

DPA Localisation Recommendations for Malaysia

Recommendations on localising Deferred Prosecution Agreements within Malaysia's anti-corruption enforcement framework.

Transparency International Malaysia

Email : ti-malaysia@transparency.org.my
Website : www.transparency.org.my



TRANSPARENCY
INTERNATIONAL
MALAYSIA



Acknowledgements

This report was conducted and commissioned by Transparency International Malaysia (TI-M) with funding and support from the United Nations Office on Drugs and Crime (UNODC) Regional Office for Southeast Asia and the Pacific, and the Swedish International Development Cooperation Agency.

This report was prepared by TI-M's consultant, Dmytro Kotlyar, and reviewed by Dr Raymon Ram (TI-M), Justin Jarret (TI-M) and Vickram Ragunath (UNODC). It draws on an interactive workshop organised by UNODC and TI-M held in May 2026 in Petaling Jaya. We gathered inputs from other stakeholders in Malaysia such as; Members of the State Assembly, MACC officers, officers from Prime Minister's Department of Malaysia's, Legal Affairs Division's, Enforcement Agency Integrity Commission, law practitioners, and representatives from multiple organisations namely Malaysia Bar Council, Himpunan Advokasi Rakyat Malaysia (HARAM), North South Initiative, Pertubuhan Anti Korupsi Malaysia (PAKAR), Pertubuhan IKRAM Malaysia, Suara Rakyat Malaysia (SUARAM), Yayasan Sinar Untuk Malaysia - Rasuah Busters, C4 Centre, Projek SAMA, The Malaysian Centre for Constitutionalism and Human Rights (MCCHR), Sustainable Development Network Malaysia (SUSDEN MALAYSIA), CSO Platform for Reform, Nusantara Academy for Strategic Research (NASR), Association of Anti-Bribery Management System (ABMS), and Association of Certified Integrity Officers Malaysia (ACeIO).

Disclaimer

This report has not been formally edited.

The contents of this publication do not necessarily reflect the views or policies of UNODC, TI-M, or contributory organisations, and neither do they imply any endorsement.

DPA Localisation Recommendations for Malaysia

Outcome Document

Prepared by Dmytro Kotlyar for Transparency International - Malaysia

June 2026

Table of contents

Summary of key recommendations	3
Introduction	5
Background	5
What is a DPA and its rationale for Malaysia	6
Addressing the risks of a DPA framework	9
Standalone act or amendments in an existing act	11
Primary law and binding guidance	12
Scope of application	13
Initiation and eligibility tests	14
Mandatory and optional terms	16
Financial penalty	18
Judicial oversight	19
Transparency requirements	20
Institutional framework	21
Legal reform coherence	23
Annex. Reference materials	24

Summary of key recommendations

- A. Introduce a Deferred Prosecution Agreement (DPA) scheme in Malaysia to enable non-trial resolution of corruption cases (and possibly other crimes) against legal persons (not individuals).
- B. Establish the DPA scheme through a comprehensive standalone act (preferred) or amendments to the Criminal Procedure Code. Complement the primary law with a binding Guidance (Code of Practice) issued by the Attorney General, covering eligibility tests, self-reporting, cooperation and remedial requirements, penalty calculation methodology, standard DPA terms, and operational procedures.
- C. To address the risks of non-trial resolution in cases of corporate wrongdoing, the DPA Act should embed the following essential safeguards: DPA negotiations led by the public prosecutor (not an investigative agency); mandatory evidentiary, public interest, and proportionality tests; judicial oversight at preliminary and final stages; a binding Guidance (Code of Practice) ensuring predictability and equal application; high level of transparency, including publication of the DPA text and court's reasoning in DPA-related decisions; an express non-foreclosure provision preserving individual criminal liability; suspension of all applicable limitation periods for the duration of the agreement; a dedicated small and medium-sized enterprise (SME) track and adjusted sanctioning for government-linked companies; and a bad faith exception permitting reinstitution of criminal proceedings where the legal person provided inaccurate or incomplete information during negotiations.
- D. Define the scope of the DPA framework broadly to cover all legal persons. Government-linked companies and other state-owned enterprises should be eligible but may be subject to adjusted terms. Qualifying offences should initially include all corruption offences under the MACC Act and money laundering under AMLA; later, the list may be extended to other offences.
- E. Establish eligibility conditions: (i) an evidentiary threshold; (ii) a public interest test; and (iii) a requirement that the DPA terms be fair, reasonable and proportionate. The Act or binding guidance should codify a non-exhaustive list of factors for and against a DPA. The Act should create a presumption in favour of a DPA where the legal person voluntarily self-reported within a reasonable time, provided genuine cooperation, and undertook timely remediation, in the absence of aggravating factors.
- F. The Act should prescribe a minimum set of mandatory DPA terms, including: a statement of agreed facts; an admission of responsibility for the offending conduct; a cooperation obligation covering ongoing and future investigations; disgorgement of all direct and indirect criminal proceeds; payment of a punitive fine; provision for victim compensation; reporting obligations on compliance; and an acknowledgement by the legal person that the DPA was concluded in good faith. The Act should also include optional terms, such as obligations to enhance the corporate compliance programme, reimbursement of investigative costs, and the appointment of an independent monitor. MACC may monitor compliance with the DPA terms, if it is not outsourced to a private firm.
- G. The Act should prescribe a structured financial penalty comprising: (i) disgorgement of all direct and indirect proceeds; (ii) a punitive fine calculated based on the applicable aggravating and mitigating factors; (iii) victim compensation or reparations; (iv) reimbursement of the investigation and negotiation costs; and (v) monitorship costs. The total financial penalty may be capped by law. The binding guidance should set out the penalty calculation methodology, including a matrix of factors that increase or reduce the base amount and a specific methodology for quantifying direct and indirect criminal proceeds.

- H. Introduce judicial oversight at the preliminary and final stages; the court should confirm that the DPA terms are fair, reasonable, and proportionate and in the public interest. The final confirmation hearing should ordinarily be held in public. The court should not have an ongoing monitoring role during DPA implementation, but must approve any material variation or termination.
- I. The Act should set a high level of DPA transparency, including publication of: (i) the agreed DPA text upon final court approval; (ii) the court's written reasons at both the preliminary and final approval stages; (iii) court decisions on variation, termination, and completion; and (iv) notices of successful DPA completion issued by the prosecutor. The Attorney General's Chambers (AGC) may establish and maintain a publicly accessible, searchable online database of all DPAs and related court decisions. The court should have the power to order postponement or proportionate redaction of specific information where necessary to protect ongoing investigations, other legal proceedings, national security, public or personal safety.
- J. The Act should designate the Attorney General as the primary DPA authority, with the power to authorise specific Deputy Public Prosecutors within the AGC to negotiate and conclude DPAs, subject to the Attorney General's (AG) hierarchical consent at the initiation and conclusion of negotiations. A dedicated Corporate Crime and DPA Unit could be established within AGC. The MACC could be designated as the default compliance monitor for corruption-related DPAs, with the option to appoint an independent external monitor in complex or high-value cases or where a conflict of interest arises. The investigative and compliance monitoring functions within the MACC should be separated. An inter-agency DPA Coordination Committee could be established to coordinate parallel enforcement and share intelligence.
- K. The introduction of the DPA Act should be accompanied by a coherent package of complementary reforms, including: (i) targeted amendments to section 17A of the MACC Act to address identified deficiencies (see UNODC 2023 Liability of Legal Persons Study), including extending the scope of liable entities, ensuring autonomous corporate liability, clarifying terms, and introducing successor liability; (ii) amendments to the Whistleblower Protection Act 2010 and other acts to strengthen protections for corporate whistleblowers, including those who report to the MACC or AGC on corporate misconduct (including the possible introduction of an award mechanism); (iii) strengthening the freedom of information framework and aligning it with the DPA publication requirements; and (iv) consequential amendments to the Criminal Procedure Code to clarify the connection between DPA proceedings and general criminal procedure.
- L. Conduct extensive public and stakeholder consultations before finalising the proposals for the DPA Act and other relevant legislation, including the binding guidance for eligibility for DPAs.

Introduction

1. This technical note was prepared by Dmytro Kotlyar, International Consultant, for Transparency International - Malaysia with the support of the United Nations Office on Drugs and Crime. The note builds on the outcomes of the stakeholder discussion organised by TI-Malaysia in Kuala Lumpur on 20 May 2026 and on the 2023 UNODC Study on the Liability of Legal Persons in Malaysia.¹
2. The technical note proposes a conceptual approach to the localisation of Deferred Prosecution Agreements (DPAs) in Malaysia through legislative reform. It aims to provide legislation drafters, policymakers, and other stakeholders with guidance on reform directions to ensure that DPAs are successfully localised and used in Malaysia as an element of the corporate liability framework.
3. The recommendations reflect international standards (notably the 2021 OECD Recommendation,² G20 High Level Principles on the Liability of Legal Persons for Corruption,³ and the United Nations Convention Against Corruption, Conference of State Parties, 2023 Resolution 10/12⁴) and foreign best practices of legislation and enforcement, including those from the United Kingdom, the United States of America, Canada, France, and Singapore. See the overview of standards and foreign practices in the 2023 UNODC Study and in the Annex to this note.
4. The note does not aim to exhaustively describe all elements of the possible DPA scheme and provisions of the DPA-related amendments (such amendments will be referred to as “the Act/DPA Act” further on in this document). Instead, it outlines essential components and parameters that an effective DPA framework should follow, while addressing associated risks.

Background

5. Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) introduced corporate criminal liability for failure to prevent bribery committed by associated persons. The new offence was passed in 2018 (and came into force in 2020), but enforcement against companies has remained very limited. The MACC has sent only two charges to court so far, and one of them was dismissed in 2026 by the Sessions Court after five years of consideration.⁵
6. Section 17A of the MACC Act establishes that a commercial organisation commits an offence if an associated person commits bribery. It is a defence for the company to show that it had in place adequate procedures to prevent associated persons from committing bribery. The offence was modelled on section 7 of the United Kingdom (UK) Bribery Act 2010.

¹ UNODC (2023), A Study of the Regulatory and Institutional Frameworks Governing Liability of Legal Persons and the Capacity to Enforce Corruption Offences against Legal Persons in Malaysia. Available at: https://www.unodc.org/roseap/uploads/documents/malaysia/research/2026/Malaysia_LL_P_Report.pdf.

² Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.

³ www.mofa.go.jp/mofaj/files/000272361.pdf.

⁴ UNCAC COSP Resolution 10/12, Providing incentives for the private sector to adopt integrity measures to prevent and combat corruption, www.unodc.org/corruption/en/cosp/conference/session10-resolutions.html#Res.10-12.

⁵ <https://www.freemalaysiatoday.com/category/bahasa/tempatan/2026/05/15/mahkamah-batal-pertuduhan-rasuah-terhadappengarah-syarikat>.

7. Neither the MACC Act nor other legislation contain a non-trial resolution mechanism that would allow charges against a legal person to be resolved without a full trial on the merits. Plea agreements under the Criminal Procedure Code have never been applied to legal persons in Malaysia and, in any event, result in a conviction with full collateral consequences. The compounding under section 92 of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLA) is similar to a settlement (compounding precludes prosecution of the offence) but is confined to AMLA offences and can only result in a reduced fine, without compliance reform, victim compensation, or disgorgement of criminal proceeds. The compounding provisions also lack safeguards against potential abuse, incentives for self-reporting, and preventive measures.

What is a DPA and its rationale for Malaysia

8. **Non-trial resolution form.** A Deferred Prosecution Agreement is a form of non-trial resolution of corruption or other charges against a legal entity without a full trial on the merits. Under a DPA, a legal entity and an enforcement authority agree to defer (suspend) the prosecution, subject to conditions. For a DPA, the accused legal person must admit to facts that would have supported a conviction, cooperate with authorities throughout the lifetime of the agreement, pay monetary compensation and comply with other requirements. If the DPA terms are successfully complied with, the charges are withdrawn or expire and may not be filed again for the same criminal acts.
9. A DPA does not absolve the legal person of responsibility; it results in corporate accountability. The legal person must disgorge undue profits and bear other negative consequences. A DPA is not a legal defence either (unlike the adequate procedures defence under section 17A(4) of the MACC Act), because the legal person admits that the misconduct took place and that it was responsible for it. At the same time, the legal person need not plead guilty, thereby avoiding a conviction and its associated consequences.
10. **Benefits for the public.** If properly constructed, the DPA regime may provide numerous benefits for various parties by ensuring effective criminal justice and preventing recidivism. DPAs serve the public interest because they:
 - Ensure corporate criminal conduct is met with effective, proportionate and dissuasive penalties without trial uncertainty; help identify individual perpetrators who can be held liable.
 - Resolve corporate wrongdoing promptly and efficiently without a lengthy and costly trial, thus freeing scarce prosecutorial resources. DPAs mostly apply to economic (financial) crimes, which are hard to detect, investigate and prosecute.
 - Incentivise early, voluntary self-reporting of misconduct and cooperation of the legal person in investigating it.
 - Support whistleblowing practices by including relevant incentives in the DPA scheme.
 - Improve corporate culture and compliance practices by triggering relevant internal reforms and other remedial actions.

- Avoid crippling legal persons with a conviction after a lengthy trial, with collateral consequences that affect innocent third parties (the company's employees, pensioners, shareholders, investors, suppliers, customers, etc.). The conviction may impose a substantial penalty, bar the company from participating in public procurement, revoke its operating licence, or impose other restrictions that could undermine its operations. Thus, DPAs allow accountability without disproportionate collateral damage.
- Generate financial benefits for the state in the form of disgorgement of profits and punitive fines.
- Provide compensation to victims of corporate misconduct, which, in cases of corruption, may include local communities and businesses.
- Facilitate multijurisdictional parallel settlements, enabling the recovery of criminal proceeds from abroad, including restitution payments to Malaysia as the victim state, if bribery targeted Malaysian authorities or companies.

11. Benefits for the legal person. For the legal persons, DPAs:

- Provide certainty through a negotiated settlement with known consequences and a clear endpoint to the prosecution, allowing the business to plan and continue operations.
- Give the legal person an active role in the negotiation process; through exemplary cooperation, the company can obtain additional credit and mitigate possible sanctions.
- Cause less reputational damage than a conviction, as the legal person can show cooperation and remedial action.
- Provide the legal person with an externally validated governance framework and an improved organisational culture through the imposed compliance reform.
- Allow bundling and resolving allegations and enforcement actions, including across multiple jurisdictions; it saves resources and contains potential economic damage.
- Protect the legal person from crippling penalties and restrictions that may be associated with a conviction.

12. Rationale for Malaysia. The above reasons apply in the Malaysian context. Malaysia introduced a progressive corporate liability regime for corruption in section 17A of the MACC Act, establishing a strict corporate liability unless the commercial organisation can demonstrate that it had adequate procedures to prevent bribery. But the mechanism for prosecuting companies is not balanced by a mechanism for companies to resolve charges through cooperation, remediation, and restitution. There is no incentive for corporate entities to cooperate with law enforcement, to come forward and self-report.

13. Enforcement track record. While the new corporate liability has been in force since 2020, only two charges have been brought to court against commercial organisations, and one of them has been dismissed after five years of litigation. The voluntary self-disclosure and whistleblower incentives may increase the number of cases prosecuted and lead to better resolutions through negotiated settlements. The DPAs may be the missing block that launches the corporate criminal enforcement in Malaysia. The use of DPA proceedings will help develop enforcement practices and domestic law enforcement and prosecutorial capacity to pursue corporate wrongdoing.

14. **International dimension.** Introducing a DPA will align Malaysia with international standards and regional peers. It will also allow Malaysia to participate in joint enforcement actions with other jurisdictions and share recovered proceeds. Having domestic enforcement and resolution proceedings increases the likelihood that Malaysia will be recognised as a victim in cases where bribery targeted it.⁶ Having a DPA framework signals to foreign investors that Malaysia has a sophisticated enforcement system by addressing corporate offences with effective and predictable measures.

Recommendation: Introduce a Deferred Prosecution Agreement (DPA) scheme in Malaysia to allow for a non-trial resolution of corruption cases (and, possibly, other crimes) against legal persons (not individuals).

⁶ For example, in a recent [French settlement](#) in the case of Exclusive Networks Corporate, Malaysia was one of the countries where bribery by a foreign entity occurred, but Malaysia was not a part to the proceedings and did not share the restitution.

Addressing the risks of a DPA framework

15. **Risks.** Any legal reform introducing DPAs into Malaysia's national system should address the risks associated with the non-trial resolution of corporate crimes. The principal critiques of DPAs include:

- *Excessive prosecutorial discretion:* Too much power concentrated in prosecutors with limited external checks, undermining confidence in the justice system.
- *Two-tier justice:* Perception that DPAs favour large corporations over smaller firms and individual offenders.
- *'Buying their way out':* Risk that legal persons see fines as a cost of doing business, eroding the deterrent effect of criminal law.
- *Eroding public trust:* If wrongdoing is repeatedly settled rather than tried, public confidence in equal application of the law may decline.
- *Shielding individuals:* Focusing on the legal entity may protect managers and employees who were actively engaged in wrongdoing from personal accountability.
- *Wasted resources:* Failed DPA negotiations can consume significant time and undermine the prospect of a subsequent trial.
- *Opaque process:* Lack of transparency in negotiation and approval erodes legitimacy and breeds suspicion of insider deals.

16. **Mitigation measures.** To address these risks, drafters should embed the following essential safeguards in the DPA Act:

- *Prosecutor-led process:* DPA negotiations are led by public prosecutors, not an investigative or enforcement agency.
- *Eligibility tests:* Establish a public interest test to qualify for a DPA and the requirement that the DPA terms be fair, reasonable and proportionate.
- *Judicial oversight:* Judicial oversight at the preliminary and final stages.
- *Transparency:* Publication of the DPA terms and the court's reasoning for supporting a DPA, amending or terminating it.
- *Primary law:* The primary law should set the key parameters of the DPA framework, including eligibility tests, mandatory agreement provisions and procedures.
- *Guidance:* A binding guidance (Code of Practice) explaining the eligibility tests, factors, methodology for calculating financial penalties and other standard terms and operational procedures to ensure predictability and fair application.
- *Preserving individual accountability:* Non-foreclosure clause on individual liability (see below); DPAs for legal entities only.
- *Suspension of limitation periods:* The running of limitation periods, or any other time restrictions on the prosecution or the start of trial in respect of any offence to which the DPA applies, should be suspended while the agreement is in force.
- *Bad faith exemption:* Possibility to re-file charges if the legal person acted in bad faith during the negotiations or implementation (see below).
- *Special conditions for SMEs and Government-Linked Companies (GLCs):* A dedicated SME track to ensure proportionality; adjusted sanctioning for GLCs.

17. **Individual liability.** The DPA amendments should contain an express provision that a DPA with a legal person does not extinguish, limit or weaken the personal criminal liability of any director, officer, employee or associated person. This would preserve the deterrent effect of section 17A(3) of the MACC Act (and any other provisions on individual liability) and address the concern that corporates “buy their way out” via DPAs while individuals walk free.⁷
18. **Bad faith DPA negotiation.** The default rule in the event of successful DPA completion (that is, when the DPA was complied with and its agreed duration has expired) is that the public prosecutor must discontinue the relevant criminal proceedings (withdraw the charges). Once discontinued, fresh criminal proceedings may not be instituted against the legal person for the same misconduct covered by the DPA terms. However, there should be an exception allowing reintroduction of charges if the public prosecutor finds that during the course of the DPA negotiations or DPA implementation, the legal person (i) provided inaccurate, misleading, or incomplete information to the public prosecutor; and (ii) knew or ought to have known that the information was inaccurate, misleading, or incomplete. The detailed reasons for the reintroduction of charges should be made public to ensure transparency and prevent abuse.

Recommendation: To address the risks of non-trial resolution in corporate crime cases, the DPA Act should embed the following essential safeguards: DPA negotiations led by the public prosecutor (not an investigative agency); mandatory evidentiary, public interest, and proportionality tests; judicial oversight at preliminary and final stages; a binding Guidance (Code of Practice) ensuring predictability and equal application; high level of transparency, including publication of the DPA text and court’s reasoning in DPA-related decisions; an express non-foreclosure provision preserving individual criminal liability; suspension of all applicable limitation periods for the duration of the agreement; a dedicated SME track and adjusted sanctioning for government-linked companies; and a bad faith exception permitting reinstitution of criminal proceedings where the legal person provided inaccurate or incomplete information during negotiations

⁷ See, for example, the US DOJ Corporate Enforcement Policy that expressly stipulates that one of the policy objectives is to “promote timely and effective enforcement of criminal laws, including holding culpable individuals accountable.” The September 2022 [DOJ Memo](#) states: “The Department’s first priority in corporate criminal matters is to hold accountable the individuals who commit and profit from corporate crime. Such accountability deters future illegal activity, incentivizes changes in individual and corporate behavior, ensures that the proper parties are held responsible for their actions, and promotes the public’s confidence in our justice system.”

Standalone act or amendments in an existing act

19. **Legal form of amendments.** The corporate corruption offence is set out in section 17A of the MACC Act. However, a new DPA framework would fit better in a standalone act or amendments to the Criminal Procedure Code of Malaysia for the following reasons:

- The DPA framework may apply to offences other than corruption offences stipulated in the MACC Act. Even if initially extended only to corruption offences, later the settlement mechanism may apply to other offences (for example, tax evasion, corporate fraud, sanctions evasion, environmental crimes, and others). Placing the DPA framework outside of the MACC Act allows institutional and wrongdoing neutrality and makes it future-proof.
- The DPAs are primarily a prosecutorial instrument for settling cases after the investigation has been concluded and charges have been drawn. The role of the MACC in negotiating the DPA is limited (although the MACC may be involved in the compliance monitoring – see below).
- A standalone act allows for the comprehensive addressing of all elements of the DPA framework (eligibility criteria, standard terms, negotiation process, judicial approval, variation and termination, breach consequences, publication requirements, etc.).
- While amendments to the Criminal Procedure Code may better link the new regime to existing provisions (for example, on plea bargaining, case disposal, and conditional discharge), they may also be limited by the Code's procedural nature.
- A standalone act on DPAs will provide additional visibility to the reform.
- Foreign comparators place DPA provisions in different statutes:⁸ *UK* – Schedule 17 (Deferred Prosecution Agreements) to the Crime and Courts Act 2013; *Canada* – Criminal Code, Part XXII.1 (Remediation Agreements); *Singapore* – Criminal Procedure Code, Part VIA; *France* – introduced by Sapin II Law as amendments to the Criminal Procedure Code; *Jersey* – a standalone Deferred Prosecution Agreements (Jersey) Law. In *Australia*, the Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 (not adopted) proposed to insert DPA provisions into the Director of Public Prosecutions Act 1983.

Recommendation: Establish the DPA scheme through a comprehensive standalone act (preferred) or amendments to the Criminal Procedure Code.

⁸ In the USA, there is no statutory basis, and non-trial resolutions are based on the prosecutorial discretion. However, there is extensive operational guidance in the form of Justice Manual, DOJ Corporate Enforcement and Voluntary Self-Disclosure Policy, DOJ Principles of Federal Prosecution of Business Organizations, and Sentencing Guidelines.

Primary law and binding guidance

20. **The scope of regulation in the primary law.** The primary law should set out key parameters of the DPA framework, including:
- 1) Characteristics of a DPA and its effect in court proceedings
 - 2) Qualifying offences and eligible entities
 - 3) Authority to negotiate a DPA
 - 4) Negotiation procedure
 - 5) Eligibility conditions (tests)
 - 6) Mandatory and optional content of a DPA
 - 7) Mandate to issue a binding Guidance (Code of Practice) on DPAs
 - 8) Judicial oversight (role of court in DPA proceedings)
 - 9) Publication of information and exemptions from publication and public hearings
 - 10) Monitoring of compliance
 - 11) Use of funds obtained as penalties or profit disgorgement
 - 12) Non-foreclosure of individual liability
 - 13) Breach of a DPA
 - 14) Variation and termination of a DPA
 - 15) Discontinuance on successful completion
 - 16) Use of materials obtained during DPA negotiations
 - 17) Appeal on certain decisions
 - 18) Consequential amendments
 - 19) Transitional provisions.
21. **Binding guidance.** The primary law should instruct the competent authority (for example, the Attorney General) to issue guidance (a Code of Practice) that is binding on prosecutors in applying the DPA framework. The guidance may cover, among other issues, the following: the process of submitting self-disclosure; the explanation of the evidentiary, public interest and other eligibility tests; consideration of aggravating and mitigating factors in deciding for or against a DPA; the process of negotiating and agreeing a DPA; the methodology for calculating financial penalties and determination of the direct and indirect proceeds; explanation of requirements that may be imposed on the legal person; cooperation requirements during negotiation stage and when implementing a DPA; the role of independent monitors and other compliance mechanisms; steps in case of alleged breach; and others.

Recommendation: Complement the primary law with a binding Guidance (Code of Practice) issued by the Attorney General, covering eligibility tests, penalty calculation methodology, standard DPA terms, and operational procedures.

Scope of application

22. The DPA Act should specify (a) the entities that may be eligible for a DPA, (b) the qualifying offences that may be the subject of a DPA, and (c) the temporal extension to conduct predating entry into force.
23. **Eligible entities:**
- DPA applies only to legal persons, not individuals.
 - Legal persons are understood broadly and include partnerships and unincorporated associations.
 - The DPA applies to legal persons subject to corporate liability. For example, in the case of corruption, a DPA would apply to commercial organisations as defined in subsection 17A(8) of the MACC Act. However, section 17A may need to be extended to include additional entities – see recommendations of the 2023 UNODC Liability of Legal Persons in Malaysia Study.⁹
 - Partnerships are expressly covered in most national systems with DPAs (financial penalties must be payable from the partnership’s funds, not from individual partners).
 - State-owned enterprises (in the form of GLCs or otherwise) operate as economic actors and may engage in corrupt and other criminal practices. The corporate liability should extend to SOEs.¹⁰ As such, SOEs should be eligible for a DPA. However, the DPA framework may reflect their special status and provide for a special approach to sanctioning (see below).
24. **Qualifying offences.** The list of qualifying (designated) offences should include corruption offences under the MACC Act and money laundering offences under AMLA. In the original DPA Act, or in any future amendment based on successful implementation, the list of qualifying offences may be extended to include other offences, such as fraud, false accounting, tax evasion, other economic crimes, and environmental crimes.
25. **Temporal application.** Conduct predating the new DPA Act should be capable of being resolved by a DPA.

Recommendation: Define the scope of the DPA framework broadly to cover all legal persons, including partnerships and unincorporated associations. Government-linked companies and other state-owned enterprises should be eligible but may be subject to adjusted terms that limit the punitive fine component and impose additional remedial obligations. Qualifying offences should initially include all corruption offences under the MACC Act and money laundering under AMLA; in the original amendments or later, the list may be extended to other offences. Resolution by a DPA should be possible for conduct predating the enactment of the Act.

⁹ “Extend the scope of the definition of “commercial organization” at subsection 17A(8) MACC Act to also include the following types of entities: i. not-for-profit organizations, including all types of societies, cooperative societies, foundations, and trusts; ii. sole proprietorships; iii. Government-linked companies, Government-linked investment companies, entities operating under ordinance, statutory bodies, state-owned enterprises; iv. entities incorporated or set up in Labuan jurisdiction, including Labuan foundations, partnerships and trusts; and v. Companies, partnerships and any other legal entity mentioned under subsection

17A(8) established by an act that preceded or succeeds any of the acts in the subsection.”

¹⁰ See, for example, the OECD Recommendation for Further Combating Bribery of Foreign Public Officials: “1. Member countries should ensure that state-owned enterprises can be held liable for the bribery of foreign public officials in international business transactions.” (<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>).

Initiation and eligibility tests

26. **Right to initiate.** Only the public prosecutor (public prosecutor specified in the Act or authorised by the Attorney General) should have the power to formally invite a legal person into DPA negotiations. The DPA negotiations should follow a full investigation that establishes the alleged offence to a sufficient standard.
27. **When to initiate.** A DPA may be negotiated before or after the charges are brought but, normally, before the start of the trial. Parties to the DPA negotiations and proceedings may withdraw at any moment before the DPA enters into force. The public prosecutor files charges against the legal person, which are immediately suspended for the duration of the DPA.
28. **Eligibility conditions.** A DPA should be possible if the following conditions are met:
 - 1) **Evidentiary threshold:** The evidence submitted by the self-reporting legal person or gathered during investigation is reasonably capable of demonstrating that the qualifying offence has been committed by the legal person

Alternative (based on the UK provisions): There is at least a reasonable suspicion based upon some admissible evidence that the legal person has committed the offence, and there are reasonable grounds for believing that a continued investigation would provide further admissible evidence within a reasonable period of time, so that all the evidence together would be capable of establishing a realistic prospect of conviction.
 - 2) **Public interest test:** The public prosecutor should ensure (and a judge should confirm) that the public interest is better served by entering a DPA rather than prosecuting the legal person.
 - 3) **Fair, reasonable and proportionate:** An additional eligibility condition should require that the draft DPA terms are fair, reasonable and proportionate. Fair means that the DPA terms are fair to all parties directly and indirectly affected by them, including the complainant, the accused, and the community. Reasonableness may be assessed according to the standard of a reasonable and informed person aware of all the circumstances of the file. Proportionality balances goals such as denunciation and deterrence without being disproportionate to the accused's wrongdoing.
29. **Public interest test considerations.** The DPA Act or supporting guidance should clarify the factors considered when deciding whether a DPA passes the public interest test. The presence or absence of any factors should not automatically lead to the prosecution or a DPA. Entering into and concluding a DPA negotiation should remain discretionary; it is a balancing exercise that considers various factors on a case-by-case basis.
30. **A presumption of a DPA.** To ensure predictability, the DPA Act or the guidance could stipulate the conditions under which there would be a presumption of a DPA, unless aggravating circumstances exclude it. In brief, there could be a strong presumption of a DPA if the legal person: (i) voluntarily self-reported within a reasonable time after it became known to it that the misconduct took place (for example, following a whistleblower report); (ii) provided full and genuine cooperation during the investigation; (iii) timely and appropriately remediated the misconduct; and (iv) there are no aggravating factors, like recidivism, pervasiveness of the misconduct within the legal person, etc. The guidance should define what is meant by voluntary self-reporting, genuine cooperation, appropriate remediation and other terms (see, for example, the US Corporate Enforcement Policy).

31. **Factors for or against a DPA.** The following factors may be considered when establishing whether a DPA is in the public interest (based on the UK Code of Practice):¹¹ *In favour of prosecution (against a DPA):*

- A history of similar conduct (including prior criminal, civil and regulatory enforcement actions against the legal person and/or its directors, partners, majority shareholders).
- The alleged conduct is part of the legal person's established business practices.
- The offence was committed at a time when the legal person had no, or an ineffective, corporate compliance programme, and it has not demonstrated a significant improvement in its compliance programme since then.
- The legal person has previously been subject to warnings, sanctions, or criminal charges and has nonetheless failed to take adequate action to prevent future unlawful conduct or has continued to engage in such conduct.
- Failure to notify of the wrongdoing within a reasonable time of the offending conduct coming to light.
- Reporting the wrongdoing but failing to verify it, or reporting it knowing or believing it to be inaccurate, misleading or incomplete.
- Significant level of harm caused directly or indirectly to the victims of the wrongdoing or a substantial adverse impact on the integrity or confidence of markets, local or national governments.

Against prosecution (in favour of a DPA):

- A genuinely proactive approach adopted by the management team when the offending is brought to their notice, involving, within a reasonable time, self-reporting offending otherwise unknown to the prosecutor and taking remedial actions, including, where appropriate, compensating victims.
- A lack of a history of similar conduct involving prior criminal, civil and regulatory enforcement actions against the legal person and/or its directors, partners, majority shareholders.
- The existence of a proactive corporate compliance programme both at the time of offending and at the time of reporting, but which failed to be effective in this instance.
- The offending represents isolated actions by individuals, such as a rogue director.
- The offending is not recent, and the legal person in its current form is effectively a different entity from that which committed the offences (for example, it has been taken over by another organisation); the management team has completely changed, disciplinary action has been taken against all of the culpable individuals, including dismissal where appropriate.
- A conviction is likely to have disproportionate consequences for the legal person; it is also likely to have collateral effects on the public, employees, shareholders, and/or institutional pension holders.

32. **Hierarchical consent.** The Act may require the Attorney General's consent to starting and/or concluding DPA negotiations.

¹¹ See also 11 factors in the US DOJ Principles of Federal Prosecution of Business Organizations and section 715.32(2), Factors to consider, of the Canada's Criminal Code.

33. **Disqualifying conditions.** The Act may establish additional disqualifying conditions for a DPA: for example, if the offence caused or was likely to have caused serious bodily harm or death, or harm to national defence or national security; the offence was committed for the benefit of, at the direction of, or in association with, a criminal organisation or terrorist group.
34. **Exclusion of national economic interest considerations.** The Act should consider the OECD AntiBribery Convention standards for foreign bribery offences, notably that the decision to prosecute should not be affected by the national economic interest, the potential effect on relations with another state or the identity of the organisation or individual involved. The Act should exclude such considerations, at least for the prosecution of foreign bribery.

Recommendation: Establish eligibility conditions: (i) an evidentiary threshold requiring evidence reasonably capable of supporting a conviction; (ii) a public interest test confirming that a DPA better serves the public interest than prosecution; and (iii) a requirement that the DPA terms are fair, reasonable and proportionate. The DPA Act or binding guidance should codify a non-exhaustive list of factors for and against a DPA. The Act should create a presumption in favour of a DPA where the legal person voluntarily self-reported within a reasonable time, provided genuine cooperation, and undertook timely remediation, in the absence of aggravating factors. Disqualifying conditions should include offences causing or risking serious bodily harm or death, national security offences, and association with organised crime or terrorism. The DPA Act should expressly exclude national economic interest as a relevant consideration for foreign bribery offences, in conformity with the OECD Anti-Bribery Convention and the 2021 OECD Recommendation.

Mandatory and optional terms

35. **Mandatory terms.** The Act should establish mandatory terms included in a DPA, including (based on Canada’s provisions):
 - 1) A statement of facts related to the offence(s) included in the charges and an undertaking by the legal person not to make or condone any public statement that contradicts those facts.
 - 2) The legal person’s admission of responsibility for the act or omission that forms the basis of the offence.
 - 3) Obligation for the legal person to cooperate in any investigation, prosecution or other proceeding in Malaysia or abroad, including by proactively providing information or testimony, in particular information that will assist in identifying individuals involved in the wrongdoing.
 - 4) Disgorgement of any direct or indirect profit derived from the offence.
 - 5) Obligation to pay a financial penalty for offences to which the agreement applies, the amount to be paid and any other terms respecting payment.
 - 6) An indication of any reparations, including restitution, that the legal person is required to make to a victim, or a statement by the prosecutor of the reasons why reparations to a victim are not appropriate in the circumstances, and an indication of any measure required in lieu of reparations to a victim (for example, payment to a charity).
 - 7) Obligation for the legal person to report to the prosecutor on the implementation of the agreement, the manner of reporting and any other terms regarding reporting.
 - 8) An indication of the legal effects of the agreement.

- 9) An acknowledgement by the legal person that the agreement has been made in good faith and that the information it has provided during the negotiation is accurate and complete.
- 10) An indication of the use that can be made of information obtained as a result of the agreement.
- 11) A notice of the prosecutor's right to vary or terminate the agreement with the approval of the court.
- 12) A warning that the breach of any term of the agreement may lead to an application by the prosecutor for termination of the agreement and a recommencement of proceedings.
- 13) Deadlines by which the legal person must meet the terms of the agreement.
- 14) The date on which the DPA ceases to have effect (the "expiry date").

36. **Optional terms.** A DPA may also include the following terms:

- 1) Obligation to reimburse the prosecutor for reasonable costs identified in the agreement that are related to its negotiation and administration and that have or will be incurred by the prosecutor.
- 2) Obligation to establish, implement or enhance compliance measures to address deficiencies in the legal person's policies, standards or procedures, including those related to internal control procedures and employee training, that may have allowed the offence.
- 3) Appointment of an independent monitor to verify and report to the prosecutor on the legal person's compliance with the DPA obligations, as well as the legal person's obligations with respect to that monitor, including the obligations to cooperate with the monitor and pay the monitor's costs. An alternative to the independent external monitor could be a monitorship performed by a state agency, for example, the MACC (French model).

Recommendation: The Act should prescribe a minimum set of mandatory DPA terms, including: a statement of agreed facts; an admission of responsibility for the offending conduct; a cooperation obligation covering ongoing and future investigations; disgorgement of all direct and indirect criminal proceeds; payment of a financial penalty; provision for victim compensation or a reasoned statement explaining why compensation is not appropriate; reporting obligations on compliance; and an acknowledgement by the legal person that the DPA was concluded in good faith. The Act should also include optional terms, including obligations for the compliance programme enhancement, reimbursement of investigative costs, and appointment of an independent monitor.

Financial penalty

37. **Structure.** The financial element of a DPA should be predictable and proportionate. The recommended approach is to include such components: (i) a punitive fine proportionate to the benefit derived from the wrongdoing; (ii) disgorgement of the criminal proceeds (both direct benefits, such as illegally obtained contract value, and indirect benefits, such as market share and treasury gain); (iii) victim compensation or reparation; (iv) the investigation and DPA negotiation costs; and (v) costs of monitorship if required under the DPA.
38. **Maximum cap.** To prevent excessive burden on a legal person, the Act may set a maximum cap on the financial penalty. The French approach is recommended – the amount of the financial penalty may not exceed 30% of the average turnover for the past three years (the consolidated turnover if the offending legal person is a part of the group). The cost of monitorship and reimbursement of the investigative costs may be excluded from the cap.
- Matrix of factors and formula.** The Act should specify that the calculation of the financial penalty be set out in the guidance, including a matrix of factors that increase or decrease the penalty amount, how to calculate direct and indirect benefits, a legal person's turnover and other financial conditions. The penalty calculation formula may further encourage corporate good-faith behaviour, for example, by offering discounts for voluntary self-disclosure, the effectiveness of the internal alert system, the relevance of the internal investigation, corrective measures after the offence, prior compensation to victims, and so on.
39. **SMEs.** The Act may specify additional waivers for the SMEs (based on the annual turnover or number of employees) – for example, that a DPA may exclude payment of the investigation costs and not require external monitorship. The Act may also specify a separate penalty cap for such entities.
40. **GLCs.** The Act may reflect the special status of GLCs and their use of public funds by limiting or excluding the punitive component of the monetary fine and by imposing additional requirements for remedial measures (for example, obligations to redress harms to affected communities and stakeholders).

Recommendation: The Act should prescribe a structured financial penalty comprising: (i) disgorgement of all direct and indirect proceeds; (ii) a punitive fine proportionate to the benefit derived from the offence and applicable aggravating and mitigating factors; (iii) provision for victim compensation or reparations; and (iv) investigative and negotiation costs and cost of monitorship. The total financial penalty could be capped at 30% of the average annual consolidated turnover for the three preceding financial years, excluding monitorship costs and investigation cost reimbursements. The binding guidance should set out the penalty calculation methodology, including a matrix of factors that increase or reduce the base amount and a specific methodology for quantifying direct and indirect criminal proceeds. A dedicated SME track could provide for reduced penalty caps and possible waiver of external monitorship and other requirements.

Judicial oversight

42. **Two-stage approval.** Judicial oversight is one of the key safeguards against the abuse of the negotiated settlements with legal persons. Introduce judicial control at the initial and final stages of the DPA negotiations (the UK model). At both stages, the scope of judicial oversight is limited to verifying that the draft DPA and its terms are in the public interest and are fair, reasonable and proportionate.
43. **Private vs. public hearing.** Court approval at the preliminary stage permits the DPA negotiations to proceed. The preliminary hearing may be held in private. If the initial application by the prosecutor was declined, the prosecutor may file a new application. At the final approval, the court delivers a judgment with reasons in an open hearing.
44. **Public hearing by default.** It is recommended to adopt Canada's approach, in which the final confirmation hearing is held in public, with possible exemptions.¹² The alternative is the UK approach, where the confirmation hearing is held in private, but if the court approves the DPA, it must give its reasons in open court (the DPA is also made public). See also the next section on the publication.
45. **Implementation oversight.** The primary role for the DPA implementation oversight lies with the public prosecutor. The court should not have an active role in monitoring compliance with the DPA terms. However, if the public prosecutor (directly or through external monitorship) detects a breach of the DPA terms, the application for variance or termination of the DPA should be filed with the court for approval. Similarly, if there is a need to amend the agreement's terms for objective reasons (upon mutual consent of the parties), the amendments should be approved by the court.
46. **DPA completion.** The Act may require that, upon the successful expiry of a DPA, the prosecutor notify the court thereof (and publish relevant notice). In addition, the Act may require that, on application by the public prosecutor, the court must, by order, declare that the terms of the agreement were met if it is satisfied that the legal person has complied with the agreement.¹³

Recommendation: Introduce two-stage judicial oversight. At the preliminary stage, the court should determine that negotiating a DPA is likely to be in the public interest; this hearing may be conducted in private. At the final stage, the court should confirm that the agreed DPA terms are fair, reasonable, and proportionate and in the public interest; this hearing should ordinarily be held in public. The court should not have an ongoing monitoring role during DPA implementation but must approve any material variation or termination. Upon successful completion, the prosecutor should apply for a court order declaring that the terms of the DPA were met.

¹² See reasoning in the Judgment of the Superior Court of Quebec, <https://www.canlii.org/en/qc/qccs/doc/2022/2022qccs4401/2022qccs4401.html>.

¹³ See section 715.4(1) of the Canada's Criminal Code.

Transparency requirements

47. **Balancing exercise.** To ensure trust in the process and allow public scrutiny, certain information about the DPA should be made public. The publication must balance the public interest in disclosing information about the DPA terms with the need to protect ongoing investigations and other proceedings.
48. **Scope of publication.** The following should be published:
- 1) Upon judicial approval of the DPA, the public prosecutor should publish the agreement's text.
 - 2) The court should publish its decision on the preliminary consideration of the application for a DPA approval, including reasons for approving or declining the application.
 - 3) The court should publish its decision on the final approval of the DPA terms, including its reasons for approving or declining the DPA.
 - 4) The court should publish its decisions on approving or declining the variation or termination of the DPA, including relevant reasons.
 - 5) The public prosecutor should publish a notice on the successful expiry of the DPA.
49. **Postponement or exemption.** The court may order the postponement of the publication of certain information if it is required to avoid a substantial risk of prejudice to the administration of justice in any criminal investigations or any other legal proceedings. The court may also order the removal or redaction of certain information if required in the interests of justice, personal or public safety, or national security.

Dedicated web page. The Act may require that the responsible authority (for example, the Attorney General's Chambers) publish and update information on the DPAs on a dedicated webpage and maintain a searchable public database of DPAs and related court decisions. Preferably, information on DPA proceedings (DPAs, any alterations, notices of completion or termination, implementation reports, etc.) should also be published on a centralised website for all court matters (e-kehakiman portal www.kehakiman.gov.my).

Recommendation: The Act should require publication of: (i) the agreed DPA text upon final court approval; (ii) the court's written reasons at both the preliminary and final approval stages; (iii) court decisions on variation, termination, and completion; and (iv) notices of successful DPA completion issued by the prosecutor. The Attorney General's Chambers may establish and maintain a publicly accessible, searchable online database of all DPAs and related court decisions. The court should have the power to order postponement or proportionate redaction of specific information where necessary to protect ongoing investigations, other legal proceedings, national security, public or personal safety.

Institutional framework

51. **Attorney General's Chambers.** The Attorney General is the constitutionally designated public prosecutor under Article 145(3) of the Federal Constitution of Malaysia. The DPA Act should designate the AG as the DPA authority, with power to delegate conduct of DPA proceedings to authorised Deputy Public Prosecutors, subject to the AG's hierarchical consent at the initiation and conclusion of negotiations. The AG should be required to issue a binding Guidance (Code of Practice) within a certain period (for example, 12 months) of the DPA Act's enactment. The AG may also retain oversight over variation and termination of DPAs.
52. **Dedicated public prosecutors.** A dedicated unit could be established within the AGC. The Unit could deal with the prosecution of corporate crime and DPA proceedings. It should be staffed by prosecutors with specialist expertise in corporate criminal law, financial investigation, asset recovery, and negotiated resolution. The Corporate Crime and DPA Unit should have primary responsibility for receiving self-disclosures, conducting DPA negotiations, presenting DPAs in court, and issuing operational guidance on compliance with the Guidance (Code of Practice).
53. **MACC: investigation and compliance oversight.** The MACC's primary institutional role in DPA proceedings is investigative: it investigates corruption offences (self-detected, disclosed by the legal person, or whistleblowers) and, upon concluding an investigation, refers the case to the AGC for consideration of DPA eligibility. The MACC may provide technical expertise, financial analysis, and evidence during DPA negotiations but should not conduct negotiations independently. Where a DPA includes a compliance programme requirement, the MACC's dedicated compliance oversight division could serve as the state monitor, reporting to the public prosecutor. For complex or high-value cases, or where a conflict of interest arises, an independent external monitor should be appointed instead. The investigative and compliance monitoring functions should be separated within the MACC.
54. **Role of courts.** The Sessions Court could be designated as the court of first instance for DPA approval proceedings. Its role is supervisory and limited: it must establish that the draft DPA (DPA amendment) satisfies the statutory tests (public interest; fair, reasonable and proportionate) at both the preliminary and final stages. The court's supervisory jurisdiction should extend to approving material variations and terminations, and to issuing completion declarations upon successful expiry of a DPA. The appeals could be directed to the High Court.
55. **Independent compliance monitors.** The DPA Act and binding guidance should establish a framework governing the selection, appointment, conduct, and oversight of independent compliance monitors. Key elements could include: (i) a register of pre-approved monitors with relevant expertise in compliance, forensic accounting, or corporate governance; (ii) conflict of interest restrictions, prohibiting appointment of monitors with prior involvement in the case or a close relationship with the legal person; (iii) a defined mandate and scope of review; (iv) reporting obligations to both the public prosecutor and, where required, to the court; and (v) a requirement that all monitor costs be borne by the legal person (with the possibility of establishing a cap on the expenses in the DPA). Monitors should act as independent professionals and must not assume management functions within the company or act as agents of the prosecution.

56. **Sectoral regulators.** The DPA framework must be coordinated with sectoral regulators whose mandates intersect with DPA-eligible offences. For example, Bank Negara Malaysia (BNM) has supervisory and enforcement authority over financial institutions for AML/CFT and related offences under AMLA; the Securities Commission Malaysia (SC) enforces capital markets and securities law. Where conduct that is the subject of a DPA also triggers regulatory action by BNM or SC, the Act could provide for: (i) information sharing between the public prosecutor and the relevant regulator; (ii) the need to establish protocols for coordinating parallel enforcement proceedings; and (iii) treatment of regulatory fines in the context of financial penalties under a DPA.
57. **Inter-agency co-ordination.** An inter-agency DPA Coordination Committee could be established, comprising representatives of AGC, MACC, BNM, SC, the Companies Commission of Malaysia (SSM), the Ministry of Finance (responsible for procurement debarment), and the National AntiFinancial Crime Centre (intelligence and sanction coordination). The Committee should develop joint enforcement protocols, agree on inter-agency referral procedures, share intelligence on potential DPA-eligible cases, and publish periodic reports on DPA enforcement trends and outcomes. The Committee could also coordinate Malaysia's participation in multinational DPA proceedings involving the same corporate conduct across multiple jurisdictions. The Coordination Committee should be established under the AGC, because of its role in coordinating all enforcement and regulatory agencies, as well as MLATs and asset recovery.

Recommendation: The DPA Act should designate the Attorney General as the primary DPA authority, with the power to authorise specific Deputy Public Prosecutors within the AGC to negotiate and conclude DPAs, subject to the AG's hierarchical consent at the initiation and conclusion of negotiations. The Act should require the AG to issue a binding Guidance (Code of Practice) within a certain period of the Act's enactment. A dedicated Corporate Crime and DPA Unit could be established within AGC. The MACC should be designated as the default compliance monitor for corruption-related DPAs, with the option to appoint an independent external monitor in complex or high-value cases or where a conflict of interest arises. The investigative and compliance monitorship functions should be separated within the MACC. An inter-agency DPA Coordination Committee comprising the AGC, MACC, Bank Negara Malaysia, the Securities Commission and other regulators/enforcement agencies could be established to coordinate parallel enforcement and share intelligence.

Legal reform coherence

58. Improvement of the corporate liability provisions. The introduction of a DPA framework provides an opportunity to strengthen existing provisions on corporate liability in Malaysia. While section 17A of the MACC Act introduced a progressive corporate liability regime, it has deficiencies that should be addressed. Among such issues that could be corrected or reinforced (see UNODC 2023 Liability of Legal Persons in Malaysia Study for the section 17A analysis and recommendations):

- Extend the scope of liable legal entities.
- Ensure an autonomous nature of the corporate liability.
- Introduce provisions on the liability of successor companies.
- Clarify key terms in section 17A (“a person associated with the commercial organisation,” “obtain or retain business for the commercial organisation,” the persons who are deemed individually liable for the corporate offence, and others).
- Elaborate on the Adequate Procedures requirement to provide more substantive provisions in the primary law.
- Review provisions on deeming liability (the broad scope of persons covered, overlap between corporate and individual defence, etc.).
- Extend the scope of persons whose acts trigger liability of legal persons to include owners, beneficial owners, shadow directors, de facto managers, and other categories of controllers.
- Revise sanctions to ensure proportionality; add non-monetary penalties.

59. Coherence with other reforms. The DPA framework should also be coordinated with other legal reforms, notably the whistleblower protection and freedom of information provisions. The DPA incentives for corporate whistleblowing may be neutralised by the restrictive approach and insufficient protections for whistleblowers provided in the dedicated legislation. The DPA Act may introduce an award scheme for whistleblowers whose disclosures resulted in the recovery of assets through a DPA or upon a conviction.¹⁴ Similarly, the transparency requirements in the DPA framework should align with the general freedom of information (access to information) legislation. The DPA framework could also be viewed in the broader context of the justice sector reform, including the status and institutional independence safeguards of the MACC and public prosecutors.

Recommendation: The introduction of the DPA Act should be accompanied by a coherent package of complementary reforms, including: (i) targeted amendments to section 17A of the MACC Act to address identified deficiencies (see UNODC 2023 Liability of Legal Persons Study), including extending the scope of liable entities, ensuring autonomous corporate liability, specifying key terms, and introducing successor liability; (ii) amendments to the Whistleblower Protection Act 2010 and other legislation to strengthen protections for corporate whistleblowers, including those who report to the MACC or AGC on corporate misconduct (including the possible introduction of an award mechanism); (iii) strengthening the freedom of information framework and aligning it with the DPA publication requirements; and (iv) consequential amendments to the Criminal Procedure Code to clarify the connection between DPA proceedings and general criminal procedure. Conduct extensive public and stakeholder consultations before finalising draft DPA proposals.

¹⁴ See US DoJ Corporate Whistleblower Awards Pilot Program, <https://www.justice.gov/criminal/criminal-division-corporatewhistleblower-awards-pilot-program>.

Annex. Reference materials

The following sources are recommended as primary reference materials for drafters and policymakers.

International Standards

- **United Nations Convention Against Corruption (UNCAC), 2003.** UN General Assembly Resolution 58/4, 31 October 2003. Available at: <https://www.unodc.org/unodc/en/corruption/uncac.html>. See in particular Articles 26 (Liability of legal persons) and 30 (Prosecution, adjudication and sanctions).
- **UNCAC Conference of States Parties, Resolution 10/12 (2023),** Providing incentives for the private sector to adopt integrity measures to prevent and combat corruption. Available at: <https://www.unodc.org/corruption/en/cosp/conference/session10-resolutions.html#Res.10-12>.
- **OECD Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 Recommendation).** Section on Non-Trial Resolution, Annex I (Good Practice Guidance on Implementing Specific Articles of the Convention), and Annex II (Good Practice Guidance on Internal Controls, Ethics and Compliance). Available at: <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>.
- **G20 High-Level Principles on the Liability of Legal Persons for Corruption (2022).** Available at: <https://www.mofa.go.jp/mofaj/files/000272361.pdf>.
- **UNODC Study on the Liability of Legal Persons in Malaysia (2023).** A study of the regulatory and institutional frameworks governing liability of legal persons and the capacity to enforce corruption offences against legal persons in Malaysia. Available at: https://www.unodc.org/roseap/uploads/documents/malaysia/research/2026/Malaysia_LL_P_Report.pdf.

United Kingdom

- **Crime and Courts Act 2013 (UK), Schedule 17 (Deferred Prosecution Agreements).** Available at: <https://www.legislation.gov.uk/ukpga/2013/22/schedule/17>.
- **Serious Fraud Office and Crown Prosecution Service, Deferred Prosecution Agreements Code of Practice (2014, updated).** Joint SFO/CPS guidance issued under paragraph 6 of Schedule 17 to the Crime and Courts Act 2013. Available at: <https://www.cps.gov.uk/publication/deferred-prosecution-agreements-code-practice>.
- **Serious Fraud Office, Guidance on Corporate Co-operation (2025).** SFO External Guidance on Corporate Cooperation and Enforcement in relation to Corporate Criminal Offending. Available at: <https://www.gov.uk/government/publications/sfo-corporate-guidance>.
- **Sentencing Council, Fraud, Bribery and Money Laundering Offences: Definitive Guideline (2014).** See the section on corporate offenders. Available at: https://sentencingcouncil.org.uk/media/oz3nw1qq/fraud_bribery_and_money_laundering_offences_-_definitive_guideline.pdf.
- **Case studies on DPAs –** see UNODC Study on the Liability of Legal Persons in Malaysia (2023) (cited above).

United States of America

- **US Department of Justice, Justice Manual, Chapter 9-28: Principles of Federal Prosecution of Business Organizations (Updated 2023).** Available at: <https://www.justice.gov/jm/jm-9-28000https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizationsprinciples-federal-prosecution-business-organizations>.
- **US Department of Justice, Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP) (2023).** DOJ Criminal Division policy setting out the benefits of voluntary self-disclosure and cooperation in corporate cases; the difference between declination and other resolutions. Available at: <https://www.justice.gov/dag/media/1430731/dl?inline>.
- **US Sentencing Commission, Sentencing Guidelines for Organizations (Chapter 8), 2023.** Available at: <https://www.ussc.gov/guidelines/organizational-guidelines>.
- **US Department of Justice Corporate Whistleblower Awards Pilot Program (2024),** <https://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilothttps://www.justice.gov/criminal/criminal-division-corporate-whistleblower-awards-pilot-programprogram>. **Canada**
- **Criminal Code of Canada, Part XXII.1 (Remediation Agreements).** Available at: <https://laws.justice.gc.ca/eng/acts/C-46/page-119.html - docCont>.
- **Public Prosecution Service of Canada, Federal Prosecution Service Deskbook, Chapter 3.21: Remediation Agreements.** Available at: <https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fpshttps://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch21.htmlsfp/tpd/p3/ch21.html>.
- **Case study on the Remediation Agreement** – see UNODC Study on the Liability of Legal Persons in Malaysia (2023) (cited above). **France**
- **Loi n° 2016-1691 du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique (Loi Sapin II).** Article 22 introduced the Convention Judiciaire d'Intérêt Public (CJIP). The CJIP provisions are codified in Articles 41-1-2 and 180-2 of the Code de procédure pénale. Available at (French): https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006071154/2026-05-28.
- **Parquet National Financier (PNF) and Agence Française Anticorruption (AFA) Joint Guidelines on the Implementation of the CJIP (Revised 2023).** Available at: https://www.tribunal-dehttps://www.tribunal-de-paris.justice.fr/sites/default/files/2023-03/Guidelines_on_the_implementation_of_the_CJIP_PNF_January_16_2023_VD.pdfparis.justice.fr/sites/default/files/2023-03/Guidelines%20on%20the%20implementation%20of%20the%20CJIP_PNF_January%2016%202023%20VD.pdf.
- **Agence Française Anticorruption, Guidelines on Compliance Programmes.** AFA guidance defining the standards for corporate anti-corruption compliance programmes under Loi Sapin II, relevant to the compliance component of CJIPs. Available at: https://www.agence-francaisehttps://www.agence-francaise-anticorruption.gouv.fr/files/files/French_AC_Agency_Guidelines_.pdfanticorruption.gouv.fr/files/files/French%20AC%20Agency%20Guidelines%20.pdf.
- **Case study on CJIP** – see UNODC Study on the Liability of Legal Persons in Malaysia (2023) (cited above).

Singapore

- **Criminal Procedure Code 2010, Part VIA (Deferred Prosecution Agreements).** Sections 149A to 149M, inserted by the Criminal Justice Reform Act 2018. Available at: <https://sso.agc.gov.sg/Act/CPC2010>.

Jersey

- **Criminal Justice (Deferred Prosecution Agreements) (Jersey) Law 2023.** Available at: https://www.jerseylaw.je/laws/current/l_2_2023.

Australia

- **Australian Law Reform Commission, Corporate Criminal Responsibility, ALRC Report 136 (April 2020).** Comprehensive review of Australia's corporate criminal responsibility framework with recommendations including the introduction of a statutory DPA scheme modelled on the UK approach. Available at: <https://www.alrc.gov.au/publication/corporate-criminal-responsibility>.
- **Crimes Legislation Amendment (Combatting Corporate Crime) Bill 2019 (lapsed).** Proposed legislation that would have introduced DPA provisions by amending the Director of Public Prosecutions Act 1983. Available at: www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=s1246.
- **Australian Federal Police, Guideline, Optimal investigation outcomes for self-reporting and cooperating corporations, April 2026.** Principles associated with achieving an optimal investigation outcome for corporations that provide genuine, proactive and fulsome cooperation in an AFP investigation, including through self-reporting. Outlines considerations to determine that the optimal investigation outcome is a non-conviction-based (civil) *Proceeds of Crime Act 2002* resolution. Available at: <https://www.afp.gov.au/news-centre/publications/optimal-investigation-outcomes-self-reporting-and-cooperating-corporations>.
- **Australian Federal Police, Corporate Cooperation Guidance, 2021.** Available at: <https://www.afp.gov.au/sites/default/files/2023-07/Corporate%20Cooperation%20Guidance.pdf>.
