legal consequences of offering or giving such gift and hospitality.

Systematic Review, Monitoring and Enforcement

- a) Identify and assign a competent person to monitor regularly the registers or records relating to gifts and hospitality;
- b) Analyse records and information of the gifts and hospitality to ensure the transparency and the reason why a gift or hospitality was provided;
- c) Conduct continual evaluations and improvements on the organisation's policies and procedures in relation to gifts and hospitality.

Training and Communication

- a) Conduct a training to enhance the understanding of employees/ agents on how gifts and hospitality can put their job at risk of corruption.
- b) Communicate the company's policy on gift and hospitality to all personnel and business associates in a manner that is most appropriate. For example, through the official website, code of business conduct and employee's handbook.

CASE STUDY 4:

Due diligence in recruitment

4

Company F, a service and retail company, is expanding its business into information and technology industry and seeking a new director to head its new Information and Technology (IT) Department. The company is concern about the danger of employing people who pose corruption risk and is looking for ways on how to minimise the risk.

The company could consider the following in preventing the risk of corruption in recruitment process:

Top Level Management Commitment

- a) Set a clear policy and criteria for selection and appointment of directors / employees.

Risk Assessment

- a) A corruption risk assessment should identify fraud as a potential risk in the recruitment areas that are vulnerable to corruption risks.
- b) Therefore, the assessment should be able to identify serious 'red flags' such as prior criminal convictions, falsification of qualification certificate, investigations or cases from previous employment.

Undertake Control Measures

- a) In managing the risk, the organisation can consider the following control measures:
 - i) Develop a detailed list of criteria and a specific knowledge and qualifications that the new director should possess.
 - ii) Conduct due diligence which include background checks on the candidate, a document verification process or conducting interviews with the person to be appointed to the position where corruption risk has been identified.

- b) A nomination or select committee must have clear terms and reference.
- c) Upon appointment, a letter shall set out the terms that include duties and responsibilities as well as conflict of interest policy. Set out the member's accountability in the contract: To uphold and promote integrity in performing their duties.

Systematic Review, Monitoring and Enforcement

- a) Monitor the performance of personnel in relation to any anti-corruption procedures to ensure their understanding and compliance of the law in his respective roles and functions.
- b) Conduct disciplinary proceedings against personnel found to be non-compliant to the rules and regulation of the organisation relating to anti-corruption.

Training and Communication

- a) Conduct a training to enhance the understanding of employees on how to identify and manage the risk of corruption in the organisation.
- b) Communicate the company's policy on anti-corruption to all personnel and business associates through the official website, code of business conduct and employee's handbook.