

DEFERRED PROSECUTION AGREEMENTS AS A CORPORATE GOVERNANCE TOOL: MALAYSIA'S REGULATORY AND ETHICAL PREPAREDNESS

ACORDOS DE SUSPENSÃO PROCESSUAL COMO FERRAMENTA DE GOVERNANÇA CORPORATIVA: O PREPARO REGULATÓRIO E ÉTICO DA MALÁSIA

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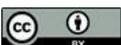
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Abstract

This article analyses corporate readiness in Malaysia to implement Deferred Prosecution Agreements (DPAs), as practised in the United States (US), the United Kingdom (UK), Canada, and Singapore. It highlights the essential elements of DPA, including judicial oversight, public-interest imperatives, and corporate compliance frameworks, thereby fostering ethical accountability. The readiness of Malaysia's top five publicly listed companies across diverse sectors is measured against compliance with the Malaysian Anti-Corruption Commission Act 2009 (MACC Act), Adequate Procedures (AP), and ISO 37001:2016 Anti-Bribery Management Systems (ABMS). The deliberate focus on large corporations reflects their heightened exposure to liability risks and the expectation that they maintain more stringent compliance standards. The findings indicate that substantial anti-corruption efforts have been undertaken, particularly through ABMS certification; however, ethical vulnerabilities persist in specific sectors, notably logistics and transportation. Overall, the study suggests that Malaysia possesses the institutional and corporate capacity to adopt DPAs, provided that such mechanisms are tailored to the country's legal, economic, and cultural context and are supported by effective judicial oversight and

Resumo

Este artigo analisa a prontidão das empresas na Malásia para implementar Acordos de Suspensão Condicional do Processo (ASP), conforme praticado nos Estados Unidos (EUA), Reino Unido (RU), Canadá e Singapura. Destaca os elementos essenciais dos ASP, incluindo supervisão judicial, imperativos de interesse público e estruturas de conformidade corporativa, promovendo assim a responsabilidade ética. A prontidão das cinco maiores empresas de capital aberto da Malásia, em diversos setores, é avaliada em relação à conformidade com a Lei da Comissão Anticorrupção da Malásia de 2009 (Lei MACC), Procedimentos Adequados (PA) e ISO 37001:2016 - Sistemas de Gestão Anticorrupção (SGAC). O foco deliberado em grandes corporações reflete sua maior exposição a riscos de responsabilidade e a expectativa de que mantenham padrões de conformidade mais rigorosos. Os resultados indicam que esforços anticorrupção substanciais foram empreendidos, particularmente por meio da certificação SGAC; no entanto, vulnerabilidades éticas persistem em setores específicos, notadamente logística e transporte. Em geral, o estudo sugere que a Malásia possui a capacidade institucional e corporativa para adotar Acordos de Não Processamento Penal



comprehensive compliance infrastructures. This research contributes to policy and corporate discourse by offering a framework for strengthening ethical governance and accountability by integrating comparative DPA models with corporate compliance assessments.

Keywords: Corporate Governance. Deferred Prosecution Agreement. DPA. Adequate Procedures. ABMS.

(ANP), desde que tais mecanismos sejam adaptados ao contexto jurídico, econômico e cultural do país e sejam apoiados por uma supervisão judicial eficaz e infraestruturas de conformidade abrangentes. Esta pesquisa contribui para o debate político e corporativo, oferecendo uma estrutura para o fortalecimento da governança ética e da responsabilização, integrando modelos comparativos de ANP com avaliações de conformidade corporativa.

Palavras-chave: Governança Corporativa. Acordo de Não Processamento Penal. ANP. Procedimentos Adequados. ABMS.

1 INTRODUCTION

Deferred Prosecution Agreements (DPAs) have emerged recently as an essential instrument in the legal systems of several countries, for example, to combat large-scale corporate crime, including corruption (Parker & Dodge, 2022). DPAs provide a legal middle ground between taking full legal action and deciding not to prosecute. They enable firms to avoid criminal convictions through specific commitments, including the enforcement of compliance programs, repayment of fines, and cooperation with ongoing investigations (Hertstein et al., 2024). This tool helps hold businesses accountable for their actions while simultaneously reducing the negative social and economic consequences of criminal prosecution. Nevertheless, how DPAs are adopted and implemented will vary from country to country. Such variation is rooted in the specific legal, social and economic settings of each country. States such as the United States, the United Kingdom, Canada, and Singapore have developed their own models of DPAs, each with its own structure and oversight mechanisms. These varying frameworks not only indicate possible advantages but also difficulties associated with DPAs; they also offer lessons that could be learnt in other legal systems, such as Malaysia's.

As anti-bribery and anti-corruption laws have evolved across jurisdictions, corruption has been considered at multiple levels, as Malaysia has done in its fight against corruption. By extension, the legal environment in Malaysia has improved over the period. It has taken various steps in the past several years to fight corruption and achieve a better countrywide Corruption Perception Index (CPI) score (Transparency

International, CPI 2021 – 2023). The enforcement activities taken by the Malaysian government are hardly new, as they began in 1950 under the anti-bribery/anti-corruption law (Hansard, House of Representatives, Parliament of Malaysia, 1961). Since its implementation in 1950, this law has undergone several legal reforms, culminating in the introduction of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) (MACC Act), which came into operation in 2009. In 2016, Malaysia implemented MS ISO 37001:ABMS following the recommendations of the International Standardisation Organisation to address corporate corruption management through the implementation of ISO 37001: Anti-Bribery Management System (ABMS) (MACC official portal 2025). The ABMS works to prevent, detect, or respond to corruption or bribery while maintaining compliance with laws, regulations, policies, and voluntary commitments. These aims are to create ethical or compliant environments in companies (The Star 2024).

In 2018, a corporate liability provision under section 17A of the MACC Act was enacted (Hansard, House of Representatives, Parliament Malaysia 2018). This section, which is effective in June 2020, provides, among other things, a defence to the company if it can demonstrate that it had adequate procedures in place to prevent such offences, thereby allowing the company to avoid liability. In this regard, section 17A(5) of the MACC Act stipulates that the Minister shall issue guidelines on adequate procedures (AP). Although section 17A represents a significant advancement in ensuring corporate accountability for corrupt activities, the current legal system lacks the adaptability to encourage corporate transformation without necessitating complete punishment. Conversely, DPAs, exemplified in nations such as the US, UK, Canada, and Singapore, provide a systematic framework to promote corporate collaboration and remedy while circumventing the collateral impact of a criminal conviction. This is a substantial deficiency in Malaysian law that may be adequately addressed with the implementation of DPAs.

Additionally, in light of the Malaysia National Risk Assessment on Money Laundering and Terrorism Financing 2023, which identifies five high-risk predicate offences for money laundering, including corruption, the government may consider the adoption of mechanisms such as Deferred Prosecution Agreements (DPAs) to more effectively address complex financial crimes that frequently give rise to money laundering activities. According to Adilah et al. (2022), a person may be found guilty of

a money laundering offence under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act (AMLATFPUAA) even if they have not been charged with or found guilty of the primary offence that the money laundering activity is based on, such as criminal breach of trust or corruption. Nevertheless, the AMLATFPUAA contains no provisions about DPA.

Hence, this study aims to offer the Government of Malaysia suitable recommendations for the structuring and implementation of DPAs through a comprehensive comparative examination. This will allow Malaysia to fully benefit from DPAs and mitigate its risks, creating a balanced and practical framework for addressing corporate misbehaviour. Also, an assessment was conducted on five top companies listed on Bursa Malaysia, categorized by sector, to determine if these companies had AP in line with the T.R.U.S.T (Top Level Commitment; Risk Assessment; Undertake Control Measures; Systematic Review, Monitoring and Enforcement; as well as Training and Communication) (Malaysia Ministerial Guidelines on Adequate Procedures) and whether such organizations have ABMS in place. To do so, this evaluation aims to measure Malaysia's preparedness to adopt DPAs by assessing how well the business sector is complying with anti-corruption policies and its readiness to reform legislatively.

2 RESEARCH METHODOLOGY

This study employs a qualitative and comparative research design to assess corporate readiness for DPAs in Malaysia. The study explores best practices for conducting DPA by reviewing existing models from jurisdictions such as the US, UK, Canada, and Singapore and examining their applicability to Malaysia's legal, cultural, and economic environment. The study further identifies compliance programs in Malaysia, focusing on the top five publicly listed companies on Bursa Malaysia, selected based on their market capitalisation and sectoral representation, through a targeted evaluation.

The study used publicly available corporate reports, compliance certifications, and Anti-corruption policies as datasets that offered insight into how AP was deployed under the MACC Act and ABMS. Although the use of secondary data has its shortcomings, this method provides a wide-ranging yet targeted view of corporate compliance trends and patterns across sectors. To strengthen the quality of this qualitative study, the

investigation draws on the literature, regulatory guidelines, and international standards, thereby providing an overall perspective for assessing Malaysia's preparedness for DPAs. This “exploratory” method provides significant implications for policymakers and corporations by bringing together international best practices with Malaysia’s distinct regulatory and cultural context.

3 RESULTS AND DISCUSSION

3.1 What is DPA?

DPAs are a method of out-of-court settlement or "non-trial resolution" that enables prosecutors to reach agreements with corporations to temporarily halt criminal proceedings, even when there is admission and evidence of corporate misconduct (Campbell L., 2021). According to Mitchell et al. (2021), DPA is a mechanism in which the prosecution of a defendant who has committed financial or economic crimes, such as fraud, money laundering, bribery, or corruption, is deferred pending negotiation and agreement on specific terms and conditions between the prosecutor and the defendant. Alun P. Milford (2019) describes DPA as a legal agreement between a prosecutor and an entity facing allegations of financial misconduct, in which prosecution is postponed for a set period contingent on the entity fulfilling the terms stipulated in the agreement (Campbell L., 2021). DPAs are seen as a tool to enhance corporate accountability, appealing to both corporations and prosecutors for their predictability, cost-effectiveness, timing, and outcomes, while also potentially fostering an ethical corporate culture within organisations through compliance programs imposed in the terms of DPAs (Bastian Hertstein et al. 2024, U.S. Department of Justice).

Based on the above definition, it can be concluded that DPA is a legal arrangement between prosecutors and parties to specific financial crimes. It allows prosecutors to defer criminal proceedings against the defendant for a period, subject to the conditions outlined in the agreement. DPAs are usually applied in corporate wrongdoing cases, such as fraud, money laundering, corruption, or bribery, and function as negotiated settlements, or “non-trial resolution.” DPAs encourage corporate change and compliance with legal and ethical standards, helping companies act more responsibly and do business more ethically.

3.2 The historical background and the development of DPA in the world

Originating from the US, DPAs have been adopted in numerous forms around the globe (Campbell, L., 2021). According to Mazzacuzza, F. (2014), in the criminal justice system and frameworks of the US, the usage of DPAs and NPAs was first limited to juvenile and drug offenders but later expanded to include business offenders. Peter R. Reily (2019) said that DPAs were initially implemented in the US during the early 1900s as a method to swiftly and effectively handle minor offences such as retail theft, often involving juveniles or first-time offenders, and that they frequently incorporated counselling, training, and employment assistance programs to aid the offender. The use of DPA to address allegations of significant wrongdoing by businesses began with the first agreement in the US in 1994 (Peter R. Reily 2019; Jake A. Nasar 2017).

Following the indictment of Arthur Andersen in the US, which led to the company's downfall, prosecutors have been more careful when charging prominent financial organisations (Peter R. Reily 2019). As an alternative, prosecutors have used DPAs and NPAs to address illicit business conduct rather than relying solely on criminal charges. (Martin 2014). According to Alexander & Cohen (2015), the Thompson Memorandum, introduced in 2003, initiated a period known as the “DPA era” by incentivising prosecutors to use NPAs and DPAs as plea deals. This approach encourages firms to self-disclose and assist with investigations into misbehaviour. Noor Afiqah Ismail et al. (2023) stated that DPAs were initially designed for less serious offences, but several jurisdictions now use them to tackle corporate wrongdoing. According to an Organisation for Economic Cooperation and Development (OECD) study published in March 2019, at least 27 jurisdictions have used a “non-trial resolution system” to settle a foreign corruption case (Noor Afiqah et al., 2023).

3.3 The implementation of DPA in the US, UK, Canada and Singapore

In assessing the suitability of implementing Deferred Prosecution Agreements (DPAs) in Malaysia, it is pertinent to examine their application in the jurisdictions under study. Existing scholarship indicates that, unlike in the United Kingdom, Canada, and Singapore, where DPAs are expressly provided for by statute, the use of DPAs or Non-

Prosecution Agreements (NPAs) in the United States for corporate criminal liability is not grounded in specific legislation. Instead, such practices are implemented in accordance with the Principles of Federal Prosecution of Business Organisations, as outlined in the United States Attorneys' Manual. The Principles of Federal Prosecution of Business Organisations was issued by the Deputy Attorney General of the United States Department of Justice (DOJ) via Memo dated 28 August 2008, which is binding on all federal prosecutors within the DOJ. One of the provisions stipulated under the Principles of Federal Prosecution of Business Organisations is a "Plea Agreement with Corporations" (Memo by Mark Filip, Deputy Attorney General of the United States DOJ 2008).

It is also observed that none of the studied countries has drafted a new law to provide DPAs. Instead, DPA is provided for under their existing laws as follows:

- Canada: the DPA, known as the Remediation Agreement, was implemented in Canada on September 19, 2018. Its authority is based on Part XXII.1 of the Criminal Code.
- The United Kingdom: The Deferred Prosecution Agreement (DPA) was implemented in the United Kingdom on February 24, 2014. The authority to establish the DPA originates from Section 45 and Schedule 17 of the Crime and Courts Act 2013.
- The United States: the DPA was introduced in the United States on 28 August 2008, known as the Deferred Prosecution Agreement and the Non-Prosecution Agreement (NPA). The authority for the DPA and NPA in the United States is based on the Principles of Federal Prosecution of Business Organizations in the U.S. Attorney's Manual
- Singapore: the DPA was introduced in Singapore on 11 April 2018 through section 35 of the Criminal Justice Reform Act 2018.

An understanding of the implementation of Deferred Prosecution Agreements (DPAs) in these jurisdictions provides a critical foundation for assessing their suitability for adoption in Malaysia. By systematically evaluating the potential advantages and limitations of DPAs, Malaysia can examine their implications for corporate accountability, regulatory enforcement, and the effective administration of justice within

its legal system. From a business ethics perspective, such an assessment is essential to determining the extent to which DPAs can promote a culture of ethical compliance and responsible corporate conduct while ensuring legal accountability and fair business practices.

3.4 The potential benefits of DPAs

DPAs offer several potential advantages for prosecutors conducting corporate investigations. The existence of DPAs provides prosecutors with a pragmatic alternative to the uncertainties of a criminal trial, the high cost of a criminal trial, or allowing a corporation to avoid prosecution and conviction because of insufficient evidence, giving prosecutors a more effective tool for holding corporations accountable for wrongdoing (Parker & Dodge, 2022). This, in turn, contributes to a more efficient docket and reduced expenditures on court cases, with individual offenders benefiting by preventing possible longer-term collateral consequences of conviction, including being barred from jury duty, government incentives, and voting privileges (Greenblum, 2005).

DPAs may serve as a more nuanced tool for prosecutors, offering a compromise between full prosecution and declination. This allows prosecutors to impose penalties on firms without risking the complete corporate downfall (Paulsen, 2007; Chua & Chan, 2019). They can also reshape corporate culture by instigating changes in management practices to deter regression. By altering a company's behaviour, prosecutors can stem further criminal activity and address the underlying causes of wrongdoing, potentially by adjusting corporate supervision or managerial roles (Jake A. Nasar, 2017; Michael Patrick et al., 2015). On the same note, Parker & Dodge (2022) explained that DPAs can encourage structural transformation within the defendant's organisation, limit collateral impact, increase accountability, and prevent forthcoming crime by having internal monitoring systems and ethical procedures and training, while at the same time, the DPAs can also ensure victims are compensated accurately.

Nicholas Lord (2023) cited the Serious Fraud Office (SFO) in the United Kingdom, noting that DPAs enable companies to fully rectify criminal misconduct without the adverse impact of a conviction, including job losses; they involve court oversight, bypass protracted and costly legal processes, and ensure transparency and

public awareness. Rebecca Mitchell et al. (2021) suggest that the rationale for implementing DPAs in England is to offer prosecutors an additional method for combating economic crime, aiming to hold organisations accountable for misconduct more effectively without the uncertainties, expenses, complexities, or length associated with criminal trials. Additionally, Rebecca noted that DPAs offer a practical solution to the challenges of prosecuting corporate entities, where proving mens rea requires establishing a “directing mind and will” (Rebecca Mitchell et al., 2021).

Moreover, DPAs are important for maintaining the balance between punishment and deterrence. They can prevent or lessen the collateral consequences of prosecution and conviction (Q. Bu 2021; Peter Reily 2018; Rajan 2021; Nicholas Lord 2023; David M. Uhlmann 2013; Greenblum 2005). Ardi Ferdian (2021) contends that DPAs can contribute to economic recovery and mitigate national losses while also balancing business interests and justice. Moreover, unlike criminal indictments or convictions, which harm innocent entities—employees, stakeholders, and shareholders—they offer protection (Public Citizen, 2019; David M. Uhlmann, 2013; Cunningham, 2014; Rakoff, 2019). As highlighted by Amulic (2017), the early 2000s conviction and subsequent dismissal of the audit firm Arthur Andersen forced the firm to cease operations, lose its audit license, and lay off 28,000 employees.

From a prosecution standpoint, DPAs represent strong strategies for achieving corporate compliance without causing catastrophic collateral damage. They can play an important role in remediating and re-establishing a company's operations, as well as protecting its ability to serve in the future (Martin, 2014). Perez (2019) stated that DPAs are more focused on targeting corporate criminal behaviour than criminal trials. As Cohen (2015) described, DPAs allow for tailoring governance solutions to the corporation rather than a universal treatment. Also, according to another scholar, DPAs can help address company misconduct following a corruption incident, advance internal compliance measures, and protect the company's continued existence (Q. Bu, 2021). As many scholars pointed out DPAs typically mean some form of commitment to compliance and remediation, and for instance the roll-out of effective corporate compliance programs, the improvement of anti-corruption policies, cooperating with the competent authorities on investigations, community projects, disciplining wrongdoers, as well as paying monetary

penalties and compensation (Balasingam, 2022; Q. Bu, 2021; OECD, 2019; Perez, 2019; Public Citizen, 2019; Cunningham, 2014).

Based on the judgment made by The Crown Court at Southwark on DPAs in a few cases in the UK, i.e. in the cases of Standard Bank, 2015; Sarclad Ltd., 2016; Rolls Royce PLC, 2017; Guralp Systems Ltd, 2019; and Airbus SE, 2020, it is observed that among penalties that imposed to the company due to corruption offence which become the terms approved by the court are disgorgement from corrupt activities, financial penalty and the payment on the costs incurred by the relevant authorities for the investigation of the case (depending to the financial condition of the corporate entities at the time of the court make a declaration to approve the DPA). OECD (2019) reported that the first DPA finalised in the UK allowed the Tanzanian government to recover compensation for the complete loss it incurred from Standard Bank as part of the resolution reached between the parties. From the views and judgments, it can be inferred that DPAs serve the interests of both commercial entities and public authorities, including governmental bodies, investigators, and prosecutors, by facilitating the efficient resolution of corporate misconduct while preserving public resources and promoting accountability.

3.5 The drawbacks of DPAs

Although DPAs are said to have many advantages as mentioned above, some scholars argue that they also have potential drawbacks. Parker & Dodge (2023) said DPAs provide insufficient penalties for individuals and enable corporations to evade criminal accountability. As seen in the US, there is a suggestion that the DPA system in the country is flawed due to insufficient judicial oversight, allowing DPAs to be agreed upon outside the court's supervision (Q. Bu, 2021). Some critics argue that DPAs are unsatisfactory because they allow large corporations to essentially “buy their way out of trouble” (Davis, 2022; Martin, 2014). Other scholars have noted that DPAs are extrajudicial agreements operating outside the standard legal framework, which could undermine the rule of law (Franco et al., 2019; Bourjaily, 2015; the Government of Canada, 2017). It also contended that DPAs represent a more lenient approach to addressing corporate crime, potentially limiting their preventive effect compared to conventional plea agreements or punishments (Raof, N.A et al. 2022; Cohen, 2015; Greenblum, 2005).

DPAs could raise concerns about injustice if the government views privilege waivers as a requirement for cooperation, thereby providing corporations with an incentive to shift blame onto employees to serve as scapegoats, as exemplified by the case of Baker Hughes Inc. in the US (Delaney, 2009). According to Reilly (2017), Delaney (2009), and Paulsen (2007), DPAs may lead to abuse of power and exploitation during negotiations, as the government often holds greater bargaining power. Additionally, they may lead the government to prioritise restructuring and regulating corporate governance rather than prosecuting corporate criminal offences. Meanwhile, Jake A. Nasar (2017) mentioned that DPAs are criticised for their ineffectiveness in holding companies and individuals accountable for their crimes. Moreover, they can be manipulated by those facing pressure or scrutiny (Coffee, Jr. 2022). Based on insights shared by former US Attorney General Dick Thornburgh (2007), it can be inferred that companies frequently feel obligated to comply with prosecutors' requests as stated in DPAs and NPAs, regardless of the onerous conditions, due to coercion and duress. Consequently, some scholars argue that judicial oversight and court approval of DPAs are crucial components of the system, as they help strike a balance between holding corporate wrongdoers accountable and upholding the rights of counsel and clients (Reilly, 2018; Bisgrove & Weekes, 2014; Delaney, 2009; Greenblum, 2005).

In summary, the potential benefits of DPAs include (i) avoiding prolonged investigations; (ii) ensuring corporate compliance; (iii) tailoring governance solutions; (iv) taking advantage of cost-saving; (v) warrant compensation for victims involved; (vi) circumvent any reputational damage; (vii) protect innocent parties; and (viii) balance between penalties and deterrence of the wrongdoing. While the drawbacks of DPAs include (i) avoiding legal proceedings; (ii) the possibility of insufficient penalties; (iii) risk of inadequate compliance measure; (iv) possibility of recurring offences; and (v) perception of leniency.

4 ASSESSING MALAYSIAN CORPORATIONS' READINESS FOR THE IMPLEMENTATION OF DPAS

4.1 Main principles in the Ministerial Guidelines of Adequate Procedures (MGAP) pursuant to section 17A(5) of the MACC Act

Following each principle on MGAP is the TRUST, which is the core component of MGAP:

- (a) Top-Level or executive commitment, by the Board and top management, to implement a full Anti-Bribery and Anti-Corruption (ABAC) Program with a zero-tolerance policy towards bribery and corruption;
- (b) Risk Assessment via the ABAC Program, which is a risk assessment that needs a regular review of the CO's risk exposure through an examination of all stakeholders, regions, and potential markets;
- (c) Control Measures which require the management to form or update control measures to reduce or eliminate risks of bribery; to the extent that the measures are adequate, documented, and sufficient to protect against the exposure.
- (d) Systematic Review, Monitoring & Enforcement to ensure that the commercial organisation must be audited periodically to ensure the effectiveness of control mechanisms and adjust to the evolution of risks, including risk assessment, policy review and procedures improvement through a series of internal and external audits;
- (e) Training & Communications to ensure that the ABC Program is successfully implemented through information dissemination, proper and adequate training for all employees and stakeholders, as well as educating them on its conditions and results.

According to the above TRUST principles, we found that a robust ABAC framework can be implemented only when the Board and senior management are committed to a zero-tolerance policy against bribery and corruption. This includes constant risk reviews of all interests and services, customised control measures based on the identified risks, appropriate controls consistent with those risks, and regular monitoring, including internal oversight and external review. Communicating the

program clearly and providing comprehensive training for employees and other relevant stakeholders will be critical to ensuring ongoing compliance, while reviewing and updating the process regularly in the face of changes in the risk landscape is also something that needs to be prioritised (Transparency International Malaysia, Guidance on Good Practice and Checklist for Adequate Procedures).

4.2 Main principles under ABMS

The Malaysian ABAC framework, aligned with ISO 37001, provides a structured framework to support organisations in preventing, detecting, and managing bribery risks. The principles governing ABMS closely align with the TRUST principles outlined in the MAGP, providing an additional defence for companies prosecuted under section 17A of the MACC Act. The ABMS also emphasizes— (a) top-level commitment which requires active engagement from top management in promoting a zero-tolerance stance on bribery; (b) risk assessment which requires continuous evaluation of bribery risks across operations and stakeholders; (c) control measures with the execution of internal controls and compliance procedures to manage and handle the identified risks; (d) training and communication with regular education and awareness programs for employees and stakeholders; (e) monitoring and auditing which require ongoing review and external audits to ensure the program's effectiveness; and (f) corrective action with mechanisms for addressing non-compliance and improving the system (Malaysian Standard, MS ISO 37001: 2016).

Implementing ABMS typically involves a comprehensive set of policies and procedures to meet the requirements outlined in the principles. In addition to the ABAC Policy, these policies include: Whistleblower Protection, Conflict of Interest, Code of Business Ethics, Due Diligence, and Gifts or No-Gifts. The subsequent topic will delve deeper into the top five companies, categorised by sector, listed on Bursa Malaysia, and establish the AP and ABMS.

4.3 The top five publicly listed companies on Bursa Malaysia, by sector, with AP and ABMS in place

It has been highlighted, based on the review of multiple DPA cases (which have been ruled in) and the courts and legislative contexts of the countries studied, that a fundamental factor for the court when granting a DPA is whether it is in the interests of justice and beneficial to society. One important factor in the judgment regarding the SFO-Sarclad, SFO-Airbus, and DPAs is, as reported by the courts, the corporation's compliance efforts before, during, and after the offence. The renewed focus on corporate compliance further underscores the need to protect the public interest, particularly given Malaysia's potential DPAs.

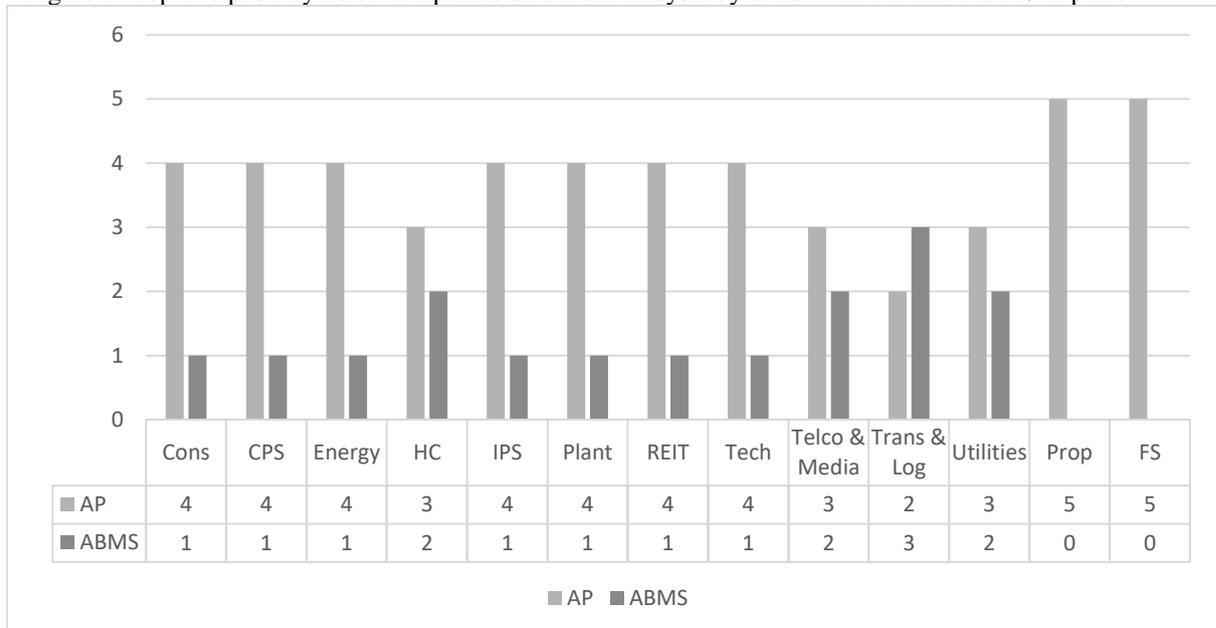
From this perspective, assessment of corporate readiness is critical. The findings from the top five companies listed on Bursa Malaysia provide insightful and helpful information on how well Malaysian companies have developed and implemented AP and ABMS. However, the adequacy of these measures as a defence under section 17A(4) of the MACC Act is ultimately a legal matter and depends on the court's interpretation of the provision. In evaluating these factors, the court will consider the scenarios, the specific case details, and all such documents and efforts of the companies. The critical aspect of the present research is assessing the preparedness of these firms to adopt corporate compliance mechanisms in compliance with regulations under section 17A(5) of the MACC Act. This assessment shows Malaysia's effectiveness in promoting corporate accountability, reducing risks to workers, shareholders, and the broader economy. It therefore increases public trust and promotes economic stability, consistent with globally best practices.

It is worth highlighting that the focus on the top five large corporations in Malaysia in this study is thoughtful, as these entities are vulnerable to corporate liability risks and are anticipated to uphold robust compliance measures. Despite the limited dataset, this exploratory study provides significant initial insights into the preparedness of Malaysian corporations to implement DPA. The outcome from this evaluation provides a basis for future, more comprehensive empirical studies.

As of 13 January 2025, there are 1,060 companies listed on Bursa Malaysia (Bursa Malaysia 2025). In this research, only the top five (5) companies within the thirteen (13)

sectoral listed on the Bursa Malaysia Sectorial Index will be examined (Bursa Malaysia 2024). Notably, the companies listed include Government-Linked Companies (GLCs), such as Tenaga Nasional Berhad (TNB), Bintulu Port Holdings Bhd., Petroliam Nasional Berhad (Petronas), Axiata Group Berhad, Telekom Malaysia Berhad, and Malaysia Airports Holdings Bhd. (Bursa Malaysia; Ministry of Finance, Malaysia). The graph below illustrates the level of corporate compliance among the top five companies listed on Bursa Malaysia, categorised by sector, concerning the implementation of AP and ABMS. The information regarding the establishment of AP and ABMS within these companies was meticulously examined on their official websites as of Jun 2025 and in their relevant annual reports.

Figure 1: Top five publicly listed companies on Bursa Malaysia by sector with AP and ABMS in place



Sources: respective companies' websites

The sectors included in this assessment, as depicted in Figure 2, are Construction (Cons); Consumer Products & Services (CPS); Energy; Healthcare (HC); Industrial Products & Services (IPS); Plantation (Plant); Real Estate Investment Trusts (REIT); Technology; Telecommunications & Media (Telco & Media); Transportation & Logistics (Trans & Log); Utilities; Properties (Prop); and Financial Services (FS).

The research concludes that all the top corporations (65 companies in Malaysia, as listed in Table 1) have already taken significant steps regarding corporate compliance

and ethical business practices, which is evident from the anti-bribery policies and frameworks of companies like Gamuda Bhd., Sime Darby Bhd. and Sunway Berhad that comply with the MACC Act and Guidelines on AP issued by the Minister in the Prime Minister's Department, Malaysia in accordance with section 17(5) of MACC Act. Some of these companies, such as TNB, Yinson Holdings Bhd., Top Glove Corporation Bhd., Sime Darby Plantation Bhd., KLCC Prop & Reits-Stapled Sec, Malaysia Pacific Industries, Maxis Berhad, Axiata Group Berhad, Malaysia Airports Holdings Berhad., Gas Malaysia Bhd., have already attained ABMS certification, indicating compliance with international anti-corruption standards. These well-documented approaches further indicate that introducing DPAs in Malaysia would not only be practical but would also build on and fortify existing company governance regimes.

In this regard, it is noted that Petroliam Nasional Berhad (Petronas) obtained Anti-Bribery Management System (ABMS) certification in 2017. However, it cannot be confirmed whether the Petronas subsidiaries listed among the top five publicly listed companies on Bursa Malaysia (Petronas Dagangan Bhd., and Petronas Gas Berhad) received similar ABMS certification. As the parent company and its subsidiaries are separate legal entities (Yihan Zang, 2024) and may operate under different business models, each Petronas subsidiary must establish its own ABMS and anti-corruption framework tailored to its specific business needs.

Table 1: List of the Top Five Public Listed Companies on Bursa Malaysia by Sector With Adequate Procedures And Anti-Bribery Management System (ABMS) In Place

SECTOR	NAME OF THE COMPANY	ADEQUATE PROCEDURES (BASED ON TRUST PRINCIPLES)	*ABMS CERTIFIED	NOTES
Construction	Gamuda Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	IJM Corporation Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Sunway Construction Group Berhad	YES	YES	Strong compliance culture
	WCE Holdings Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles

	Kerjaya Prospek Group Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
Consumer Products & Services	Nestle (M) Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	PPB Group Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Petronas Dagangan Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Sime Darby Bhd.	YES	YES	Strong in compliance culture
	Genting Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Energy	Dialogue Group Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Yinson Holdings Bhd.	YES	YES	Strong in compliance culture
	Bumi Armada Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Velesto Energy Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Dayang Enterprise Holding Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Health Care	IHH Healthcare Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Hartalega Holdings Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Top Glove Corporation Bhd.	YES	YES	Leading in compliance, as it became the first private company certified with ABMS in 2017
	KPJ Healthcare Bhd.	YES	YES	Strong in compliance culture
	Kossan Rubber Industries Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Industrial Products & Services	Petronas Chemicals Group Bhd.	YES	YES	Strong in compliance culture
	Press Metal Aluminium Holding Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles

	Sunway Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Hap Seng Consolidated Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Malayan Cement Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
Plantation	Sime Darby Plantation Berhad	YES	YES	Strong in compliance culture
	IOI Corporation Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Kuala Lumpur Kepong Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	United Plantations Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Batu Kawan Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Real Estate Investment Trusts	KLCC Prop&Reits- Stapled Sec	YES	YES	Strong in compliance culture
	IGB Real Estate Investment Trust	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Pavilion Real Estate Investment Trust	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Sunway Real Estate Investment Trust	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Axis REITS	YES	NA	ABAC policy and procedures meet the TRUST Principles
Technology	Inari Amerton Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	MY E.G. Services Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Malaysian Pacific Industries	YES	YES	Strong in compliance culture
	Vitrox Corporation Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles

	Frontken Corporation Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Telecommunications & Media	CelcomDigi Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Maxis Berhad	YES	YES	Strong in compliance culture
	Axiata Group Berhad	YES	YES	Strong in compliance culture
	Telekom Malaysia Bhd.	YES	YES	Strong in compliance culture
	Time Dotcom Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
Transportation & Logistics	MISC Bhd.	YES	YES	Strong in compliance culture
	Malaysia Airports Holdings Bhd.	YES	YES	Strong in compliance culture
	Westports Holdings Bhd.	YES	YES	Strong in compliance culture
	Bintulu Port Holdings Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Hextar Technologies Solutions Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
Utilities	Tenaga Nasional Bhd.	YES	YES	Strong in compliance culture
	YTL Power International Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	YTL Corporation Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Petronas Gas Bhd.	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Gas Malaysia Berhad	YES	YES	Strong in compliance culture
Property	IOI Properties Group Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Sime Darby Property Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	UEM Sunrise Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles

	UOA Development Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles
	SP Setia Bhd	YES	NA	ABAC policy and procedures meet the TRUST Principles
Financial Services	Malayan Banking Bhd	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Public Bank Bhd	YES	NA	ABAC policy and procedures meet the TRUST Principles
	CIMB Group Holdings Bhd	YES	NA	ABAC policy and procedures meet the TRUST Principles
	Hong Leong Bank Bhd	YES	NA	ABAC policy and procedures meet the TRUST Principles
	RHB Bank Berhad	YES	NA	ABAC policy and procedures meet the TRUST Principles

*NA – Not Available

Sources: respective companies' websites

It is worth noting that, commencing in 2026, all construction companies in Malaysia will be required to obtain ABMS certification if they intend to bid for Government projects valued at RM100 million or more (The Star 2024). Although it is not a mandatory requirement under Malaysian law, this initiative demonstrates the Government of Malaysia's commitment to combating corruption and improving Malaysia's ranking in the CPI.

5 PROPOSED STRATEGIES FOR THE GOVERNMENT OF MALAYSIA

In the event of the implementation of DPA in Malaysia, should the relevant corporations face corruption charges under section 17A of Act 694, the court may primarily consider the public interest and the companies' dedication to addressing corruption by establishing AP. Given that there are several companies are publicly listed on Bursa Malaysia, the collateral effects of prosecuting these entities for any future misconduct could impact not only their employees but also public investors, potentially affecting the broader Malaysian economy, as had happened to the accounting firm, Arthur Anderson in the US (Mike Koehler, 2015). In this case, the company was convicted of obstruction of justice for shredding documents related to its audit of Enron. As a result, it

faced collateral consequences, including the revocation of its certified public accounting license and the layoff of thousands of employees due to its 2002 business closure. Despite the Supreme Court's unanimous 2005 reversal of Arthur Andersen's conviction, the immediate damage from the criminal conviction had already occurred. The company had only 200 employees remaining after the Supreme Court decision, a significant decrease from the 28,000 employees in 2002 (Donald L. Buresh 2023).

Building on DPA frameworks implemented in the studied countries, as well as the data on the top five listed companies in Bursa Malaysia with which AP and ABMS are applied, the following strategies are suggested for deploying DPAs in Malaysia's legal system:

- **Review the current legislation:** the current legislation, such as the MACC Act, shall be evaluated to identify gaps and areas where DPAs could be integrated, ensuring compatibility with Malaysia's legal framework. In this sense, the experience across the countries studied in DPAs can provide insightful lessons for Malaysia. As an example, Malaysia might look at the United Kingdom's DPA statute under the Crime and Courts Act 2013 because there are similarities between section 7 of the United Kingdom Bribery Act 2010 and section 17A of the MACC Act, holding a commercial organisation liable if any associated person commits bribery or corruption (Serious Fraud Office, Standard Bank PLC).
- **Judicial Oversight:** An assessment should also evaluate the potential benefits of augmenting judicial oversight in DPA proceedings. Judicial intervention may enhance accountability, transparency, and compliance with the law, thereby strengthening public confidence in the DPA framework (Frederick T. Davis 2022). A lack or negligible judicial review of DPAs could erode the public interest and undermine the separation of powers (Vita & Vozza, 2024). In this regard, the policymaker shall also revise the Criminal Procedure Code to empower the court accordingly.
- **Corporate compliance and ethical business practices:** It is essential to help companies with DPAs adopt strong corporate compliance programs proactively. Compliance is facilitated by proactive initiatives that not only foster engagement with DPA mandates but also act as deterrents to future violations of the law and

drive a culture of corporate ethics (Cristie Ford & David Hess, 2009; Nitish Upadyaya et al., 2024).

- ABMS as a tool for compliance program: DPA mandates corporations to design a compliance programme and hire an external monitor to have its DPA remain a type of enforcement, which involves both enforcement of compliance and rehabilitation of individuals. For that, ABMS could be one of the main corrective measures to address wrongdoing and prevent further corporate corruption (Januarsyah et al., 2020).

To ensure the effective implementation of Deferred Prosecution Agreements (DPAs) in Malaysia, the framework should incorporate the key features identified above, as reflected in international practice. Additionally, the Malaysian government could also consider the inclusion of independent compliance monitors, who are highly qualified, possess strong integrity, and are widely respected, as one of the salient terms in DPAs (Schwartz, Akin & O'Connell 2024). Enhancing transparency in the monitorship process could significantly improve its effectiveness in restoring public trust. Improved transparency would help ensure companies fulfil their obligations under the DPA, resulting in enduring improvements in corporate governance and ethical standards (Sincox, 2023). The involvement of independent compliance monitors would further strengthen public confidence in the DPA regime by providing ongoing oversight of corporate remediation efforts and ensuring sustained compliance with agreed obligations.

6 CONCLUSION

The prospective introduction of Deferred Prosecution Agreements (DPAs) in Malaysia represents a significant development in the ongoing reform of corporate accountability and ethical corporate governance. Drawing on comparative insights from the United States, the United Kingdom, Canada, and Singapore, this study demonstrates that DPAs constitute a viable regulatory mechanism for addressing corruption in corporate governance while simultaneously reducing the financial and social costs associated with criminal prosecution. With the compliance frameworks of leading corporations on the table, Malaysia has the regulatory readiness to implement DPAs in a ready regulatory environment. To succeed, DPAs need to be relevant to Malaysia's

peculiar legal and cultural settings, with adequate focus on judicial scrutiny, stringent corporate compliance requirements, and dedicated, independent compliance officers. Properly structured, DPAs have the potential not only to enhance transparency and accountability but also to cultivate a sustained culture of integrity and ethical business conduct. Malaysia could further increase its commitment to DPAs through adoption, fight corruption, instil confidence in corporate governance and foster long-term social and economic development. Decisive action by policymakers and corporations is required to implement these recommendations, which would make Malaysia a regional paragon of ethical corporate practices.

7 DECLARATION OF GENERATIVE AI AND AI-ASSISTED TECHNOLOGIES IN THE MANUSCRIPT PREPARATION PROCESS

During the preparation of this work the author(s) used CHATGPT and Quillbot in order to improve language clarity and readability of this manuscript. After using this tool/service, the author(s) reviewed and edited the content as needed and take(s) full responsibility for the content of the published article.

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Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

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