

INTEGRITY & GOVERNANCE UNITS (IGU) TO ENHANCE GOVERNANCE AND ETHICS IN GOVERNMENT INTEREST COMPANIES

Recently, the Yang di-Pertuan Agong Sultan Abdullah Sultan Ahmad Shah urged the Government to remain committed to the implementation of the National Anti-Corruption Plan. His Majesty's aspiration is for everyone to champion the conviction in order for the country's development not to be eroded by corruption, misappropriation and abuse of power. As large amounts of public funds are being channelled into the administration and investment of Government Interest Companies, it is imminent that the Government reaffirms its commitment in combatting corruption through the introduction of various initiatives to encourage good governance and ethics. In this article, our Partner Mohamad Izahar Mohamad Izham and Senior Associate Liya Saffura Ab Rashid of the Corporate & Government Advisory Practice of Zaid Ibrahim and Co. (a member of ZICO Law) provide an informative look into the efforts supported by the National Anti-Corruption Plan within the public sector, with a focus on the establishment and operation of Integrity and Governance Units in Government Interest Companies.

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INTRODUCTION

Malaysia’s anti-corruption policies are laid out in various legal and policy documents which include provisions under penal, civil, and administrative laws that safeguard integrity, transparency, and uphold accountability in the public sector. Despite so, the Malaysia Anti-Corruption Commission (“MACC”), as the regulator of the anti-corruption regulatory framework has received an alarming number of complaints on corruption within the public sector relating to among others procurement processes in contracts awarded through direct negotiations or allegations of graft cases in Government officers to name a few. In undertaking its role as the lead agency monitoring corruption, there are four divisions that serve as the ‘heartbeat’ of MACC i.e. the Investigation Division, Intelligence Division, Legal and Prosecution Division, and Records Management and Information Division. These divisions undertake a range of portfolios relating to

anti-corruption which includes investigating, gathering information, providing forensic assistance, processing and managing information as well as managing case trials on complaints received by the MACC. However, an effective regulatory framework should be supplemented with preventive measures to ease the supervisory burden of the MACC in overseeing the implementation of anti-corruption laws. To this effect, the Service Circular No.6/2013 requires all Federal Ministries, Departments, and Government Agencies to set up internal Integrity Units that are tasked with six core functions coordinated through the Prime Minister’s administrative orders. As a result of the effectiveness of the Integrity Units, the Government of Malaysia has since expanded this initiative in reaffirming its commitment to promoting good governance and ethics in combating corruption within the public sector.

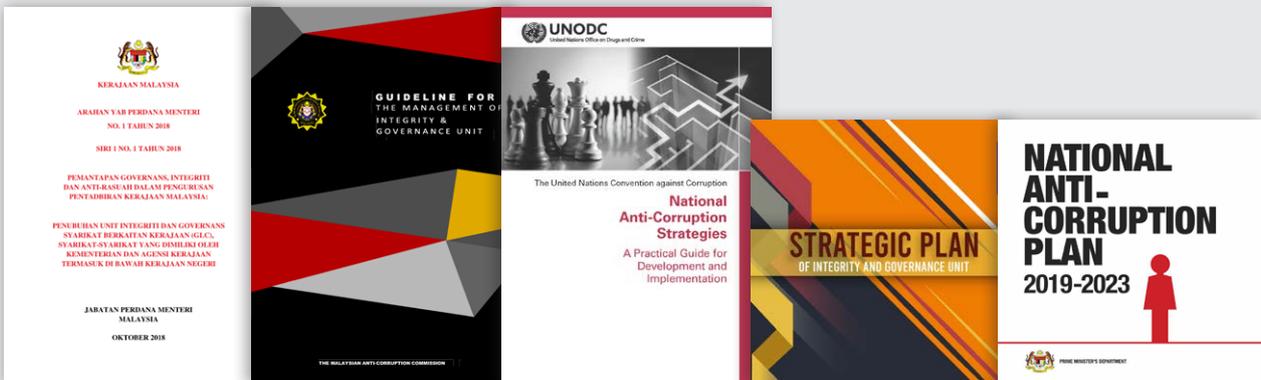
PRIME MINISTER’S DIRECTIVE SERIES 1 NO.1 YEAR 2018

During the Invest Malaysia Kuala Lumpur (IMKL) 2017 conference, the Government announced the need to establish Integrity and Governance Units in Government Interest Companies in order to facilitate the strengthening of internal controls to prevent malpractice, corruption, and abuse of power. This was followed by the Prime Minister’s Directive Series 1 No. 1 Year 2018 dated 5 October 2018¹ (“Directive”) which mandates MACC, in particular, the Agency Integrity Management Division or “Bahagian Pengurusan Integriti Agensi” (“BPIA”) of MACC to monitor the implementation of this new policy. The Directive has the effect of extending the Integrity Units policy to include all Government-linked companies, companies owned by Ministries and Government agencies including by State Governments (collectively referred to as “Government Interest Companies” or “GIC”). Fundamentally, the Directive requires all GICs to set up an Integrity and Governance Unit or “IGU” within the organisations to promote good governance.

The then MACC Chief Commissioner had been quoted during a press conference on 6 August 2019² highlighting that the number of GICs flagged as “high-risk” is a matter of concern in which MACC has been

encouraging GICs to comply with the various guiding documents. One such document issued by MACC in support of the Directive would be the Guideline for the Management of Integrity & Governance Unit (2019) (“Guideline”). The requirements under this Guideline are outlined in detail under the Strategic Plan of Integrity and Governance Unit (2019 – 2021) (“IGU Strategic Plan”) which provides the overview of the mechanism in setting up and running the IGU within organisations.³

On a national level, the National Anti-Corruption Plan 2019 – 2023 (“NACP”) supports the IGU Strategic Plan by having an institutional anti-corruption approach which underlies the spirit of Article 5 of the United Nations Convention against Corruption (UNCAC). The NACP was developed in accordance to the “National Anti-Corruption Strategies: A Practical Guide for Development and Implementation” by the United Nations Office on Drugs and Crime (UNODC).⁴ Under the NACP, the priority areas relevant to the implementation of IGUs are public sector administration and corporate governance which guided the development of the core functions under the Guideline.



The documents from left to right are Prime Minister’s Directive Series 1 No. 1 Year 2018, Guideline on the Management of Integrity & Governance, UNODC National Anti-Corruption Strategies: A Practical Guide for Development and Implementation, Strategic Plan of Integrity and Governance Unit 2019-2021, and National Anti-Corruption Plan 2019-2023. The various guiding documents serve as a reference to the GICs as provided by the Government with respect to its aspiration on the IGU agenda.

SUMMARY OF THE GUIDELINE FOR THE MANAGEMENT OF INTEGRITY & GOVERNANCE UNIT (2019)

CORE FUNCTIONS OF INTEGRITY AND GOVERNANCE UNIT

MACC has issued the Guideline to serve as a reference document for GICs in the implementation of IGU functions. The implementation of the core functions vary according to the needs and suitability of each organisation.⁵ Under the Guideline, an IGU in every organisation must implement these four core functions:

Complaints Management

Complaints management involves the systematic management of information/complaints on potential misconduct and violation of organisation's code of conduct and ethics (if any) to ensuring that such misconduct is addressed. In addition to supervising and monitoring complaints, the IGU officers are responsible for the efficiency of the Complaints Management system. Among others, below are a few key activities to be carried under this core function:

- establishing Standard Operating Procedures ("SOP") for the Complaints Management;
- setting up Organisational Integrity Complaints System;
- reporting to Information/Complaints Assessment Committee; and
- establishing SOP on Whistleblower Protection Policy.

Governance

This function aims towards good governance in the organisation which includes research and recommendations to improve on existing policies, systems and work procedures, in addition to undertaking the task of coordinating effort to implement such recommendation. Among others, below are a few key activities to be carried under this core function:

- Malaysian Standard MS ISO 37001: 2016 Anti-Bribery Management Systems (ABMS);
- Organisation Anti-corruption Plan;
- Whistleblower Protection Policy;
- Organisation's Code of Work Ethics;
- 'No Gift Policy'/Referral Policy; and
- Integrity Pact for Business Operation

Detection & Verification

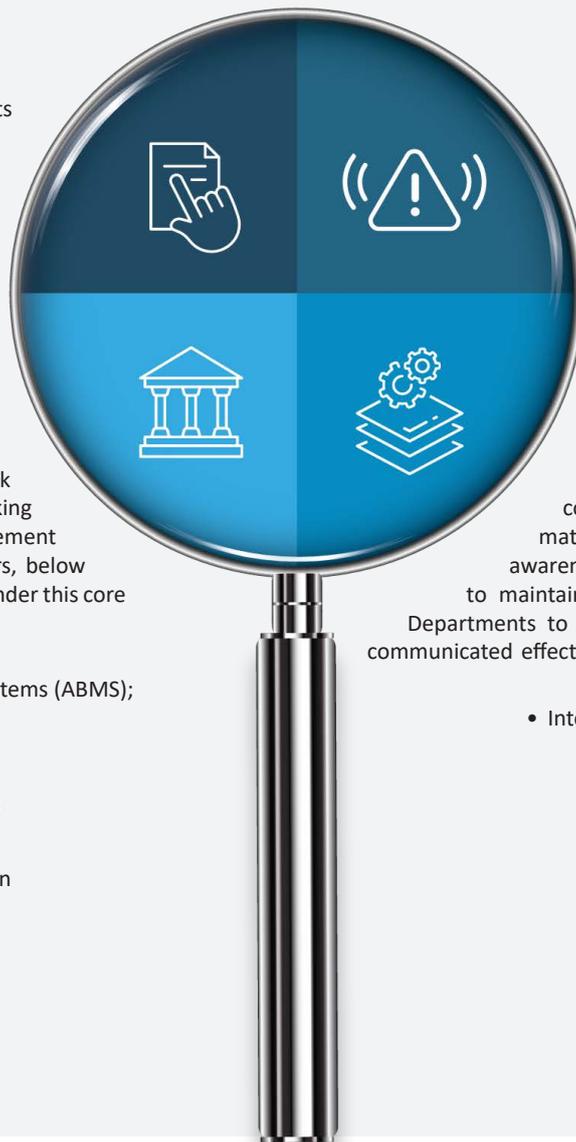
This core function is responsible for detecting and verifying complaints on potential misconduct and violation of code of conduct and ethics, and to determine and take appropriate action to address such misconduct or breach. This can be done through among others, preparation of a complete report on conducted verification which includes, comments and recommendations whether such complaints should be forwarded to the relevant implementing and enforcement agency. Some of the activities to be undertaken by this core functions include:

- examination and scrutiny on Internal Audit Report;
- formation of Special Committee for Investigation; and
- Investigation Reports.

Integrity Strengthening

Integrity strengthening can be carried out through awareness programs in enhancing the best practices of ethics and integrity within the organisation. Under this core function, the IGU should prepare materials in relation to campaigns and awareness programs for the staff as well as to maintain synergy with the relevant Head of Departments to ensure that awareness programs are communicated effectively. Examples of activities under this core functions are:

- Integrity Discourse – monthly talks/poetry /bulletin/articles;
- Corruption-Free Pledge (IBR); and
- 'No Gift Policy' Campaign



ROLE OF IMPLEMENTERS

To achieve the objectives of the four core functions of the IGU, the Guideline sets out the following implementers to be responsible in ensuring that integrity management is implemented effectively.



The Guideline also spells out the roles and responsibilities of the implementers as follows:

Agency Integrity Management Division/ *Bahagian Pengurusan Integriti*

The roles of the Agency Integrity Management Division are:

- to supervise, monitor and coordinate the implementation administration of the IGU functions;
- to provide consultation towards the implementation of the IGU functions;
- to carry out organisational risk rating to set the appropriate structure for the IGU; and
- to gather corruption prevention and integrity management resources internally and internationally for the reference of IGU. The Agency Integrity Management Division is encouraged to collaborate with the Association of Certified Integrity Officer Malaysia (“**ACeIO**”) to ensure for the references to be up-to date with contemporary best practices. In this regard, ACeIO acts as a network of cooperation between Certified Integrity Officers (“**CeIO**”) certified by the Malaysia Anti-Corruption Academy (“**MACA**”) who possess expertise in corruption prevention as well as integrity management in the public and private sector.

Chief Integrity and Governance Officer

Chief Integrity and Governance Officer (“**CIGO**”) plays a crucial role in ensuring that the four core functions of the IGU are implemented effectively. Under the Guideline, the CIGO are tasked with a robust set of responsibilities which includes among others ensuring transparency of reporting, and unequivocal discharge of duties on both integrity and governance matters of the IGU in which the CIGO reports directly to the Board of Directors of the GIC. Most importantly, the role of CIGO must not be undermined by placing CIGO’s portfolio under an existing department or position in the GIC. The CIGO must be equal to other heads of department, for example the Head of Internal Audit, Head of Risk Department, etc. In practice, MACC has seconded internal officers to undertake the role of CIGO in several GICs. Below are the list of a number of requirements and roles to be undertaken by the CIGO:

- to ensure timeliness, expertise and efficiency in the managing the risk of corruption, abuse of power and malpractice in the GIC;
- to implement the functions of IGU effectively, without influence from any internal or external parties;
- to avoid elements of rejection, pressure, isolation, denial or unreasonable action on the GIC’s side;
- to avoid conflict of interest in any exercise of official duty;
- to coordinate, supervise, monitor, and assess the GIC’s integrity programs;
- to advise the Head of Organisation in matters involving integrity, corruption and abuse of power;
- to prepare an Organisation Anti-Corruption Plan which details the anticorruption action plan in the GIC;
- to carry out duties on organisational integrity management from time to time based on the enforced law and regulations;
- to carry out benchmarking for integrity programs in comparison to other organisations for continuous improvement;
- to establish good relations with the GIC’s Top Management in order to enhance awareness on corruption, abuse of power and malpractice as well as violation of integrity;
- to establish a systematic integrity complaints system to ensure action is taken on every report on criminal misconducts, corruption, abuse of power and malpractice, as well as violation of organisational code of conduct and ethics;

- to supervise the detection and verification on reports of criminal misconduct, corruption, abuse of power and malpractice that the IGU receive in the GIC, following which ensuring appropriate action is taken;
- to plan, implement and coordinate integrity enhancement programs to boost moral values, ethics and integrity among officers and staff of the organisation; and
- to ensure the best governance is upheld towards strengthening integrity of officers and staff in the organisation as well as in dealing with integrity issues, in particular those of corruption, abuse of power and malpractice.



Integrity and Governance Officer

An Integrity and Governance Officer ("IGO") is responsible for carrying out the four core functions of the IGU. Among others, MACC has made it a requirement for all IGOs to undergo the CeIO Programme organised by MACC and to be successfully certified as a CeIO in accordance to the Directive of the Prime Minister No. 1 of 2009, Integrity Management System of the Malaysian Government Administration, Series 1 No. 1 of 2011 Implementation of Certified Integrity Officer Programme. Under the IGU Strategic Plan, the IGU must be equipped with adequate human resources comprising competent officers and staff of high integrity that are subject to integrity vetting prior to undertaking their roles.



Head of Organisation

Among others, the Head of Organisation is responsible in ensuring that the GIC has an annual budget allocation to support operation of the IGU in order to ensure effective execution and discharge of its entrusted roles and functions. In addition to this, the roles of the Head of Organisation are:

- to avoid conflict of interest in all exercise of official duties and to lead the GIC in creating an enabling environment engrained with integrity and good governance;
- to set a comfortable and harmonious work environment between IGU and other divisions/sections/units in the organisation in building cooperation;
- to intensify activities that cultivate integrity in the GIC;
- to encourage the organisation's workforce to practise work productivity embedded with integrity in every exercise of duty;
- to ensure all divisions/sections/units cooperate fully with the IGU in exercising its functions; and
- to ensure the CIGO position is not vacant for more than one month.



Independent Committee

The Independent Committee is tasked with the supervisory role to monitor and oversee the implementation and running of the IGU. The Independent Committee comprises of a Chairman and five individuals to be appointed by the Board. The roles of the Independent Committee are:

- to oversee issues of corruption, fraud, malpractice and unethical conduct within the GIC; and
- to assist the Board of Directors in carrying out its responsibilities towards an organisation free from corruption, with integrity and good governance, in addition to overseeing the IGU in achieving its objectives.



Board of Directors

The Board of Directors play an important in creating an enabling environment to ensure that the core functions of the IGU can be carried out effectively. The roles of the Board of Directors are:

- to ensure a separate IGU structure that is directly answerable to the Board of Directors;
- to ensure the IGU carries out its four core functions;
- to monitor the IGU's performance through reporting by the CIGO and Independent Committee; and
- to issue commands to IGU in an effort to keep it relevant as an entity responsible for preserving integrity in the GIC.

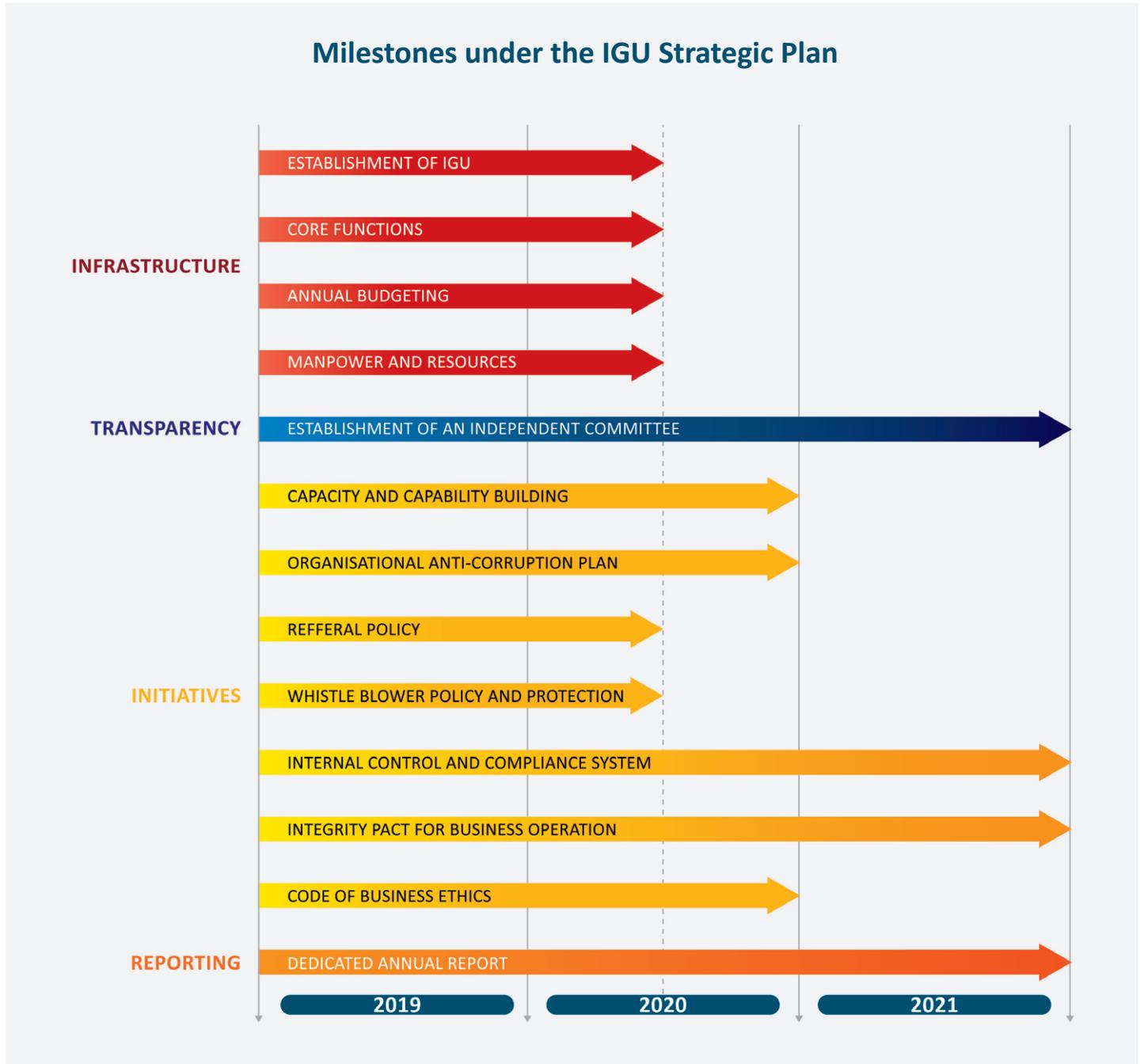
IMPLEMENTATION MECHANISM OF THE IGU

Under the Guideline, MACC has proposed a holistic implementation mechanism to ensure that the IGU is able to achieve its goals and objectives, in line with the IGU Strategic Plan. The table below provides an overview of the implementation mechanism that may be adopted by GICs.

Implementation Mechanism	Requirement
Network of Integrity and Governance Management	<p>Generally, the CIGO reports directly to the Board of Directors in relation to specific issues on integrity. However, the full reporting structure for the CIGO in relation to day-to-day administration are as follows:</p> <ul style="list-style-type: none"> • Board of Directors • Independent Committee • Head of Organisation • MACC
Organisational Risk Rating	<ul style="list-style-type: none"> • The Agency Integrity Management Division is responsible for conducting organisational risk rating to set a suitable structure for the IGU. • Risk ratings are classified into high, medium or low and re-rating of a GIC's risk is conducted every three years or as necessary.
Appointment of CIGO/IGO	<p>In practice, GICs that are classified as 'high-risk' are recommended to appoint CIGO and IGO from among MACC officers. In addition, CIGO and IGO must fulfil the following conditions before being appointed for the task:</p> <ul style="list-style-type: none"> • excellent service record and zero disciplinary record; • at least five years of work experience; • CIGO and IGO must undergo the CeIO Program within a maximum of two years from the date of joining the IGU; and • appointment of CIGO and IGO must receive agreement of the Board of Directors for the organisation's officers and MACC's agreement for MACC officers. <p>The Guideline has also stipulated the period of service to be undertaken by the appointed CIGO and IGO.</p>
Capacity Building	<p>CIGO and IGO are required to enhance capacity strengthening and skills of duty, in particular, in relation to detection and verification of information on conducts of corruption, abuse of power, malpractice and other offences under the Malaysia Anti-Corruption Commission Act 2009 (Act 694).</p>
CeIO Programme	<p>The CIGO and all IGOs are required to complete the CeIO programme before appointed as CIGO and IGO under the GIC.</p>
Reporting by IGU	<p>Reporting must be submitted to the MACC twice a year according to the following period:</p> <ul style="list-style-type: none"> • January – June Report to be submitted on <i>31 July</i> of the current year; and • July – December Report to be submitted on <i>31 January</i> of the following year. <p>Reports to the Agency Integrity Management Division secretariat should be sent to the following address and email: Director Agency Integrity Management Division (Bahagian Pengurusan Integriti Agensi/BPIA) The Malaysian Anti-Corruption Commission (MACC) Headquarters Level 8, Block B, No. 2, Lebuhr Wawasan, Presint 7, 62250 Putrajaya. E-mail: t1@sprm.gov.my or urusetiaui@sprm.gov.my</p> <p>Mandatory reporting under a dedicated section in GIC's Annual Report on all anti-corruption measures undertaken by the organization and firm commitment to put in place good governance intended to curb corruption, fraud, and malpractices.</p>



Milestones under the IGU Strategic Plan



Source: Malaysian Anti-Corruption Commission, 'Strategic Plan of Integrity and Governance Unit 2019-2021' at page 8.

GOVERNMENT ASPIRATION TOWARDS MS ISO 37001: 2016 ANTI-BRIBERY MANAGEMENT SYSTEM

Malaysia was involved in the development of MS ISO 37001 which is an anti-bribery management system standard published in October 2016 by the International Organisation for Standardisation (“ISO”). The MS ISO 37001 was designed to help an organisation establish, implement, maintain, and improve an anti-bribery compliance programme which includes a series of measures and controls that represent global anti-

bribery best practices. On October 2017, the MS ISO 37001: 2016 Anti-Bribery Management System (MS ISO 37001) was launched.⁶ The Guideline has incorporated the requirements under the MS ISO 37001, where the GIC must implement a series of measures and controls in a reasonable and proportionate manner to facilitate in preventing, detecting, and dealing with bribery which includes:



GICs will benefit from adhering to MS ISO 37001 by assisting the GIC to prescribe minimum requirements and supporting guidance for implementing or benchmarking an anti-bribery management system

as well as providing evidence that the GIC has indeed taken reasonable steps to prevent malpractice, abuse of power, and bribery.

NEXT STEPS?

All GICs are given a two year grace-period to comply with the requirement to set up an IGU within the organisation latest by **October 2020**.⁷ In light of the timeline imposed by MACC, all GICs are encouraged to commence preparation early in setting up the respective IGUs where any non-compliance will be reported directly to the Prime Minister’s Office. In addition to the Guideline, MACC further welcomes enquiries from GICs in providing clarification and a clear action plan to set up the IGU within the organisation, in particular, in ensuring that the size and structure of the IGU is proportionate to the

risk level and size of the GIC. It is believed that the successful implementation of this policy will significantly enhance integrity and promote ethical practices within GICs which in turn will strengthen public confidence in the Government in respect of public service and administration. At the end of the day, “*what is important from these initiatives is changes in [the] systems and institutions which will determine that these [anti-corruption] efforts are continuous and sustainable and not seasonal*”.⁸

¹ Arahan YAB Perdana Menteri No. 1 Tahun 2018 Siri 1 No. 1 Tahun 2018 “Penubuhan Unit Integriti dan Governans Syarikat Berkaitan Kerajaan (GLC), Syarikat-Syarikat Yang Dimiliki Oleh Kementerian dan Agensi Kerajaan Termasuk di Bawah Kerajaan Negeri”

² MACC chief calls on private companies to have own integrity officers as watchdogs, <https://www.thestartv.com/v/macc-chief-calls-on-private-companies-to-have-own-integrity-officers-as-watchdogs>

³ Strategic Plan of Integrity and Governance Unit (2019-2021), https://www.sprm.gov.my/images/Arahan_Pekeliling/Strategic_Plan_of_IGU.pdf

⁴ National Anti-Corruption Plan (2019-2023), https://www.pmo.gov.my/wp-content/uploads/2019/07/National-Anti-Corruption-Plan-2019-2023_.pdf

⁵ Schedule A: Core Functions of Integrity and Governance Unit under the Guideline for the Management of Integrity & Governance Unit, https://www.sprm.gov.my/images/Arahan%20&%20Pekeliling/GUIDELINE_FOR_THE_MANAGEMENT_OF_INTEGRITY_&_GOVERNANCE_UNIT.pdf

⁶ MS ISO 37001:2016 Anti-Bribery Management System (MS ISO 37001), <https://www.sprm.gov.my/index.php/en/prevention/perkhidmatan/abms>

⁷ Arahan YAB Perdana Menteri No. 1 Tahun 2018 Siri 1 No. 1 Tahun 2018 “Penubuhan Unit Integriti dan Governans Syarikat Berkaitan Kerajaan (GLC), Syarikat-Syarikat Yang Dimiliki Oleh Kementerian dan Agensi Kerajaan Termasuk di Bawah Kerajaan Negeri”

⁸ Malaysia respected again, no longer seen as a kleptocracy - Dr Mahathir, <https://www.nst.com.my/news/nation/2020/01/561161/malaysia-respected-again-no-longer-seen-kleptocracy-dr-mahathir>

If you have any questions or require any additional information, you may contact Mohamad Izahar Mohamad Izham, Liya Saffura Ab Rashid, or the Zaid Ibrahim & Co. partner you usually deal with.



**Mohamad Izahar
Mohamad Izham**
Partner

izahar.izham@zicolaw.com
t. +603 2087 9953

Mohamad Izahar is a Partner in the Corporate and Government Advisory practice group at Zaid Ibrahim & Co. (a member of ZICO Law).

His practice focuses in the area of law reform. This includes advising Federal and State Governments including Ministries, regulators, and statutory bodies on the 'end-to-end' law reform spectrum ranging from regulatory mapping, undertaking feasibility studies, conducting regulatory impact analysis (RIA), assisting in the drafting of primary and subsidiary legislations, and implementing regulatory frameworks.

He has also been involved in post-law reform work through his experience in compliance and governance with legal awareness initiatives, advising on regulatory compliance, developing legal audit programmes, and advising on rationalization, privatization, and corporatization exercises.

At the same time, his practice includes providing strategic and legal support to private sector clients interested in engaging the Government in policy development and reform. This includes industry proposals to amend or introduce new laws as well as complex and novel regulatory applications and approvals.



Liya Saffura Ab Rashid
Senior Associate

liya.saffura@zicolaw.com
t. +603 2087 9992

Liya Saffura is a Senior Associate in the Corporate and Government Advisory practice group at Zaid Ibrahim & Co. (a member of ZICO Law).

Her practice focuses on law reform through advising Federal Ministries and Government Agencies in regulatory mapping and conducting feasibility studies in relation to the review of primary and subsidiary legislations which involves among others, conducting key stakeholders engagements and proposing policy recommendations.

She also advises on matters relating to compliance and governance, in particular, advising Government-Linked Companies and Statutory Bodies on Board roles and responsibility mapping, as well as assisting clients to develop compliance programs and processes.

She is currently co-authoring a book on "*Corporate Governance and Ethics in Malaysia*" which will provide general principles relating to corporate governance and ethics using past and present case studies to illustrate the practical applications in the private and public sector. To date, she has contributed in the writing of several commercial papers and academic textbooks in relation to Malaysian legal framework in Islamic Finance and is actively involved in civil societies in her capacity as a Chevening alumna.

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