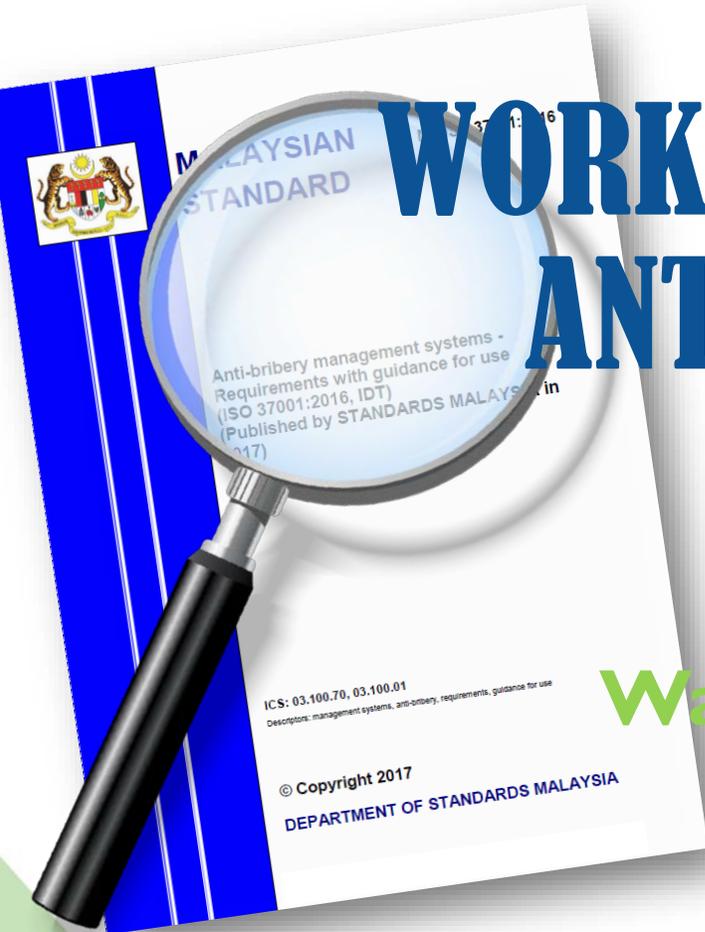




BUILDING INTEGRITY: WORKSHOP ON INTRODUCTION TO ANTI-BRIBERY MANAGEMENT SYSTEM (ABMS)



Presented by:

Wan Nabilah Binti Meor Mohd Jamil

Consultant

Section of Advocacy and Training, IIM



Workshop 4: 24th August 2023



**Theatrette,
MATRADE Exhibition & Convention Centre**



Learning Outcome

At the end of this workshop, you will be able to:

1

Define 3 key clauses in MS ISO 37001:2016 ABMS requirements.

2

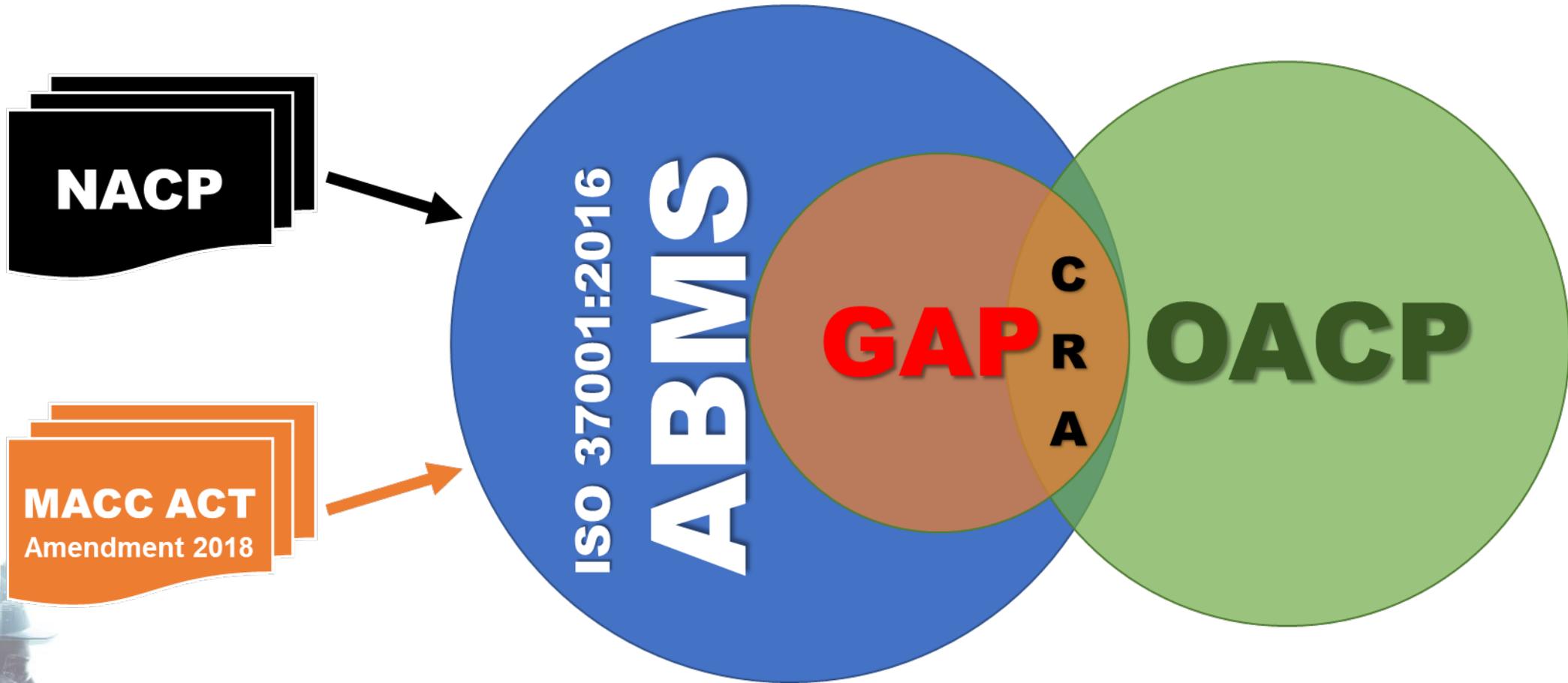
Explain how to comply with MS ISO 37001:2016 requirements.

3

Identify areas for improvements based on MS ISO 37001:2016 ABMS requirements.



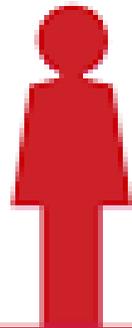
Overview: Anti-Bribery Management System In Malaysia





Vision: Towards A Corrupt Free Nation

NATIONAL ANTI- CORRUPTION PLAN 2019-2023



PRIME MINISTER'S DEPARTMENT

NATIONAL ASPIRATION

“Malaysia to be known for her integrity and not corruption”

Amendment MACC Act 2018 (Act A1567)



SECTION 17A MALAYSIAN ANTI-CORRUPTION COMMISSION (MACC) ACT ENFORCED ON 1ST JUNE 2020

The implementation of the corporate liability provision involving commercial organisations under Section 17A MACC Act 2009 is enforced on 1st June 2020.

This matter was announced in a press release from the Prime Minister's Department on 21st May 2020, following which the date of enforcement for the application of Section 17A of the MACC Act 2009 was set by the Minister's power through the Federal Government Gazette on 27th May 2020.

The amendment for this provision and amendments to other sections had been implemented previously through the Malaysian Anti-Corruption Commission Act (Amendment) 2018 (A1567 Act). After this amendment was gazetted on 4th May 2018, Section 17A MACC Act 2009 was given a two-year grace period to give room for commercial organisations to make appropriate preparations.

The provision under Section 17A MACC Act 2009 is a provision that stipulates 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 whether or not, the upper management or its representatives know about the corruption acts committed by its employees or associates.

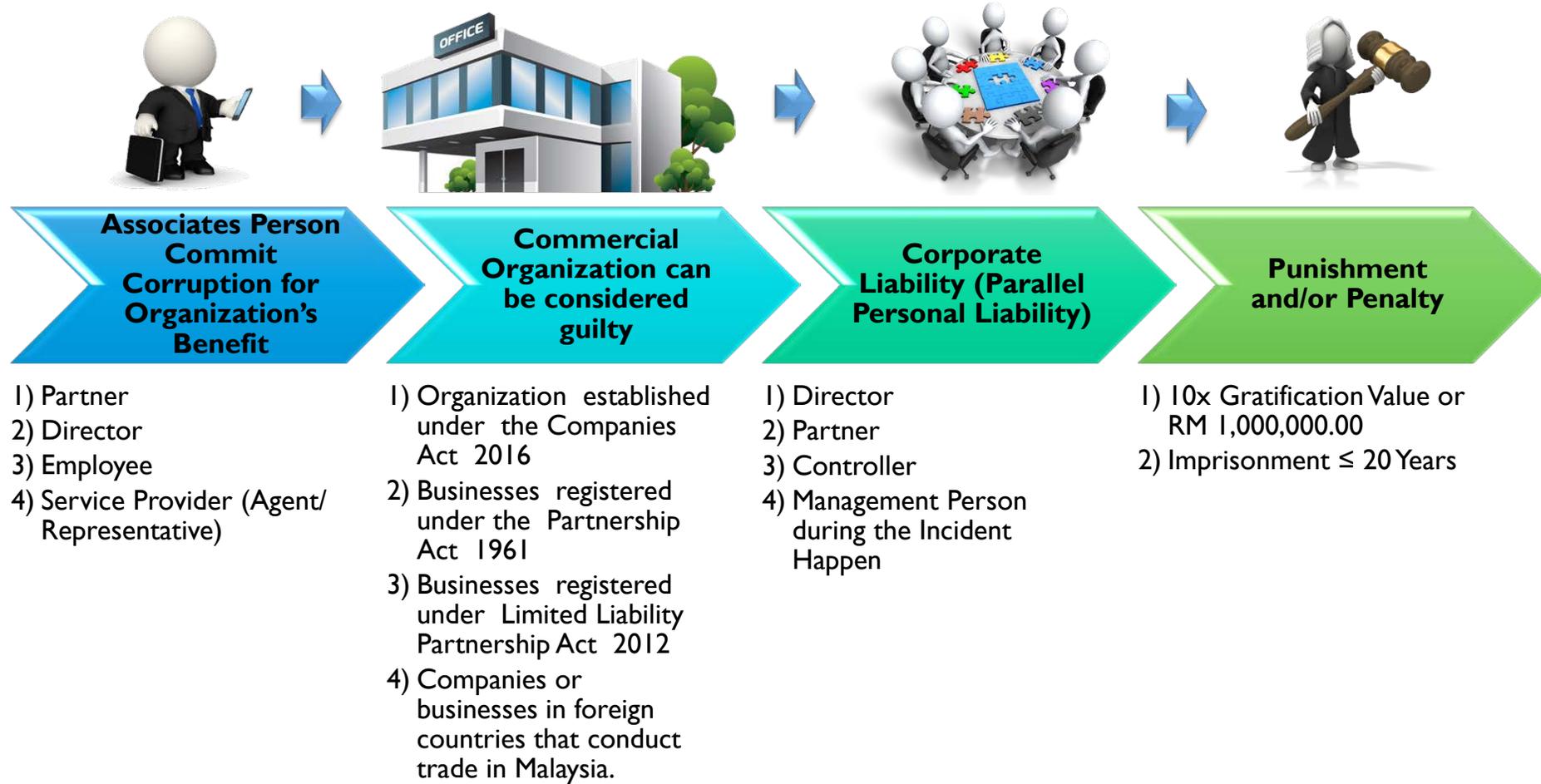
This new provision encourages commercial organisations to take appropriate and parallel steps to ensure businesses are conducted with integrity and without corruption.

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 RM 1 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 the organisation has implemented 'Adequate Procedure' in its operation.

The government's decision to proceed with the enforcement of Section 17A MACC Act 2009 was made after considering the current situation and the views of all parties, and thus the government is consistent with their firm stand that the enforcement of this Corporate Liability law maintains its date of enforcement on 1st June 2020.

WWW.SPRM.COV.MY | SPMMALAYSIA | ODV/MACC | SPRM.BENCIRASUAH

PREPARED BY - STRATEGIC COMMUNICATION DIVISION, MACC



Correlation

GUIDELINES ON ADEQUATE PROCEDURES				
Top Level Commitment	Risk Assessment	Undertake Control Measures	Systematic Review, Monitoring & Enforcement	Training g& Communication
MS ISO 37001:2016 ANTI-BRIBERY MANAGEMENT SYSTEMS REQUIREMENTS				
Clause 5: Leadership Clause 6.2: Anti-bribery objectives and planning to achieves them Clause 7.2: Competence	Clause 4: Context of organizations Clause 6.1: Actions to address risks and opportunities	Clause 7.1: Resources Clause 7.5: Documented information Clause 8: Operations	Clause 9: Performance evaluation Clause 10: Improvement	Clause 7.3: Awareness and training Clause 7.4: Communication
A GUIDE TO DEVELOPING AN ANTI-CORRUPTION PLAN FOR ORGANIZATIONAL				
Step 1: Getting the Approval of the Head of Organization	Step 2: Data Analysis Step 3: Setting Context Step 4: Identifying Corruption Risk Step 5: Determining Priority Area Step 6: Scenario Planning Step 7: Preparing Strategies and Action Plan		Step 8: Determining a Monitoring and Evaluation Mechanism	



Guidelines on Adequate Procedures

TOP MANAGEMENT COMMITMENT

Practice the highest level of integrity and ethics.

Complies fully with the applicable laws and regulatory requirements on anti-corruption.

Effectively manages the key corruption risks.

Provides assurance to its internal and external stakeholders.

RISK ASSESSMENT

Conducted periodically and when there is a change in law or circumstances of the business.

Identify, analyze, assess and prioritize the corruption risks.

Mitigate the risk by strengthening the control mechanism.

UNDERTAKE CONTROL MEASURE

Due Diligence

Reporting Channel

Policies and Procedures

SYSTEMATIC REVIEW, MONITORING & ENFORCEMENT

Conducted regular review to assess the performance, efficiency and effectiveness of anti-corruption programs.

Auditing

Efforts to improve the existing anti-corruption control in place.

TRAINING & COMMUNICATION

Policy

Training

Reporting Channel

Consequences of non-compliance

ISO 37001:2016



Anti-Bribery Management Systems (Requirements with guidance for use)

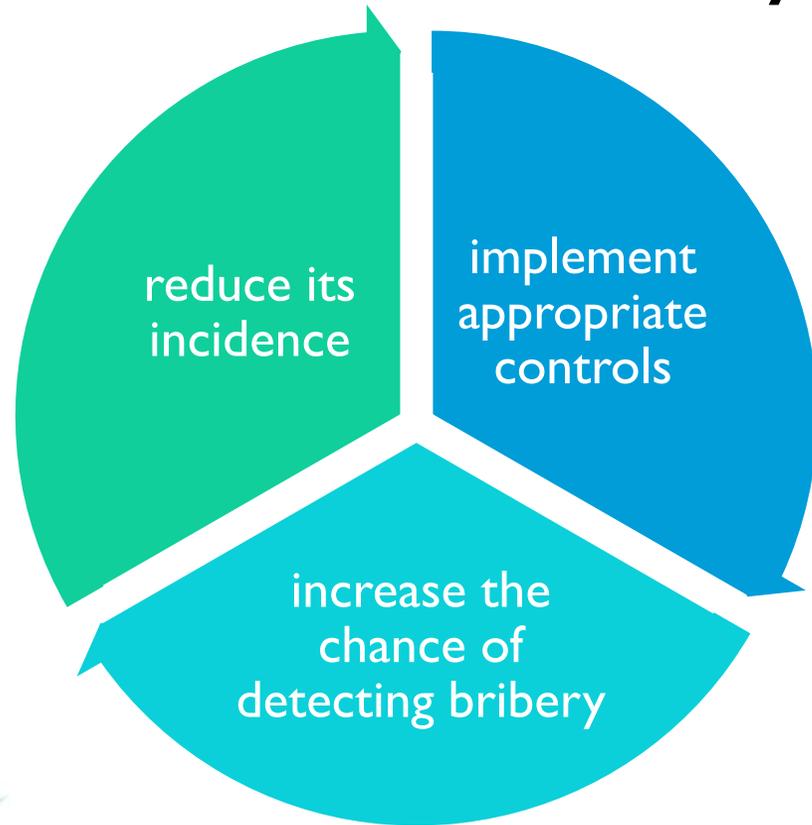


Adopted
as
Malaysian
Standard

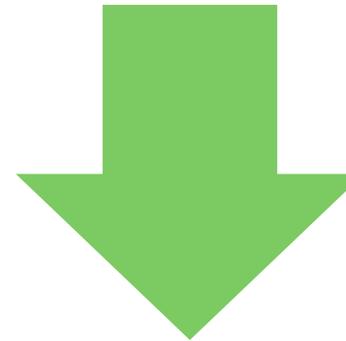


Anti-Bribery Management System

Designed to instill an anti-bribery culture



Design to guide



To prevent, identify, detect and respond to bribery



To comply with laws, regulations and other voluntarily commitments



Includes a series of measures and controls that represent global anti-bribery good practice.



ISO 37001

Anti-Bribery Management Systems

Generic
standard

Applicable to
all
organizations

Designed to
be integrated

ISO High-Level
Structure
(HLS)

The ISO High Level Structure (HLS)

Clause	ISO 9001:2015	ISO 14001:2015	ISO 37001:2016	ISO 45001:2018
0.	Introduction	Introduction	Introduction	Introduction
1.	Scope	Scope	Scope	Scope
2.	Normative Reference	Normative Reference	Normative Reference	Normative Reference
3.	Terms and Definitions	Terms and Definitions	Terms and Definitions	Terms and Definitions
4.	Context of the Organization			
5.	Leadership	Leadership	Leadership	Leadership and Workers Participation
6.	Planning	Planning	Planning	Planning
7.	Support	Support	Support	Support
8.	Operation	Operation	Operation	Operation
9.	Performance Evaluation	Performance Evaluation	Performance Evaluation	Performance Evaluation
10.	Improvement	Improvement	Improvement	Improvement

ISO 37001 Requirements



Anti-bribery Policy, Procedures, & Controls

Top Management Leadership, Commitment & Responsibility

Governing Body Oversight

Anti-Bribery Training & Awareness

Risk Assessment

Due Diligence on Projects & Business Associates

Reporting, Monitoring & Investigation

Management Review, Corrective Action &

Continual Improvement

Contents of MS ISO 37001:2016

Plan

4. CONTEXT OF ORGANIZATION

- 4.1 Organization and Its Context
- 4.2. Need and Expectation of Stakeholders
- 4.3. Scope of Anti-Bribery Management System
- 4.4. Anti-Bribery Management System
- 4.5. Bribery Risk Assessment

5. LEADERSHIP

- 5.1. Leadership and Commitment
- 5.2. Anti-Bribery Policy
- 5.3. Roles, Responsibilities and Authorities

6. PLANNING

- 6.1. Address Risks and Opportunities
- 6.2. Anti-Bribery Objective and Planning to Achieve Them

7. SUPPORT

- 7.1. Resources
- 7.2. Competence
- 7.3. Awareness & Training
- 7.4 Communication
- 7.5 Documented Information

Guidance :

Annex A – A.1 till A. 22
ISO 31000 (Risk)
ISO 19600 (Compliance Management)

8. OPERATION

- 8.1. Operational Planning and Control
- 8.2. Due Diligence
- 8.3. Financial Controls
- 8.4. Non-Financial Controls
- 8.5. Anti-Bribery Controls
- 8.6. Anti-Bribery Commitments
- 8.7. Gifts, Hospitality, Donations and Similar Benefits
- 8.8. Managing in Adequacy of Anti-Bribery Controls
- 8.9. Raising Concerns
- 8.10. Investigation and Dealing with Bribery

9. PERFORMANCE EVALUATION

- 9.1. Monitoring, Measurement, Analysis and Evaluation
- 9.2. Internal Audit
- 9.3. Management Review
- 9.4. Review by Anti-Bribery Compliance Function

10. IMPROVEMENT

- 10.1. Nonconformity and Corrective Action
- 10.2. Continual Improvement

Do

Check

Act



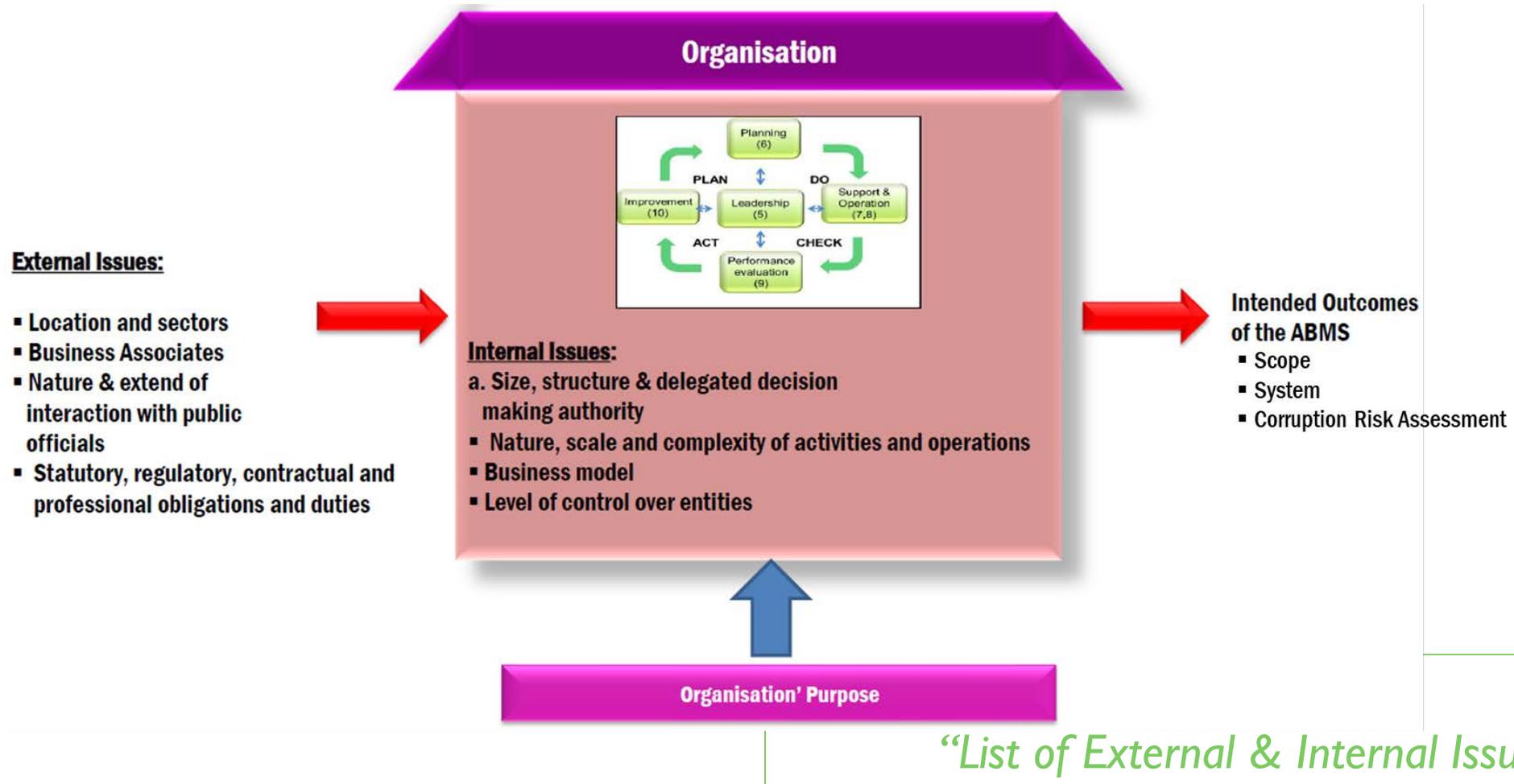
Clause 4

Context of the Organization



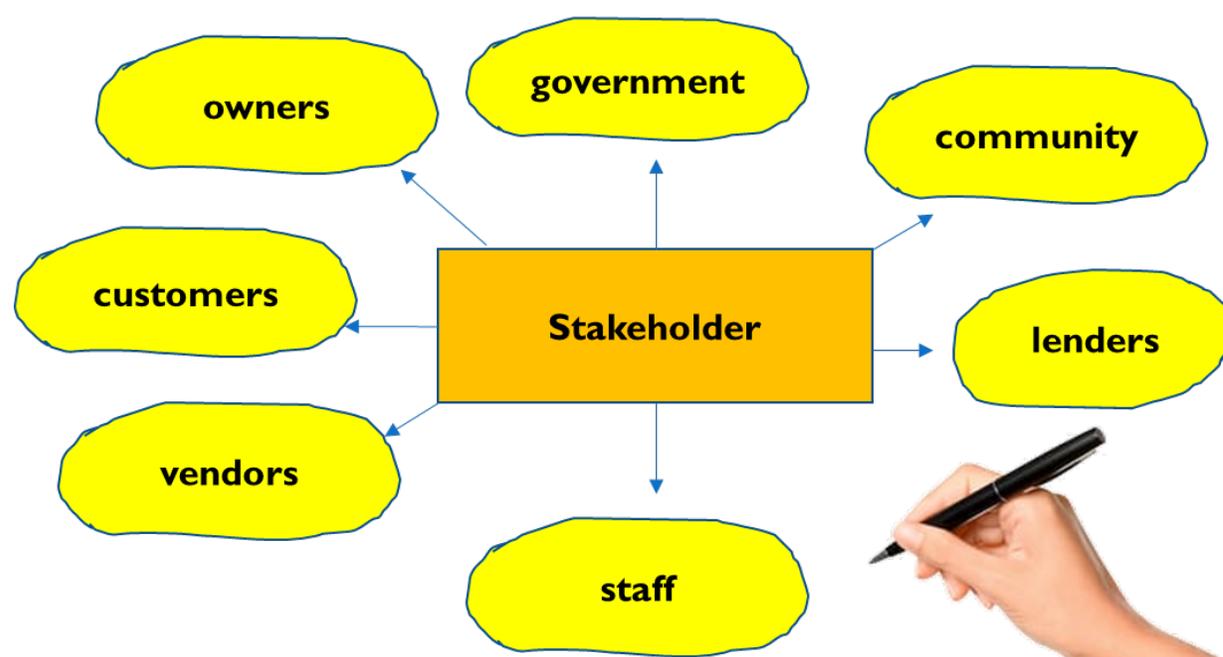
Clause 4.1

Understanding the Organization and Its Context



Clause 4.2

Understanding the Needs and Expectations of Stakeholders



- 1) Identified Stakeholders
- 2) Including their needs and expectations

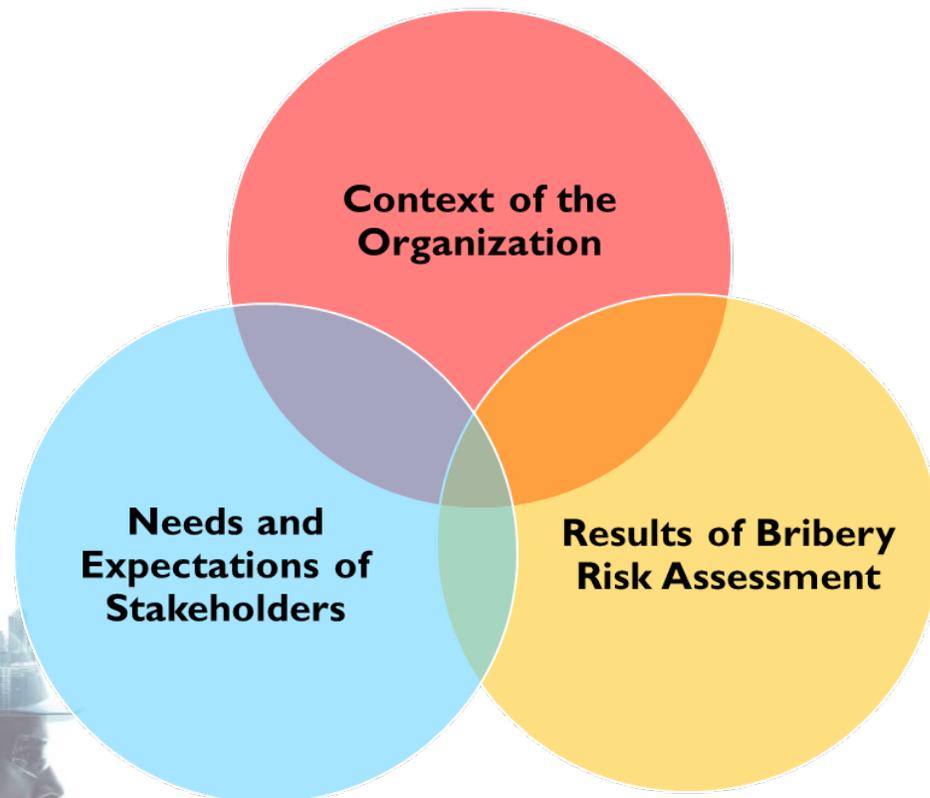
Documents:
“List of Need and Expectation of Stakeholders”



Clause 4.3

Scope of Anti-Bribery Management System

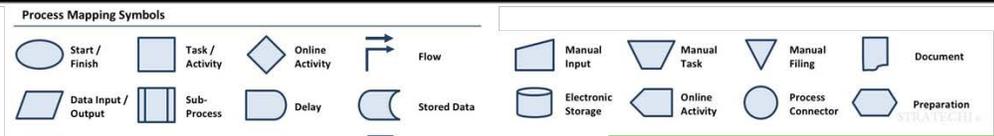
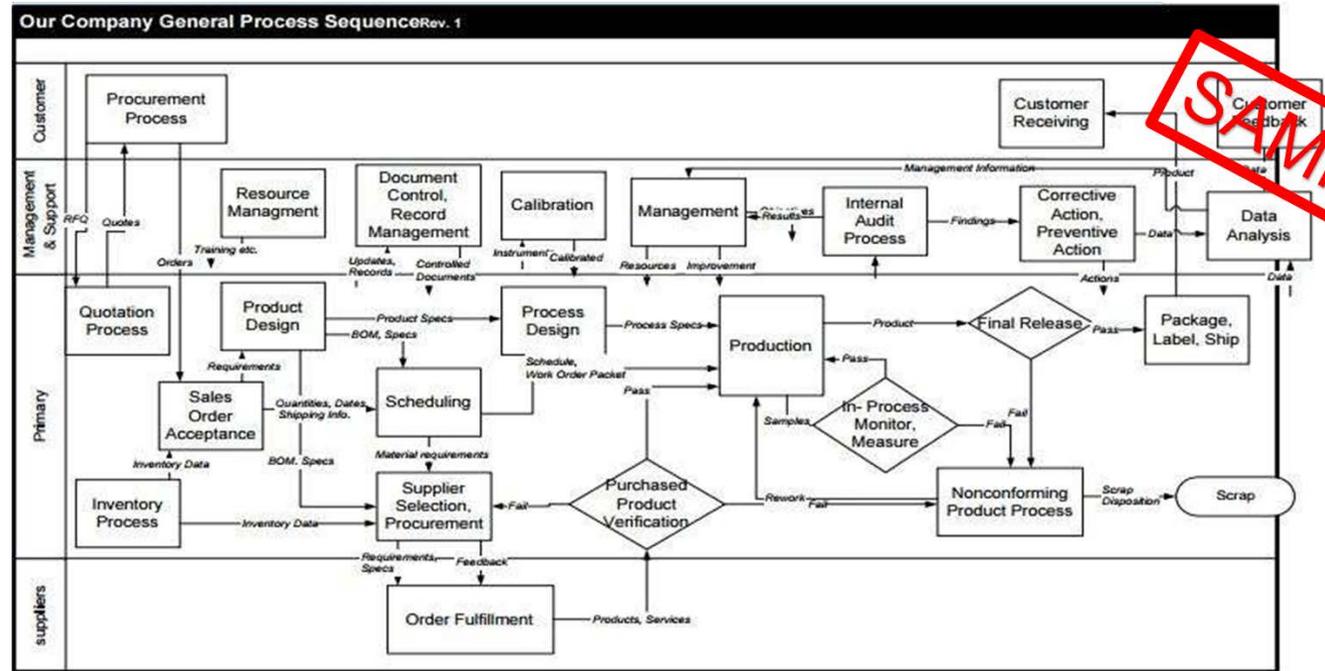
Documented boundaries and applicability of the ABMS with consideration of:



Example:
“The provision of training and consultation related to the Integrity, Governance and Anti-Bribery”

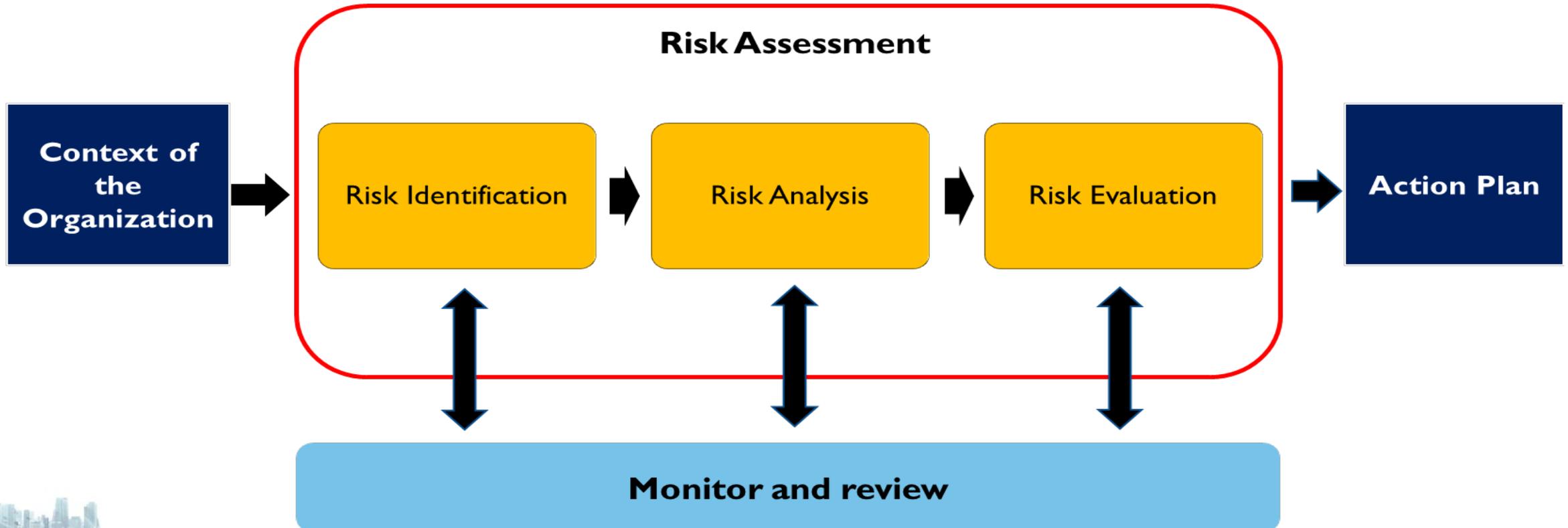
Clause 4.4

Anti-Bribery Management System



Documents:
"Process Mapping"

Clause 4.5 Bribery Risk Assessment



Documents:
"Corruption Risk Register"



Clause 5

Leadership



Clause 5.1.1 Governing Body

Demonstrate leadership & commitment

Approving the anti-bribery policy

Ensuring the alignment of strategy and anti-bribery policy

Reviewing periodically contents and operations of ABMS

Requiring adequate and appropriate resources needed

Oversighting the effectiveness of ABMS implementation

Documents:

“Terms of Reference for Board of Directors”

Clause 5.1.2

Top Management

Demonstrate leadership & commitment

Ensure the ABMS is established and maintained

Ensure the integration of the ABMS requirements into the organization's processes

Deploy adequate and appropriate resources

Communicate anti-bribery policy internally and externally

Communicate the importance of effective & conforming ABMS

Ensure the ABMS is appropriately designed

Direct and support personnel to contribute to the effectiveness of the ABMS

Promote an appropriate anti-bribery culture

Promote continual improvement

Encourage the use of reporting procedures for suspected and actual bribery

Ensure no retaliation, discrimination disciplinary action for reports made in good faith

Report to the governing on the content and operation of the ABMS and of allegations of serious or systematic bribery.



Clause 5.2 Anti-Bribery Policy

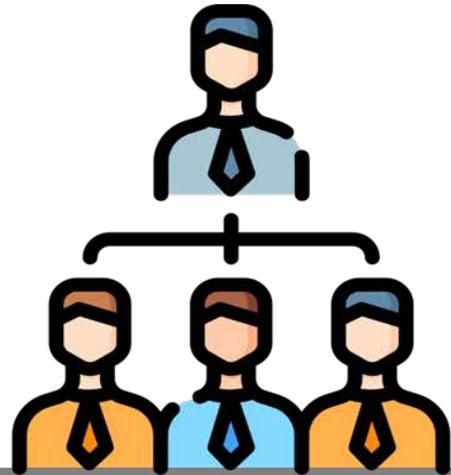
ESTABLISH, MAINTAIN AND REVIEW

- Prohibits bribery
- Requires compliances with anti-bribery laws
- Appropriate to the purpose of the organization
- Provides a framework
- A commitment to satisfy anti-bribery
- Encourages raising concerns
- Commitment to continual improvement
- Explains the authority and independence of the anti-bribery compliance function
- Explains the consequences of not complying

Documents:
“Anti-Bribery Policy”

Clause 5.3.1

Roles and Responsibilities



TOP MANAGEMENT

- ✓ Responsible for the implementation and compliance.
- ✓ Assigned relevant responsibilities and authorities.
- ✓ Communicate within and throughout every level of the organization.



MANAGERS

- ✓ Apply and comply the ABMS requirements with in their respective department or function.



ALL PERSONNEL

- ✓ Understand, comply with and apply the ABMS requirements.

Documents:
“Job Description”

Clause 5.3.2

Anti-Bribery Compliance Function



Responsibilities and authorities:

Overseeing ABMS implementation

Providing advice and guidance to staff on ABMS

Ensuring ABMS conforms to the requirements of the standard

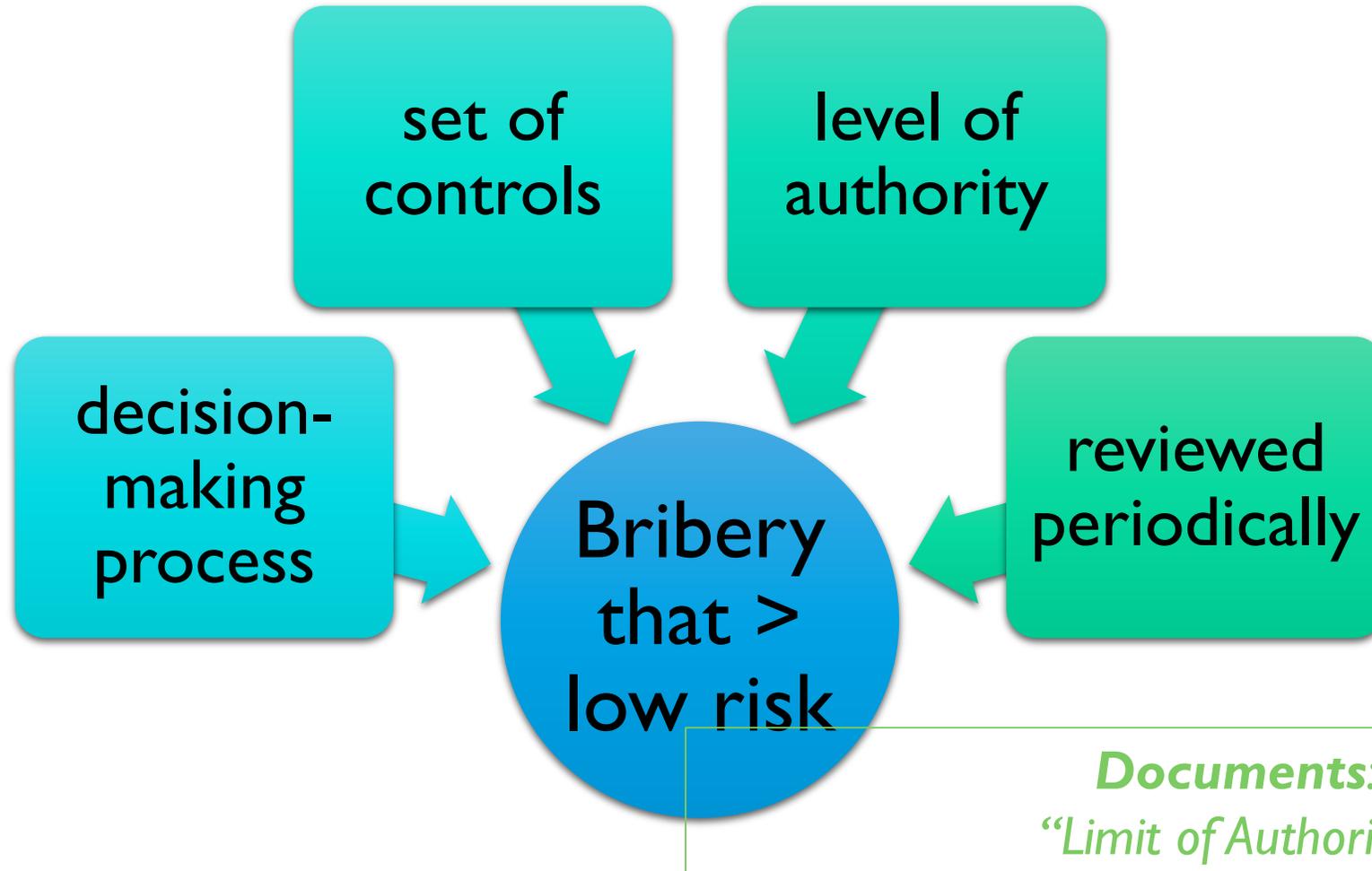
Reporting to top management and governing body

Have direct and prompt access to the governing body and top management

Documents:

“Organization Functional Chart”

Clause 5.3.3 Delegated Decision-Making





Clause 6

Planning



Clause 6.1

Actions to Address Risks and Opportunities

6-Step Risk Assessment Process

1 ORGANIZATIONAL CONTEXT

- External Issues
- Internal Issues
- Need & Expectation of Stakeholders
- Processes/ Activities

2 RISK IDENTIFICATION

- Risk Statement
- Scheme/Category
- Root Cause
- Consequences

Significant	Significant	High	High	High
Moderate	Significant	Significant	High	High
Low	Moderate	Significant	High	High
Low	Low	Moderate	Significant	High
Low	Low	Moderate	Significant	Significant

3 RISK ANALYSIS

Inherent Risk Rating

Impact Likelihood

High	High
Significant	Significant
Moderate	Moderate
Low	Low

Current Controls

Effectiveness Controls

Satisfactory
Some Weaknesses
Weak

Residual Risk Rating

Impact Likelihood

High	High
Significant	Significant
Moderate	Moderate
Low	Low

6 MONITORING & REVIEW

- Status of Additional Controls Execution
- Reassess the Risk (Start Step 1)

5 ACTION PLAN

- Additional Controls
- Division/Unit In Charge
- Execution Due Date

4 RISK EVALUATION

Risk Treatment

- Accept
- Mitigate
- Terminate
- Transfer

Documents:
“Corruption Risk Framework/ Procedure”

Clause 6.2

Anti-Bribery Objectives and Planning to Achieve Them



No	Objectives	KPI	Indicator	Control Points	Person in Charge	Achievement	Improvement Action
1.	Bribery case	0 case	<ol style="list-style-type: none"> = 0 case - achieved 1 to 2 cases - need improvement > 2 cases – system review 	Conduct integrity programmes to staff at least 4 times per year.	Compliance function		
2.	Resolve disciplinary cases within 3 months from the receipt of report	100%	<ol style="list-style-type: none"> 96% - 100%: Achieved 80% - 95%: Need improvement <80%: system review 	<ol style="list-style-type: none"> Establishment of relevant procedures. Provision of adequate personnel to speed up investigation process. 	Compliance function		

Documents:
“Schedule of Anti-Bribery Objectives”



Clause 7

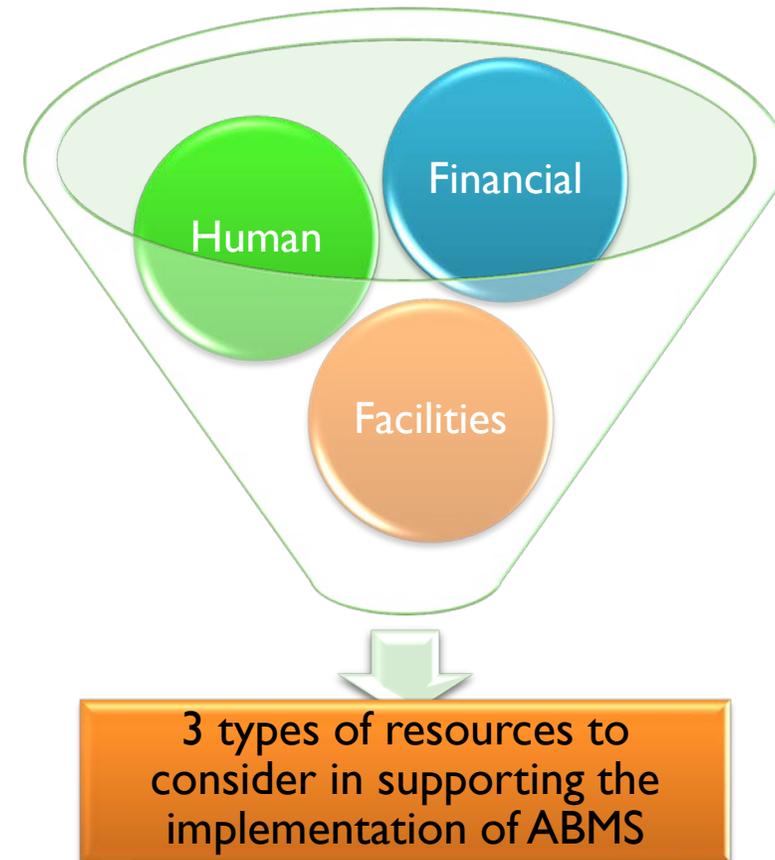
Support



Clause 7.1 Resources

Provide the necessary resources needed for ABMS:

- ✓ Establishment
- ✓ Implementation
- ✓ Maintenance
- ✓ Continual improvement





Clause 7.2 Competence

Determine competence requirement

Ensure staff competent

Actions to acquire & maintain necessary competence

Retain evidence to support competence

Documents:

“Competency Matrix, Training Need Analysis”



Clause 7.2.2

Employment Process

- a) Compliance towards the anti-bribery policy and ABMS.
- b) Provided an training/awareness of anti-bribery policy.
- c) Take appropriate disciplinary action to those violate the anti-bribery policy and ABMS
- d) No retaliation, discrimination or disciplinary action whenever refuse bribery or raising concern.
- e) Conduct due diligence personnel before they are employed, transferred or promoted.
- f) Periodically review bonuses, KPI, and other incentivizing elements of remuneration.
- g) File a declaration at reasonable intervals proportionate with the identified bribery risk.

Documents:
“Human Resource Procedure”



Clause 7.3

Awareness and Training

Suggestion for awareness or training modules:

- a) anti-bribery policy, procedure and ABMS and their duty to comply;
- b) the bribery risk and the damage to them and the organization which can result from bribery;
- c) the circumstances in which bribery can occur;
- d) how to recognize and respond to solicitation or offer of bribes;
- e) how they can prevent and avoid bribery;
- f) their contribution to the effectiveness of ABMS;
- g) the implications and potential consequences of not conforming with ABMS requirements;
- h) how and whom to report any concern;
- i) information on available training and resources.

Documents:

“Awareness & Training Procedure”

Clause 7.4 Communication



COMMUNICATION PLAN

No.	Topic	Frequency	Target Audience	Medium	Person In Charge	Language
1.						
2.						
3.						
4.						

Documents:
“Communication Plan”



Clause 7.5

Documented Information



- a) Documented information required by MS ISO37001:2016;
- b) Documented information determined by the organization as being necessary for the effectiveness of ABMS.

Documents:
“ABMS Documents Master List”



Clause 7.5.2

Creating and Updating

Identification and description

A title | Date | Author | Reference number

Format

Language | Software version | Graphics

Media

Paper | Electronics

Review and approval

Suitability | Adequacy

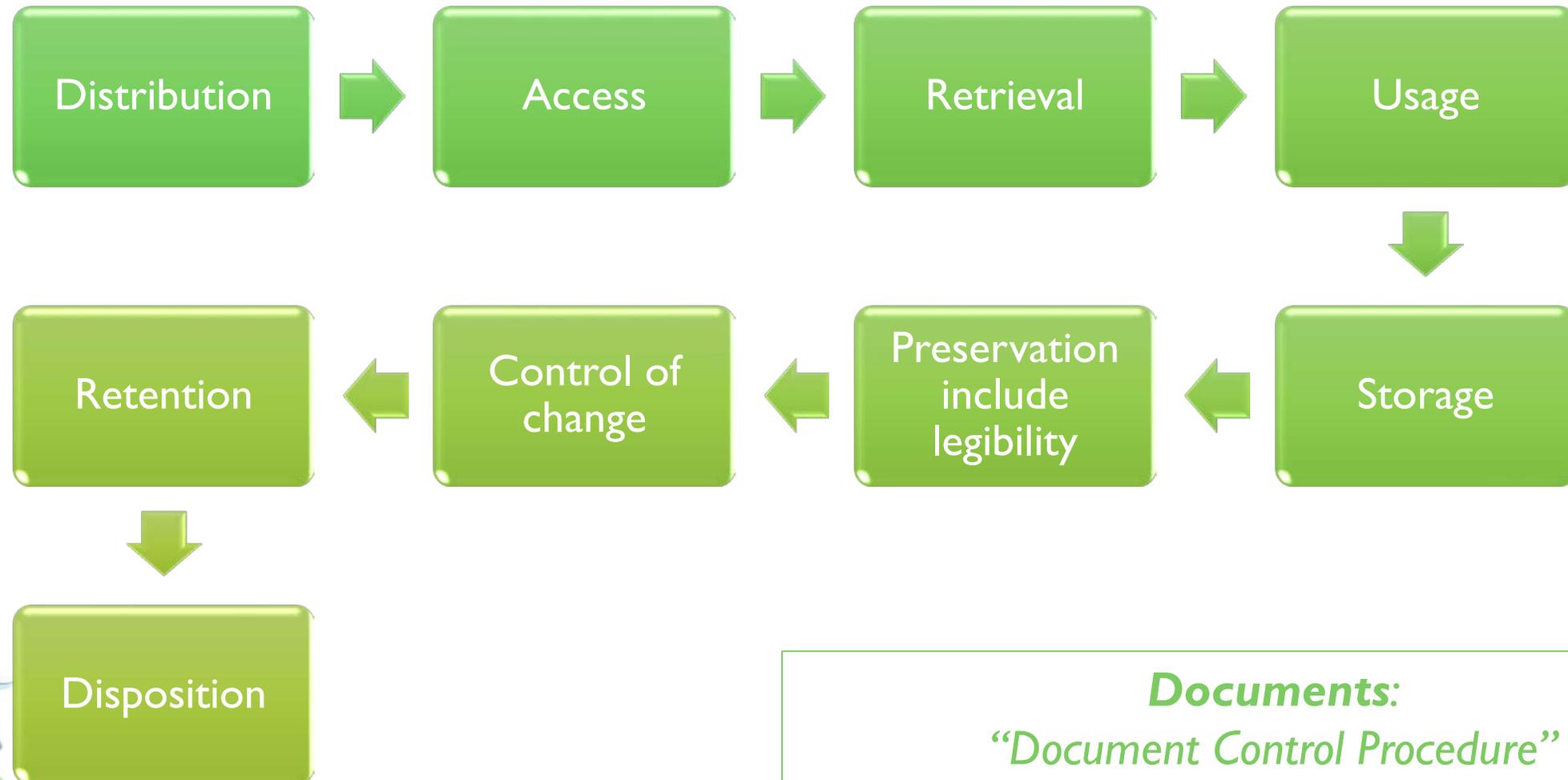
Documents:

“Document Control Procedure”



Clause 7.5.3

Control of Documented Information



Documents:
“Document Control Procedure”



Clause 8

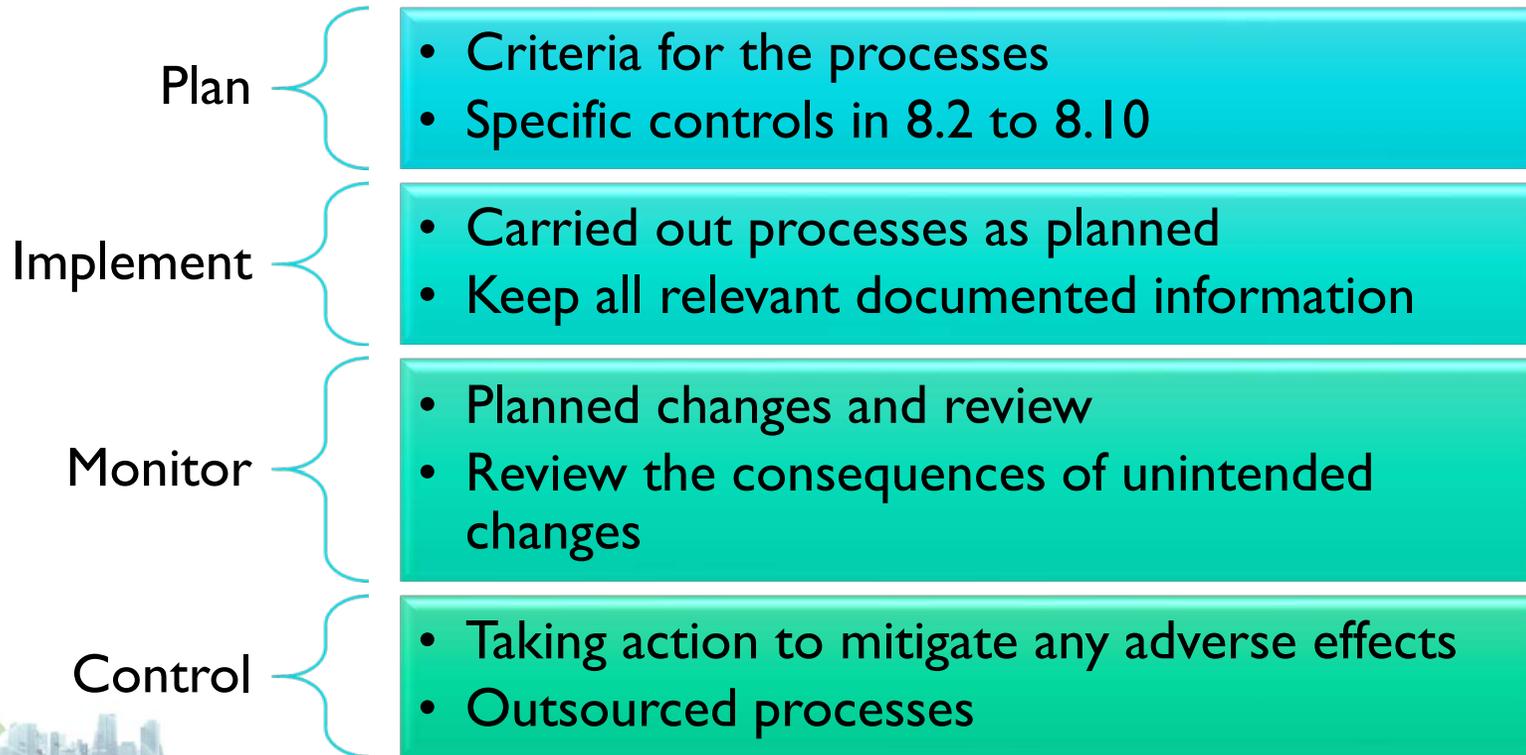
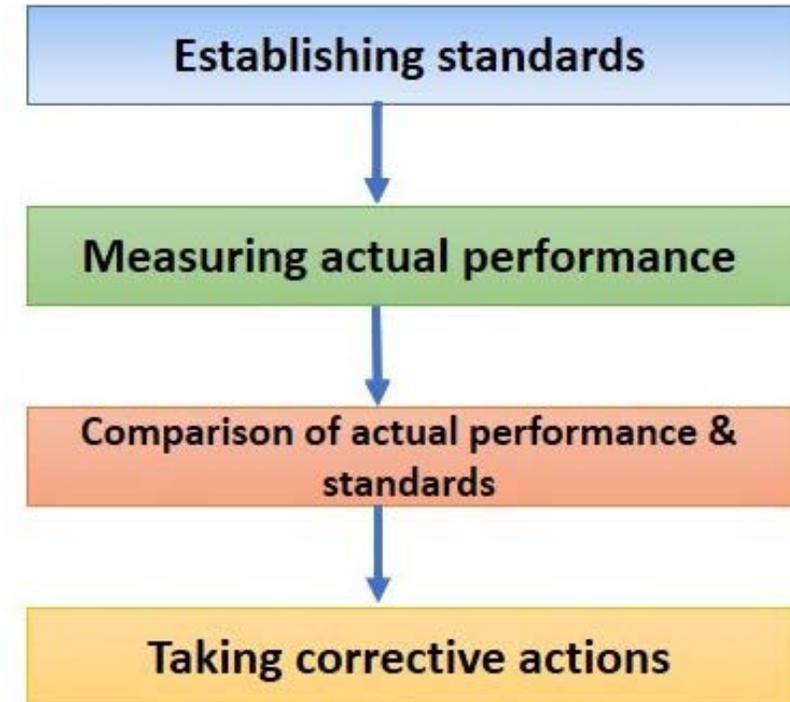
Operation



Clause 8.1 Operational Planning and Control



Steps of Control Process



Documents:
“Operational Procedure”

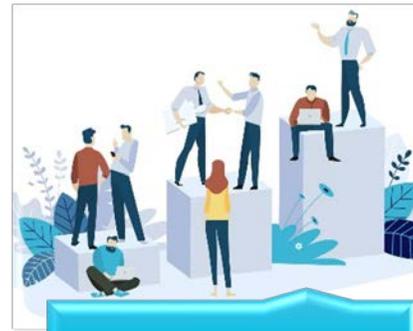
Clause 8.2 Due Diligence



Transactions



Projects



Activities



Business Associates



Personnel In Certain Position

Documents:

“Due Diligence Procedure”

Clause 8.3 Financial Controls



The objective of financial controls implemented is to ensure that organization **manages** its financial transaction **properly** and **record** these transaction **accurately**, **completely** and in a **timely manner**.

Documents:
“Financial Management Procedure”

Clause 8.4

Non-Financial Controls

The ultimate goals for non-financial controls is to ensure that the **bribery risk** areas are **properly managed**.



Usage of approved suppliers that have undergone pre-qualifying process and due diligence.



Transparent tender process for awarding contracts,



Requires at least 2 person to evaluate tenders and approve contract



Implement separation of duties



Requires at least 2 signatures on contracts



Usage of checklists, forms and etc.

Documents:

“Procurement Procedure, Sales Procedure, Commercial Procedures, Asset Management Procedure, ICT Management Procedure, Legal Procedure & etc.”

Clause 8.5 Implementation of Anti-Bribery Controls by Controlled Organizations and by Business Associates





Clause 8.6

Anti-Bribery Commitments

Implement to the business associates that poses more than a low bribery risk:

- a) To commit to preventing bribery by, on behalf of, or for their benefit; and
- b) Will be terminate the relationship in the event of bribery.

Documents:

“Integrity Pact & Code of Conducts”

Clause 8.7

Gifts, Hospitality, Donations and Similar Benefits



- a) Prevent the offering
- b) Provision or acceptance
 - a) Gifts
 - b) Hospitality
 - c) Donations
 - d) Similar benefits



Documents:
“Gift Management Procedure”

Clause 8.8

Managing Inadequacy of Anti-Bribery Controls



Where the organization cannot manage bribery risk - the relationship with a business associate is to be **reviewed** at appropriate stages, and **withdraw** or **decline**, as practicable.

Existing Transaction, Project Activity or Relationship

- Terminate,
- Discontinue
- Suspend
- Withdraw

New Proposed Transaction, Project Activity or Relationship

- Postpone
- Decline

Documents:
“Exit Clauses in the Contract.”

Clause 8.9

Raising Concerns

- a) Encourage and enable persons to report in good faith or on the basis of a reasonable belief
- b) Treats reports confidentially
- c) Allow anonymous reporting
- d) Protect those making reports from retaliation
- e) Enable to give advice when faced with a concern or situation which could involve bribery.



Documents:

“Whistleblowing Procedure.”



Clause 9

Performance Evaluation



Clause 9.1 Monitoring, Measurement, Analysis and Evaluation



Retain **evidence** of:

- Monitoring
- Measurement
- Analysis
- Evaluation methods and results.

Evaluate the anti-bribery **performance** and the **effectiveness** and **efficiency** of the ABMS.



Clause 9.2

Internal Audit

Conduct Internal audits at planned intervals to provide information on whether the ABMS:

- ✓ conforms to:
 - ✓ the organisation's own requirement for its ABMS;
 - ✓ the requirements of this document;
- ✓ is effectively implemented and maintained.



Documents:
“Internal Audit Procedure”



Clause 9.3.1

Top Management Review

- a) the status of action from previous management reviews;
- b) changes in external and internal issues that are relevant to the ABMS;
- c) information on the performance of the ABMS, including trends in:
 - ✓ non-conformities and corrective actions;
 - ✓ monitoring and measurement results;
 - ✓ audit results;
 - ✓ report of bribery;
 - ✓ investigations;
 - ✓ the nature and extent of the bribery risks faced by the organization;
- d) effectiveness of action taken to address bribery risks;
- e) opportunities for continual improvement / need for changes of the ABMS.

Documents:
“Minutes of Management Review Meeting.”



Clause 9.3.2

Governing Body Review

Periodically reviews of the ABMS implementation based on information provided by:

- top management
- the anti-bribery compliance function
- any other information that the governing body requests or obtains.

Documents:

“Extraction Minutes of Governing Body Review Meeting.”



Clause 9.4 Review by Anti-Bribery Compliance Function



Assess the ABMS

- adequately mitigate the bribery risks
- effectively implemented

Report

- adequacy ABMS
- implementation ABMS
- results of investigations and audits.

Documents:

“Minutes of Management Review Meeting.”



Clause 10

Improvement



Clause 10.1

Nonconformity and Corrective Action

When a nonconformity occurs:

- a) react promptly to the nonconformity
- b) eliminate the cause(s) of the nonconformity;
- c) implement any action needed;
- d) review the effectiveness of any corrective action taken;
- e) make changes to the ABMS, if necessary.

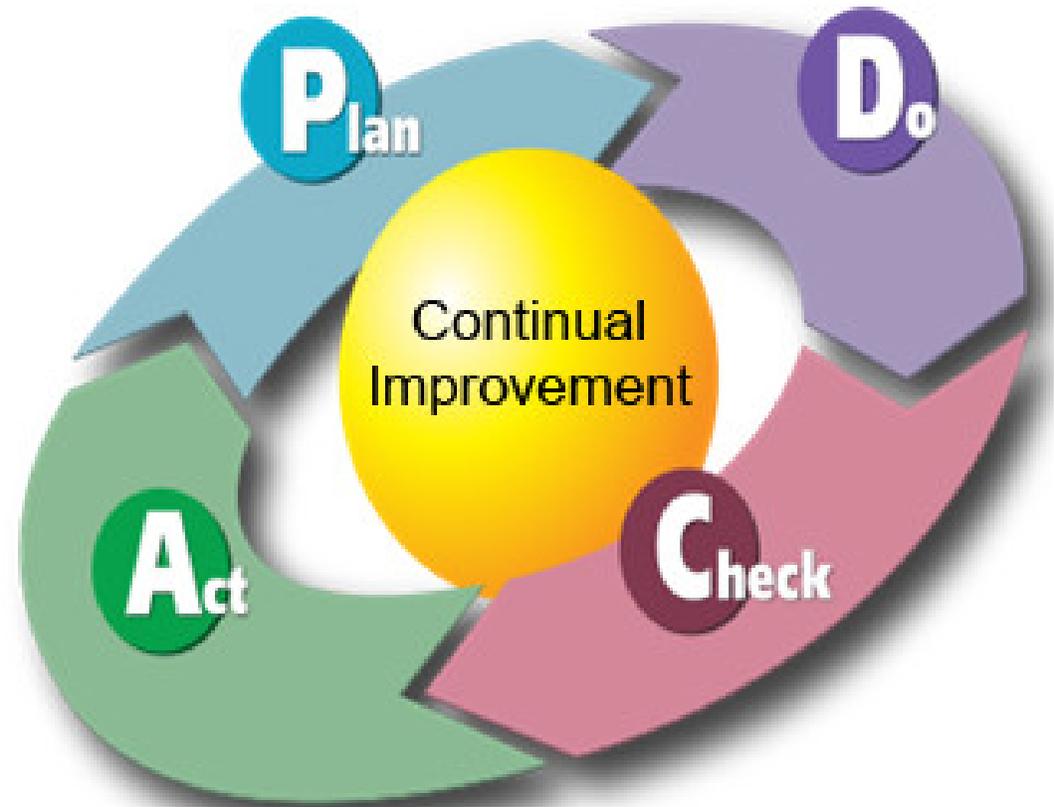


Documents:
“Non-Conformity Reports.”

Clause 10.2

Continual Improvement

Continuously improve the suitability, adequacy and effectiveness of the ABMS.





Conclusion

ABMS is about :

- ✓ **proactively combating bribery**
- ✓ **building anti-bribery culture**

ABMS is an **internationally recognized** standard.

Certification to ISO 37001 **may help** in preventing organization from being fined under Section 17A Malaysian Anti-Corruption Commission Act (Amendment) 2018.



Q & A





THANK YOU



“Committed To Engineering Excellence”

BOARD OF ENGINEERS MALAYSIA

Tingkat 11 & 17, Blok F Ibu Pejabat JKR

Jalan Sultan Salahuddin, 50580 Kuala Lumpur

<http://www.bem.org.my>

enquiry@bem.org.my or complaint@bem.org.my.

Tel: 03-26912090; Fax: 03-26925017

