

ISO 37001 – ABMS IMPLIMENTATION
**CONCEPT OF CORRUPTION AND
LEGAL REQUIREMENTS**

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DBKU, KUCHING, SARAWAK
25 MAC 2019

DBKU lancar Pensijilan MS ISO 37001:2016 Sistem Pengurusan Risiko Rasuah

KUCHING: Dewan Bandaraya Kuching Utara (DBKU) semalam melancarkan Pensijilan MS ISO 37001:2016 Sistem Pengurusan Risiko Rasuah (ABMS) pada Majlis Perhimpunan Bulanan organisasi itu bagi edisi Mac 2019.

Menurut kenyataan medianya semalam, majlis itu disempurnakan Datuk Bandar DBKU Datuk Abang Abdul Wahap Abang Julai di ibu pejabat DBKU di sini.

Abang Wahap dalam ucapannya berkata, DBKU komited dalam mewujudkan persekitaran kerja bebas rasuah, mematuhi undang-undang dan kawal selia berkaitan rasuah serta mengamalkan budaya kerja berintegriti tinggi, profesional, telus dan adil dalam memberi perkhidmatan terbaik kepada warga kota.

Beliau berkata, integriti secara umumnya merupakan kualiti unggul yang perlu ada pada diri seseorang individu dan organisasi.

“Budaya integriti berkait rapat dengan isu-isu etika dan nilai murni. Integriti penjawat awam memerlukan mereka bertindak secara jujur dan amanah mengikut bidang kuasa dan tugasnya, telus, tiada konflik peribadi, berwibawa, akauntabiliti serta patuh kepada peraturan dan undang-undang.



RASMI: Abang Wahap memotong reben sebagai simbolik pelancaran Pensijilan MS ISO 37001:2016 ABMS sambil disaksikan Katherine, Morshidi dan Shamsury pada majlis Perhimpunan DBKU Edisi Mac 2019 di Kuching semalam.

“Oleh itu, adalah penting bagi warga kerja Dewan Bandaraya Kuching Utara (DBKU) secara khususnya melaksanakan segala amalan dengan sebaiknya supaya dapat meningkatkan kepercayaan terhadap perkhidmatan DBKU.”

Datuk Bandar DBKU Datuk Abang Abdul Wahap Abang Julai berkata, DBKU akan melaksanakan program “Old Kuching Smart Heritage” pada Warisan Pintar Kuching yang bertepatan dengan Empowering Smart Community pada 25 hingga 31 Mac ini di Square Tower di sini.

“Tema ini adalah terce-

tus dari... Kuching yang... iatif... ekonomi... bagi tahun... 2022.

Datuk Bandar DBKU Datuk Abang Abdul Wahap Abang Julai berkata, DBKU akan melaksanakan program “Old Kuching Smart Heritage” pada Warisan Pintar Kuching yang bertepatan dengan Empowering Smart Community pada 25 hingga 31 Mac ini di Square Tower di sini.

“Old Kuching Smart Heritage” adalah program kolaboratif antara Kerajaan Sarawak melalui Old Kuching Smart Heritage (OKSHE) dan Sarawak Multimedia Authority (SMA),” katanya sambil menambah DBKU juga akan melancarkan Pelan Cantik, Bersih dan Selamat (CBS) 2.0 pada program itu nanti.

Sementara itu, majlis perhimpunan DBKU itu turut menyaksikan seramai empat staf DBKU yang bersara dan empat staf DBKU yang telah berkhidmat selama 25 tahun diraikan sebagai tanda penghargaan pihak pengurusan DBKU atas perkhidmatan mereka.

Hadir sama, Pengarah DBKU Dr Morshidi Ahmad, Ketua Bahagian Audit Dalam DBKU Shamsury Sahari dan Ketua Penolong Pengarah, Unit Pendidikan Masyarakat, Suruhanjaya Pencegahan Rasuah Malaysia (SPRM) Katherine Nais.

TAHNIAH DBKU

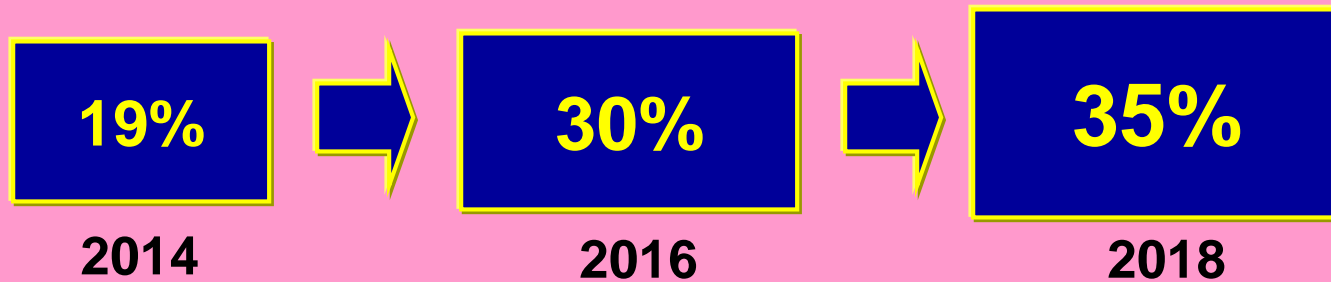
SCOPE

- # FORMS AND NATURE OF CORRUPTION
- # **BRIBERY & CORRUPTION OFFENCES**
- # CAUSES OF CORRUPTION
- # **LEGAL REQUIREMENTS AND ADEQUATE PROCEDURES**
- # PREVENTING BRIBERY & CORRUPTION
UNDER ISO 37001 - ABMS

BRIBERY AND CORRUPTION KEEPS RISING...

Malaysian organization are not doing enough to protect themselves

Reported incidents of bribery and corruption continue to increase from



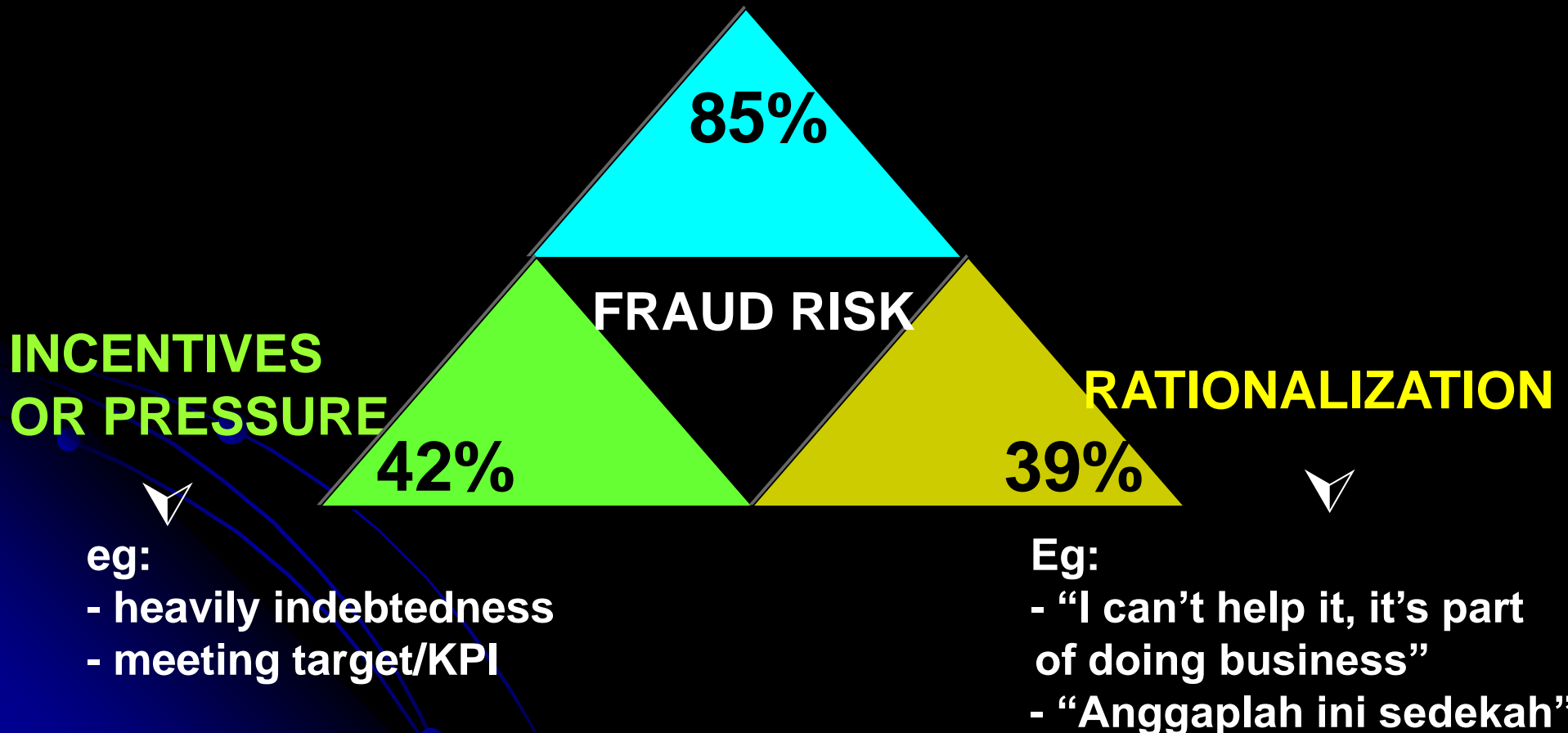
It is concerning that Malaysian organizations appear to be ambivalent about addressing the risks of bribery and corruption

Source: pwc, 2018

THE DRIVERS OF FRAUD

(Source: pwc, 2018)

OPPORTUNITY ➤ eg: red tape that causes delay



KPMG Malaysia

Fraud, Bribery and Corruption Survey 2013

- 71% of respondents believed that **bribery** is an inevitable cost of doing business
- 64% believed business can't be done in Malaysia without paying bribes

NO OF ARRESTS BY SECTORS & TYPES OF OFFENCES [2016 – 2018]

TYPES OF OFFENCES	2016					2017					2018				
	PK	SW	OA	AP	LL	PK	SW	OA	AP	LL	PK	SW	OA	AP	LL
Received Bribes	315	51	81	0	15	275	48	60	9	15	230	73	62	10	19
Gave Bribes	5	57	129	0	1	4	65	172	1	0	0	21	99	3	1
False Claims	114	76	11	0	4	82	36	21	0	3	103	69	42	0	18
Abuse of Position	12	8	1	0	7	31	11	8	1	3	71	5	7	4	4
Others	14	18	16	0	4	18	10	5	1	2	19	15	10	7	4
Total	460	210	238	0	31	410	170	266	12	23	423	183	220	24	46
TOTAL	939					881					896				

Source: MACC (4.1.2019)

PK – PEGAWAI KERAJAAN

SW – SWASTA

OA – ORANG AWAM

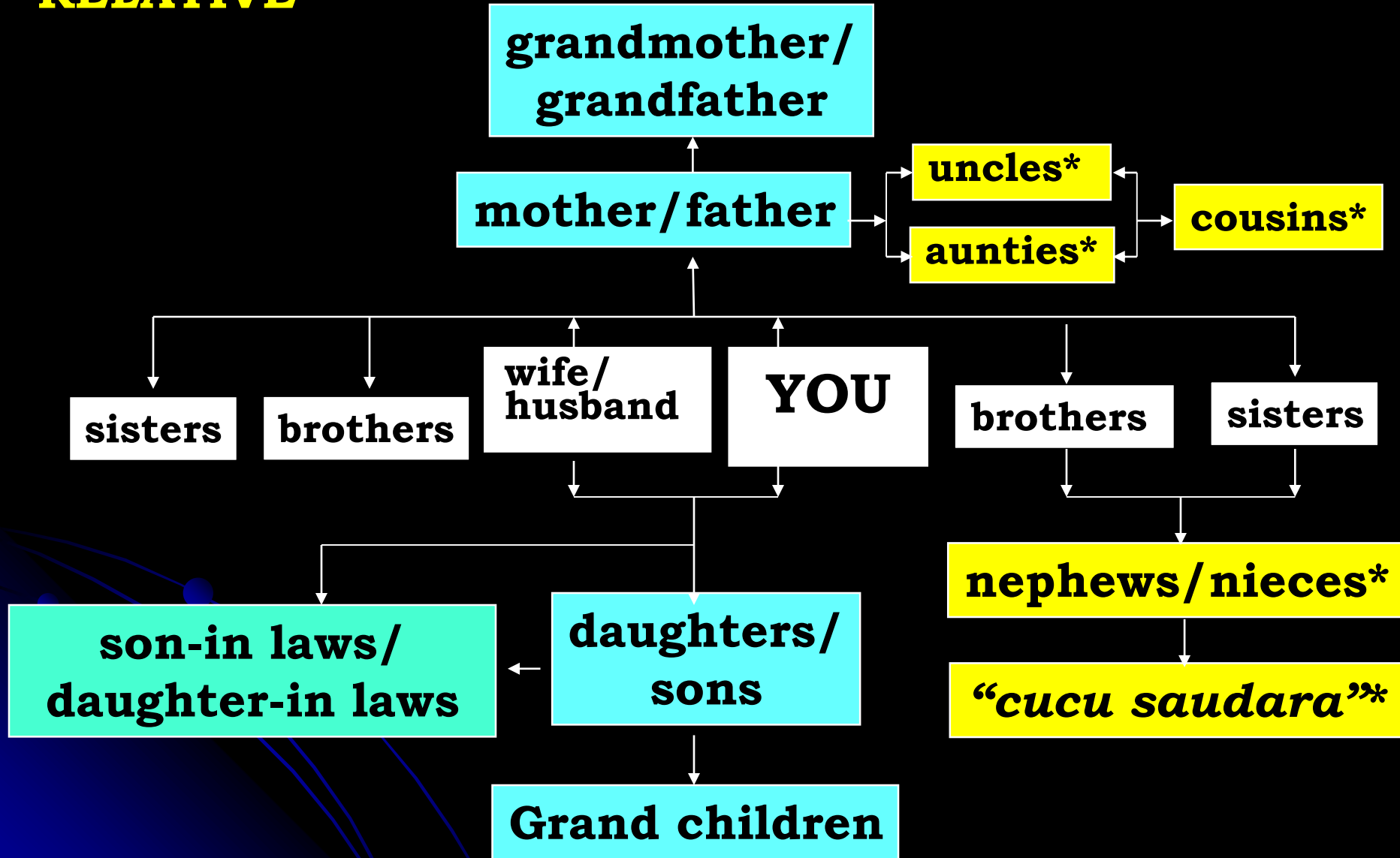
AP - AHLI POLITIK

LL – LAIN-LAIN (students, foreigners)

CORRUPTION

FORMS	OFFENCES
<ul style="list-style-type: none">• Bribery	<ul style="list-style-type: none">• Accepting/Receiving/Soliciting/Demanding/Attempting to obtain gratification• Giving/Offering gratification (Section 16 & 17, MACC Act 2009 amendment 2018)• Receiving/Obtaining Valuable Thing Without Consideration (Section 165, Penal Code)
<ul style="list-style-type: none">• Embezzlement	<ul style="list-style-type: none">• Theft (Section 381, Penal Code)
<ul style="list-style-type: none">• Fraud	<ul style="list-style-type: none">• False Claim (Section 18, MACC Act 2009)• Cheating (Section 420, Penal Code)• CBT (Section 409, Penal Code)
<ul style="list-style-type: none">• Extortion	<ul style="list-style-type: none">• Extortion, putting fear to a person (Section 385-389, Penal Code)
<ul style="list-style-type: none">• Favouritism	<ul style="list-style-type: none">• Using office or position for gratification (Section 23, MACC Act 2009)
<ul style="list-style-type: none">• Nepotism	<ul style="list-style-type: none">• Using office or position for gratification (Section 23, MACC Act 2009)

Interpretation of “RELATIVE”



TYPES OF BRIBERY

- **SPONTANEOUS**
- **INSTRUMENTAL**
- **INDIVIDUALISTIC**
- **SYNDICATED**

MAIN CHARACTERISTICS OF BRIBERY

- **INVOLVING TWO PARTIES OR MORE**
- **SECRETIVE**
- **CONSENSUAL ACT**
- **A WIN-WIN SITUATION**
- **INVOLVE ABUSE OF POWER/AUTHORITY**
- **VIOLATION OF RULES & REGULATIONS**

LEGAL REQUIREMENT UNDER THE MACC ACT 2009 (amendment 2018)

CORRUPTION OFFENCES – MACC Act 2009

BRIBERY

1.

- giving gratification
- accepting gratification

Sec. 16 & 17
MACC Act 2009

2.

giving or using false
documents to make claims

Section 18
MACC Act 2009

3.

abuse of public office for
pecuniary advantage

Section 23



**UNDANG-UNDANG
MALAYSIA**

LAWS OF MALAYSIA

**AKTA SURUHANJAYA PENCEGAHAN
RASUAH MALAYSIA 2009
(Akta 694)**

**MALAYSIAN ANTI-CORRUPTION
COMMISSION ACT 2009
(Act 694)**

**“CORPORATE
LIABILITY
PROVISIONS”
Section 17A of the
Malaysian Anti-
Corruption
Commission
(Amendment) Act
2018
Impact on
Organisations**

THE NEED FOR CORPORATE LIABILITY PROVISIONS

- **Prior to the Amendment Act, only individuals were liable for committing bribery offences under the MACC Act 2009.**
- **Although an employee or director of the company could be punished for the crime, the company itself did not suffer any penal consequences. In fact, the company benefited from the corrupt act committed by the individual.**

ECONOMIC COST OF CORRUPTION

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Sport

Culture

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The
Guardian

International edition ▾

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Rebuilding trust: How Siemens atoned for its sins

German engineering giant Siemens suffered a huge loss of trust following a bribery scandal, but a determination to face the truth put the firm on the path to recovery



Siemens was accused of bribery and other corporate malfeasance in approximately 20 countries. Bribes were given to win many contracts.

Siemens agreed to pay a record **\$1.34 billion in fines** in December 2008 after being investigated for serious bribery.

ECONOMIC COST OF CORRUPTION

Alcatel was charged with two counts of violating the US Foreign Corrupt Practices Act. Three of its subsidiaries agreed to plead guilty to one count each of conspiracy to violate the anti-bribery law.

Agreed to pay more than **US\$137 million (RM430.4 million)** to settle US charges that it paid millions of dollars in bribes to foreign officials to win business in Latin America and Asia, US authorities.

Alcatel agrees to settle bribery case for \$137 million

Jeremy Pelofsky

3 MIN READ



WASHINGTON (Reuters) - Alcatel Lucent SA has agreed to pay more than \$137 million to settle U.S. charges that it paid millions of dollars in bribes to foreign officials to win business in Latin America and Asia, U.S. authorities said on Monday.



ECONOMIC COST OF CORRUPTION

Alstom to Plead Guilty and Pay U.S. a \$772 Million Fine in a Bribery Scheme

By Danielle Ivory

Dec. 22, 2014

The French industrial giant Alstom has agreed to pay a \$772 million penalty to the United States in a bribery case announced by the Justice Department.

Alstom, an energy and transportation company, is under investigation in a plot involving tens of millions of dollars in contracts with government officials in Indonesia and other countries. The criminal penalty, announced Monday, is the largest ever levied by the United States for foreign bribery.

"Alstom's corruption scheme was sustained over a period of years across several continents," said James Cole, deputy assistant attorney general. "The scheme was astounding in its breadth, its brazenness and its consequences."

SFO charges another individual in Alstom corruption case

By Richard L. Cassin | Tuesday, March 29, 2016 at 3:08PM

ALSTOM

The UK Serious Fraud Office charged another individual Tuesday as part of the ongoing investigation into Alstom.

Alstom Country
Transport UK and
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will appear at

work UK Ltd,
eir trial date has

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, the SFO said,

Alstom paid more than \$75 million in bribes from 2000 to 2011 to secure \$4 billion in contracts around the world, which led to profits of about \$300 million. They were fined **US\$772 million.**

In UK, they were still being prosecuted in 2017 for bribes paid more than ten years ago.

THE OFFENCE– Section 17A(1)

A commercial organization commits an offence if a person associated with the commercial organization corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent –

- a) To obtain or retain business for the commercial organization; or**
- b) To obtain or retain an advantage in the conduct of business for the commercial organization.**

COMMERCIAL ORGANIZATION

- SECTION 17A(8)

- **a company incorporated in Malaysia carrying on business in Malaysia or elsewhere**
- **a company wherever incorporated but carries on business or part of a business in Malaysia**
- **a partnership formed under the Malaysia Partnership Act 1961 or the Limited Liability Partnership Act 2012 carrying on business in Malaysia or elsewhere**
- **a partnership wherever formed but carries on business or part of a business in Malaysia**

ASSOCIATED PERSON

Section 17(6)

For the purposes of this section, a person is associated with the commercial organization if he is a director, partner or an employee of the commercial organization or he is a person who performs services for or on behalf of the commercial organization.

Corporate Liability For Corruption

— Sec 17A MACC Act 2009

THE 'CONVICTION'



The conviction and sentencing would not be for the offence of bribery but for the failure to prevent the offence.

THE 'PENALTIES' **(Section 17A(2))**

Any commercial organization who commits an offence under this Section shall on conviction be liable to:

- a fine of not less than **ten times** the sum or value of the gratification, or**
- **one million ringgit**, whichever is the higher, or**
- imprisonment not exceeding **20 years**, or**
- to both (fine & imprisonment).**

THE 'DEFENCE'

Section 17(4)

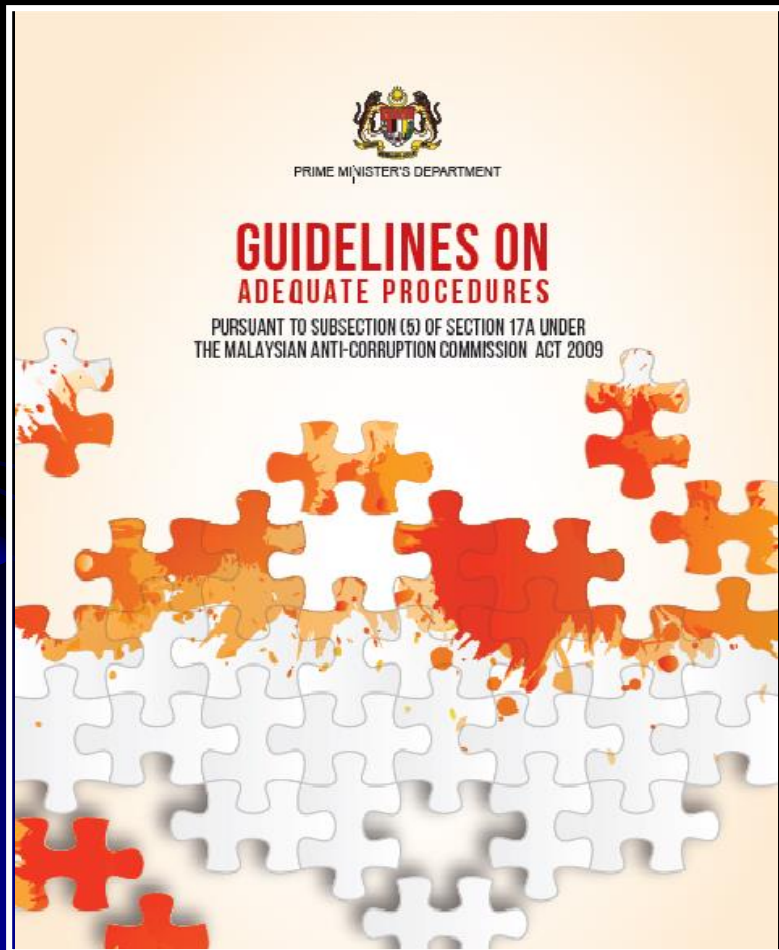
If a commercial organization is charged for the offence referred to in subsection 1, it is a **defence** for the commercial organization to prove that the commercial organization had in place **adequate procedures** to prevent persons associated with the commercial organization from undertaking such conduct.

Definition on "ADEQUATE PROCEDURES"

- The Act does not define "adequate procedures", but the Minister has issued Official Guidelines on Adequate Procedures that commercial organisations can put into place to prevent bribery by persons associated with them.
- Proportionate to the bribery risks the organisation faces and to the nature, scale and complexity of its commercial activities.

GUIDELINES ON ADEQUATE PROCEDURES

[Pursuant To Subsection (5) Of Section 17A]



“The objective of these guidelines is to assist commercial organisations in understanding what are the adequate procedures that should be implemented to prevent the occurrence of corrupt practices in relation to their business activities.”

ADEQUATE PROCEDURES PRINCIPLES

The 8 'TRUST' Requirements

TOP LEVEL COMMITMENT

RISK ASSESSMENT

UNDERTAKE CONTROL MEASURES

SYSTEMATIC REVIEW MONITORING
AND ENFORCEMENT

TRAINING AND COMMUNICATION

- Establish Anti-Bribery Policy
- Implement Anti-Bribery Programmes

The Adequate Procedures Guidance provides a non-exhaustive list of the topics an organisation's anti-bribery policy should consider including:

- **The involvement of the organisation's top-level management.**
- **Risk assessment procedures.**
- **Due diligence of existing or prospective associated persons.**
- **The provision of gifts, hospitality and promotional expenditure; charitable and political donations; or demands for facilitation payments.**
- **Direct and indirect employment, including recruitment, terms and conditions, disciplinary action and remuneration.**
- **Governance of business relationships with all other associated persons including pre and post contractual agreements.**

- Financial and commercial controls such as adequate bookkeeping, auditing and approval of expenditure.
- Transparency of transactions and disclosure of information.
- Decision making, such as delegation of authority procedures, separation of functions and the avoidance of conflicts of interest.
- Enforcement, detailing discipline processes and sanctions for breaches of the organisation's anti-bribery rules.
- The reporting of bribery including 'speak up' or 'whistle blowing' procedures.
- The detail of the process by which the organisation plans to implement its bribery prevention procedures, for example, how its policy will be applied to individual projects and to different parts of the organisation.
- The communication of the organisation's policies and procedures, and training in their application.
- The monitoring, review and evaluation of bribery prevention procedures.



ISO 37001:2016

**ANTI-BRIBERY
MANAGEMENT
SYSTEM (ABMS)**

**An Effective Mechanism
to Combat Corruption
in the Organisation**



PREVENTING THE ROOT CAUSES OF BRIBERY & CORRUPTION

BREEDING AREAS

- red flags

Corruption
Risk
Assessment

SYMPTOMS

- indicators

**Unclear policies,
rules &
regulations;
unclear
instruction;
discretionary
power without
control/guidance**

**Outdated or
lack publicity on
Code of Ethics;
weak
enforcement;
Lack
accountability;
Conflict of
Interest**

**Lack
supervision
and
monitoring,
inefficiency,
poor
handling of
public
complaints**

**OPPORTUNI-
TIES FOR
BRIBERY AND
CORRUPTION
DUE TO
WEAK
SYSTEM**

**Untrained
& unskilled
Staff**

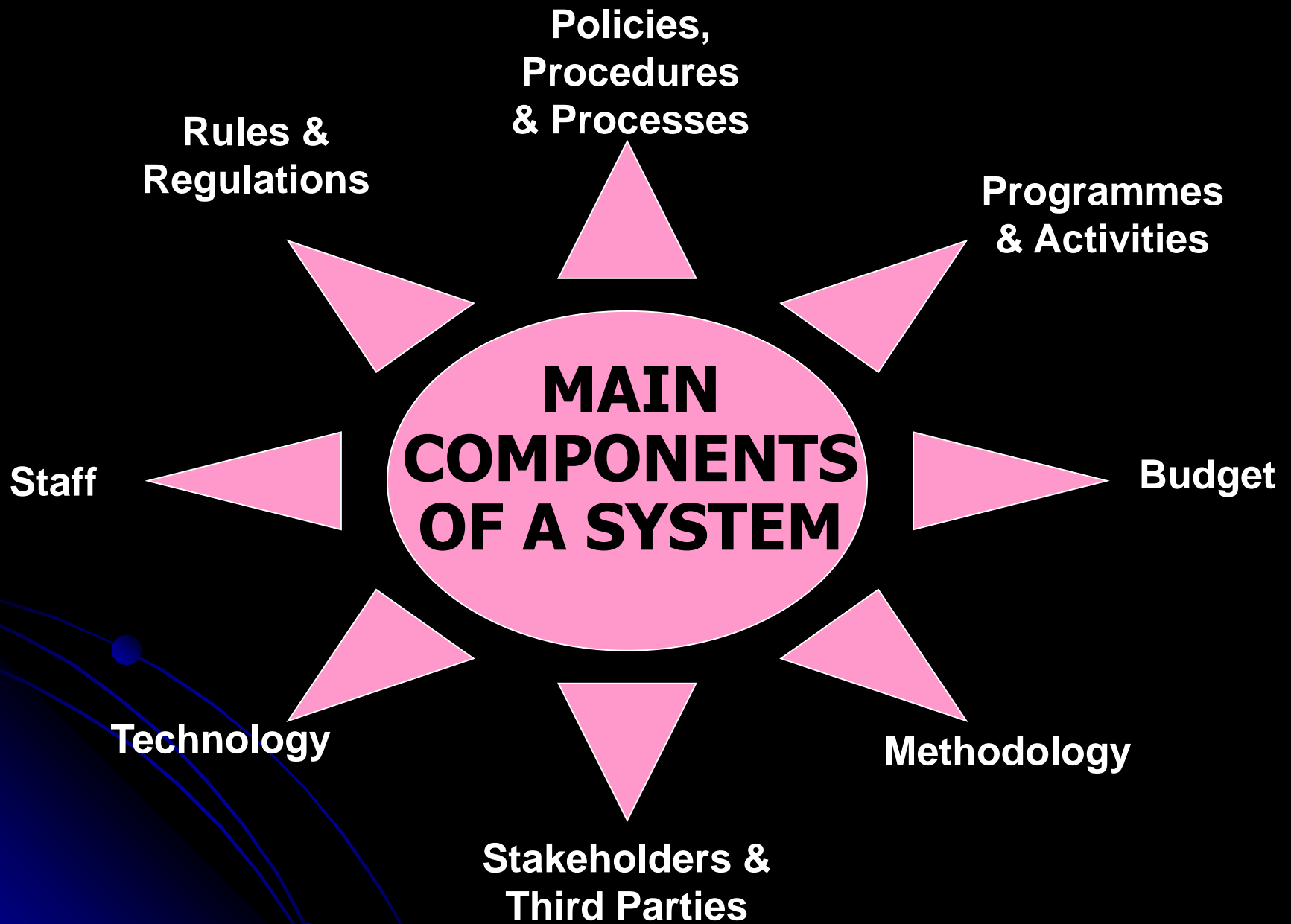
**Low level of
integrity – greed,
living beyond
means, involved in
debts**

**Weak
leadership,
not hands-
on, unclear
direction;
absolute
power**

**System and
procedures are
not transparent,
absence of checks
& balances;
outdated work
manuals;
bureaucracy/red
tape; outdated SOP**

COMMON CORRUPTION SYMPTOMS/INDICATORS

- * lavish lifestyle - living beyond means**
- * unexplained sources of wealth**
- * unusual close relationship with clients**
- * unnecessary involvement in other division**
- * Heavy indebtedness, gambling**
- * refusal of suppliers/contractors to deal with other staff**
- * prefer to work alone, very secretive**
- * unnecessarily making extra copies of document**



KES	ISU	PELUANG RASUAH
Tuntutan perjalanan oleh Ahli Lembaga Pengarah RISDA dan anak syarikatnya	<ul style="list-style-type: none"> Ahli Lembaga membuat dua tuntutan bertindih – satu perjalanan tetapi dua tuntutan. 	<ul style="list-style-type: none"> Tiada dasar atau polisi
<u>Kaedah-kaedah Motor Vehicles (Prohibition Of Certain Types Of Glass) Rules, 1991 - JPJ</u>	<ul style="list-style-type: none"> Undang-undang tidak boleh dikuatkuasakan Alat pengukur cahaya digital tidak diwartakan. 	<ul style="list-style-type: none"> Undang-undang tidak kemaskini
Penetapan Kadar Saman Bagi Kesalahan Sek. 6(1) Enakmen Hiburan Dan Tempat-tempat Hiburan Negeri Selangor 1995	<ul style="list-style-type: none"> Enakmen peruntukkan kuasa hanya kepada YDP untuk menetapkan kadar kompaun. 	<ul style="list-style-type: none"> Penompokan kuasa
Prosedur Kerja Pendakwaan Kes Jabatan Kastam	<ul style="list-style-type: none"> Tiada semakan keputusan kes oleh Pengarah. 	<ul style="list-style-type: none"> Tiada check & balance

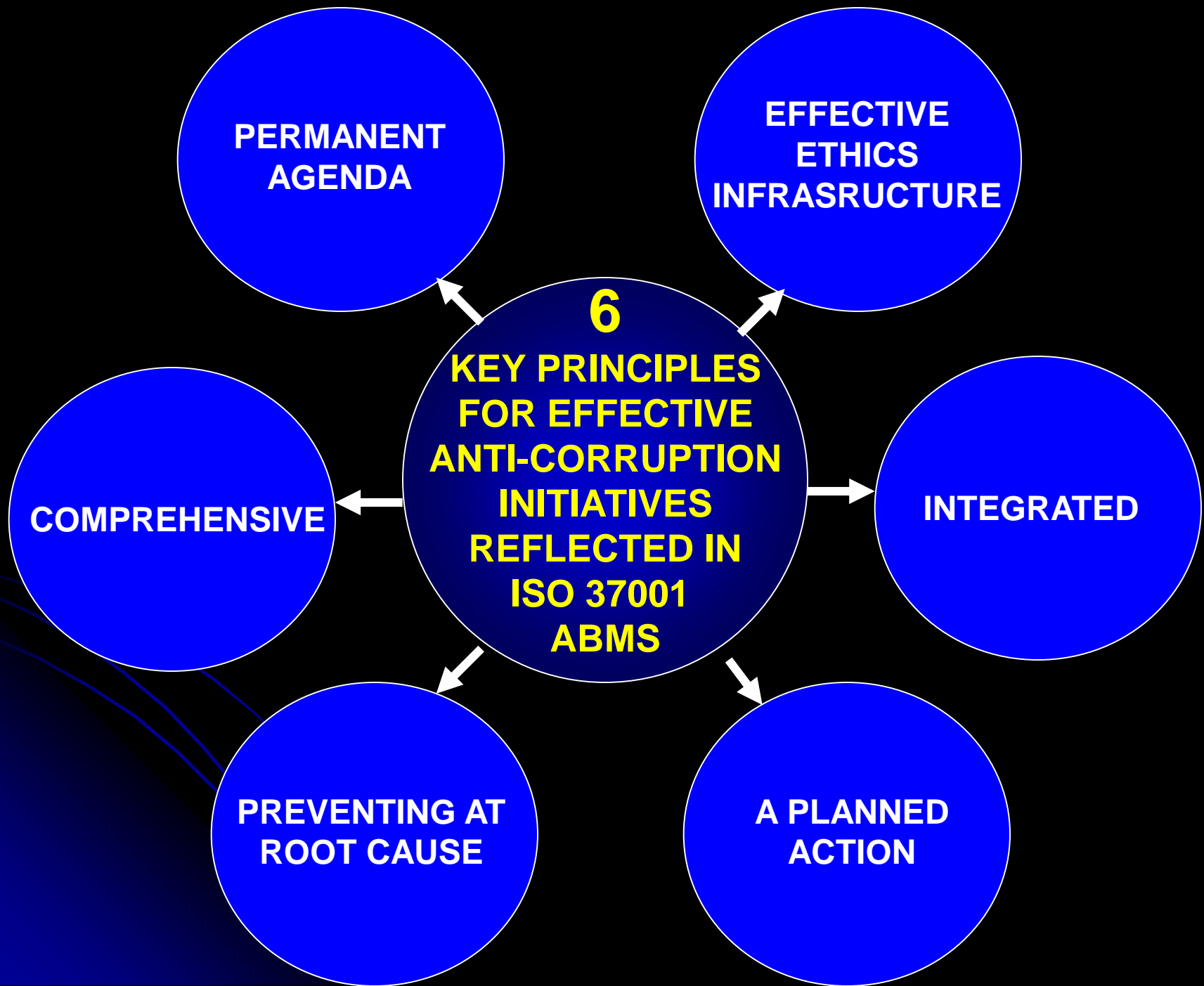
WEAK SYSTEM CONTROL PROMOTES THE OCCURRENCE OF BRIBERY & CORRUPTION

**WEAKNESSES
ARE
IDENTIFIED
USING
CORRUPTION
RISK
ASSESSMENT
INSTRUMENT**

- Lack of Transparency
- Lack of Accountability
- Lack of Checks and Balances
- Unnecessary Procedures & Red Tape That Cause Delay
- Lack of Knowledge, Lack Supervision & Monitoring
- Untrained & Unskilled Employees
- Outdated or Inadequate Policies
- Unenforceable Legislation
- Unclear or Too Many Instructions
- Ineffective Whistle-blowing Channel
- Discretionary Power Without Proper Guidance/Control
- Work Processes Manually Done
- Ambiguity and Occurrence of Grey Areas
- Insufficient Publicity & Communication
- Low Level of Integrity
- Outdated FM, MPK & Clients Charter
- No Time Frame for Job Completion
- Conflict of Interest

ADEQUATE PROCEDURES PRINCIPLES

The 8 'TRUST' Requirements	ISO 37001 – ABMS Requirements
T OP LEVEL COMMITMENT	<ul style="list-style-type: none">• TOP MANAGEMENT LEADERSHIP, COMMITMENT & RESPONSIBILITY• GOVERNING BODY OVERSIGHT
R ISK ASSESSMENT	BRIBERY RISK ASSESSMENT
U NDERTAKE CONTROL MEASURES	<ul style="list-style-type: none">• DUE DILIGENCE ON PROJECTS & BUSINESS ASSOCIATES• AN ANTI-BRIBERY POLICY, PROCEDURES, & CONTROLS
S YSTEMATIC REVIEW MONITORING AND ENFORCEMENT	<ul style="list-style-type: none">• MANAGEMENT REVIEW, CORRECTIVE ACTION & CONTINUAL IMPROVEMENT• REPORTING, MONITORING AND INVESTIGATION
T RAINING AND COMMUNICATION	ANTI-BRIBERY TRAINING AND AWARENESS



CONCLUSION:

**LOW
DETECTION
RISK**

HIGH REWARDS



**HIGH
DETECTION
RISK**

LOW REWARDS

**PREVENT THE
OCCURRENCE
OF BRIBERY &
CORRUPTION**



**ETHICAL
ENVIRONMENT**



**“Leadership is not rank,
privileges, titles or money;
it is responsibility.”**

[Peter Drucker]

THANK YOU

**LETS MAKE MALAYSIA KNOWN FOR ITS
INTEGRITY AND
NOT CORRUPTION**