

# SECTION 17A

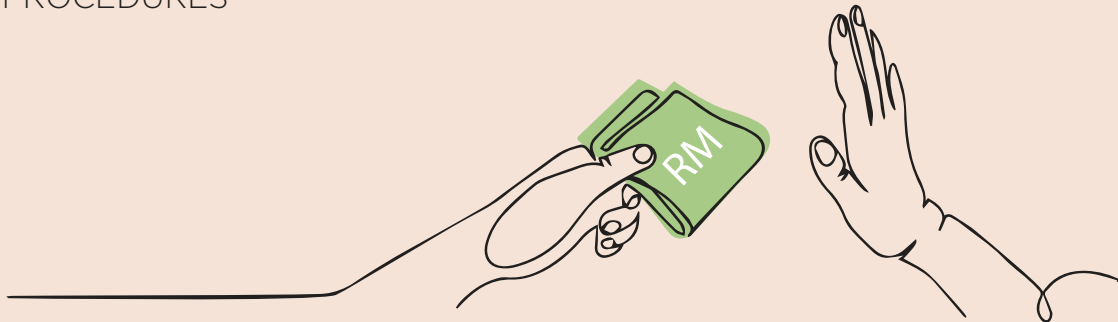
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MACC ACT 2009  
& ADEQUATE  
PROCEDURES



## EMPLOYERS' HANDBOOK

For Small & Medium Enterprises (SMEs)





TRANSPARENCY  
INTERNATIONAL  
MALAYSIA

# WE WANT YOU TO SPEAK UP AGAINST **BUSINESS CORRUPTION**



Transparency International - Malaysia (TI-M) is an independent, non-governmental organisation that is an accredited chapter of Transparency International.

For more information, please visit:  
[www.transparency.org.my](http://www.transparency.org.my)

**Disclaimer:** All characters and events in this book are entirely fictional and do not represent or reflect any person or event in real life.

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# INTRODUCTION

**Small Medium Enterprises (SMEs)** contribute significantly to the Malaysian economy. In 2019, SMEs contributed a total of **38.9% to the country's gross domestic product (GDP)**.

What's more, a grand total of **907,065** businesses within Malaysia identify as an SME. Thus, SMEs are pivotal to safeguard Malaysia's continuous economic growth and upward mobility.

This further demonstrates the level of competition the SME industry faces and with the growing competition, it breeds the right conditions for unethical business practices.

Remember, it's **never too late** to join the **fight against corruption**.

Call us at **03 7887 9628** or drop us an email at **ti-malaysia@transparency.org.my** if you have any questions regarding incidences of bribery, corruption or anything related to such criminal conduct.

Transparency International Malaysia (TI-M) aims to **drive anti-corruption efforts, business integrity and transparency in the private sector**. To be the driving force for the SMEs and their employees to curb bribery and corruption in the field of business before it spreads and stifles economic development.

TI-M dedicates this handbook to all responsible individuals in the eventual hope that it will serve as a **valuable guide to promote proper business ethics** in the workplace. The handbook aims to engage and empower every single individual in the workplace.

# WHAT IS **CORRUPTION & BRIBERY?**

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**Corruption** is the  
**abuse of**  
**entrusted power**  
**for private gain.**



**- TRANSPARENCY INTERNATIONAL -**

# WHAT IS BRIBERY?

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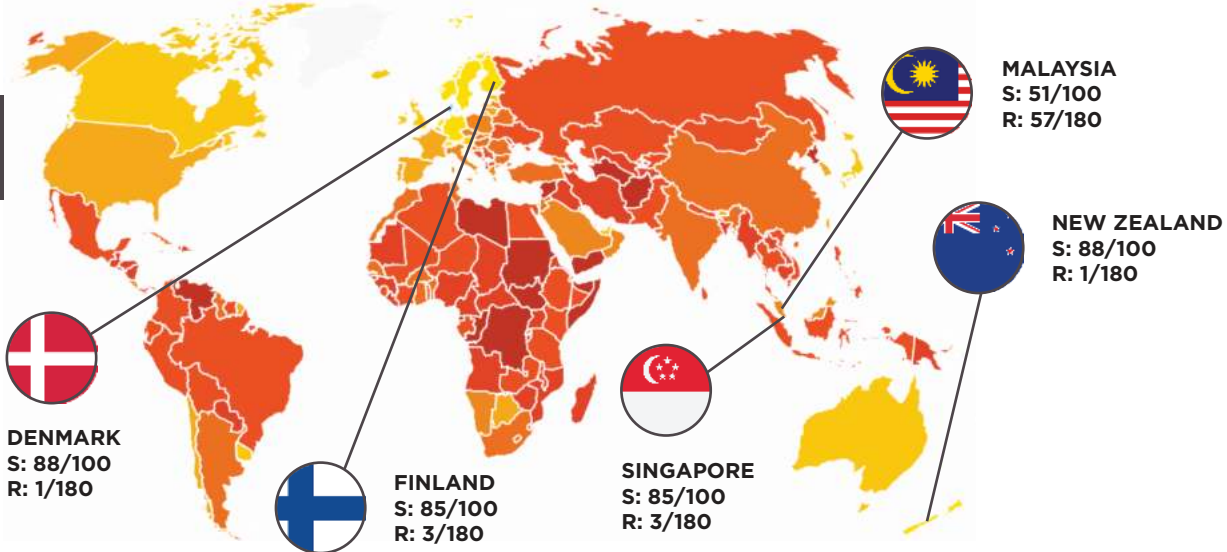
FORMS OF  
GRATIFICATION  
BASED ON  
**SECTION 3,  
MACC ACT  
2009**

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# CORRUPTION PERCEPTIONS INDEX 2020

S: SCORE  
R: RANK



HIGHLY CORRUPT

SCORE

VERY CLEAN





# GLOBAL CORRUPTION BAROMETER ASIA 2020



**71%**



Think government corruption is a big problem.

**15%**



Used personal connections for public services\*

**13%**



Paid a bribe for public services\*

**12%**



Experienced sextortion or know someone who has.

**7%**



Offered bribes in exchange for votes.

**\*Based on people who used these public services in the previous 12 months.**

Source from Transparency International Malaysia.

COMMON  
TYPES OF  
**CORRUPTION  
OFFENCES  
MACC ACT  
2009**

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# FACILITATION PAYMENT

Speeding up the processes - payments made to officials to obtain or speed up approvals and routine services, which the officials are required to provide.

**It does not include payments made directly to obtain or retain business.**



You're  
**Hired**

## CONFLICT OF INTEREST

Gaining or providing opportunities to undeserving persons with no matching qualifications, family members or close associates (nepotism).

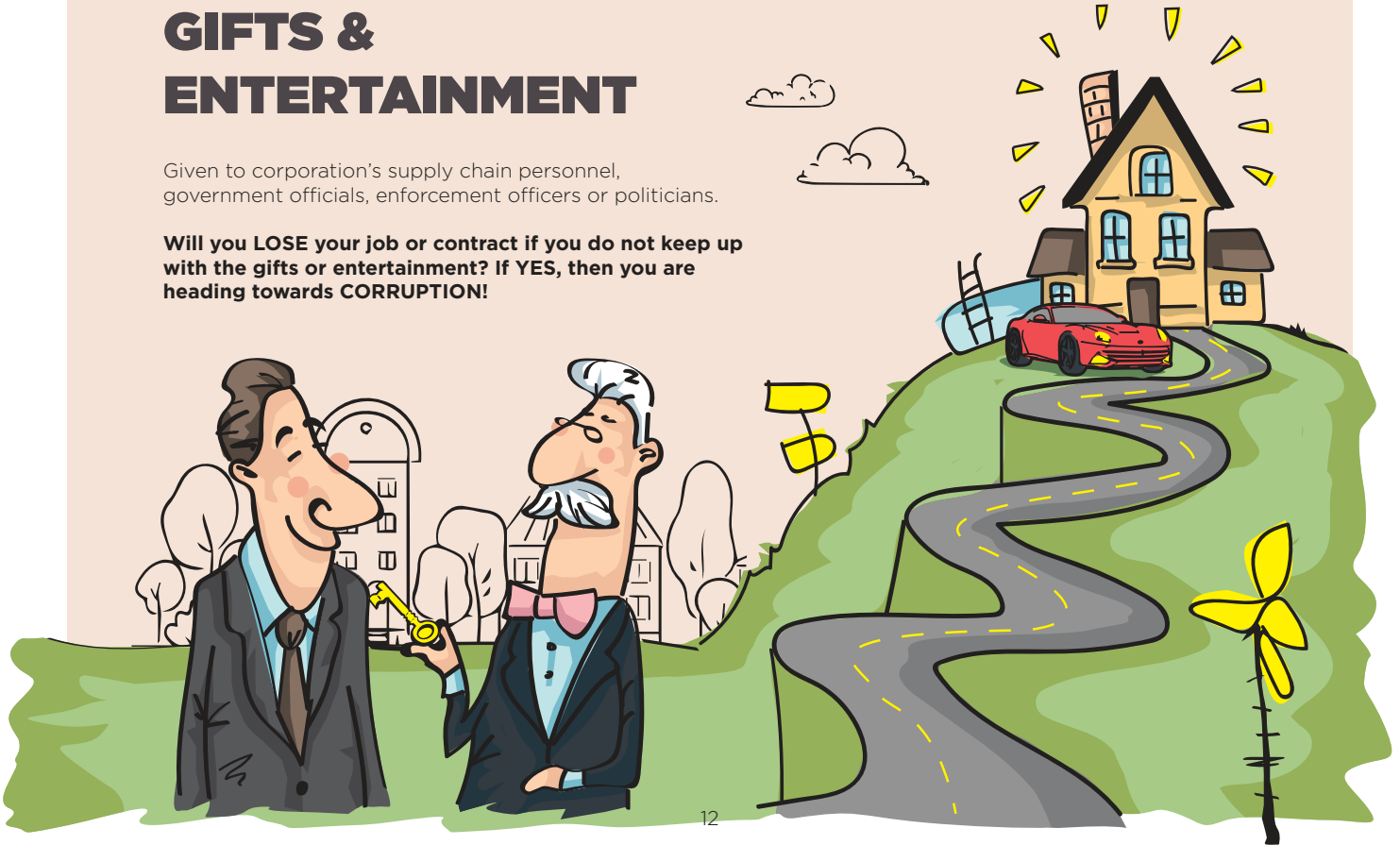
**Doing personal work on company's time and money.**



# GIFTS & ENTERTAINMENT

Given to corporation's supply chain personnel, government officials, enforcement officers or politicians.

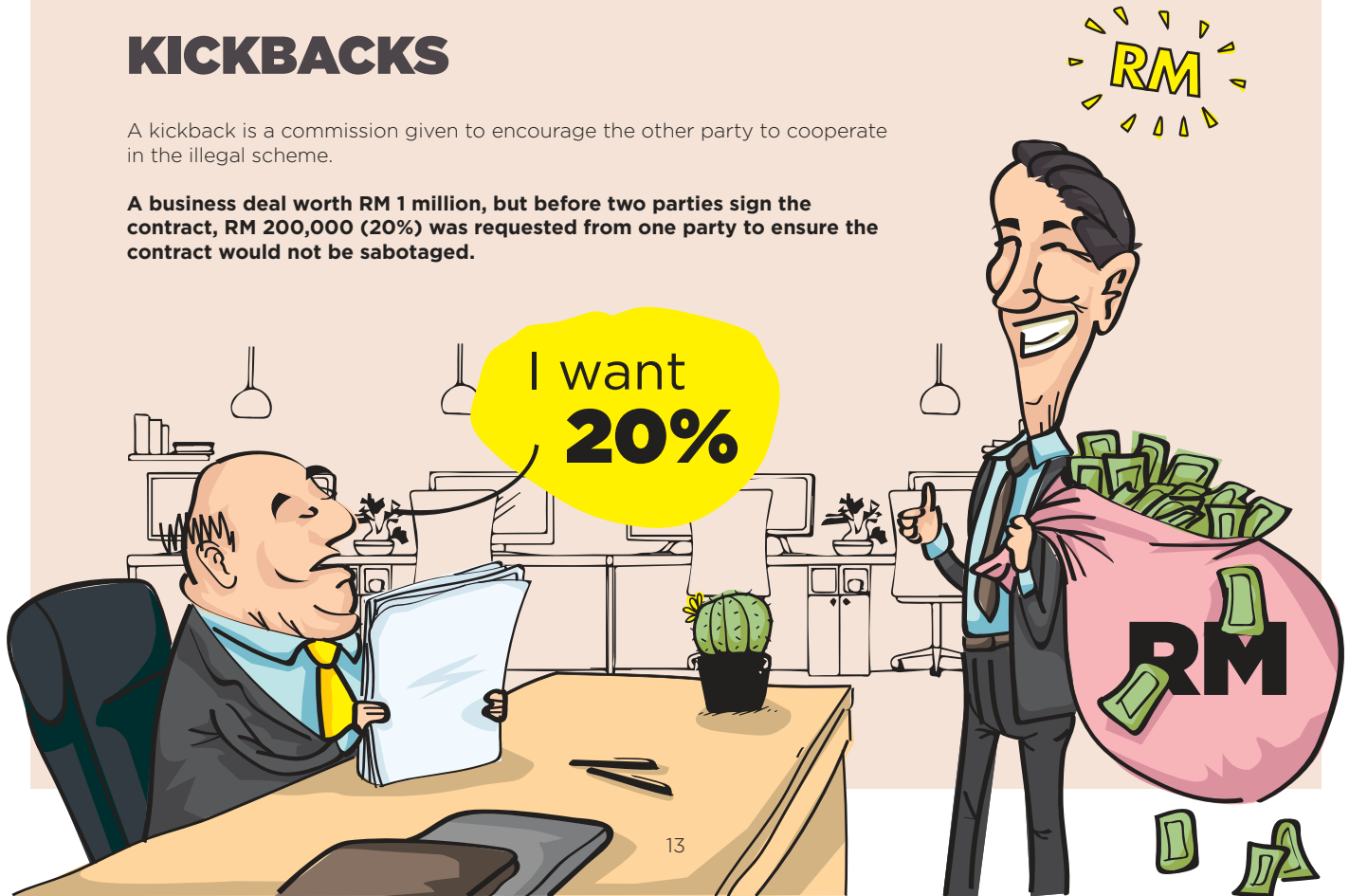
**Will you LOSE your job or contract if you do not keep up with the gifts or entertainment? If YES, then you are heading towards CORRUPTION!**



# KICKBACKS

A kickback is a commission given to encourage the other party to cooperate in the illegal scheme.

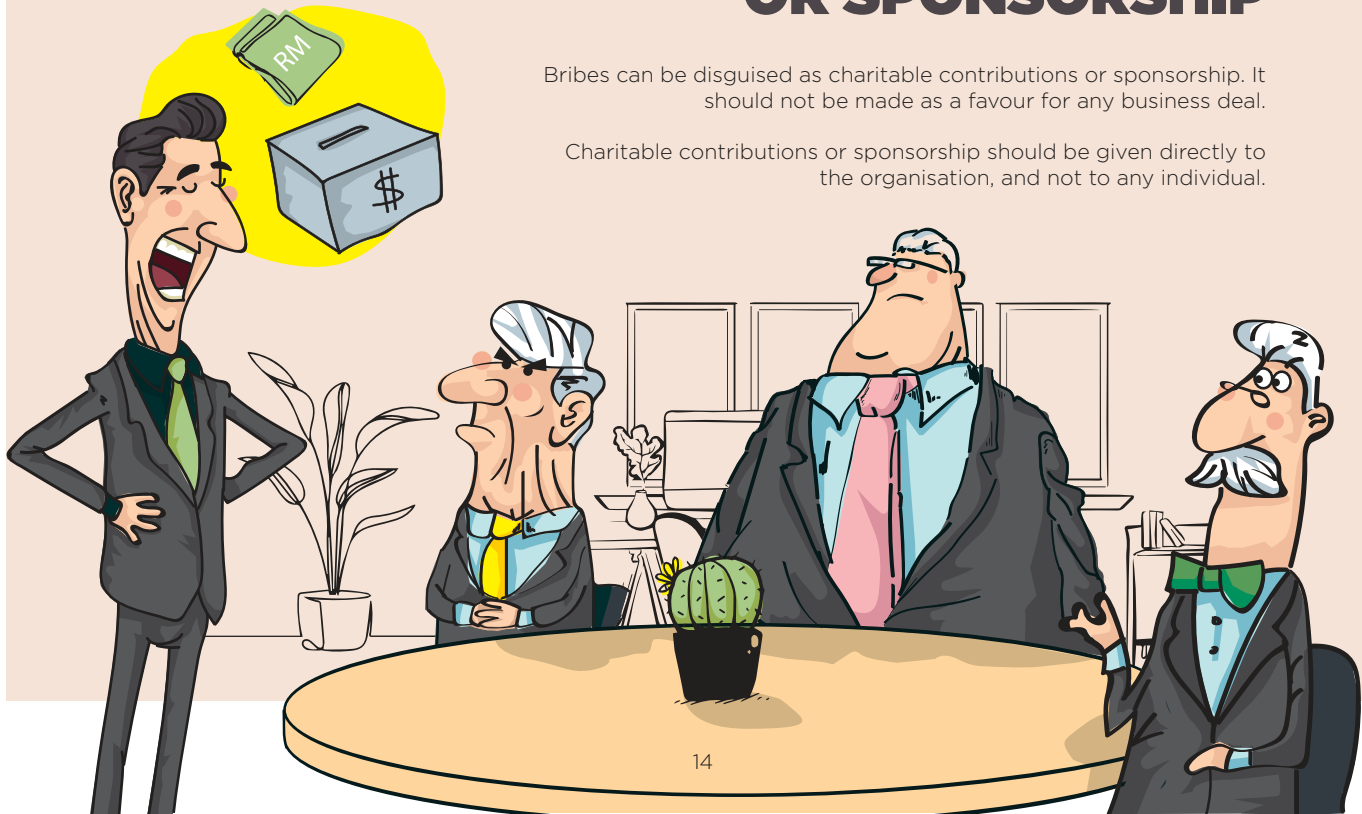
**A business deal worth RM 1 million, but before two parties sign the contract, RM 200,000 (20%) was requested from one party to ensure the contract would not be sabotaged.**



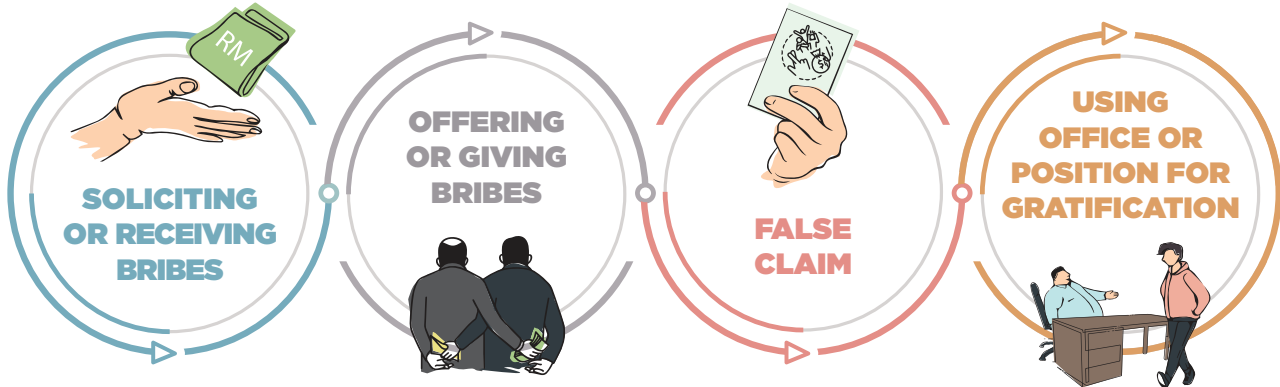
# CHARITABLE CONTRIBUTION OR SPONSORSHIP

Bribes can be disguised as charitable contributions or sponsorship. It should not be made as a favour for any business deal.

Charitable contributions or sponsorship should be given directly to the organisation, and not to any individual.



# MAIN OFFENCES UNDER THE MALAYSIAN ANTI-CORRUPTION COMMISSION ACT 2009



Any person soliciting or receiving bribes as an inducement or reward in an official transaction.

**S.16(a) and 17(a) MACC Act 2009**

Any person offering or giving bribes to public or private sector officials in an official transaction.

**S.16(b) and 17(b) MACC Act 2009**

Any person submitting false claims in payment requisitions.

**S.18 MACC Act 2009**

Abuse of office or position by a public official in making decisions for purposes of self-interest.

**S.23 MACC Act 2009**



# WHAT IS THE **PENALTY?**

---

## **IMPRISONMENT & FINE**

Imprisonment up to **20 years** and fine **RM 10,000/-** or **5 times** the bribe amount; whichever is higher.

**- Section 24 MACC Act 2009 -**

# MACC AMENDMENT ACT 2018

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## SECTION 17A

An offence committed by commercial organisation.

Tabled in Parliament on **4 April 2018** & gazetted on **4 May 2018**.

**8 sections** were amended within the Act.

## TWO (2) NEW SECTIONS:

Moratorium to prepare & implement Section 17A by **1 June 2020**.

## SECTION 41A

On admissibility of documentary evidence.

Ministerial Guidelines based on **Subsection (5)** issued in **December 2018**.



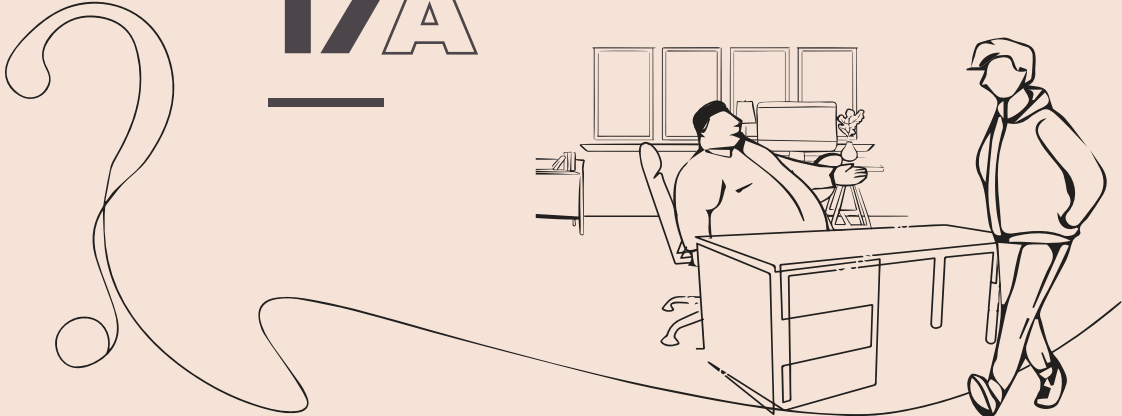
## **SECTION 17A** OF MACC ACT 2009

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Took effect on **1 June 2020**

**Commercial organisations are liable** if their employees or persons associated commits bribery related offences.

# WHAT IS **SECTION** **17A**





A COMMERCIAL  
ORGANISATION  
**COMMITS AN  
OFFENCE**

---

**To obtain  
or retain  
business.**

if a person associated  
**corruptly gives, agrees to  
give, promises or offers to  
any person any gratification  
with the intent...**

**To obtain or  
retain an  
advantage in  
the conduct  
of business.**

# SECTION 17A

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## COMMERCIAL ORGANISATION

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# SECTION 17A

## COMMERCIAL ORGANISATION

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**A company** incorporated under the **Companies Act 2016** and carries out business in Malaysia or elsewhere.



**A company** wherever incorporated and carries on a business or part of a business **in Malaysia.**



**A partnership** under the **Partnership Act 1961** and carries on a business in Malaysia or elsewhere.



**A partnership** which is a limited liability partnership registered under the **Limited Liability Partnership Act 2012** and carries on a business in Malaysia or elsewhere; and



**A partnership** wherever formed and carries on a business or part of a business **in Malaysia.**

# WHO IS CONSIDERED AS A “PERSON ASSOCIATED”

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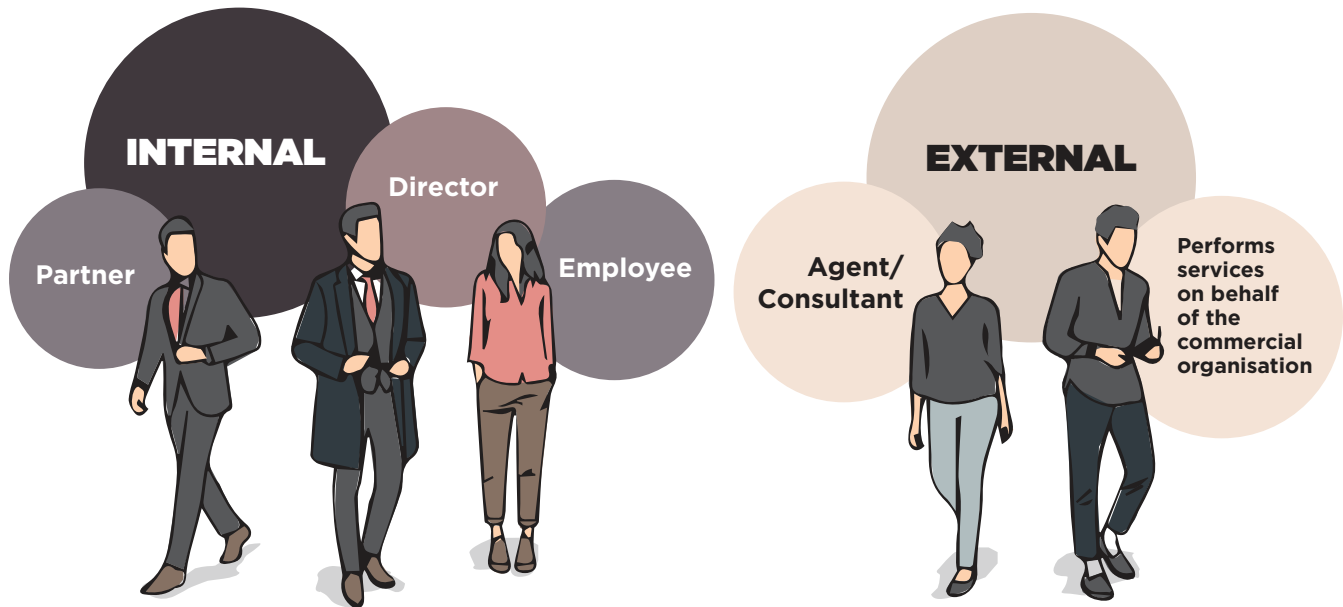
WITH THE  
COMMERCIAL  
ORGANISATION





# PERSON ASSOCIATED WITH THE COMMERCIAL ORGANISATION

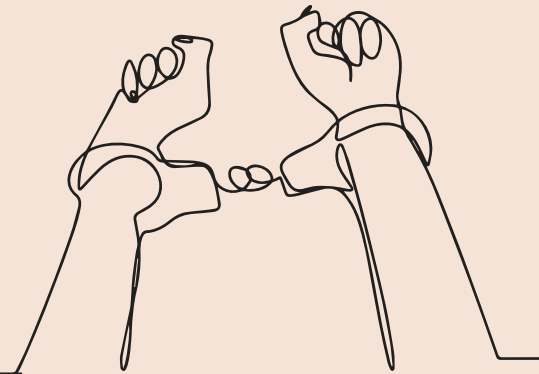
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# WHAT IS THE **PENALTY?**

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IMPRISONMENT  
& FINE



# WHAT IS THE PENALTY?

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A fine of not less than 10 times the value of the gratification or RM 1 Million, whichever is higher.

**OR**  
**BOTH**  
**IMPRISONMENT**  
**& FINE**

Imprisonment for a term not exceeding 20 years.

# PLAUSIBLE SCENARIO

## (SUMMARY)

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WHAT ARE THE  
**LEGAL  
DEFENCES  
AVAILABLE**

for the **Board of  
Directors** and the  
**Senior Management?**

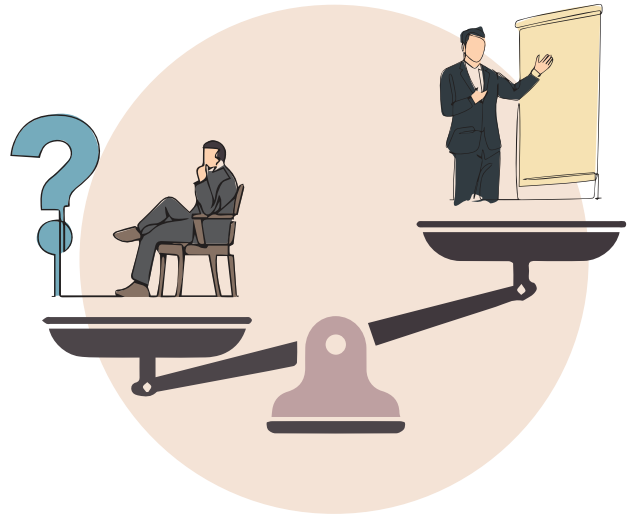


# LEGAL DEFENCES AVAILABLE FOR BOARD OF DIRECTORS & SENIOR MANAGEMENT

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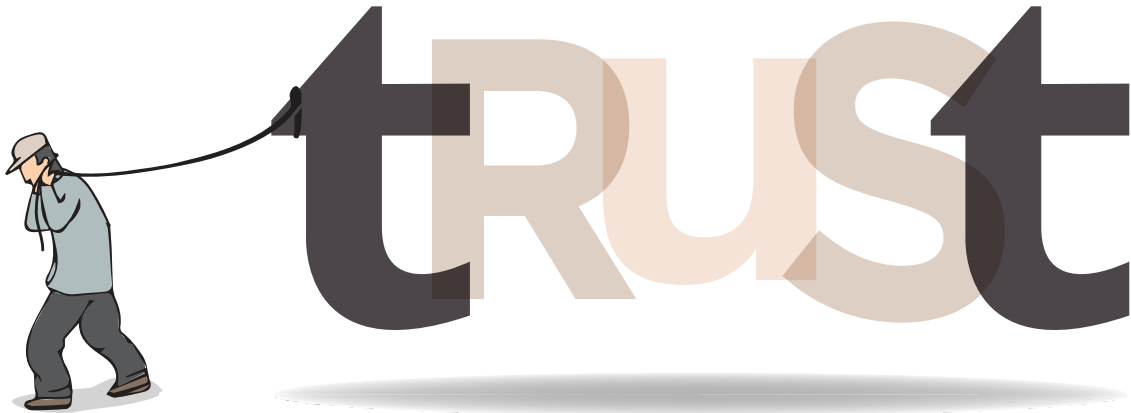
Able to prove that the offence was **committed without their consent.**

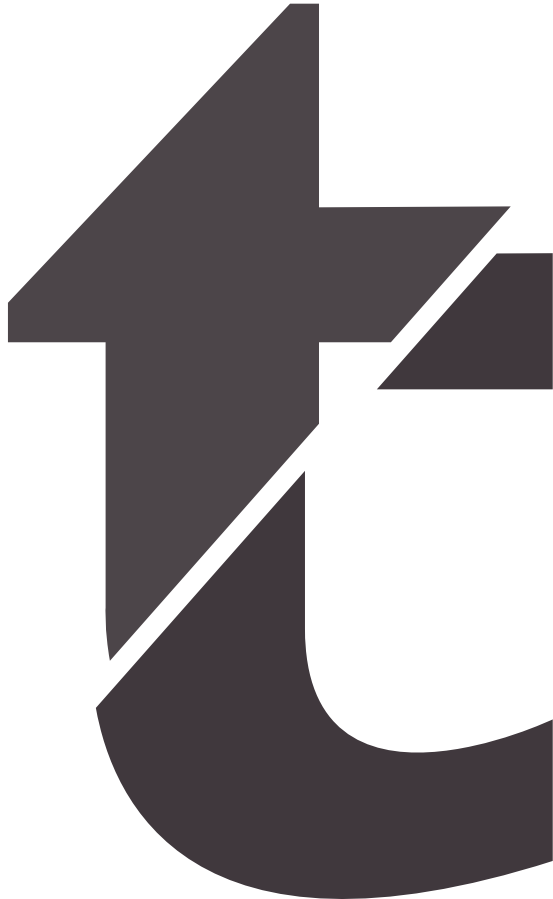
Able to prove that it had **“adequate procedures”** to prevent the persons associated to it from committing the corrupt offence.



**COMPANIES NEED TO  
ENSURE THAT  
“ADEQUATE PROCEDURES”  
ARE IN PLACE**

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## PRINCIPLE I

### TOP LEVEL COMMITMENT

Top Level (Board of Directors & Senior Management) **responsible for highest** level of **Integrity & Ethics & to comply with** anti-corruption laws & regulation.



# PRINCIPLE I

## TOP LEVEL COMMITMENT

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**Board and Management is responsible** for ensuring that the commercial organisation:-

- Practices the highest level of Integrity and Ethics.
- Comply with anti-corruption laws and regulations.
- Manages key corruption risks of the organisation.

**Key Activities** to be implemented:

- Anti-corruption compliance programme – policies & objectives addressing bribery risks.
- Culture of integrity.
- Communication of policies & commitment on anti-bribery to internal & external parties.
- Whistle-blowing & reporting.
- Competent person (may be external) to oversee compliance.
- Appropriate lines of authority for personnel tasked with oversight roles.
- Results of audit, review of risk assessment, control measures & performance report to top-level management & board.



## **PRINCIPLE II**

### RISK ASSESSMENT

- | Identify, analyze, & assess key bribery risks & establish appropriate processes, systems & controls.

# PRINCIPLE II

## RISK ASSESSMENT

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Conduct assessments to **identify, analyse, assess & prioritise** bribery risks. Standalone assessment or incorporated into general risk register.

Comprehensive risk assessments performed **every 3 years**, covering:

- Opportunities for corruption due to governance & internal control weaknesses.
- Presentation of financial transactions (disguise corrupt payments).
- Business in higher corruption risk countries or sectors.
- Act of external parties dealing on behalf of commercial organisation.
- Relationship with third parties in the supply chain.



## **PRINCIPLE III**

### UNDERTAKE CONTROL MEASURES

- | Having appropriate controls & contingency measures such as **due diligence & reporting mechanism.**

# PRINCIPLE III

## UNDERTAKE CONTROL MEASURES

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Commercial organisations to have appropriate controls & contingency measures **(reasonable & proportionate)**, which includes:

### **Establish policies & procedures on:**

- General anti-bribery & corruption stance.
- Conflicts of interest.
- Gifts, entertainment, hospitality & travel.
- Donations & sponsorship (including political donations).
- Facilitation payments.
- Financial & Non-Financial Controls.
- Anti-corruption monitoring framework.
- Record-keeping (documentation on Adequate Procedures).

### **Due diligence:**

- Background checks.
- Document verifications.
- Conduct interviews.

### **Reporting mechanism:**

- Accessible & confidential channel
- Internal and external parties
- Report in good faith
- Ensure confidentiality
- Prohibit retaliation



## **PRINCIPLE IV**

SYSTEMATIC REVIEW,  
MONITORING &  
ENFORCEMENT

| To **ensure regular reviews on anti-corruption programs** are conducted to assess its **efficiency & effectiveness.**

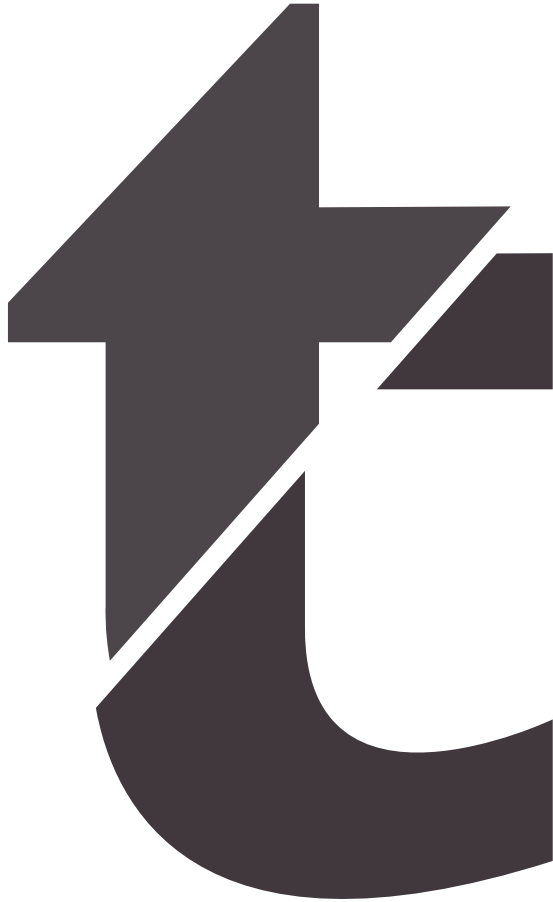
# PRINCIPLE IV

## SYSTEMATIC REVIEW, MONITORING & ENFORCEMENT

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### **Role of** top level management:

- Regular reviews of anti-corruption programmes (in-house or external).
- Plan, establish, implement & maintain monitoring programme (covering scope, frequency & methods for review).
- Identify competent persons (compliance function) – conduct internal corruption measures.
- Evaluation of Policies & Procedures on anti-corruption.
- Consider external audit (MS ISO37001 auditors) once every 3 years.
- Monitor performance of staff on anti-corruption policies & procedures.
- Disciplinary proceedings against non-compliances.



## **PRINCIPLE V**

### TRAINING & COMMUNICATION

| Develop and disseminate **internal and external training & communication to personnel & business associates.**



# PRINCIPLE V

## TRAINING & COMMUNICATION

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Develop & disseminate internal & external training & communications, **in proportion to the size of the operations.**

**Communicate and make publicly available** the anti-corruption policy to personnel and business associates (policy, training, reporting channel & consequences of non-compliance).

**Communications** should consider:

- Key points to be communicated.
- Recipients.
- Medium to communicate.
- Time frame for communication plan.
- Languages used on dissemination of information.

Provide employees & business associates training on organisation's anti-corruption position (induction, role-specific topic, corporate training programmes, seminars, videos, intranet, web-based, town-hall, retreats)

# OTHER CORRUPTION RELATED OFFENCES

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COMPANIES ACT **2016**



## SECTION 218 (2)

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### Directors' Duties and Responsibilities.

**Prohibition against improper use** of company's property, position, corporate opportunity or competing with the company.

Director or officer of a company who without the consent or ratification of a general meeting uses his position as a director or officer to gain a benefit for himself or any other person is guilty of an offence punishable by **imprisonment for up to 5 years or fine of not exceeding RM3 Million or both.**

# OTHER CORRUPTION RELATED OFFENCES

## PENAL CODE (ACT 547)

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### SECTION 417

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Whoever cheats shall be punished with imprisonment for a term which may extend to **5 years or with a fine or both.**



### SECTION 161

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Public servant to accept any gratification other than legal remuneration as a motive or reward for doing or forbearing to do any official act.  
**Penalty: Max. 3 years imprisonment & or a fine.**



### SECTION 165

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Illegal for a public servant to accept a valuable thing without adequate consideration from the department.  
**Penalty: Max. 2 years imprisonment & or a fine.**

# GLOSSARY

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# GLOSSARY

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## BRIBERY

The offering, promising, giving, accepting or soliciting of an advantage as an inducement for an action which is illegal, unethical or a breach of trust. Inducements can take the form of gifts, loans, fees, rewards or other advantages (taxes, services, donations, favors etc).

## CHARITABLE DONATIONS & SPONSORSHIPS

Donations, financial or in kind, given to support a good cause. This can be loans, gifts of property, services, sponsorship of tables at events or sporting clubs, advertising or promotional activities. Charitable contributions may be used as a subterfuge for bribery and asked to be part of a business agreement.

## CONFLICT OF INTERESTS

A situation where an individual or the entity for which they work, is confronted with choosing between the duties and demands of their position and their own private interests.

## **FACILITATION PAYMENTS**

A small bribe, also called a 'facilitating', 'speed' or 'grease' payment; made to secure or speed up the performance of a routine or necessary action to which the payer is entitled to.

## **FALSIFYING PAYMENT DOCUMENTS**

Altering, changing, or modifying a document for the purpose of deceiving another person.

## **FAVOURS**

Giving unfair preferential treatment to one person or group at the expense of another.

## **GIFTS & ENTERTAINMENT**

Giving or accepting gifts or entertainment presents bribery risks, especially to influence a business decision or gain an unfair business advantage. It may be used by third parties to make employees feel obligated to act corruptly.

# **GLOSSARY**

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# GLOSSARY

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## KICKBACK

A “commission” that is given to someone in return for helping in a secret and dishonest business deal.

## PERSON ASSOCIATED

**Internal:** Partner, director & employee.

**External:** Performs services on behalf of the commercial organisation.

## POLITICAL CONTRIBUTIONS

Any contribution, made in cash or in kind to a political cause to gain improper business advantages. This include: gifts, services, advertising activities endorsing a political party and the purchase of tickets for fundraising events.

# ACKNOWLEDGEMENT

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This e-book provides valuable insights into the **Corporate Liability Provision, Section 17A, Malaysian Anti-Corruption Commission Act 2009** and the **Ministerial Guidelines on Adequate Procedures**. Our sincere gratitude goes out to our project funders, **Malaysia Reform Initiative (MARI), United States Agency International Development (USAID), Embassy of the United States of America (KL)**, and the team from **Transparency International Malaysia**, namely **Dr Muhammad Mohan, Raymon Ram, Nuradlina Adnan** and **Nurizzati Mohamad Nor**.





# WITH APPRECIATION

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# REFERENCES

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## **LINK TO GIACC WEBSITE**

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

## **LINK TO GUIDELINES ON ADEQUATE PROCEDURES**

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

## **LINK TO MACC WEBSITE**

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

## **LINK TO MACC ACT LEGISLATION**

### **MACC Act 2009, update to include Section 17A**

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

## **LINK TO MACC FAQs**

### **General Enquiry**

[http://www.sprm.gov.my/index.php?id=21&page\\_id=75&articleid=481](http://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=481)

### **Gift Enquiry**

[http://www.sprm.gov.my/index.php?id=21&page\\_id=75&articleid=522](http://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=522)

### **Enquiry on the MACC Act**

[http://www.sprm.gov.my/index.php?id=21&page\\_id=75&articleid=1524](http://www.sprm.gov.my/index.php?id=21&page_id=75&articleid=1524)

SPEAK UP **AGAINST CORRUPTION**



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