



BOARD OF ENGINEERS MALAYSIA

GUIDELINE NO. 006

GENERAL GUIDELINES ON INTEGRITY MANAGEMENT SYSTEM FOR ENGINEERING CONSULTANCY PRACTICE

1. PURPOSE

The purpose of this guideline is to assist Engineering Consultancy Practice (ECP) in establishing an Integrity Management System (IMS) in line with the principles stated in the Guidelines on Adequate Procedures issued by the Prime Minister Office of Malaysia.ⁱ The IMS is aimed at assisting ECPs who is a professional as well as a commercial organisation to prevent the occurrence of corrupt practices, manage its integrity risks and implement its integrity policies. IMS if properly implemented can be relied upon as a defence in legal action faced by ECPs under the Corporate Liability Law introduced via Section 17A of the Malaysian Anti-Corruption Commission (Amendment) Act 2018.ⁱⁱ

2. BACKGROUND

- 2.1 Eradicating corruption has become a high priority agenda in Malaysia. This agenda is also important as it helps protect the reputation of companies and businesses while promoting the development of sustainable and socially responsible practices vital to nation building. The Board of Engineers Malaysia (BEM) is aligned with the Government of Malaysia to promote integrity, good ethical practices and good governance in the fight against corruption and malpractices. In materializing this, BEM in collaboration with Institute of Integrity Malaysia (IIM) has prepared this guideline aimed to create awareness and to promote the implementation of IMS amongst ECP and professional engineers. The beneficial effects of integrity initiatives also bode well for the ECP's through improvements in their competitiveness.
- 2.2 ECPs and Registered Persons registered with the BEMⁱⁱⁱ, is expected to display the highest standard of integrity in carrying out there services as it directly impacts public health, safety, and welfare. Integrity is the practice of maintaining appropriate ethical behaviour and showing strong adherence to moral and ethical principles and values such as honesty, impartiality, fairness, equity, dependability and trustworthiness.
- 2.3 Integrity is the foundation for a successful Client-ECP relationship and essential for the long-term sustainability of an ECP. It is also in line with international best practice.^{iv} ECPs with ISO 37001: 2016^v certification has become a pre-requisite for many project participation.

- 2.4 Registered Engineers and ECPs in Malaysia shall ensure compliance with the law in relation to the professional practice of engineering and relevant legal statutes that relates to the promotion of ethics and integrity throughout their practice and within their organisation, in particular,
- a) Registration of Engineers Act 1967 (Act 138)
 - b) Board of Engineers Malaysia Circular No. 001 – Code of Conduct of Registered Person
 - c) Code of Conduct of the Registration of Engineers Regulations 1990
 - d) Malaysian Anti-Corruption Act 2009 (Act 694)
 - e) Malaysian Anti-Corruption Act (Amendment) 2018 (Act 1567)
 - f) Whistle-blower Protection Act 2010 (Act 711)
 - g) Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) (Act 613)
- 2.5 The Corporate Liability Law has been introduced in Malaysia by way of inserting Section 17A into the Malaysian Anti-Corruption Commission (Amendment) Act 2018 whereby the provision imposes liability on a commercial organisation in the event any of its associated person has given, promised or offered some form of gratification for the benefit of the commercial organisation. As commercial organisation, ECP should implement Adequate Procedures as a defence from the penalty of the Corporate Liability Law.

3. INTEGRITY MANAGEMENT SYSTEM

The IMS is to be designed in accordance to the principles defined in the Guidelines on Adequate Procedure, issued on December 2018 by the Prime Minister Office of Malaysia (1). The key principles are Top Level Commitment (T), Risk Assessment (R), Undertake Control Measure (U), Systematic Review and Monitoring and Enforcement (S) and Training and Communication (T).

3.1 Top Level Commitment (T)

Tone from the top is critical to the success of the IMS. Therefore, the governing body such as the Board of Directors, the top and senior management team should be the driver for the IMS implementation through their behaviour and actions and promote an integrity culture within the organisation.

They should provide assurance to its stakeholders that the organization is operating in compliance with its policies, procedures and applicable legal requirements.

3.1.1 The governing body should demonstrate leadership by: -

- a) Approving the organization's integrity policy;
- b) Ensuring that the organization's strategy and integrity policy are aligned;
- c) Requiring that adequate and appropriate resources needed for effective operation of the integrity are allocated and assigned;
- d) Exercising reasonable oversight over the implementation of the organization's integrity by top management and its effectiveness.

The Top management is primarily responsible for ensuring that the commercial organisation (ECP) would be able to practice the highest level of integrity, complies fully with the applicable laws, regulatory requirements and the Code of Conduct, and

implement an effective IMS to prevent corrupt practices such as bribery, extortion, coercion, fraud, collusion, and conflict of interest.

3.1.2 Top Management should;

- a) formulate a Code of Conduct which is consistent with BEM Code of Conduct,
- b) formulate an Integrity Policy,
- c) assign a person (s) (e.g Integrity Officer/ Integrity Governing Unit) to execute responsibilities and authority related to integrity compliance functions which includes overseeing the implementation of the IMS, including compliance to legal requirements, provide advice and guidance to personnel on issues relating to integrity, and reporting the performance of the IMS to the top management and the governing body.

All governing body and top management should file a declaration on their commitment to comply with the integrity policy at reasonable intervals.

3.2 Risk Assessment (R)

A regular integrity risk assessment should be undertaken to identify, analyse, assess and prioritise the integrity risks that the organisation anticipates. The suitability and effectiveness of existing control to mitigate the integrity risks should be evaluated. A comprehensive integrity risk assessment should be conducted to cover all activities, functions and departments in the organisation. The risk assessment report is a living document that should be reviewed whenever there is a change in the business activities, structure, or applicable legal requirements to ensure any emerging integrity risks will always be within acceptable level.

The methodology and process for conducting the risk assessment depends on the nature, complexity and integrity risks of the organization. Reference can be made to the international standards such as the ISO 31000 and ISO 31010. The most commonly used methodology for risk assessment is the “Consequence and Likelihood” technique.

All risks categorised as high risk and above should be presented and discussed among the governing body and top management through suitable platform (e.g Independent Audit and Risk committee as in good Corporate Governance practice) to ensure the risks can be mitigated appropriately and reduced to an acceptable level.

3.3 Undertake Control Measures (U)

Appropriate controls should be established and implemented to ensure all integrity risks can be reduced or eliminated. Based on the established risk assessment, organization should develop necessary objectives and targets, action plans, and procedures to control the operations of the organization. Consideration should also be taken to control the activities of business associates which may have a negative impact to the organisation’s integrity risks.

Among the procedures and processes that should be developed includes (not limited to);

- a) protection to complainants in relation to complaints/raising concerns against registered persons and ECPs
- b) due diligence (on employees, procurement of new projects etc)
- c) control of documents (including procedures and records)

- d) gifts, hospitality, donations (refer to Annex A15 of MS ISO 37001:2016)
- e) investigation and dealing with violation of integrity related incidents and complaints against registered persons and ECPs
- f) conflicts of interest and separation of power (example in tendering process)
- g) financial controls such as payment and level of approval, financial audits, effective cash management, etc.
- h) procurement
- i) training and awareness
- j) recruitment and dismissal
- k) disciplinary action

The procedures should clearly define the action/process, responsibilities, approval and reporting channel while necessary records as evidence of implementation need to be established and kept. Procedures are supposed to assist the organisation and not to burden. It should be periodically reviewed and updated to ensure it stays relevant and effective.

In developing the procedure for due diligence for personnel or business associates such as board members, top management and key personnel with high integrity risks, employees, agents, vendors, contractors, suppliers, consultants and partners, consideration should be given on the method criteria and methods may include background checks on the person and entity, integrity profiling, verification with references, or conducting interviews whichever is appropriate. The relevant parties/personnel should be required to provide essential information such as company profile, business activities, country of establishment, works list, competency, management information and financial status of the company in order for the organisation to conduct a risk assessment and evaluation as well as to determine the level of any additional due diligence required.

In developing the procedure for whistle blowing/reporting complaints, reference can be made to international standard ISO 37002 – Whistleblowing management systems. An accessible, transparent and trusted reporting channel for integrity related incidents or issues should be established and made known to all employees and stakeholders. The confidentiality of the whistle blower's identity and the information reported should be protected to prohibit retaliation against those making reports in good faith.

3.4 Systematic Review, Monitoring and Enforcement (S)

The performance of IMS should be evaluated through several measures such as internal audit and reviews by governing body, top management, the IMS compliance function and key personnel responsible to ensure the IMS is implemented effectively.

An internal audit function should be established to conduct a periodical audit (e.g. once a year) on the IMS. This function can be integrated in the existing function of internal audit of the ECP. The competency of the auditors should be assessed and evaluated before the auditors are qualified to audit the IMS. Among the competency required by the internal IMS auditors are good understanding of the relevant Acts, regulations and requirements that the ECP shall comply, integrity risk assessment and the integrity management system. The procedures and programs to conduct the IMS internal audit should be established. Result of the audit finding should be reported to the governing body, top management and the integrity compliance function.

Review of the performance of the IMS should be conducted at a defined interval by the governing body, top management and the integrity compliance function. Necessary information should be provided to the governing body, top management and the

compliance function in order to enable them to evaluate whether the IMS is implemented effectively or requires improvement.

The review should include:

- a) The current integrity risks faced by the organisation and the effectiveness of actions taken to address integrity risks
- b) Report on IMS internal audit finding
- c) Incidences relating to integrity including the investigation findings
- d) The achievement of the organisation objectives, targets and programs relating to integrity.

The integrity compliance function is responsible to report to the top management and the governing body on the overall adequacy of the implementation of the IMS.

3.5 Training and Communication

3.5.1 Appropriate and adequate awareness program should be identified and conducted to all personnel as well as business associates. The training should include among others:

- a) The IMS, including the integrity policy and procedures, and other elements of the IMS in relation to their job and their duty to comply;
- b) Integrity risks and the damage to the organisation resulting from the risks; and
- c) The relevant integrity related legal requirements and their duty to comply.

3.5.2 After each training, the organisation should conduct an evaluation using the feedback provided by the participants. They can then improve on any areas of weaknesses and increase the effectiveness of the subsequent training sessions. At the same time, evaluation on the performance of the personnel with respect to their compliance to the IMS policy, procedures, and other IMS requirements should also be included in their yearly appraisal performance.

The training may be conducted in a variety of formats, including but not limited to:

- a) Induction programs featuring anticorruption elements;
- b) Role-specific training, which is tailored to corruption risks the position is exposed to;
- c) Corporate training programs, seminars, videos and in-house courses;
- d) Intranet or web-based programs;
- e) Retreats; and
- f) Out-reach programs.

3.5.3 The Integrity Policy should be made publicly available, and should be appropriately communicated to all personnel and business associates. Communication of the policy and relevant code of conduct and procedures may be conducted in a variety of formats and mediums. These may include, but are not limited to:

- a) Messages on the organisation's intranet or website;
- b) Emails, newsletter, posters; and
- c) Handbooks.

4. DEFINITIONS

4.1 Integrity Management System

The organisational structure, responsibilities, procedures, processes, and resources implemented in a firm to accomplish integrity management.

4.2 Commercial Organisation

- a) A company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;
- b) A company wherever incorporated and carries on a business or part of a business in Malaysia;

4.3 Partnership

- a) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or
- b) which is a limited liability partnership registered under Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or
- c) A partnership wherever formed and carries on a business or part of a business in Malaysia

4.4 Associated Person

Director, Partner, Employee of the ECP or a person who performs service for or on behalf of the ECP

4.5 Top Management

Person or group of people who directs and controls an organisation at the highest level.

4.6 Governing Body

Group, or body that has the ultimate responsibility and authority for an organisation's activities, governance and policies and to which Top Management reports and by which Top Management is held accountable i.e Board of Directors.

4.7 Policy

Intentions and directions of an organisation as formally expressed by its Top Management or Governing Body.

4.8 Risk

Effect of uncertainty on an objective. Uncertainty is the state, even partial of deficiency of information related to, understanding or knowledge of, an event, its consequence or likelihood.

4.9 Conflict of Interest

Situation where business, financial, family, political or personal interests could interfere with the judgment of persons in carrying out their duties for the organisation.

4.10 Due diligence

Process to further assess the nature and extent of the bribery risk and help organisations make decisions in relation to specific transactions, projects, activities, business associates and personnel.

4.11 Whistleblowing

Deliberate, voluntary disclosure or reporting of individual or organisational malpractice by a person who has or had privileged access to data, events or information about an actual, suspected or anticipated illegal or immoral act.

4.12 Business Associates

external party with whom the organisation has, or plans to establish, some form of business relationship.

[348th Board Meeting / 13th March 2022]



Ir. Dr. MEGAT ZUHAIRY BIN MEGAT TAJUDDIN
Registrar
BOARD OF ENGINEERS MALAYSIA

ⁱ Guidelines on Adequate Procedure Pursuant to Subsection (5) of Section 17A under the Malaysian Anti-Corruption Commission Act 2009, Prime Minister Office

ⁱⁱ Malaysian Anti-Corruption Act 2009 (Act 694) and Malaysian Anti-Corruption (Amendment) Act 2018 (Act 1567)

ⁱⁱⁱ Registration of Engineers Act 1967 (Act 138)

^{iv} FIDIC Guidelines for Integrity Management in the Consulting Industry Part I – Policies and Principles; Part II - FIMS Procedures and Part III - FIMS and ISO 37001 Procedures
Note: FIDIC - International Federation of Consulting Engineers

^v MS ISO 37001: 2016 Anti-bribery Management Systems – Requirements with Guidance for Use