

# Anti Bribery & Corruption - Third Party Management

The Malaysian Anti-Corruption Commission (MACC) (Amendment) Act 2018 passed by Parliament in April 2018 introduced a new strict statutory corporate liability offence under Section 17A of the MACC Act 2009 which came into effect on 1 June 2020. Under Section 17A, a commercial organisation is deemed to have committed an offence if any persons associated with the commercial organisation commits a corrupt act in order to obtain or retain business or advantage for the organisation. The Act stipulates that persons considered to be “associated” with a commercial organisation include directors, partners and employees of the commercial organisation, as well as any person “who **performs services for or on behalf of the commercial organisation.**”



## How does this impact you?

Like the UK Bribery Act and the US Foreign Corrupt Practices Act (FCPA), under Section 17A of the MACC Act 2009 (Amendment 2018), a **commercial organisation can be subjected to legal proceedings should persons associated with the commercial organisation, including third parties, commit corruption offences.** The organisation’s only defense to absolve liability under Section 17A is to demonstrate that it has put in place adequate procedures to prevent occurrence of corrupt practices. In the event of failure to prevent bribery by an associated person, as part of its “defence”, the organisation is required to prove that it had in place an effective third party risk management program which is designed to prevent persons associated with it from engaging in corrupt activities.

“ The commercial organisation may be liable whether or not its top level management and/ or representatives had actual knowledge of the corrupt acts of its employees and/ or associated persons. ”

Paragraph 3.1 of the *Guidelines on Adequate Procedures*

“ As a commercial organisation, you are only as strong as your weakest link, and the lack of appropriate oversight and monitoring of third-party relationships may expose the organisation to a wide range of risks. ”

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# Mitigating bribery and corruption risks with a robust third party risk management program

Whilst every organisation is unique and there is no 'one-size-fits-all' third party risk management program, the following are hallmarks of any successful third party risk management program that effectively mitigate the risk of bribery and corruption posed by third parties:



## Third Party Risk Management (TPRM) Policies and Procedures

Policies and procedures set the expectation on how third party risk should be managed by the organisation and its employees through clearly defined roles and responsibilities as well as procedural requirements throughout the lifecycle of the third party relationship. Policies and procedures should be reviewed regularly and updated to remain relevant in managing third party risk exposure.



## Third Party Risk Assessment

A well-designed risk assessment helps an organisation to apply a risk-based approach in assessing third party relationships that aligns with the risk appetite of its third party risk management program. It is important to conduct risk assessment on third party relationships prior to onboarding to determine the extent and nature of risk that each of your third party relationships poses to your business and to determine the appropriate level of integrity due diligence for that third party. Subsequently, third-party relationships should be continuously managed based on their risk profile.



## Integrity Due Diligence

Third party due diligence is a vital element of any successful TPRM program and has been underlined in regulatory guidelines<sup>1</sup> as a key control measure that organisations must undertake to identify and manage third party risks. Risk-based due diligence must be embedded in an organisation's pre-onboarding and ongoing monitoring processes.



## Training and Communication

Training and communication help to create awareness among employees and equip them with adequate knowledge and skills to keep them up to date with the regulatory and industry needs in third party risk management. Training can be general but where a role or function is faced with heightened third-party risk, training should be customised in the context of the specific role or function to ensure employees are receiving training applicable to them. Training to specific third parties is also beneficial and in certain circumstances, crucial, in clearly communicating the organisation's key business principles, ethical standards as well as tolerance to corrupt practices in the context of anti-bribery and corruption.



## On-going Vigilance

Policies and procedures incorporating an adequate level of internal controls are merely the start of the journey. There is a continuous need for an independent assurance that the design of internal controls remains at an adequate level, and for an assurance in the integrity of the system of internal controls and its ability to detect, prevent and minimise acts of corruption. The role of the internal audit function, as an independent and unbiased gatekeeper, is vital.

<sup>1</sup> The Guidelines on Adequate Procedures issued by the Prime Minister's Department pursuant to subsection (5) of Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) ("MACC Act 2009"), as stated in the Malaysian Anti-Corruption Commission (Amendment) Act 2018 ("MACC Amendment Act 2018").

# How can KPMG help you?



## ■ Policies and procedures

- Review the policies and procedures that establish your TPRM program.
- Perform a gap assessment of your organisation's TPRM policies and procedures against those of leading practices to identify inefficiencies or control gaps in your risk mitigation measures.
- Enhance existing policies and procedures to align with regulatory requirements including the Guidelines on Adequate Procedures as well as industry leading practices.
- Develop policies and procedures that incorporate the necessary controls for third party risk management from initiation to termination.

## ■ Training and Awareness Program

- Develop, enhance and update training materials on TPRM to incorporate awareness on bribery and corruption as well as the related risk mitigation measures.
- Design training materials on TPRM to targeted audiences such as employees, process owners, Senior Management and Board which are specific to their roles.
- Develop specific anti-bribery and corruption training and communication materials for third parties which are aligned to both your TPRM program as well as anti-bribery and corruption program.

## ■ Third Party Risk Assessment

- Identification of the universe of third-party relationships you are engaged in and understanding of the third-party risks you are exposed to.
- Perform a gap assessment of your organisation's third party risk assessment methodology against those of leading practices to identify inefficiencies or control gaps.
- Enhance or develop a methodology to perform third party risk assessment which takes into consideration bribery and corruption related risks such as the development of a Third Party Bribery and Corruption Risk Assessment Scorecard.
- Assist your organisation in conducting third party risk assessment to risk profile your third party relationships based on the Third Party Bribery and Corruption Risk Assessment Scorecard as well as defined criteria specific to your business.

## ■ Integrity Due Diligence

- Review your current third party due diligence approach and methodology.
- Perform a gap assessment of your third party due diligence methodology against that of leading practices to identify inefficiencies or control gaps.
- Enhance or develop a risk-based methodology to help you perform integrity due diligence on your third-party relationships in an efficient way which takes into consideration bribery and corruption related risks. This includes the development of due diligence questionnaires, forms and checklists.
- Assist in conducting integrity due diligence on third parties as part of your pre-onboarding as well as ongoing monitoring processes using our dedicated solution, KPMG Third Party Intelligent Diligence ('K-3PID').

# Contact Us

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