



NEWSLETTER

A Nation Without Corruption, A Society With Integrity

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PRESIDENT'S MESSAGE

As of mid of August we have crossed 1.4 million Covid-19 cases and more than 12,000 deaths. While we will have to continue with our life with movement restrictions, income loss and a gloomy economic outlook caused by the Covid-19 pandemic, but our role as a leading corruption watch dog will continue.

Since last year all our activities were carried out online and we have been able to achieve our funders' target of completing numerous projects and several other projects are still in progress. Among the projects completed was the research on the "Effectiveness of Government Aid & Transparency for the SMEs". The report was launched in July this year and the research findings was shared with the government and other think tanks. The research covered three initial stimulus packages launched in 2020. This research was funded by Centre of International Public Enterprise.



Money politics remains a big issue in Malaysian politics not only in general elections, by-elections but also party elections. TI-Malaysia conducted an in-depth research on "Reforming Political Funding in Malaysia" 11 years ago and proposed 22 recommendations to the government then. Two years ago, a political funding bill was drafted but it was not tabled in parliament. We hope our government will consider tabling this bill soon and get it passed by both houses. Political funding must be regulated to stop any form of corruption among law makers.

Under the MARI funding, on line forums on 'Youth Integrity', 'Misconduct in Public Office' provision and a workshop on investigative journalism was organized for the public and journalist. GIACC meantime funded us to organise talks for the Small and Medium Enterprises on Corporate Liability provision (CLP) and adequate procedures. Speakers from MACC were invited to speak on this subject. We will continue to organize more talks on this subject to the SMEs as many companies lack knowledge on CLP and have yet to implement any adequate procedures.

TI-Malaysia will be working closely with MACC to include the 'Deferred Prosecution Agreement' (DPA) in the CLP Section 17A, MACC Act (amended 2018) which will be similar to the UK Bribery Act (2010). TI-Malaysia is conducting a study on the implementation and challenges of DPAs in other commonwealth countries and this will be shared with MACC.

Another area that TI-Malaysia will be collaborating with MACC is to push for the 'Misconduct in Public Office' (MIPO) provision to be included in the MACC Act. This is meant to hold public officials accountable for their actions and against 'Maladministration'.

Dr Muhammad Mohan

President

Transparency International-Malaysia

EDITORIAL

INTO MURKY WATERS

There is an old Indian proverb that says that ‘what the right hand does, the left hand shouldn’t know’. This of course applies to charitable acts. When you do charity, there’s no need to publicize it. But in this case, this adage seems to be taken into context by the authorities to do whatever they want without the rakyat knowing about it.

In fact, the country now seems to be in murky waters. There seems to be a substantial breakdown in the dissemination of information in almost everything that is being done. There’s a misty pall of anxiety engulfing every aspect of our lives, no thanks to the devastating pandemic. With new variants of the Covid 19 virus mutating at unpredictable speed, the number of cases are going over the hill and yet we are unsure what is actually being done to curb this menace. The battle cry seems to be for all the rakyat to be vaccinated as if it is the magic wand to solve all our problems. What about contingency plans? What if the vaccination exercise fails to curb the disease, especially with the advent of new variants? What are the measures taken to safeguard the nation in the long term? Can we last any longer? Especially with our economy taking a nose dive, foreign investments disappearing and the people slowly and surely drowning in poverty.

While all these questions mentally provoke us, the authorities are freely spending money on irrelevant projects that have no priority in the present conditions that we are in. Worst still, there is the political instability that is dragging the nation into a quagmire of uncertainties. Instead of working together to fight the pandemic, we are now fighting each other for power and the perks that come together with it, while the rakyat drown slowly in the sea of neglect. So, may we the rakyat ask what is really happening?

Every day we hear or read about news that we are not really sure about. Fake dissemination of news is everywhere. Not only from unreliable sources but also from bona fide sources. What is said today is refuted the next day. There are many promises to help the people and revive the economy but help only seems to be trickling in. The nation is in dire straits. It is time for all to put their political differences aside and work together, both government and opposition as well as the private sector to come out with concrete plans and strategies to pull us out of the murky waters and in the process inform the people of what lies ahead. Be transparent everyone – the government, the opposition, the government servants, the enforcement agencies, the NGOs and the business community. Come together for the sake of the nation.

Sivasangaran Nair



ALL-PARTY PARLIAMENTARY GROUP MALAYSIA (APPGM)

A MEDIUM TO PUSH FOR POLITICAL FINANCING LAW

TI-Malaysia and IDEAS are part of the group in forming an All-Party Parliamentary Group Malaysia (APPGM) on political financing. The President and the Deputy President represented TI-Malaysia in this meeting with IDEAS. The need to have a law governing political funding in Malaysia was first addressed by TI-Malaysia 11 years ago. Under the government of Pakatan Harapan, a bill was proposed to the cabinet members and it should have been tabled in parliament in the March 2020 sitting. However, the change in government that took place at the end of February 2020 stalled the plan. Commitment from the Perikatan Nasional government to present the bill is still unclear.



With this APPGM it is hoped this will open up more opportunities for representatives of civil society organisations to engage with MPs whether government or opposition in obtaining accurate information and facts on political funding issues in Malaysia as well as further helping MPs to support the bill when it is tabled in parliament. TI-Malaysia had made 22 recommendations in its book “Reforming Political Funding in Malaysia”.

FORUM ‘RASUAH DIHINDARI, HIDUP BERINTEGRITI’

CULTIVATE INTEGRITY IN THE BUSINESS

TI-Malaysia has taken the initiative to host a forum on ‘Rasuah Dihindari, Hidup Berintegriti’ in collaboration with SME Corporation Malaysia and supported by National Centre for Governance, Integrity and Anti-Corruption (GIACC) in spreading awareness among the public especially small and medium enterprises (SMEs) on the corruption offences as well as the Corporate Liability Provision, Section 17A. Following the enforcement of Section 17A in June 2020, many SMEs seems to be either partially prepared or unprepared despite the 2 years of grace period given for them. TI-Malaysia intends to address this issue in the SMEs sector in Malaysia.

PKPj Tuan Mohd Nur Lokman, Head of Private Sector Branch from MACC was invited to give clear understanding on the subject matter and issues concerning the corruption and bribery.

GUIDANCE ON GOOD PRACTICE & ADEQUATE PROCEDURES CHECKLIST DEVELOPMENT

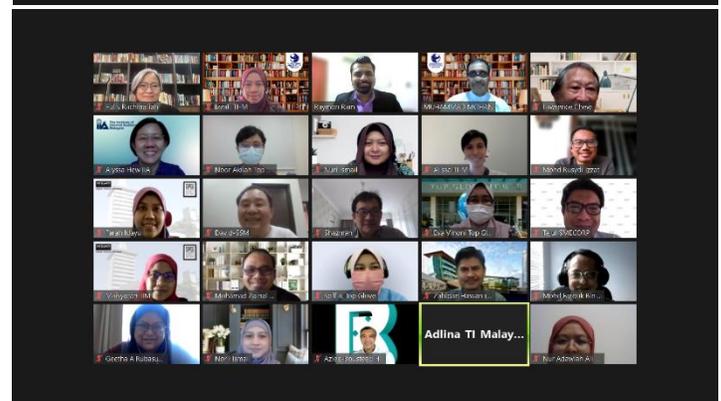
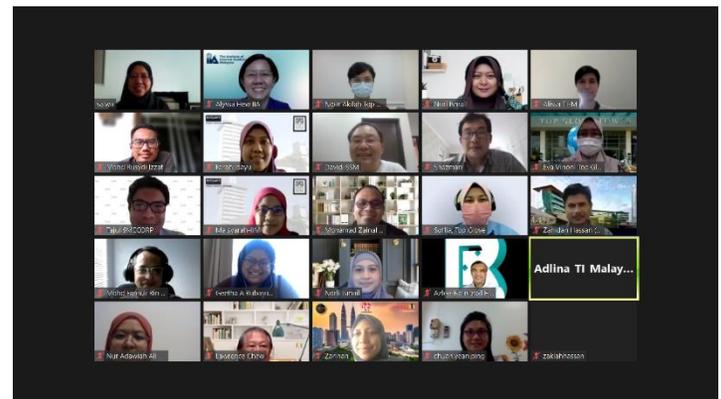
AS A DEFENCE FOR COMPANIES AGAINST CORRUPTION AND BRIBERY

A 2-day virtual workshop was conducted on the 2nd and 9th July 2021 to discuss and develop a checklist to guide the corporate sector on the implementation of T.R.U.S.T principles as per the Ministerial Guidelines on Adequate Procedures, pursuant to Subsection 5, Section 17A MACC Act 2009. Present at the workshop were senior officials from the law enforcement and government agencies, professional bodies, SME Corporation Malaysia, Companies Commission of Malaysia, Institut Integriti Malaysia, The Institute of Internal Auditors Malaysia and representatives from the corporate sector being from Duopharma Biotech Berhad, Top Glove Berhad, Sime Darby Berhad, MIDF Berhad, Boustead Holdings Berhad, VERITAS Design Group and Cyberview Sdn Bhd.

With reference made to the Guidance on Adequate Procedures issued by the UK Ministry of Justice pursuant to Section 9 of the Bribery Act 2010, the workshop served as a platform for brainstorming sessions and group presentations towards developing a checklist tailored to suit the Malaysian context. The finalized checklist is to be used as a reference by commercial organizations (both large and small / medium enterprises) in protecting themselves against the acts of bribery committed by persons associated.

Led by the Secretary General, Mr. Raymon Ram, the forum discussed matters pertaining to international and local laws on bribery and corruption, ISO 37001:2016 Anti-Bribery Management System (ABMS) requirements, gift policies, facilitation payments and other preventive mechanism / actions.

Day-2 was concluded with utmost gratitude to all participants / stakeholders for their valuable time, cooperation and feedback throughout the workshop.



GOVERNMENT STIMULUS PACKAGE -RESEARCH

COVID-19 AND MALAYSIAN SMEs: A STUDY ON THE EFFECTIVENESS AND TRANSPARENCY OF GOVERNMENT AID

A two-phase study was conducted by TI-Malaysia and Merdeka Center for Opinion Research with support from the Centre for International Private Enterprise (CIPE) to understand the economic impact of COVID-19 on SMEs in Malaysia, as well as to assess the perception of the respondents on the effectiveness and transparency of the aid programs. The research involved a survey of 500 SMEs and 10 interviews with government agencies, trade associations and SME owners/representatives. The report launch was held virtually on 8 July 2021.

The Malaysian economy has been adversely impacted by the COVID-19 outbreak. Apart from the obvious consequences from the pandemic, the three Movement Control Orders (MCO) has further slowed down the Malaysian economy as well as the business operations particularly in terms of a reduced revenue inflow.

This has especially impacted the ability of many small and medium-sized enterprises (SMEs) in Malaysia to sustain their business. SME Corp Malaysia estimates that SMEs consist of 98.5% of business establishments in Malaysia. It was anticipated that the downturn would negatively impact the purchasing power of many small holders causing an increase in unemployment percentages. To overcome this predicament faced by the SMEs, the federal government of Malaysia had introduced multiple stimulus packages – PRIHATIN, PENJANA and PERMAI. Our research covered these three stimulus packages.

Although these initiatives have provided relief for businesses, certain parties have questioned the implementation of these programs, both in terms of deliverables and outreach, as well as from the perspective of good governance. Various parties

have expressed their distrust and suspicions on the ability of the federal and state governments to manage the fiscal injection and aid provision programs, especially with the instability and sudden changes in Malaysia's political front over the last year. Combined with the expected red tape and bureaucracy, this has provided the basis for many to question the transparency of these initiatives and the ability of the government to be accountable for the funds distributed, whilst being able to ensure that all parties involved behaved with integrity to prevent the possibility of misappropriations or other issues related to fraud and cronyism.

Among the key findings concluded from the study:

- a) 445 out of 500 respondents (89%) of them were eligible to apply for federal assistance. 423 (95%) from the eligible enterprises had the knowledge to apply for the assistance and 406 (96%) of them had applied for assistance. The type of assistance applied by this number of enterprises were Wage Subsidy Program (80%), PRIHATIN Special Grant (8%), Loan Moratorium (4%), PENJANA SME Financing (3%) as well as other programs (5%). Additionally, 85% of the enterprises had successfully received the applied assistance.
- b) 47% of the enterprises were satisfied with the government aid with 21% being neutral with the performance of federal government in terms of relief aids delivery to the businesses. 17% were dissatisfied and 15% did not receive any assistance from the federal government.
- c) 21% of them were eligible to apply for state government assistance. The impact of the confusion in channel of application and lack of

knowledge were also reflected, where 48% were not aware that their enterprises were eligible to apply for state government assistance and 31% were unsure/refused to answer. 29% from the eligible enterprises had the knowledge to apply for the assistance and 47% of them had applied for assistance. Enterprises from Sarawak were the most applicants for state assistance among all states. It made up 26% of the applicants among the respondents who applied. Lacking of awareness on state government aid also resulted in 65% of the respondents of not knowing the mechanisms to apply for the stated aid.

- d) 43% of respondents who applied for the state government assistance had received the requested aid, while 24% of them were rejected due to the lack of quota and inability to fulfil the specified criteria. At the time of survey, 14% of the respondents said that their applications were still being processed. Overall, the respondents' level of satisfaction with state level assistance could not be adequately assessed since 87% of the respondents did not receive any help from the state governments.
- e) In term of challenges faced in receiving assistance under PRIHATIN and PENJANA aid packages, the respondents reflected that 41% were because of rigid criteria, bureaucracy and unclear procedures. Meanwhile, limited quota for assistance (13%), non-transparent selection processes (7%) and bribery and corruption (2%) as shown in Figure 1.

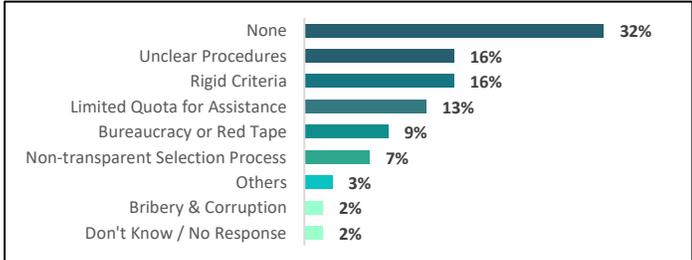


Figure 1

- f) 63% acknowledged the government's effectiveness in delivering assistance to the SMEs.
- g) The aforementioned 8% which is equivalent to 40 respondents from the 500 surveyed enterprises were further asked to expand on the most usual/perceived form of bribery occurred among SMEs businesses. The respondents mentioned that cash offerings (76%), personal networking/connection (19%) and project/contracts (3%) were among the most common forms of bribery & corruption. For 31 respondents who answered cash offerings, 85% of them did not provide answer for the exact amount of cash, while the rest said the amount involved was less than RM 1,000, between RM 1,000 to RM 5,000 and between RM 100,000 and above (5% respectively).
- h) 70% of the enterprises were very willing or willing to report bribery & corruption if it were to happen in front of them with 27% not willing to come forward. This corresponds closely with the % that were willing to report if they were forced to be actively involved regardless of position or relationship.
- i) 61% upholding the principle that corruption is wrong and need to be combatted and 19% perceiving it as citizen's social responsibility to exercise action against bribery & corruption, especially among businesses. However, 31% enterprises expressed their concern about their personal safety and security of the enterprises, with 22% lacking confidence in the transparency of the existing Whistle Blower Protection Act.
- j) 46% reported not confident and 49% were confident when asked on their confidence level with the promises made by Federal Government to combat corruption and bribery.

This study reports that Malaysian SMEs have been adversely impacted by COVID-19, especially with the internal political issues, inconsistent rules and regulations, market turbulence and financial problems plaguing day-to-day operations. With revenue generation being affected, a majority of SMEs have had to temporarily stop or scale down their businesses with a handful resorting to other emergency measures such as sudden change in business model and operational downsizing.

While certain industries such as tourism, small-scale manufacturing and services (especially food and beverage) suffered from the situation, players in high-demand sectors and sub-sectors have flourished namely those in IT and business services, agriculture and transportation/logistics.

It was encouraging to note that the respondents had reflected a mildly optimistic outlook for 2021, especially with the anticipated vaccination roll out. Aid and stimulus packages have been a good support for SME's, but a key question would be for how long? The Malaysian Prime Minister, Tan Sri Muhyiddin Yassin had also recently warned of our dipping reserves. Respondents of this survey have also raised the same question indicating that they too are willing to work with the government to rebuild the economy. This is especially crucial as Malaysians battle COVID-19 during our 3rd MCO.

With regard to recognition of aid programs, most SMEs highlighted their satisfaction with the offerings announced in the PRIHATIN Stimulus Package and PENJANA Economic Recovery Plan, especially the ones associated with loan moratorium, wage subsidy program and provision of grants / loans. However, there were grouses reported due to the relatively slow rollout of aid packages and the need to apply for most assistance despite company records being readily available and accessible. The communication strategies utilized by the Federal Government and the State

Government needs to be improved in terms of outreach and clarity.

Although the business owners have expressed their confidence in the aid and also in the transparency of the delivery of the aid, this was based on their perception of the previous government's (Pakatan Harapan) initiatives. More businesses acknowledged the efficiency of the Federal Government rather than the State Governments initiative in handing out aid, with a majority not even being aware of the aid provided by the state. The respondents had also expressed their confusion on the various new aid packages being provided such as the PERMAI Stimulus Package (in January 2021) and PEMERKASA (in March 2021) during the second and third MCO respectively. There needs to be a clearer communication of the availability of the aids and the application process. Some of the SME business owners revealed that certain items announced in the stimulus packages were not received or were delayed to have any significant effect causing a slowly increasing suspicion of corruption.

Combining this with the unstable political situation in the country, there has been a significant deteriorating confidence level in the leadership of the country to steer Malaysia out of the pandemic related economic disaster and into a stronger economic recovery stage. Malaysians have expressed their frustration on various social media, aggravated by economic and political scares such as when the COVID-19 emergency was announced without proper information being communicated. However, it is heartening to note that most of the respondents also responded positively towards anti-bribery and corruption measures. Apart from being aware of the issues on hand, the respondents were also aware of whistleblowing mechanisms and most importantly, felt that it was their duty to uphold transparency and integrity.

With the prevalence and innovation of digitalization platforms, information can be circulated in social media and as such, potential acts of bribery and corruption within the society should be effectively addressed and eradicated. Similarly, top leaders should portray themselves as role models to demonstrate integrity and accountability so that the public and businesses are willing to emulate their ethical behavior and avoid negative activities. Whilst technology and change management would be a suggested future, not all parts of Malaysia have the same exposure and access to the Internet or other forms of technology.

This could also be one cause of the lack of access to the aid and subsidies, as well as why only certain sectors prominent to certain geographical areas may be exposed to bribery and corruption under these circumstances.

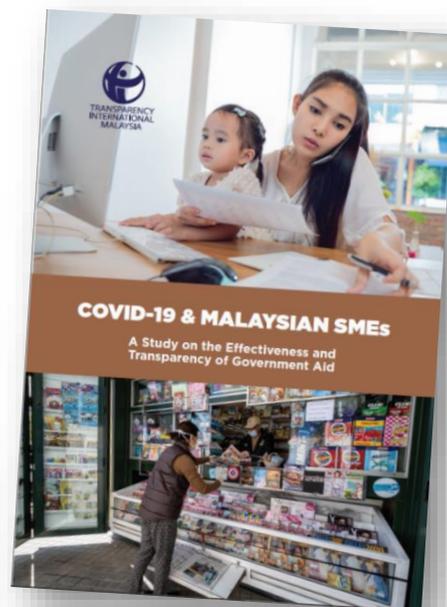
A paradigm shift from a more “agency-centric” model to a “citizen-centric” model needs to be implemented to prioritize the basic necessities of the people. Many respondents communicated the need for the government to go to the ground and investigate the needs of people at the various community levels who are struggling to sustain their livelihood due to the pandemic.

As the nation aims to recover from the bleak predicament through government intervention at multiple avenues (i.e. healthcare and economy), future policies must incorporate the components of economic and social mobility, as well as the importance of personal character founded on ethical principles and moral values.

In the effort to mitigate the economic effect by the COVID-19 outbreak, the federal government should consider providing more opportunities and

exposure of new skills to the individuals and businesses via up-skilling initiatives and training programs to allow the society to cope with unprecedented situations and be more resilient in facing the fluid economic climate. While fiscal injection is still relevant in the short run, a structured approach in driving the national economy would be more feasible and appreciated by the masses.

As for SMEs, priorities should be given on operational efficiency, revenue optimization and profit maximization as well as market expansion. COVID-19 has taught Malaysian businesses to sustain and survive – the next phase must be built upon strong organizational foundation, talent development and technological expertise that might help to reduce reliance on government assistance, and eventually allow Malaysian SMEs to thrive in a global setting, in the long run.



Full report available here:

<http://transparency.org.my/pages/news-and-events/publications/covid-19-and-malaysian-smes-a-study-on-the-effectiveness-and-transparency-of-government-aid>

INVESTIGATIVE JOURNALISM BUILDING A FORCE AGAINST CORRUPTION IN MALAYSIA

For the first time, TI-Malaysia organized a training workshop to equip young journalists in the area of investigative journalism, enabling them to better unearth abuses of public trust. The full-day virtual workshop, held on 28 July 2021, saw the participation of 33 local journalists in a stimulating exchange of ideas and views with a panel of experts.

The workshop was also part of TI-Malaysia's advocacy work in amending the Whistleblower Protection Act (2010) to provide wider protection to the whistle blowers. TI-Malaysia member Chew Phye Keat gave the journalists valuable insights about the current Whistleblower Protection Act (2010) from a legislative perspective. The act does not currently protect whistleblowers who go directly to the media. Given the public interest on such investigative reporting, TI-Malaysia will continue to advocate for extending whistleblower protection in Malaysia to protect journalists and their sources in exposing corrupt acts that have not received attention from the authorities.

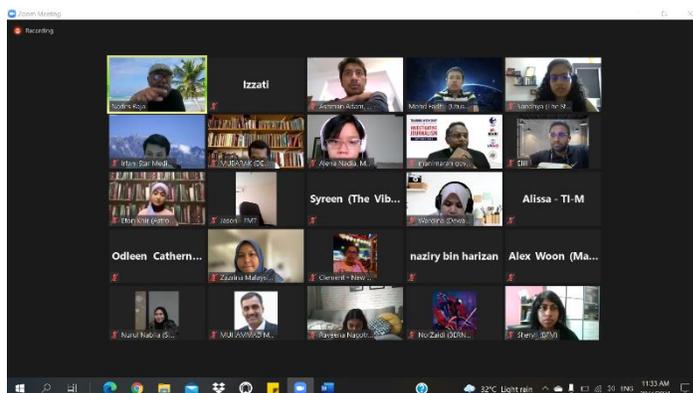
At the opening, Dr Muhammad Mohan said, "Professional investigative journalists who report with factual accuracy and depth of knowledge about transparency, good governance, and integrity are our vanguards in the fight against corruption. We are thankful for the many stories that have come to light thanks to the efforts and risks undertaken by journalists."

The workshop featured five speakers, namely legal practitioner Mr Chew Phye Keat from Raja Daryl & Loh; Columnist and former Editor, The Sun Daily, Mr R. Nadeswaran; Managing Editor of The Vibes, Mr Terence Fernandez; Manager, Special Projects of Sistem Televisyen Malaysia Berhad, Media Prima Group, Ms Farrah Naz Abdul Karim, and Prof. Dato'

Dr. Ahmad Murad Merican, an academic with broad experience in journalism and mass communications.

This is the first of three workshops on whistleblower protection organized with the support of USAID and Malaysia Reform Initiative (MARI). The next two workshops will cover the gaps and the amendments to the Whistleblower Protection Act (2010) and challenges faced by whistle blowers in the private sector and how whistle blowers can be assured of protection.

The workshop was facilitated by Dr Manimamran formerly from the communication division in MACC and he is now a freelance consultant.



MISCONDUCT IN PUBLIC OFFICE (Proposed Provision)

PLUGGING THE GAP: A NEW PROVISION ON MISCONDUCT IN PUBLIC OFFICE

On 4th August 2021, TI-Malaysia organized a forum for the civil servants to discuss MACC's proposal to introduce the Misconduct in Public Office (MIPO) provision to be added to the MACC Act to strengthen enforcement against leakages in the public coffers due to corruption. More than 500 persons attended the forum via Zoom and Facebook, drawn largely from ministries, statutory bodies, and government agencies.

Titled 'Antara Ketelusan dan Ketirisan: Peruntukan Salah Laku Dalam Badan Awam', and among the panelist were, the Auditor General Dato' Nik Azman, MACC Deputy Chief Commissioner (Prevention) Datuk Sri Shamshun Baharin, CUEPACS President Haji Adnan Mat, and former TI-M President Dato' Sri Akhbar Satar. The forum was moderated by En Kamarul Bahrain (a former news anchor in Astro Awani).

Datuk Sri Shamshun shared on the need for the new provision to bring errant public officers to justice. Out of the 225 MACC investigations into mishandling of public resources based on the Auditor General's report, only 2 were successfully charged in court, while the others faced the internal disciplinary action, which is insufficient as a deterrent.

The Auditor General followed up by explaining that the 2019 Series 1 Auditor General's Report showed that out of a total value of RM15.7 billion in government delivery projects audited, they found wastage and leakages to the tune of RM978 million, or 6.2% of the total value.

The Auditor General agreed that the provision was necessary for greater accountability and to enforce better stewardship of public resources. CUEPACS President Haji Adnan, on the other hand,

emphasized the collective responsibility of the private and public sectors in combating corruption, whilst advocating for strengthening procedures for prevention.

Dato' Sri Akhbar Satar spoke about the need for strong internal controls due to the weak culture of integrity in the public sector in Malaysia at the moment. Citing Brunei and Hong Kong as examples, he noted that their strong Misconduct in Public Office provisions has allowed for high-ranking public officers, including ministers, to face charges in court. With such a provision, heads of departments should take a stand when instructed by someone higher up in the agencies or ministries to commit a wrong doing. MIPO will make public officials accountable for their actions.

The forum saw active discussion and engagement from the audience, who maintained a constant chatter in the chat box, peppering the panelists with questions about strengthening accountability in the public delivery system. TI-Malaysia is pleased to have convened this panel and looks towards future cooperation with MACC and the Auditor General's Office on advocating for better transparency and accountability in public office.



ISO 37001 – ABMS: A management tool to address MACC Act Section 17A (Corporate Liability) provision

By: Dr Loi Kheng Min

ISO/PC 278 Vice Chair, ISO 37001 Expert

Since the publication of ISO 37001:2016 - Anti-Bribery Management System (ABMS) in October 2016, it has, indeed, been getting world-wide attention and generating a lot of interests among industry actors and players. This international standard is only applicable to anti-bribery and not grand corruption, as it sets requirements and guidance for the establishment of an anti-bribery management system to prevent, detect and respond to bribery in compliance with anti-bribery laws. The ISO 37001 – ABMS outlines the minimum standards required to achieve third-party compliance, including the elements of a company’s risk assessment process, anti-bribery policy, as well as implementation of good practices regarding raising concerns and the investigation and remediation of suspected and actual bribery.

Bribery is a powerful and cancerous disease, costing lives and eroding economies all over the world. Bribery has not only raised serious social, moral, economic, and political concerns, but also undermines good governance, hinders development, and distorts competition, in addition to being negatively impactful to human rights. Bribery is one of the greatest challenges to international development and poverty relief. Its consequences can be catastrophic for the economy, infrastructure, health, education, quality, safety and the Sustainable Development Goals (SDGs).

This ISO 37001 ABMS standard is designed to help organizations implement effective measures to prevent, detect and respond to bribery, and instill a culture of integrity, honesty, and transparency helping an organization to attain its corporate governance. While it cannot guarantee that bribery won’t occur, it can provide the tools, processes and systems to greatly reduce the potential bribery risk, and to help organizations deal with it effectively if it does arise. Implementing ISO 37001 ABMS will also provide reassurance to investors and other stakeholders and interested parties that an organization has an effective management system in place to manage the potential risk of bribery. This approach not only gives organization a competitive edge over its peers and competitors but also a distinction mark with a cut above the rest to ensure trust, confidence and governance in doing fair businesses. This ISO 37001 ABMS will collectively reach out to industry peers, suppliers and other stakeholders and interested parties through proper implementation of such management system standard.

During the past 15 years, many countries have made efforts at both national and international levels to combat, curb and curtail bribery. Treaties have been signed and laws have been amended and improved, and many countries are now prosecuting bribery offences. On 31st January 2020, UK’s Serious Fraud Office (SFO) fined Airbus €984 million for related bribery cases in Sri Lanka, Malaysia, Indonesia, Taiwan, and Ghana that taken place between July 2011 and June 2015 which was charged under Section 7 (Failure of Commercial Organizations to Prevent Bribery) of UK’s Bribery Act 2010. On 18th March 2021, an offshore and ship maintenance services company has become the first commercial organization in Malaysia to be charged under the newly enforced Section 17A (Offences by Commercial Organization) of the Malaysian Anti-Corruption Commission (MACC) Act 2009. This is the first test case in Malaysia as the director who attended the court on behalf of the organization pleaded not guilty. This Section 17A provision is to ensure that when an employee takes or gives a bribe, the

company can be charged for not taking adequate measures to prevent it from happening. It is a legal responsibility of an organization for criminal actions, or the failure to act in some cases, committed by the organization’s employees. If the actions of employees were done for the benefit or advantage of the commercial organization, are a result of negligence or if they occurred due to a lack of responsible management by the organization, the entity can be prosecuted and punished with a fine of not less than 10 times the sum or the value of gratification; or RM 1.0 million, whichever is higher, or to imprisonment for a term of not exceeding of 20 years, or to both.

In the event of a corporate criminal liability investigation, this ISO 37001 ABMS standard helps companies and organizations to demonstrate that reasonable steps or ‘adequate procedures’ have been put in place and appropriate action taken to prevent bribery and corruption. These ‘steps and procedures’ are already having a mitigating effect in some jurisdictions such as United Kingdom, Australia, Thailand and Malaysia. The organization has to have adequate procedures in place to address this Corporate Liability provision and one of best tools is, none other than, adopting ISO 37001 – ABMS to address the five principles (T.R.U.S.T) of the Ministerial Guidelines on Adequate Procedures. Table 1 shows how the ISO 37001 Clauses are mapped out addressing the five (5) principles of “Adequate Procedures”.

Table 1 : Matrix of ISO 37001 Clauses and Adequate Procedures

No:	Adequate Procedures	ISO 37001:2016
1.	TOP-LEVEL COMMITMENT	5.0 Leadership 5.1 Leadership and Commitment
2.	RISK ASSESSMENT	4.5 Bribery Risk Assessment
3.	UNDERTAKING CONTROL MEASURES	5.2 Anti-bribery Policy 7.5 Documented Information 8.2 Due Diligence 8.3 Financial Controls 8.4 Non-financial Controls 8.7 Gifts, Hospitality, Donations, etc. 8.9 Raising Concerns
4.	SYSTEMATIC REVIEW, MONITORING & ENFORCEMENT	8.10 Investigating and Dealing with Bribery 9.0 Performance Evaluation 10.0 Continual Improvement
5.	TRAINING & COMMUNICATION	7.2 Competence 7.3 Awareness and Training 7.4 Communication

Thus, this ISO 37001 ABMS standard has come in handy to be used as management tool to put in place management controls to address anti-bribery practices so as to meet the compliance of our newly enforced Section 17A on 'Corporate Liability' provision of Malaysian Anti-Corruption Commission (MACC) Act 2009 and the Ministerial Guidelines on Adequate Procedures.

In the age of transparency and accountability, no organization can afford to take the risk of bribery lightly. Investors, business associates, personnel, shareholders and other interested parties all need to be assured that you have made every possible effort to prevent bribery at all levels of the organization. To drive this message and 'to stop the buck', it always has to come from the top – not only tone from the top but also conduct from the top!

The first organization to be certified to this ISO 37001:2016 was an Italian corporation based in Rome, Italy on 25th January 2017. Today, this corporation, ENI S.p.A has its 160 sites worldwide certified with the complete scope covering (a) Upstream and Technical Services; (b) Midstream Gas & Power; (c) Refining & Marketing of Chemicals; (d) Retail Market Gas & Power; and (e) Support Functions. As by March 2021, SIRIM QAS has certified ninety (90) organizations in Malaysia to ISO 37001:2016 standard and among the first twelve organizations to be certified are the Road Transport Department a.k.a Jabatan Pengangkutan Jalan (JPJ) and the Immigration Department (Jabatan Imigresen Malaysia).

However, could this ISO 37001 ABMS, which is designed to help organizations implement effective measures to prevent and address bribery, and instill a culture of integrity, honesty and transparency helps an organization to attain its corporate governance? It is most disturbing and frustrating to know that Road Transport Department or Jabatan Pengangkutan Jalan (JPJ) has obtained its ISO 37001 certification from SIRIM QAS in November 2017. Would it be more atoning to know that JPJ is one of the 10 government agencies among the pioneers in Malaysia to implement an Anti-bribery Management System (ABMS) at their workplace.

Yet, JPJ has also been in the limelight for in March 2020, Malaysian Anti-Corruption Commission (MACC) has detained 32 Road Transport Department (RTD) officers in a major operation in five states believed to be in connection with the lorry driver protection racket amounting to RM1.65 million which have taken place between 2019 and 2020. In April 2019, up to 75 JPJ officers were implicated in a similar syndicate involving lorry operators in Penang. And not forgetting that in September 2018, 12 JPJ staff were arrested by the MACC for their suspected involvement in the sale of some 14,000 'lesen terbang' or illegal licenses. These 12 officers include a deputy director, two assistant enforcement officer, two assistant enforcement chiefs, six enforcement assistants, and one administration assistant from Perlis, Perak, Negeri Sembilan, Sabah and Sarawak.

Would JPJ be able to sustain its effectiveness and efficiency in maintaining its ABMS while addressing any one of the 115 initiatives under our Malaysian National Anti-Corruption Plan (2019-2023)? Moreover, JPJ signed a series of memorandum of understandings with MACC in an effort to combat corruption and abuse of power in 2000, 2010 and on May 15, 2017. These MOUs include the sharing of expertise in the areas of detection, information dissemination, consultancy, education and training as well as efforts to enhance integrity and strengthen the practice of pure value towards enhancing the capacity and capability of MACC officers and JPJs in combating corruption. Can JPJ do better than these to be a corruption-free agency?

Institutions with weak systems of oversight are more prone to bribery and corruption and fail to perform efficiently. Institutions must establish checks and balances, self-discipline and build on governance, integrity, accountability and transparency which are indeed the essential ingredients for tackling and fighting bribery and corruption.

Slowly but surely, a picture is starting to come together. Whether our instincts are correct or not. Hopefully, each and every one of us will just know precisely what to do. To put in place some of the anti-bribery management system and tools to address the long arm of corporate liability requirements. It is just more and going beyond signing an Integrity Pledge, Pact and Policy, all organizations should fully adopt the ISO 37001: Anti-bribery Management System standard which is designed to help organizations to prevent, detect and respond to bribery by establishing a culture of integrity, honesty, transparency and compliance. Once again, while the standard cannot guarantee that no bribery has or will occur, but it can help organizations to implement effective measures to prevent and address the five (5) principles of the Ministerial Guidelines on Adequate Procedures.

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WHISTLEBLOWER PROTECTION: REFINING THE FRAMEWORK

By: Nisha Kamilla

Youth Committee Member, Transparency International Malaysia

The Whistleblower Protection Act 2010 (“WPA” or “Act”) came into force in December 2010. The Act enables:

- a. disclosures of reasonable belief of improper conduct to enforcement agencies, such as the Malaysian Anti-Corruption Agency, PDRM and Securities Commission Malaysia;
- b. protection of the confidential information of whistleblowers;
- c. protection of whistleblowers from being subject to detrimental action (as defined by the Act) from any person, public or private body;
- d. immunity of whistleblowers to civil and criminal action, or to liability arising by way of administrative process; and
- e. remedies granted by the court to a whistleblower for any detrimental action they may face as a result of whistleblowing.

The Act is intended to address misconduct in both the private and public sector. Protection is not limited to disclosures of corruption. The Act brings Malaysia a step closer to transparent and good governance in both the public and private sector. While lauded when it first came into effect, years of use and enforcement have shown that there are a few gaps that should be addressed via amendments to the WPA.

Under Section 6(1) of the WPA, disclosure will only be protected if it is made to an enforcement agency. An enforcement agency is a body with investigative and enforcement powers under the law. Therefore, disclosures to private or public bodies with no enforcement powers such as internal whistleblowing channels at workplaces, NGOs, the media, or even local MPs will not entitle potential whistleblowers to protection under the Act. This does not realistically reflect disclosures in Malaysia, where a whistleblower is more likely to turn to a familiar and trusted reporting line than to lodge a report with an unfamiliar agency.

Section 6(1) also caveats that whistleblower protection under the WPA is not available where the disclosure is prohibited by any written law. Therefore, disclosures of improper conduct in breach of law, such as the banking secrecy provisions in the Financial Services Act 2013, will not entitle the whistleblower to the protections under the Act. This gap can be seen in the disclosure that led to Rafizi Ramli being charged and found guilty of illegally releasing financial details relating to the National Feedlot Corporation.

The protection under the WPA is limited. In fact, protection accorded to whistleblowers may be revoked by an enforcement agency where the whistleblower participated in the misconduct. This provision hinders disclosures by persons who regret their involvement in any improper conduct, or who inadvertently facilitated such misconduct. Such persons are unlikely to step forward where there is a risk of incurring civil or criminal liability as a result of their whistleblowing.

The Personal Data Protection Act 2012 (“PDPA”) came into force after the WPA. In line with the proposed amendments above, the Act should also clarify the position of the PDPA, in relation to disclosures by whistleblowers, that whistleblowers will be protected where the disclosures contravene the PDPA.

The WPA represented a good step towards greater transparency in Malaysia. Fine tuning the Act to address the gaps set out above is needed to encourage disclosures and to build the public’s trust and confidence to speak up when they have reasonable belief of abuse in the public and private sectors.

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PRESS STATEMENTS

26 May 2021 - LRT Collision: Set up an RCI for an Independent & Transparent Inquiry

<http://transparency.org.my/pages/news-and-events/press-releases/lrt-collision-set-up-an-rci-for-an-independent-transparent-inquiry>

9 July 2021 - Stimulus Packages' Roll Out: Higher Level of Transparency Needed

<http://transparency.org.my/pages/news-and-events/press-releases/stimulus-packages-roll-out-higher-level-of-transparency-needed>

19 July 2021 - TI-M Welcomes The Asset Declaration of The Cabinet Members

<http://transparency.org.my/pages/news-and-events/press-releases/ti-m-welcomes-the-asset-declaration-of-the-cabinet-members>

28 July 2021 - Transparency International Malaysia Empowers Investigative Journalism As A Force Against Corruption

<http://transparency.org.my/pages/news-and-events/press-releases/ti-malaysia-empowers-investigative-journalism-as-a-force-against-corruption>

4 August 2021 - TI-Malaysia Menyokong Peruntukan Baru Menangani Masalah Pecah Amanah Dalam Badan Awam

<http://transparency.org.my/pages/news-and-events/press-releases/ti-malaysia-menyokong-peruntukan-baru-menangani-masalah-pecah-amanah-dalam-badan-awam>

ABOUT TRANSPARENCY INTERNATIONAL MALAYSIA

Transparency International–Malaysia (TI-M) is an independent, non-governmental organisation with a vision to create a nation free of corruption. TI-M is an accredited chapter of Berlin-based Transparency International.

Our mission is to eradicate corruption and promote transparency, accountability and integrity throughout society. The four core values of TI-M are Integrity, Transparency, Accountability, Independence. TI-M's understanding of corruption – ranging from petty corruption to state capture – enables the movement to raise awareness and critically but constructively engage with all stakeholders from civil society, government, private sector, professional bodies and academia.

Drawing on the dedication of members as well as partners in the fight against corruption, TI-M engages in legal advocacy and equips stakeholders with the knowledge, skills, and networks to be strong proponents of anticorruption efforts. Together, we build a nation with better transparency, accountability, and enforcement in governance.

TI-M's strong reputation among stakeholders globally enables members to create political pressure for anti-corruption action and promote collective action for transparency, accountability and integrity systems at local, national and international levels.

OUR KEY PROGRAMME

Business Integrity Programme

Youth Integrity Programme

Speak Up Against Corruption Campaign

Transparency in Defence

Reforming Political Financing

GIAT Coalition

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