

ANTI-CORRUPTION: COLLECTIVE CHALLENGES AND ACTIONS IN MALAYSIA'S PRIVATE SECTOR



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FOREWORD

Private corruption affects the entire supply chain, and it increases in the cost of “doing business”. The various leakages and corrupt transactions that occur along the supply chain translate into higher costs of products and reduces the quality of products and services (UNODC, 2013b). Aside from the financial risks, there are also legal risks involved.

Collective Action is a key approach to address these complex corruption issues. Therefore, UNGCMYB launched the Anti-Corruption Collective Action Malaysia project (“AC-CA Malaysia”). Collective Action to counter corruption is an effective approach not only to individually avoid and mitigate the risks and costs of corruption, but above all seizing the opportunities and associated benefits of a robust culture of integrity that is fostered and implemented collectively by a committed group of like-minded stakeholders.

This Guide is co-written by UNGCMYB & SENTRAL College Penang and is a product of the Collective Action workshops that were organised and facilitated by UNGCMYB and the Malaysian Anti-Corruption Commission (“MACC”) to various collaborators of different industries. It serves to give an indication to the corruption landscape of the country in order to be able to move forward with future initiatives and AC-CA concepts. Even though the data presented is of preliminary stages, it is effective in understanding where we are in terms of knowledge of national corruption. The workshops that took place around the country in Johor, Penang, Sarawak, Sabah, and the Klang Valley has opened the stage for decision making acts that might not otherwise have been vocalised in other instances, for reason of fear or judgement. They provided a venue for open discussion between various stakeholders and were able to capture the opinions, risks and threats, as well as opportunities that arise within businesses of different origins and sizes.

Based on these discussions and outcomes, this guide provides Collective Action recommendations for businesses, and a framework that organizations can adopt in their anti-corruption efforts.

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TABLE OF CONTENTS

01 Introduction *pg.03-04*

1.1 Purpose of this Guide *pg.05*

02 Definitions *pg.06*

2.1 What is Corruption? *pg.07*

2.2 Collective Action *pg.07*

03 Malaysia's Anti-Corruption Legislation *pg.08*

3.1 MACC Act 2009 *pg.09*

3.2 Amendments to the MACC Act *pg.09*

04 Corruption Analysis From Malaysian Business Perspective *pg.10*

4.1 Awareness and understanding *pg.11*

4.2 Corruption risks and challenges *pg.12*

Summarized issues in the SWOT analysis *pg.13*

05 Anti-Corruption Collective Action *pg.14*

5.1 AC-CA recommendations *pg.15-16*

1. Awareness

2. Commitment

3. Implementation

4. Monitoring and Compliance

5. Celebrating

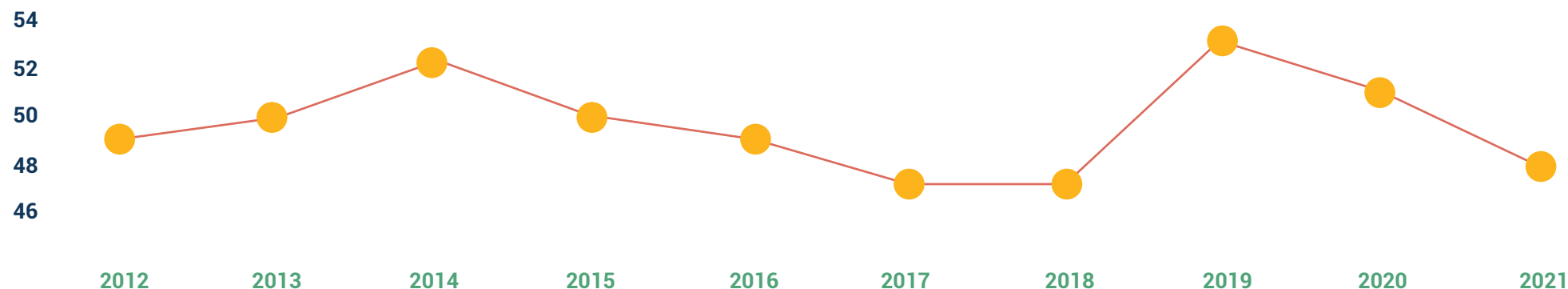
5.2 The AC-CA MY framework *pg.17*

06 Conclusion *pg.18*

01. INTRODUCTION



Score changes 2012-2021



In 2021, Malaysia dropped five spots in the Transparency International Corruption Perception Index (CPI), to the 62nd position out of 180 countries in terms of public sector corruption. Corruption appears to be a systemic problem in Malaysia. According to a 2017 PwC Economic Crime Survey, it was reported that Malaysia was estimated to have lost up to RM47 billion in GDP value in 2017, more than the amount spent on education and double the amount spent on healthcare.

Captured in the midst of these rampant issues are Malaysian businesses, as a perpetrator, a victim, or as a bystander in the face of corruption. Regardless, the business community as a whole suffers from an increased cost of doing business, no level playing field, which decreases the competitiveness and reduces the quality of products and services.

Many Malaysian business owners and professionals are aware of these issues and are taking actions to counter corruption and bribery, such as implementing anti-bribery and corruption policies and employee training sessions. Companies should ensure that their anti-corruption procedures are aligned, adequate and in compliance with the laws and regulations, as enforced under the MACC Act 2009.

However many of these initiatives occur in silos, and not many organizations are speaking up publicly about the corruption-related challenges that they face. Corruption is a collective problem, and occurs in transactions between multiple parties. Hence it would be beneficial if organizations would share their approaches in combating corruption and bribery, and how they promote a culture of integrity within the organization. A collective sharing and understanding, and creating a supportive environment to enable peer-to-peer sharing could be beneficial in overcoming corruption issues.

With this in mind, UN Global Compact Network Malaysia & Brunei (UNGCMYB) has initiated the Anti-Corruption Collective Action Malaysia (AC-CA MY) project and established a working group. UNGCMYB has engaged with multiple stakeholders from the public and private sector, academia and think-thanks to identify what the current anti-corruption landscape is, how businesses perceive corruption challenges, and to use the Collective Action approach to explore collaborative methods to scale effectiveness in working together against corruption.

1.1 Purpose of this Guide

This Report provides an insight into the landscape of the anti-corruption setting in Malaysia. It addresses corruption issues and challenges in the private sector, from the viewpoints of small to medium enterprises (SMEs) and Corporates in Malaysia that are specifically important related to the latest amendments to the MACC Act 2009, Section 17A.

The recent enforcement of Section 17A poses higher legal risks to businesses. To get a better understanding of how well businesses are prepared for these risks and to what extent have they implemented adequate procedures, UNGCMYB has engaged with the private sector to get insights on the following:

Identifying risks and challenges:

To identify common challenges in the private sector in prevent and addressing corruption issues



Awareness and understanding:

To gauge the knowledge level of the business community on corruption and bribery issues, and on Section 17A

Training and Development:

To understand how organizations train their employees on good governance and anti-corruption



To explore opportunities and interests for Collective Action in fighting corruption



Insights were derived from focus-group discussions, SWOT analysis in group exercises, and surveys with business representatives from legal and compliance backgrounds. To better represent the landscape of different geographical locations in Malaysia, several workshops were conducted across the nation namely Johor (South), Penang (North), Sarawak and Sabah (East) and Klang Valley (Central).

Given the topic, these events were aimed at heads of compliance and regulation. It is important to have a localised approach and understanding of corruption issues in the country, due to local cultural differences and business customs.

The outcomes are summarized in this Guide and form the basis of the Anti-Corruption Collective Action initiative. This can assist private sector actors, government agencies and other stakeholders to get a better understanding of corruption risks and organizational challenges in addressing corruption from the business perspective, and provide a framework to reduce corruption and promote integrity.

02. DEFINITIONS





2.1 What is Corruption?

Corruption is a fraudulent and dishonest act conducted by those in power. Transparency International defines corruption as “the abuse of entrusted power for private gain which eventually hurts everyone who depends on the integrity of people in a position of authority”.

The Malaysian Anti-Corruption Commission (MACC) defines corruption as “the act of giving and receiving gratification for performing a task in relation to an individual/a company’s job description”.

By nature, corruption happens and involves unethical decisions made by people associated with an organisation to obtain or retain business, or an advantage in the conduct of business.

This can be an individual directly employed by the organisations or others, such as an agent, that acted corruptly on their behalf. Forms of corruption can include bribery, lobbying, extortion, cronyism, nepotism, parochialism, patronage, influence peddling, graft, and embezzlement.



2.2 Collective Action

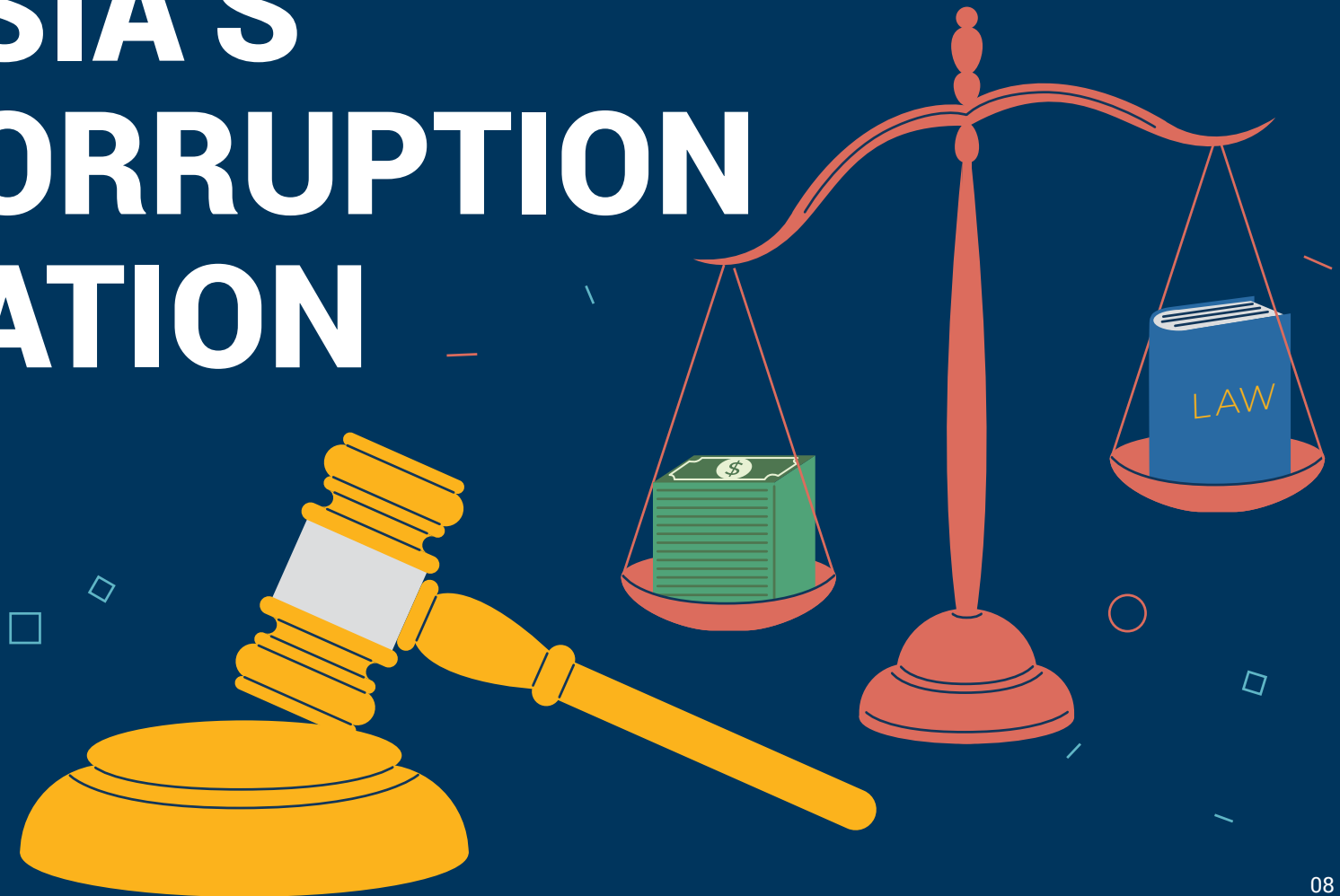
Collective Action is a collaborative and sustained process of cooperation between stakeholders.

It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field.

Companies are slowly realising that individually, they are unable to tackle the issue of corruption. It is either too costly or too risky for them to do it alone, and it might also provide an undue advantage to other business actors that are not playing the game in a fair, ethical way.

However, by collectively putting in the effort and building the trust, they can stand a chance against corruption together while providing a level playing field for all business actors involved. Collective Action is born out of the necessity to foster more ethical, transparent and less corrupt business environments, while mitigating potential business risks.

03. MALAYSIA'S ANTI-CORRUPTION LEGISLATION



3.1 MACC Act 2009

The MACC Act 2009, is the Malaysian law which was enacted to provide for the establishment of the Malaysian Anti-Corruption Commission, which is dedicated to investigate and prevent any form of corruption and abuse of power.

The main offences under the MACC Act 2009 are:

The Malaysian Anti-Corruption Act 2009 (MACC Act 2009) (Act 694) listed four (4) main offences of corruption and they are listed below:

- » Soliciting/receiving gratification (bribe) under section 16 & 17a
- » Offering/giving gratification (bribe) under section 17b
- » Intending to deceive false claim under section 18
- » Using office or position for gratification (bribe) (abuse of power/position) under section 23

Any failure to report a known act of offering bribes is committing an offence under sections 25 (1) and (2) of the MACC Act 2009 and is punishable by a fine not exceeding one hundred thousand ringgit and/or imprisonment not exceeding 10 years or to both.

Any failure to report a known act of soliciting and obtaining bribes is committing an offence under sections 25 (3) and (4) of the MACC Act 2009 and is punishable by a fine not exceeding ten thousand ringgit and/ or imprisonment not exceeding 2 years or to both.

3.2 Amendments to the MACC Act

The new section 17A was implemented as the corporate liability provision involving commercial organisations and was enforced on 1 June 2020. The provision under Section 17A MACC Act 2009, stipulated that a corporate liability principle where a commercial organisation can be considered guilty if any of its employees and/or associates commit corruption for the benefit of the organisation.

The commercial organisation is also considered guilty in the event of whether or not, the upper management or its representatives know about the act of corruption committed by its employees or associates. This new provision encourages commercial organisations to take appropriate and parallel steps to ensure businesses are conducted with integrity and without corruption and they were given a two-year grace period to make appropriate preparations prior to this amendment.

If a commercial organisation is found guilty under Section 17A, the penalty under Section 17a (2) is a fine of not less than 10 times the value of the bribe or RM1 million, whichever is higher, or imprisonment for up to 20 years, or both. However, the commercial organisations can defend themselves if they can show that their organisations have implemented 'Adequate Procedure' in their operations.



04. CORRUPTION ANALYSIS FROM MALAYSIAN BUSINESS PERSPECTIVES



4.1 Awareness & Understanding

Since the enforcement of Section 17A, it is important that Legal and Compliance officers update their knowledge to understand the implications of this legislation to their respective organizations.

Participants were asked to rate their current knowledge and understanding of compliance with Malaysian corruption regulations and laws. Where majority of the respondents rated their knowledge as sufficient to high levels of knowledge (rated 6 until 9, on a scale from 1 to 10), there were also a number of respondents that rated their knowledge average to insufficient (5 to 2).

Taking into consideration that the respondents are from a legal and compliance background, the hypotheses was that they would self-assess their knowledge and understanding of Malaysian corruption laws and regulations higher. Therefore, there appears to be a knowledge gap.

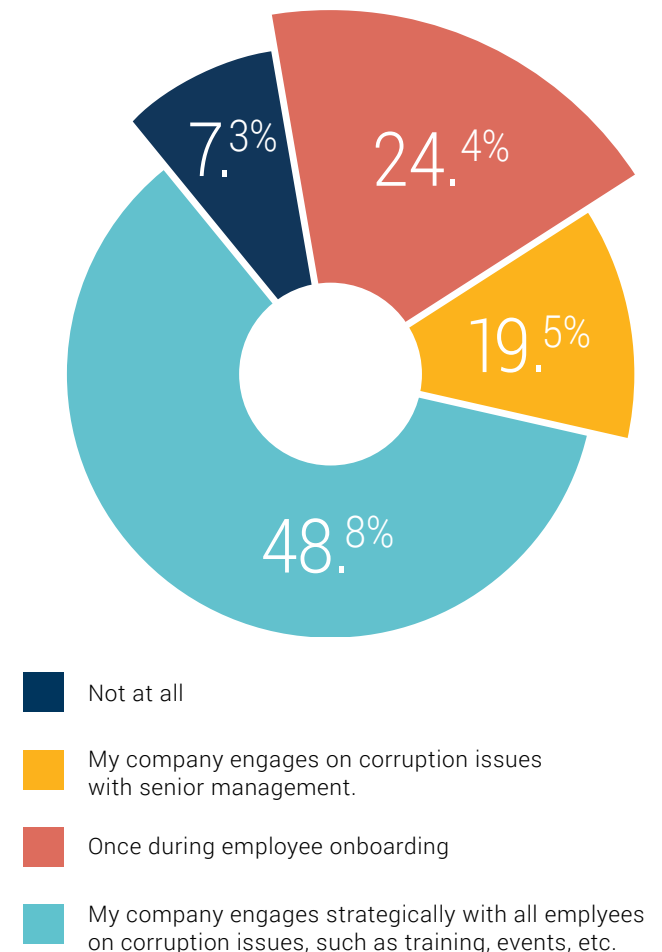
Participants also discussed if corruption issues are addressed in the organization, and if the management and employees are aware of their responsibilities and to be in compliance with anti-corruption policies.

Less than half of the participants engages frequently with all employees on corruption issues, such as trainings or awareness events, whereas about 15% engages with management only. About a quarter of the respondents said they only engage with employees once which is upon employee onboarding. This is often in the form of an anti-corruption clause which is included in the contract. And a minority stated they don't engage in their company at all.

Some participants identified a lack of suitable training materials and best practices. In addition, the participants stated there was no clear guideline on the definition of "Adequate Procedures" so they are unsure if their policies and programs are sufficient as mandated by law.

Does your Company engage with all its employees on corruption issues?

41 responses



4.2 Corruption Risks & Challenges

On external challenges and risks, critical issues identified by participants were categorized into three points of view namely political/legal, economic/financial and societal. The potential threats were applicable to multiple industries.



POLITICAL/LEGAL

Corruption will affect the political stability of the country if not handled properly and has a negative impact on the business ecosystem. A company which is corrupted may be deemed to lose public trust and its empowerment among the public. If found guilty, they might face a fine or imprisonment or both. Worse is that the company may be blacklisted from the entire industry. Renewal of license may also be difficult once the company has been blacklisted.

The main challenge that was shared among the participating companies, is that the enforcement of the MACC Act 2009 is not strong enough and there are rampant corruption issues in the public sector. This had led to a loss of public trust, which deteriorates companies' willpower to combat corruption.



ECONOMIC/FINANCIAL

Economically and financially, corruption may not only cause revenue loss to a business but subjecting the company's loan application to be disapproved. On-going projects may be halted if companies are not financially sound. Future collaborations with potential investors and stakeholders will be impacted negatively as the image of the company has been tarnished. If the company is a listed company, the consequence of its corrupt act will also cause a drop in its share prices which will lead to an eventual loss of trust among stakeholders. The economic sectors may be affected negatively if a country is notoriously known for corruption as the gap in confidence level among international clients and investors increases.

The main challenge that was shared among the participating companies, that businesses lose out on investments and financing opportunities due to corruption issues and it also increased business costs.



SOCIETAL

If known to be involved in corrupt acts, a company may not only lose its customers' trust but its employees' trust as well. When corrupt organizations win business tenders unfairly, it increases the inequality gaps in terms of earning of income, that can harm vulnerable groups such as women and minority groups. Main challenge that was identified by the participants was that many companies have a strict hierarchy and inequality in decision making, therefore the checks and balances in the company itself are often inadequate to address corruption issues.

Summarized issues in the SWOT analysis

SWOT analysis on corruption issues among Malaysian businesses

The corruption analysis from the business perspective has been essential in the formulation of our collective recommendations to counter corruption and promote cultures of integrity.

STRENGTHS	WEAKNESS	OPPORTUNITIES	THREATS
<ul style="list-style-type: none">» Expanded awareness levels reduce corruption risks» New legislation and stringent enforcement will decrease corruption instances» Cost benefits and business advantage from good governance» Easier access to financing, loan borrowing	<ul style="list-style-type: none">» Rundown facilities/facade» Lack of corruption policies and enforcement» Lack of education programmes» Hierarchy and inequality in decision making» No best practices available	<ul style="list-style-type: none">» Rise in collaboration opportunities» Rise in client confidence levels» S.17A encourages making integrity part of organisational structure» Attracting new Talent» Transparency can attract investment	<ul style="list-style-type: none">» Increase in trust from international clients/investors» Low confidence levels from employees and local stakeholders» Changes of government regulations and political instability» Events beyond control» Government approvals and too much bureaucracy in doing business

05. ANTI-CORRUPTION COLLECTIVE ACTION



5.1 AC-CA MY Recommendations

Recommendations

The main corruption issues that had been identified by the private sector, has led to the development of the following AC-CA MY framework. It consists of 5 steps that are recommended from the Collective Action perspective, and focuses on the collaborative element in each subsequent step.

The AC-CA MY approach aims to complement the organization's existing anti-corruption framework or strategies. Meaning that the AC-CA MY is an additional anti-corruption program that businesses may choose to implement. Each step can help to connect with like-minded individuals and organizations that want to level with each other, support and motivate each other in organizational anti-corruption endeavors.

The framework also leverages existing anti-corruption infrastructure or programs. That way, anti-corruption initiatives in the Malaysian business community can not only co-exist, but moreover connect, aim to complement and ultimately to enhance the effectiveness and outcomes of such programs.

1. Awareness

Awareness creation is the first step in building a culture of integrity that will help in the prevention of corruption. There is a need for increased awareness efforts amongst businesses, to advance knowledge and understanding about corruption issues, and about Section 17A.

The awareness-related activities should be an internal exercise first, as there is an opportunity to fill in the knowledge gap through increased employee engagement within the organization. Subsequently, the impact in the awareness stage can be enhanced through collective action.

It is recommended for organizations to engage their key external stakeholders such as business partners and vendors, to engage in multi-party awareness sessions. This will eventually help all stakeholders to collectively gather input on anti-corruption agreements and to identify corruption risks that may be specific to their line of business.

2. Commitment

Realising the issues that are caused by the acts of corruption, it is important that we uphold the right integrity values to curb the negative action. These values of integrity should start right from the top management; leading and showing the right examples, advocating with clear and executable written policies.

Having an anti-bribery and corruption policy in place is very important, describing in detail the definition of what is allowed and what is not allowed. Of what is not allowed and considered as a bribery act can be defined clearly in the policy which is applicable in any industry settings.

From there on, it is recommended that the Company can scale their commitment by participating in a collective anti-corruption commitment, such as the Corporate Integrity Pledge. The CIP is a collective action principles-based approach, which consists of 5 Corporate integrity principles that the Company commits to. More information can be found here: (insert link).

Moving forward, UNGCMYB will promote the CIP to Corporates and SMEs as a key recommendation under its AC-CA project.

3. Implementation

Adequate training for business owners and legal and compliance officers is required to implement anti-corruption policies successfully.

Educational resources are an essential component to enable effective implementation policies. Resources such as eLearning modules, guidebooks and case studies will be produced in a Malaysia-specific context as part of the AC-CA Malaysia project. The resource hub serves as a digital platform that helps businesses to navigate through relevant anti-corruption tools and resources.

It is essential to have not just right, but also consistent training on anti-corruption policy and good practices, not just among management but across the whole organization. Therefore it is recommended to have frequent sessions on this. As this may be a resource intensive exercise, it is recommended that organizations work together with their key stakeholders on implementation or training programs, especially in the vendor-buyer relationship. In addition, organizations can leverage on AC-CA Malaysia to participate in multi-stakeholder engagements such as workshops and roundtables.

4. Monitoring & Compliance

Corruption can be detected through a variety of methods, and it is important that the organization continues to monitor any incidence of corruption in its operations. Monitoring can be done through self-reporting and audits.

In order to ensure proper enforcement of the anti-corruption policy that has been put into place, it is also vital to conduct a regular audit for any incompliance. The audit is useful to review the policy in place and amend any to abide by current legislation if there are any changes.

An example of compliance management would be the Anti-Bribery Management System (ABMS) or ISO37001 which is designed to help companies prevent, detect and respond to bribery incidences.

In the case of SMEs, which may have specific challenges in obtaining an ISO, there are alternatives available such as engaging with business schools to conduct assessments.

5. Celebrating

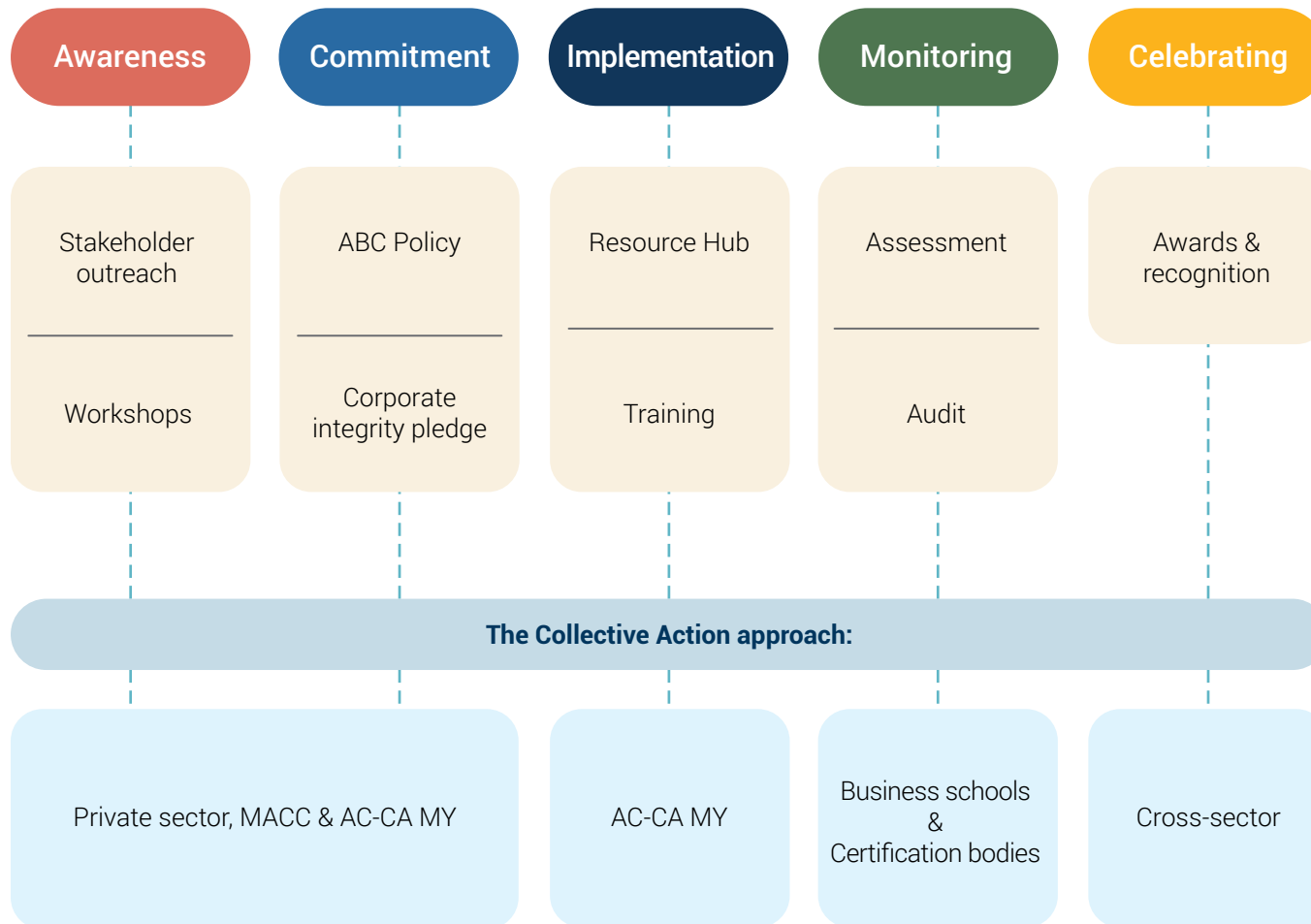
It is important to celebrate the small wins and to use the power of progress in motivating and encouraging businesses and their employees to remain committed to fighting corruption, especially in an environment where corruption is a systemic issue.

Motivating people is a key aspect of running a business, and keeping employees motivated in the fight against corruption is important. Some managers recognize employees for good work, while others put more stock in tangible incentives, and some may focus on the value of interpersonal support.

Therefore it is recommended to participate in an awards ceremony or a similar event that rewards those that have taken collective action in fighting corruption. By celebrating these initiatives together, it can help to strengthen relationships and nurture cultures of integrity.

5.2 The AC-CA MY framework

The collective actions can be summarized in the AC-CA MY framework (see figure).



The Objective of this plan is to ultimately reduce corruption in the business community by:

- >> Creating awareness through engagement sessions and workshops
- >> Commitment from the top management which is expressed through the Corporate Integrity Pledge
- >> Implementation stage: Participate in training and workshops
- >> Monitoring the effectiveness of measurements by doing a corruption risk assessment
- >> Celebrating the wins: Nurturing cultures of integrity by rewarding good behaviour

Adopting this framework encourages all parties to move away from mere individual compliance towards a culture of integrity that is implemented by a committed group of like-minded stakeholders.

06. CONCLUSION



Both internal and external stakeholders and their environments on the whole play significant roles in contributing to the commitment toward zero-corruption. Businesses call for greater transparency and accountability, in not just the enforcement of individual policies but also the legislation from a wider perspective.

Therefore, anti-corruption collective action can be a powerful tool to address the challenges as identified by the business community.

This guide calls for a collective action approach to reduce corruption. While collective actions have been suggested for implementation in tackling the aforementioned issues, the context and limitations of the recommended collective actions are affected by other factors such as:

- » The perceived level of corruption and behavioral culture
- » The effectiveness of internal controls
- » The legislation and standards of a sector/industry

Hence, further research and available data is needed to give a deeper understanding of corruption issues in specific industries, and how collective action can help Malaysian organizations to overcome them.

The engagement of various stakeholders from different states of Malaysia through workshops on corruption issues have permitted to identify corruption-related risks and challenges from a business perspective. It was found that organizations have a need for guidance and resources to be educated on Section 17A and on corruption issues as a whole. Engagements and discussions among a variety of stakeholders have demonstrated to be effective in sharing best practices. Further initiatives as part of the AC-CA Malaysia will focus on creating localized content that can support these organizations with anti-corruption implementations. Furthermore, organizations are willing and interested to explore collective action approaches to combat corruption that can be built on existing infrastructure such as the CIP.

Finally, there is a need for on-going monitoring and evaluation to ensure the framework and its recommendations remain relevant and effective.

UNGCMYB welcomes input and feedback from businesses and other stakeholders, and calls for a united stand against corruption.



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