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ISO 37001: ANTI-BRIBERY MANAGEMENT SYSTEM- BENEFITS AND IMPLEMENTATION

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ABSTRACT

Anti-Bribery Management System was first introduced in Malaysia in 15th October 2016. Before this, other countries such as United Kingdom and the United States have come out with the act. The UK Bribery Act, 2010 was passed on 8 April 2010 and was enforced on 1 July 2011 and the US Foreign Corrupt Practices Act, was enacted in 1977 and was amended in 1988. This paper will discuss the purpose of ISO 37001, what an organization should have to implement the system and what are the benefits that can be gained from the implementation.

Keywords: ISO 37001, Anti-bribery management system

INTRODUCTION

Bribery is a serious issue of our time. Realizing the fact that bribery has become one of the world most common problems, every effort has been taken into consideration in fighting this crime. Organization all over the world are facing the same risk, whether they are directly or indirectly involved with this kind of crime. This paper will give an overview on the need of an assessment

of the system in place in an organization that can help reduce the risk of bribery and help organizations deal with it.

In the UK, starting from 2011, the Bribery Act 2010 has replaced the existing UK bribery laws, and has introduced a new offence of “failure of commercial organizations to prevent bribery”. UK has issued BS 10500:2011 Specification for an anti-bribery management system (ABMS). Organizations now have to prove that it had adequate procedures in place to prevent bribery together with their clients, agents, joint venture partners, and major sub-contractors, suppliers and consultants. Numerous companies had successfully adopted this standard as an adequate anti-bribery measures.

According to Transparency International Study in 2011, 27% of the 3016 business people surveyed across 30 countries reported that they had lost business due to bribery by their competitors. Damages caused by bribery to countries, organizations and individuals lowers economic growth, discourages investment, marginalizes and restricts global markets, erodes support for economic aid, puts a heavy economic burden on the poor and lowers the standard of living of the people. (Gasiorowski-Denis, E, 2014).

The Global Economic Crime Survey 2016 (Malaysia report), reported that almost 98% of companies surveyed make it clear to staff that bribery and corruption are unacceptable. Yet it reported that incidents of bribery and corruption increase from 19% (2014) to 30% (2016). Bribery and corruption incidences are on the rise, amidst an increasingly complicated risk landscape. While such economic crime risks are increasing in complexity, Malaysian companies are not evolving fast enough to mitigate them. Following the above report, Mr. Alex Tan, Senior Executive Director and Forensic Lead, PwC Consulting Associates (M) Sdn Bhd. Mentioned: “At the speed with which the risk landscape is evolving, combating rampant economic crimes can no longer be the sole responsibility of a person or team, it must be embedded within the whole organizational culture” (Thesundaily, 24 June 2016).

Thus, it is important that ethics and integrity be embedded and integrated in the organization’s policies and way of doing things.

DEFINITION OF BRIBERY

Bribery is the offering, promising, giving accepting or soliciting of an undue advantage of by value (which could be financial or non- financial), directly or indirectly or indirectly, and irrespective of location(s), in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person’s duties. (ISO37001 Standard) According to Transparency International, corruption is the abuse of entrusted power for private gain. It can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs. Thus it can be said that bribery is a subset of Corruption.

Bribery and corruption is a growing concern for businesses in all sectors and jurisdictions. Corruption is a problem not only from an ethical and competition-distorting perspective, but also because of the substantial risk it creates to the reputation of affected businesses and the potential financial implications of a conviction, or even just the adverse publicity of an allegation or investigation.

The increase in enforcement of national and international bribery and corruption legislation means businesses must demonstrate compliance. Due to its complexities, this can be a challenging area for businesses to address. Therefore, many organizations have come out with standard in order to comply with their nation and country's legislative.

PREVIOUS MATERIALS ON ANTI BRIBERY MANAGEMENT SYSTEM

Anti-Bribery issues have been discussed widely. This section will discuss some of the ISOs, Standards and guidelines issued to date.

Business Principles for Countering Bribery

This business principle provides a framework for companies to develop comprehensive anti-bribery programs based on continuing risk assessment. It was first introduced in 2003 and the initiative was led by Transparency International. It covers issues on bribes and business relationships.

Good Practice Guidance on Internal Controls, Ethics and Compliance

The Working Group on Bribery in International Business Transactions held one of its regular consultations with the private sector and civil society on 13 October 2011 in Paris in keeping with the 2009 Anti -Bribery Recommendations. Idea was initiated in OECD (Organization for Economic Co-operation and Development) Anti- Bribery Convention. The Working Group must regularly engage the private sector and civil society on issues related to the fight against foreign bribery. It provides guidance on the types of good practices such as adoption of an effective internal controls, ethics and compliance. Also provides guidance regarding third party's due diligence.

Guidelines for Multinational Enterprise

First initiated in 2011 by OECD. The OECD Guidelines for Multinational Enterprises (the Guidelines) comprise a set of voluntary principles and standards for responsible business conduct, in a variety of areas including human rights, disclosure, employment and industrial relations, environment, combating bribery, consumer interests, science and technology, competition, and taxation.

Integrity Compliance Guidelines

First initiated in 2010 by World Bank Group. The guidelines incorporate standards, principles and components commonly recognized by many institutions and entities as good governance and anti-fraud and corruption practices.

Principles of Countering Bribery (PACI)

PACI Principles was first initiated in 2005 by a multinational task force of companies during the World Economic Forum. Transparency International and Basel Institute on Governance also assisted in its formulation. It provides a framework for good business practices and risk management strategies for countering bribery. It is intended to assist enterprise to:

1. Eliminate bribery.
2. Demonstrate their commitment to countering bribery.
3. Make a positive contribution to improve business standard of integrity, transparency and accountability wherever they operate.

The enterprise shall prohibit bribery and commit to the continuation or implementation of an effective program to counter bribery.

Rules on Combating Corruption

Was first published in 1977 and revised in 2011. It is initiated by the International Chamber of Commerce. It covers bribery of public officials, including at international level, bribery of a political party, party official or candidate, bribery of a director, officer, employee or agent of a private enterprise; extortion; solicitation; facilitation payments, agent and other intermediaries, joint ventures and outsourcing agreements.

APEC (Asia-Pacific Economic Cooperation) Anti-Corruption Code of Conduct

First initiated in 2007. These code is for all APEC Members, which covers bribery in any form and see the need to develop program articulating values, policies and procedures for preventing bribery in all activities under enterprise’s effective control.

UN (United Nations) Convention against Corruption (UNCAC)

First initiated in 2005. It calls on the private sector to play an active role in preventing corruption. The summary of the Act, standards and Guidelines can be seen in Table 1.

ISO 37001 ANTI-BRIBERY MANAGEMENT SYSTEM

ISO has issued an Anti-Bribery Management System standard (ISO 37001) in October 2016 for the purpose of assisting organizations to prevent, detect, and address bribery towards better ethical business culture. It is designed to help an organization establish, implement, maintain, and improve an anti-bribery compliance program. It can help organization to implement an anti-bribery management system, or enhance the controls currently in place. It helps to reduce the risk of bribery occurring and can demonstrate to stakeholders that an internationally recognized good-practice anti-bribery controls have been adopted.

Table 1: Overview of materials on anti-bribery management system

Name of instrument	Year of adoption or revision	Scope	Adopted or produced by
Business Principles for Countering Bribery http://www.transparency.org/globalpriorities/private-sector/business-principles	First ed. 2003 2 nd ed. 2009 (lights revisions) The Business Principles for Countering Bribery, SME Edition, revised in 2013	Covers bribes; political contribution; charitable contributions and sponsorships, facilitation payments, gifts, hospitality and expenses Cover business relationships; human resources, training; seeking guidance; communications; internal controls and record keeping; monitoring and review; external verification and assurance 2013 edition also includes clauses and revised language on topic such as risk assessment, conflict of interest, co-operation with authorities, facilitation payment, lobbyists and communication and reporting.	Multi-stakeholder group led by Transparency International (TI)
Good Practice Guidance on Internal Controls, Ethics and Compliance http://www.oecd.org/dataoecd/5/51/44884389.pdf	2010	Supply-side of bribery of foreign public officials, but could be adapted to bribery in general. Provides guidance on types of good practices that should be adopted for effective internal controls, ethics and compliance, such as regarding gifts, hospitality, entertainment and expenses, customer travel, political contributions, charitable donations, facilitation payments; and solicitation and extortion. Provides guidance regarding third-party due diligence, financial and accounting procedures, communication and training, disciplinary procedures; incentives; business partners; periodic reviews, actions by business association and professional organizations.	40 State Parties to OECD Anti-Bribery Convention
Guidelines for Multinational Enterprises – Part VII on ‘Combating Bribery, Bribe Solicitation and Extortion’ http://www.oecd.org/dataoecd/43/29/48004323.pdf	2011	Bribery of public officials and private sector business partners No use of third parties, including business partners, to channel bribe payments Adequate internal controls, ethics and compliance program for preventing and detecting bribery, based on regular risk assessment, including employee awareness. Prohibition or discouragement by companies of small facilitation payments Due diligence for hiring of agents Transparency and public commitment No illegal contributions to candidates for public office or political parties or organizations	42 Governments; OECD

Integrity Compliance Guidelines http://siteresources.worldbank.org/INTDOII/Resources/Integrity Compliance Guidelines.pdf	2010	Incorporate standards, principles and components commonly recognized by many institutions and entities as good governance and anti-fraud and corruption practices. Rules regarding risk assessment, internal policies (including due diligence, arrangements with former public officials, gifts and expenses, political and charitable contributions and facilitation payments), responsibilities of management, business partners, internal controls, training and communication, incentives, reporting, remediation and collective action.	World Bank Group
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Table 1: Overview of materials on anti bribery management system (continue)

Name of instrument	Year of adoption or revision	Scope	Adopted or produced by
Principles of Countering Bribery https://members.weforum.org/pdf/paci/principles short.pdf	2005	Covers bribery of public officials, political candidates, parties or party officials, or any private sector employee Implementation of effective program to counter bribery; risk assessment Principles regarding political contributions, charitable contributions and sponsorships, facilitation payments, gifts, hospitality and expenses, responsibilities of board of directors, etc.; business relationships, human resources, training, seeking guidance, communication, internal controls and audit; monitoring and review.	Developed by multinational task force of companies with the World Economic Forum’s Partnering against Corruption Initiative (PACI), TI and Basel Institute on Governance
Rules on Combating Corruption http://www.iccwbo.org/advocacy-codes-and-rules/areas-of-work/corporate-responsibility-and-anti-corruption/ICC-Rules-on-Combating-Corruption/	2011 ed. (first published in 1977)	Covers bribery of public officials, including at international level, bribery of a political party, party official or candidate, bribery of a director, officer, employee or agent of a private enterprise; extortion; solicitation; facilitation payments, agent and other intermediaries, joint ventures and outsourcing agreements Rules regarding corporate policies, financial recording and auditing; responsibilities of board of directors, audit committee; follow-up and promotion of rules.	International Chamber of Commerce [ICC]
APEC Anti-Corruption Code of Conduct 2007 for Business http://www.apec.org/Groups/SOM-Steering-Committee-on-Economic-and-Technical-Cooperation/Task-Groups/~/_media/Files/Groups/ACT/07_act_code brochure.ashx		Covers bribery in any form Need to develop program articulating values, policies and procedures for preventing bribery in all activities under enterprise’s effective control Also covers charitable donations; gifts, hospitality and expenses; facilitation payments; political contributions; business relationships; communication; leadership; financial recording and auditing; human resources; monitoring and review; seeking guidance; training; organizations and responsibilities	APEC member economies
UN Convention against Corruption (UN2005) http://www.unodc.org/unodc/en/treaties/CAC/		Article 12 calls on the private sector to play an active role in the prevention of corruption	

Source: Anti-Corruption Ethics and Compliance Handbook for Business, OECD, UNODC, World Bank (2013).

Anti-Bribery Management System may benefit an organization by providing:

1. Minimum requirements and supporting guidance for implementing or benchmarking an anti-bribery management system;
2. Assurance to management, investors, employees, customers, and other stakeholders that an organization is taking reasonable steps to prevent bribery risk;
3. Evidence in the event of an investigation that an organization has taken reasonable steps to prevent bribery.

Anti-Bribery Management System includes an internationally agreed series of measures and controls that represent global anti-corruption good practice which organizations should implement to prevent and detect bribery. These include adopting an anti-bribery policy, appointing a person to oversee anti-bribery compliance, training, risk assessments and due diligence on projects and business associates, implementing financial and commercial controls, and instituting reporting and investigation procedures. Organization must implement these measures in a reasonable and proportionate manner.

ISO 37001 Anti-Bribery Management System Standards is one of the latest initiatives introduced by the government. This ISO is applicable to assist an organization to measure the anti-corruption system control in existence within an organization, and it will also assist organizations to implement management systems that are effective in preventing, detecting and dealing with corruption and abuses. As reported by Bernama (May 17, 2016), Malaysian Qualifications Agency is the first agency in Malaysia to be evaluated and monitored under ISO 37001. Autonomy given to institutions of higher learning should also be looked at in the light of governance and integrity issues.

The ISO standard specifies the requirements and provides guidance to the organizations on establishing, implementing, maintaining, reviewing and improving an anti-bribery management system. This system can be a system by itself or can be integrated into an overall management system. Examples of bribery which is covered by the standard are:

1. Bribery in the public, private and not-for-profit sectors;
2. Bribery by the organization;
3. Bribery by the organization's personnel acting on the organization's behalf or for its benefit;
4. Bribery by the organization's business associates acting on the organization's behalf or for its benefit;
5. Bribery of the organization;
6. Bribery of the organization's personnel in relation to the organization's activities;
7. Bribery of the organization's business associates in relation to the organization's activities;
8. Direct and indirect bribery (e.g. a bribe offered or accepted through or by a third party).

ISO 37001 is applicable only to bribery. It sets out requirements and provides guidance for a management system designed to help an organization to prevent, detect and respond to bribery and comply with anti-bribery laws and voluntary commitments applicable to its activities.

This ISO does not specifically address fraud, cartels and other anti-trust/competition offences, money-laundering or other activities related to corrupt practices, although an organization can choose to extend the scope of the management system to include such activities.

The requirements of this document are generic and are intended to be applicable to all organizations (or parts of an organization), regardless of type, size and nature of activity, and whether in the public, private or not-for-profit sectors.

THE IMPLEMENTATION OF ANTI-BRIBERY MANAGEMENT SYSTEM

Previous research has shown (Manhuwa & Stansburry) that the anti-bribery policy and management system will help the organization to avoid or reduce the costs, risks and damage from involvement in bribery, promote trust and confidence in business dealings and enhance the organization's reputation. The standards set out what an organization can do to establish the ISO 37001 such as follows:

1. Define an anti-bribery policy and program for your organization
2. Communicate the policy and program to all stakeholders, ranging from employees to business associates such as suppliers, shareholders, investors, consultants, etc.
3. Appoint a compliance manager to supervise the program
4. Provide anti-bribery training to staff
5. Assess bribery risks, including appropriate due diligence
6. Take reasonable and proportionate steps to ensure that controlled organizations and business associates have implemented appropriate anti-bribery controls. This applies for example to your supply chain.
7. Verify as far as reasonably possible that staff will comply with the anti-bribery policy
8. Verify that gifts, hospitality, donations and similar benefits comply with the policy
9. Implement appropriate financial, procurement and other commercial controls so as to help prevent the risk of bribery
10. Implement reporting and whistle-blowing procedures
11. Investigate and deal appropriately with any actual or suspected bribery

According to KM Loi, Deputy President of Transparency International Malaysia, Top Level Commitment need to introduce 3 issues in the implementation of ABMS and they are: (i) Policies and Procedures; (ii) Proactive and (iii) Reactive as shown in Figure 1 and Table 2.

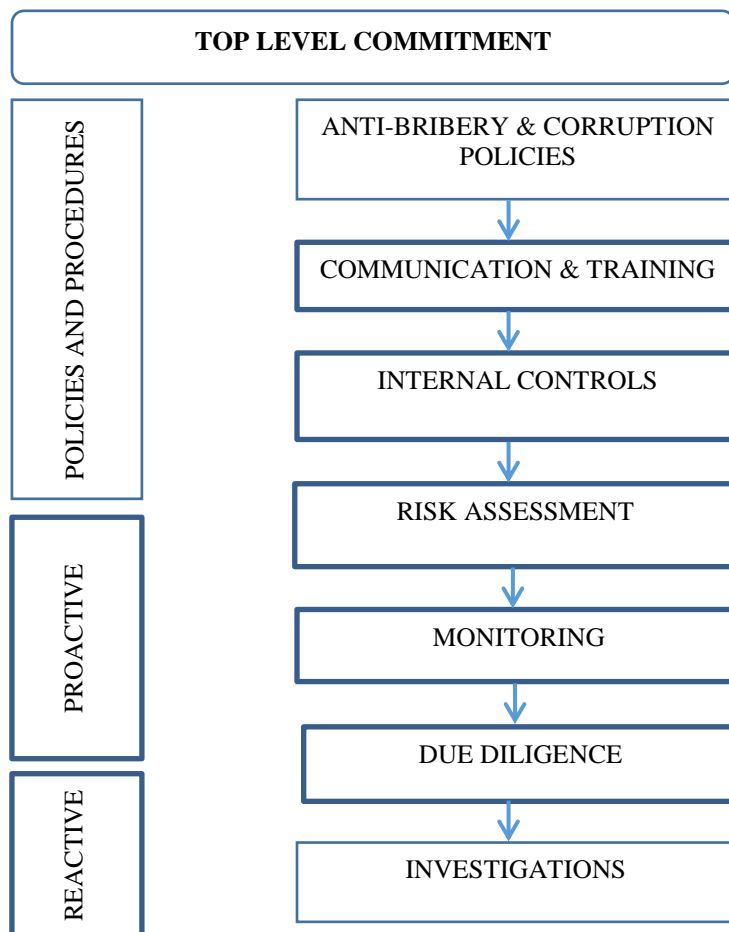


Figure 1: Guiding principles for ABMS

Source: Kheng Meng Loi , ISO 37001:2016 Anti-Bribery Management System Overview

Table 2: Principles and initiatives of ABMS

Principles	Initiatives – Some examples
Top level commitment	Setting tone at the top through policies and procedures Proactively identifying bribery risk and monitoring internal controls to prevent, detect and respond fraud risks Developing monitoring mechanism
ABMS policies	Code of Conduct Whistle Blowing Process Anti-Bribery & Corruption Policy Gifts, hospitality, donations and similar benefits policy
Communications and training	Internal and External Communications Education, Training and Awareness

Table 2: Principles and initiatives of ABMS (continued)

Principles	Initiatives – some examples
Internal Controls & SOPs	Financial and Non-Financial Controls Anti-bribery contract terms Procurement procedures
Risk assessment	Conduct Risk Analysis & Evaluation
Monitoring, enforcement & review	Auditing the process and procedures Measurement, Analysis & Evaluation Investigating and dealing with bribery Managing inadequacy of ABMS controls
Due diligence	Conduct High-Level Understanding of Operations Identify potential red flags
Investigations	Internal Controls and External Monitoring trigger investigation Response to investigation

Source: Kheng Meng Loi, ISO 37001:2016 – Anti-Bribery Management System Overview

CONCLUSION

This paper discussed the various standards and guidelines that are issued on anti-bribery. It also discusses the new international standard, ISO 37001, its benefits, its implementation, to whom is it applicable to, its guiding principles, and its core components.

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