



LAWS OF MALAYSIA

Act 694

**MALAYSIAN ANTI-CORRUPTION COMMISSION
ACT 2009**

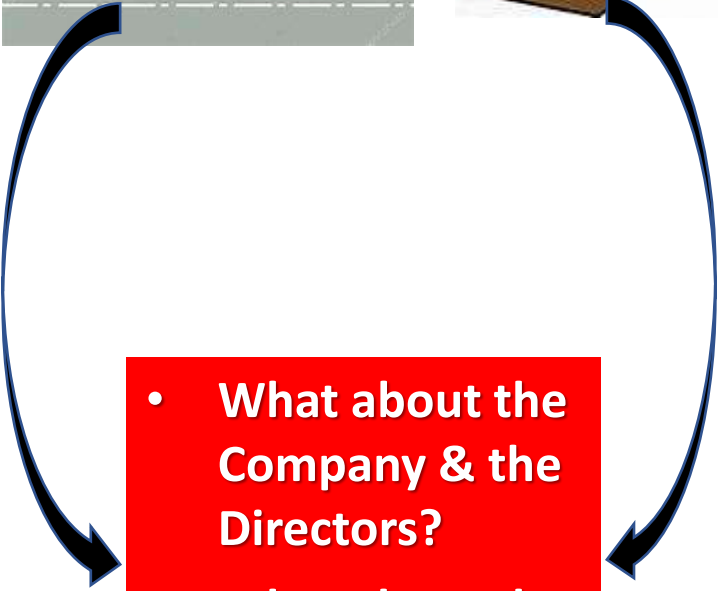
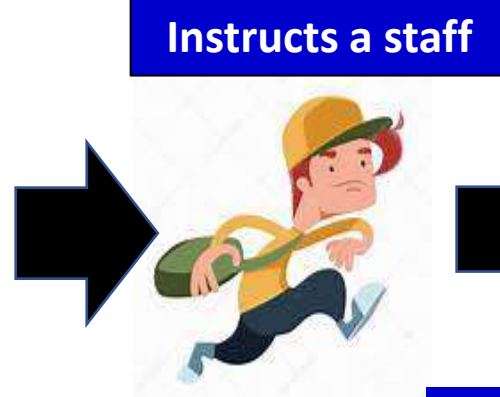
CORPORATE LIABILITY PROVISION ON CORRUPTION UNDER SECTION 17A OF THE MACC ACT 2009

**Roles of the Internal Audit in
providing assurance & consulting
to commercial organisations**

1 April 2021

**Organised by the Research & Technical Advisory
Committee of the IIA Malaysia**

An Introduction - Corruption & Bribery



- What about the Company & the Directors?
- What about the Manager who gave the instructions?



If convicted – fine & jail



MACC – charges offeror & recipient of "tip"



**UNPACKING SECTION 17A
OF THE MACC ACT 2009**

SECTION 17A OF THE MACC ACT 2009 (Effective 1 June 2020)

S17A(1) A **commercial organisation** commits an **offence**:

- If a **person associated** with commercial organisation **corruptly** “*gives, agrees to give, promises or offers to any person*” any **gratification**
- Gratification can be either for “**benefit of that person or another person**”
- With **intent** to “**obtain OR retain business for commercial organisation**” **OR** “**to obtain OR retain advantage in conduct of business for commercial organisation**”

S17A (2) PENALTIES: Any commercial organisation which commits an offence shall, **on conviction**, be liable to:

- a fine not less than **10 times the sum or value** of gratification or **RM1 million**, whichever is **higher**, **AND/OR**
- its officers concerned, **imprisonment** for a term **not exceeding 20 years**



This is corporate liability on corruption

Key definitions:

Corruption = “Abuse of entrusted power for private gain”

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” (Source: Transparency International, a global coalition against corruption)

SECTION 17A OF THE MACC ACT 2009 (Effective 1 June 2020)

Defence for Commercial Organisation

S17A(4) Defence available to commercial organisation in event of a charge is to prove:

That it **had** in place “adequate procedures” designed to **prevent** persons **associated** with commercial organisation **from undertaking such conduct**



“Deeming Provision” - Defence for those charged with governance & management

S17A(3) If offence is committed by Commercial Organisation, a person who is **Director, Controller, Officer, Partner** or is **concerned in management** of commercial organisation’s affairs is **deemed to have committed the offence**. As defence, he **bears the burden to prove**:

- that offence was committed **without his consent** **OR** **connivance**; **AND**
- that he **exercised due diligence** to prevent **commission of offence** as he **ought to have exercised**, having regard to “**nature of his function in that capacity & to the circumstances**”

SECTION 17A OF THE MACC ACT 2009 (Effective 1 June 2020)

S17A (6 & 7) A person will be **deemed** to be **associated with a commercial organisation** if he is:

- a **Director**
- a **Partner**
- an **Employee**
- a person who **performs services for or on behalf of commercial organisation** (whether a person is associated to commercial organisation is determined by [reference to all relevant circumstances](#) & NOT merely reference to nature of relationship between the person & organisation)

S17A (8) Definition of commercial organisation:

- company incorporated under **Companies Act 2016** & carries on business **in Malaysia OR** elsewhere
- company wherever incorporated & carries on business **OR part of** business in Malaysia
- partnership (limited & unlimited) carrying on business **in OR** elsewhere
- foreign partnership carrying on business **OR part of** business in Malaysia

SECTION 17A OF THE MACC ACT 2009 (Effective 1 June 2020)



S17A(5) The Minister shall:

- issue **guidelines** relating to **procedures** mentioned in **S17A(4)**
- what are deemed to be **Adequate Procedures** for a commercial organisation to prove
- that it **had** in place to **prevent** persons associated with it from **corruptly** giving or offering gratification

Key **attributes** of Guidelines:

- designed to be **principle-based** – **5 Principles of “T.R.U.S.T.”**
- for **general application** by any commercial organisation
- of any **size & industry**
- should **NOT** be assumed **“one-size-fits-all”**
- applied **practically**, in **proportion** to scale, nature industry, risk & complexity of organisation 7

FIRST CASE CHARGED UNDER SECTION 17A

Report: Pristine Offshore Sdn Bhd becomes first company charged under Malaysia's new corporate liability anti-corruption law

- A maiden charge under **S17A of MACC Act 2009** targeting corporations was instituted against Pristine Offshore Sdn Bhd (“Pristine”)
- It is accused of **giving bribe of RM321,350** to secure a subcontract from the bribe recipient company
- Pristine's **former director was charged under S16(b)(A)** of MACC Act for giving the bribe allegedly between **June 29 & October 14, 2020**
- The subcontract promised to Pristine was for supply of workboats, a master & crew and other related marine services & offshore support for maintenance, construction & modification services
- Pristine's **current director** was reportedly present in Court here today as the **company's representative**
- If Pristine is **found guilty**, it will be **subject to a fine no less than 10 times the bribe amount &/or its officers to a jail sentence not exceeding 20 years**



This case involves the giver of bribe (S16), the commercial organisation (S17A[1]) & directors of the commercial organisation (S17A[3])

IIAM ARTICLE - WHAT INTERNAL AUDITORS SHOULD KNOW, INCLUDING THEIR ROLES

- Purpose of Article – to apprise Internal Auditors, & provide guidance in their work, on **Section 17A**
- Background – **S17A**, its **implications**, definition of **gratification** & Guidelines on Adequate Procedures covering “T.R.U.S.T.”
- Amendments to **Bursa’s Listing Requirements** – Anti-Corruption Policy & Procedures & Whistle-blowing Policy & Procedures
- **Roles of Internal Audit (“IA”) Function** - *“Preparing IA to assess whether commercial organisations’ procedures accord with GAP & are adequate & operating as intended”*
- Suggested materials on anti-bribery & corruption in other jurisdictions to augment IA’s understanding & knowledge:
 - **UK Guidance** on Adequate Procedures
 - Transparency International Checklist on **gap analysis**
 - UN Global Compact **Anti-Corruption Risk Assessment Guide 2013**
- Suggestions on **focus areas** (vis-à-vis the GAP) that IA Function should consider in **assessing an organisation’s Adequate Procedures**

OVERVIEW OF THE 5 PRINCIPLES OF “T.R.U.S.T.” UNDER THE GUIDELINES ON ADEQUATE PROCEDURES

GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE I – TOP-LEVEL COMMITMENT

Responsibilities of Top-level Management

Ensure commercial organisation:

- practises highest level of integrity & ethics
- complies with anti-corruption laws & requirements
- manages key corruption risks



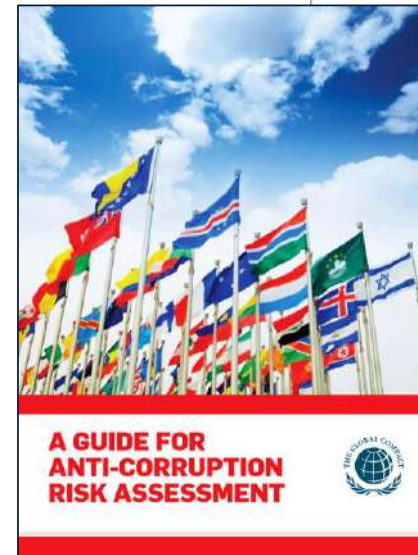
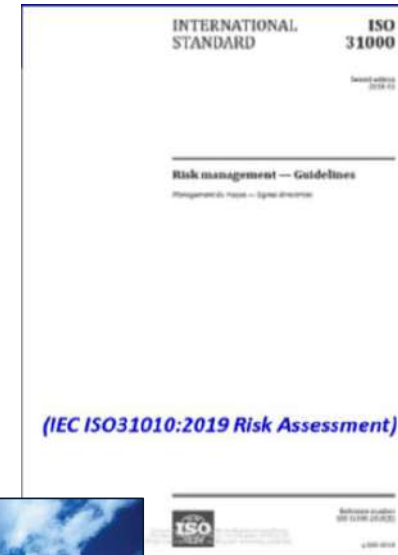
- Anti-corruption **compliance programme** – policies & objectives addressing corruption risks
- Culture of **integrity**
- **Communication** of policies & commitment on anti-corruption to internal & external parties
- **Whistle-blowing & reporting**
- **Competent** person (may be **external**) to oversee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

Adequate Procedures

PRINCIPLE II – RISK ASSESSMENT

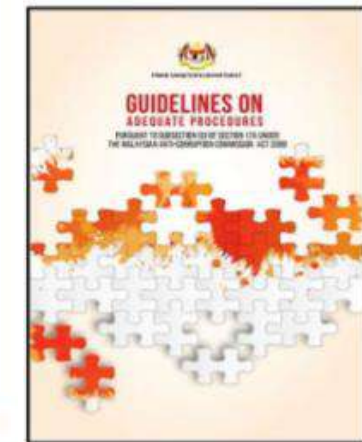
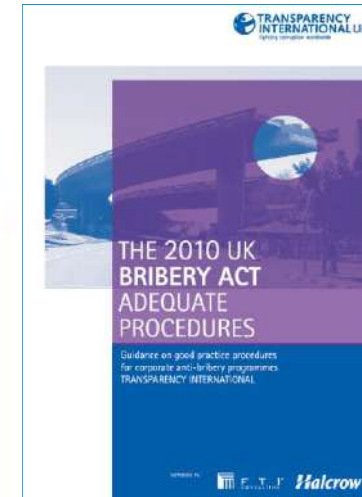
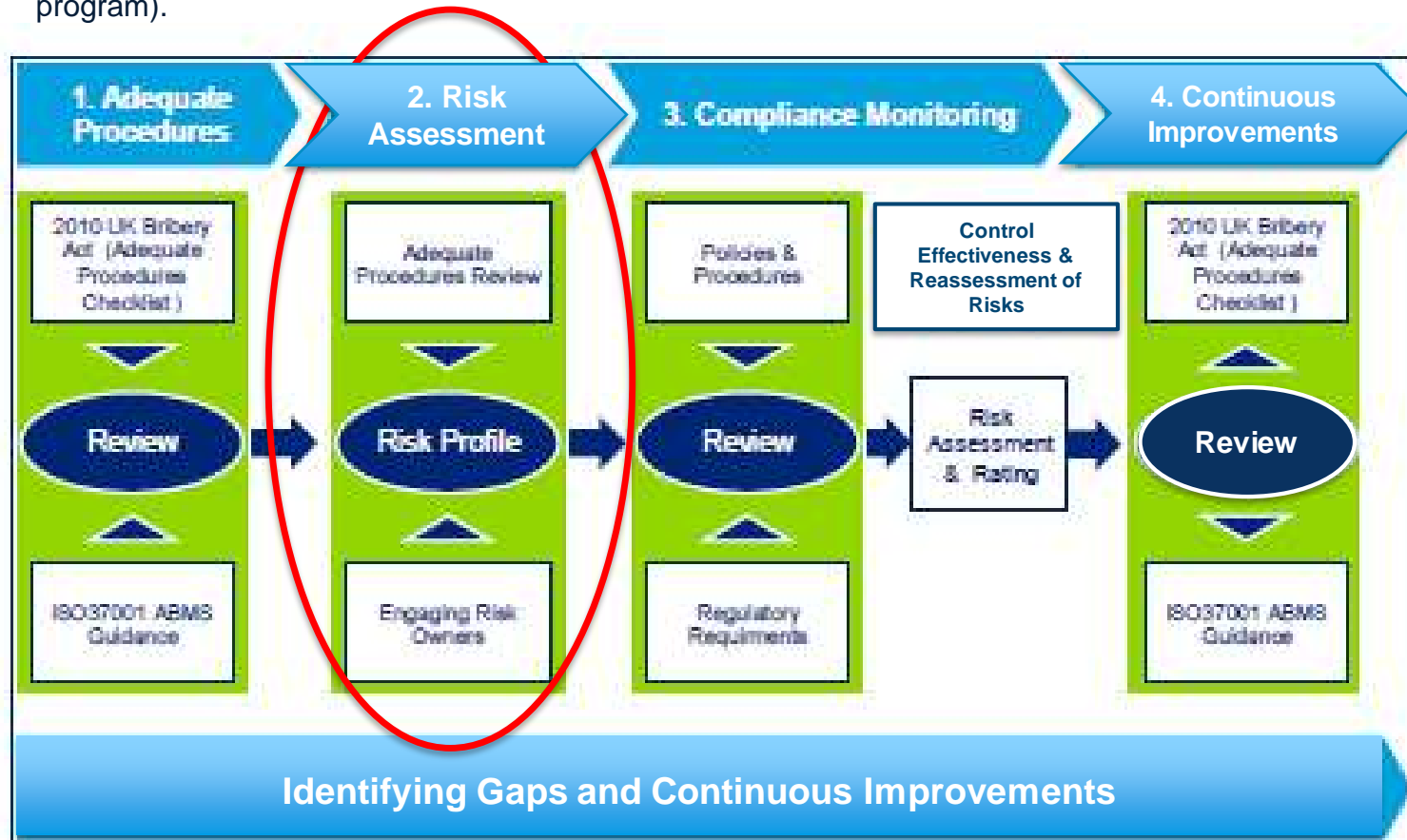
- **Identify, analyse, assess & prioritise** corruption risks
- **Processes, systems, & controls** approved by top-level Management for corruption risk mitigation
- **Comprehensive risk assessment** performed **every 3 years**:
 - **governance & internal control** weaknesses
 - **transactions** disguising corrupt payments
 - **higher** corruption risk countries or sectors
 - **non-compliance** by **external parties** dealing on behalf of organisation
 - **relationship with third parties** in supply chain (*agents, vendors, contractors, etc.*)
- Standalone assessment or incorporated into general risk register
- Risk profile – Risk treatment - Control measures and monitoring programs

"A risk assessment process gives the company a systematic view of where bribery risks lie and as a result it can design detailed policies and procedures accordingly."



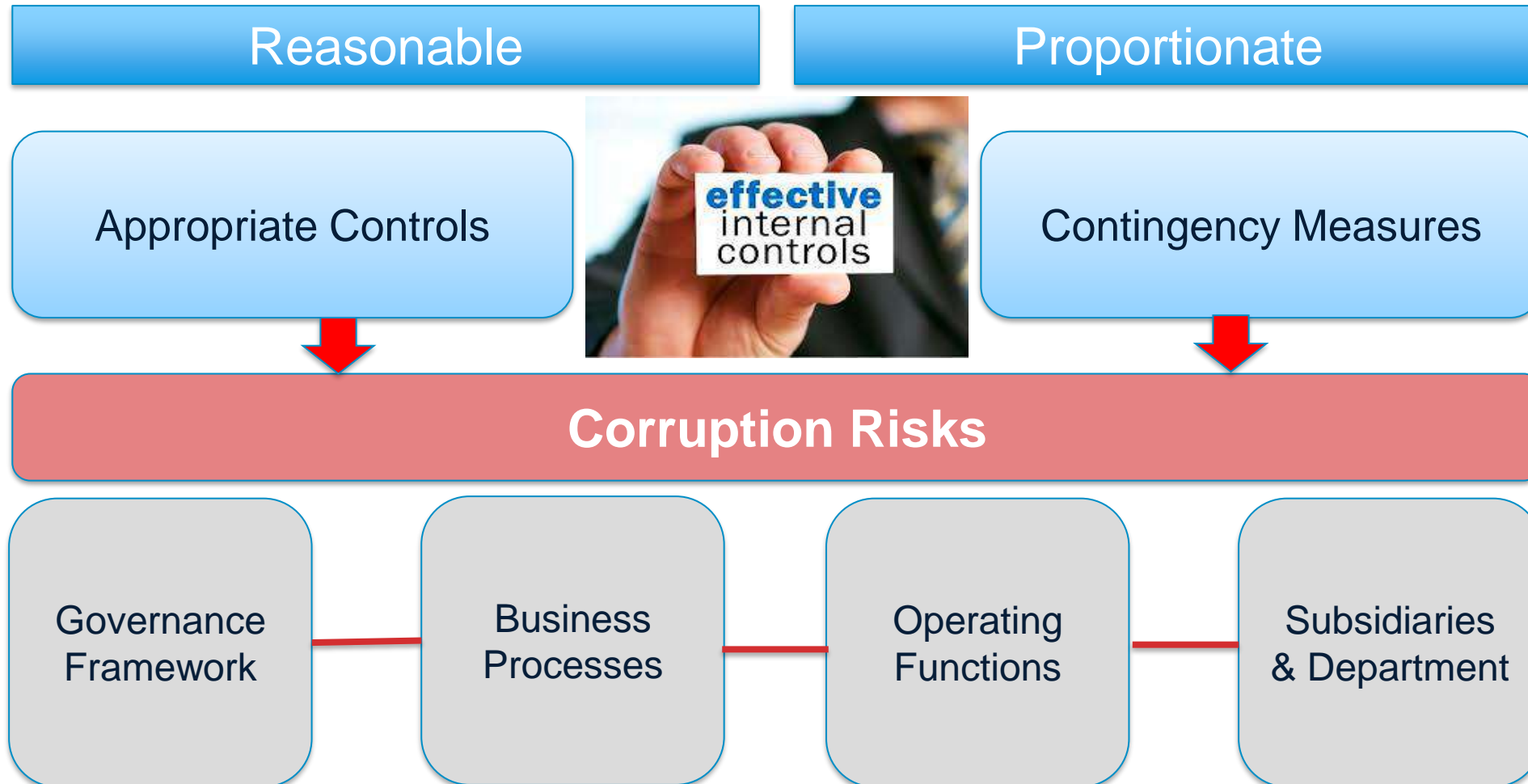
Adequate Procedures Review

Risk assessment to identify pain points and root causes of potential corruption within the Company for review of Adequate Procedures and development of action plans (including monitoring and training program).



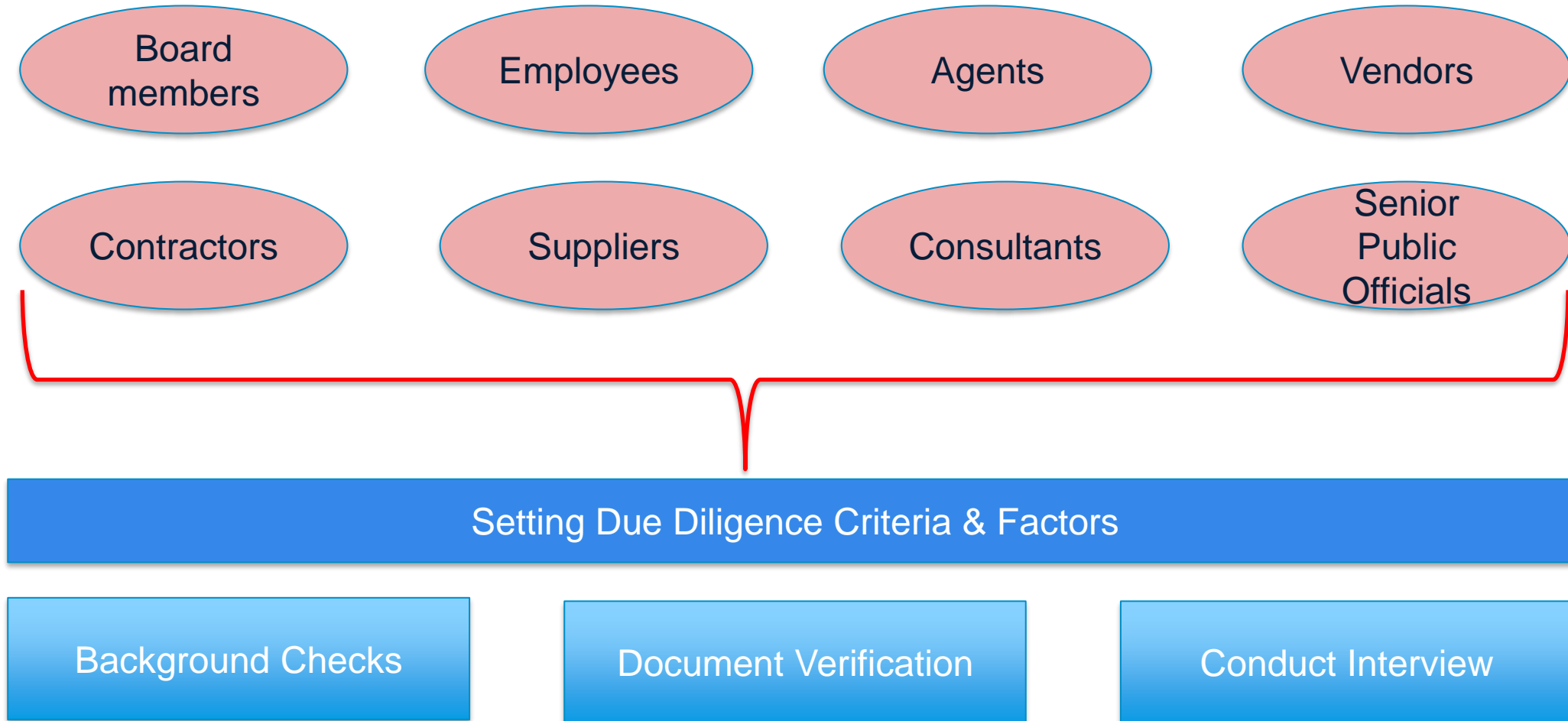
GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE III – UNDERTAKE CONTROL MEASURES



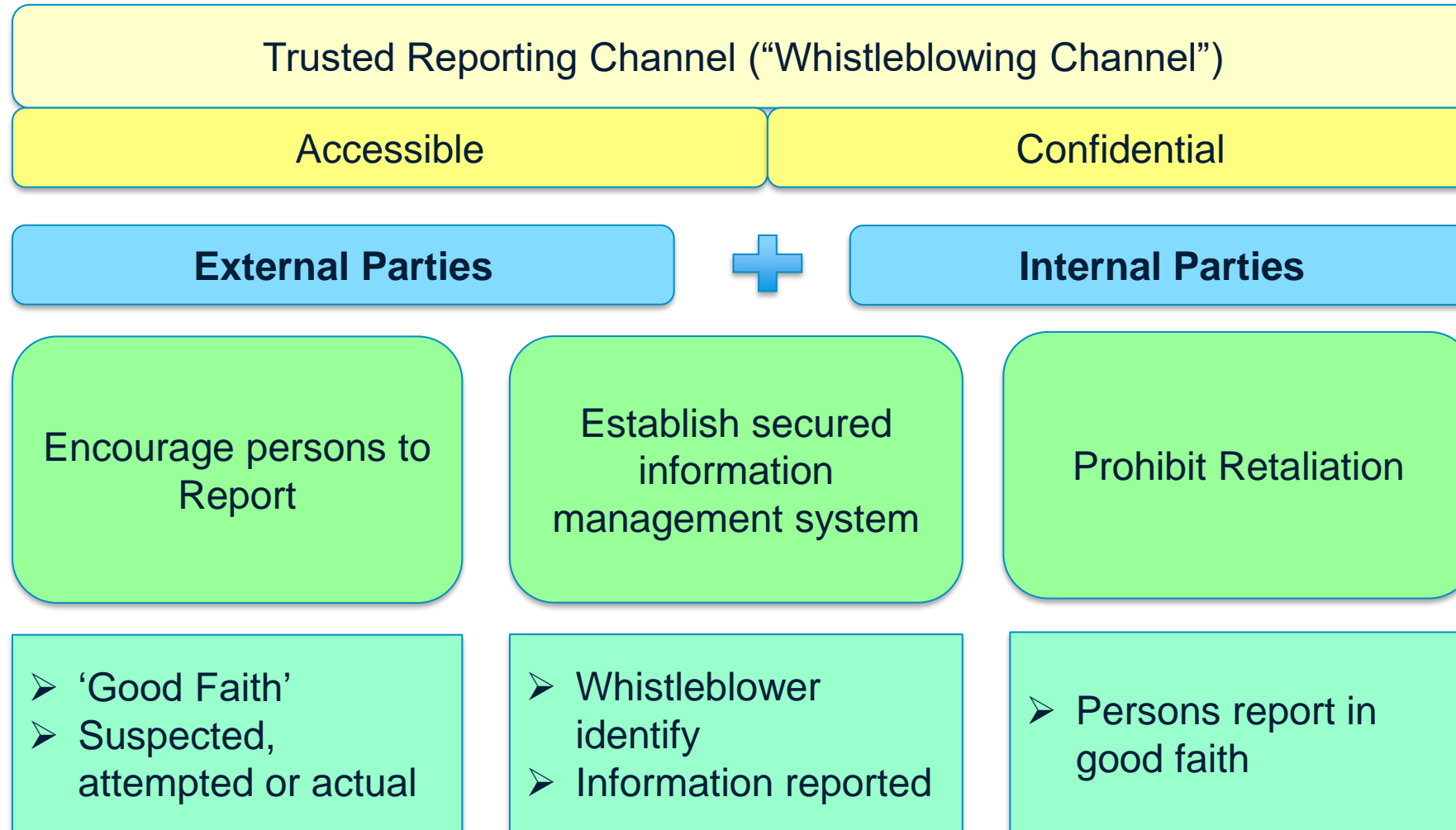
GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE III – UNDERTAKE CONTROL MEASURES – DUE DILIGENCE



GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE III – UNDERTAKE CONTROL MEASURES – REPORTING CHANNEL



GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE III – UNDERTAKE CONTROL MEASURES – POLICIES & PROCEDURES

ESTABLISH POLICIES & PROCEDURES

1

General AB&C Policy

2

Conflict of interest

3

Gift, Entertainment,
Hospitality & Travel

4

Donations &
Sponsorships (incl
political donations)

5

Facilitation Payments

6

Financial Controls

7

Non-Financial Controls

8

Anti-Corruption
Monitoring Framework
(Management &
Enhancement)

9

Record keeping –
Adequate Procedures

Policies should be:

- Endorsed by Top-Level Management
- Kept up-to-date
- Publicly and/or easily available
- Suitable for use where & when needed

GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE IV - SYSTEMATIC REVIEW, MONITORING & ENFORCEMENT

Roles of Top-Level Management

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



GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE V – TRAINING & COMMUNICATION

The commercial organisation should develop and disseminate internal and external training and communications relevant to its anti-corruption management system, in proportion to its operation, covering the following areas:

- i. policy;
- ii. training;
- iii. reporting channel; and
- iv. consequences of non-compliance.

i.e. Management to be able to **provide evidence** on the acknowledgement of all relevant personnel with regards to their awareness on the contents of the Anti-Corruption Policies and Procedures and consequences / penalties of non-compliance, and to **provide evidence** that sufficient anti-corruption trainings has been attended by all relevant personnel.

GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE V – TRAINING & COMMUNICATION

The organisation’s anti-corruption policy should be made publicly available, and should also be appropriately communicated to all personnel and business associates.

i.e. Management to be able to **provide evidence** that the Anti-Corruption Policies and Procedures is published in the public domain also been communicated to business associates such as vendors and customers.

When planning strategies for communicating the organisation’s position on anti-corruption, the organisation should take into account

- i. what key points should be communicated,
- ii. to whom they should be communicated,
- iii. how they will be communicated,
- iv. the timeframe for conducting the communication plan,
- v. what languages the materials will be communicated in.

GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE V – TRAINING & COMMUNICATION

The communication of the organisation’s policies may be conducted in a variety of formats and mediums. These may include, but are not limited to:

- i. messages on the organisation’s intranet or website;
- ii. emails, newsletters, posters;
- iii. code of business conduct and employee’s handbooks;
- iv. video seminars or messages; and
- v. town-hall sessions.

i.e. These are the mediums where anti-corruption messages can be incorporated to substantiate the seriousness of the commercial organisation in battling corruption.

GUIDELINES ON ADEQUATE PROCEDURES – “GAP”

PRINCIPLE V – TRAINING & COMMUNICATION

The commercial organisation should provide its employees and business associates with adequate training to ensure their thorough understanding of the organisation’s anti-corruption position, especially in relation to their role within or outside the commercial organisation.

The training may be conducted in a variety of formats, including but not limited to:

- i. induction programs featuring anti-corruption elements;
- ii. role-specific training, which is tailored to corruption risks the position is exposed to;
- iii. corporate training programs, seminars, videos and in-house courses;
- iv. intranet or web-based programs;
- v. town hall sessions;
- vi. retreats; and
- vii. out-reach programs.

i.e. Management to have a Training Needs Analysis (TNA) document that places more emphasis on GRC and fraud / corruption-related topics.

END OF PRESENTATION