

**The Star April 2020**

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## 1. Lokman's appeal rescheduled to May 13



PUTRAJAYA (Bernama): The Court of Appeal has fixed May 13 to hear former Umno supreme council member Datuk Lokman Noor Adam's appeal to set aside the leave obtained by the Attorney General (AG) to initiate committal proceedings against him for allegedly intimidating a witness in the 1Malaysia Development Bhd (1MDB) trial.

The Attorney General's Chambers received a letter dated April 2 from the court notifying that the hearing date has been rescheduled to May 13.

The appellate court had earlier set March 31 for hearing of Lokman's appeal.

On Jan 14, this year, the High Court in Kuala Lumpur dismissed Lokman's application to set aside the leave obtained by former Attorney General Tommy Thomas to initiate committal proceedings against him for allegedly intimidating a witness in Datuk Seri Najib Razak's 1MDB case.

On Oct 22 last year, the High Court granted leave for the Attorney General to initiate committal proceedings against Lokman for contempt of court acts perpetrated on two occasions on Sept 25, last year.

In the application, the Attorney General sought an order for Lokman to be committed to prison or be fined for his actions.

Last month, the Court of Appeal granted Lokman a stay of the committal proceedings hearing pending disposal of his appeal in the Court of Appeal.

## 2. SRC trial: Oral submission dates rescheduled to May 18

KUALA LUMPUR: The submission dates in the SRC International Sdn Bhd trial involving former prime minister Datuk Seri Najib Razak have been rescheduled in light of the movement control order (MCO).

Deputy registrar Mahyudin Mohmad Som confirmed that hearing dates for oral submission have been fixed for three days starting May 18.

"The previous dates for oral submission that were fixed before (May 13 and May 15) have been vacated," he said when contacted on Friday (April 10).

The court also ordered the defence to submit its written submission by April 28 and the prosecution to reply by May 12.

Mahyudin said the new dates were fixed following a request by the defence who sought a two-week extension to file in their submission in view of the MCO.

"The prosecution had no objection to the request. Justice Mohd Nazlan Mohd Ghazali allowed the request but gave an extension of one week instead," he added.

The defence trial, which started on Dec 3 last year, lasted 33 days with 19 witnesses taking the stand.

Najib, 67, was the first witness to testify in the defence trial.

Other high profile witnesses were former foreign minister Datuk Seri Anifah Aman, former minister at the prime minister's department Datuk Seri Jamil Khir Baharom, former attorney general Tan Sri Mohamed Apandi Ali and former MACC chief commissioners Tan Sri Dzulkefli Ahmad and Latheefa Koya.

A total of 807 exhibits were tendered in court.

The prosecution had earlier called 57 witnesses to the stand.

Najib is facing seven charges - three for criminal breach of trust, one for abuse of power and three for money laundering involving SRC International funds totalling RM42mil.

### **3. US returns RM1.3bil of 1MDB money to Malaysia**

WASHINGTON (AFP): The US Department of Justice (DoJ) says that it had sent US\$300mil (RM1.3bil) in funds stolen in the 1MDB corruption scandal to the Malaysian government that had been laundered through the global financial system.

Combined with other funds handed over nearly one year ago, DoJ said it has now returned or helped Malaysia recover more than US\$1bil (RM4.33bil) in funds and assets lost in the scam.

"The repatriation of these stolen funds to the citizens of Malaysia is the result of the tireless efforts of prosecutors and federal agents to prevent foreign kleptocrats and their associates from using the United States as a playground where they can enjoy the fruits of their pilfered wealth," said US Attorney Nick Hanna in a statement.

"The amount of money stolen from the people of Malaysia is staggering, and we have been relentless in recovering assets that always should have been used for their benefit."

The money was a part of the more than US\$4.5bil that (RM19.47bil) US investigators say was looted from the state-owned investment firm, with alleged help from ex-prime minister Najib Razak and his inner circle.

The US says that from 2009 to 2015, high-level officials of 1MDB and businessman Low Taek Jho, or Jho Low, siphoned off the billions originally meant to fund state investments.

Low used a lot of the money to buy luxurious homes and top-level art and invest in Hollywood movies, including the Martin Scorsese hit Wolf of Wall Street.

DoJ seized most of Low's assets and has been slowly liquidating them for return to Malaysia.

**4. US returns another US\$300mil of recovered 1MDB funds to Malaysia**



**"The payment reflects the United States' continuing commitment to the Malaysian people to hunt down, seize, forfeit, and return assets that were acquired in connection with this brazen scheme," Assistant Attorney General Brian A. Benczkowski of the agency's Criminal Division said.**

WASHINGTON: The U.S. Department of Justice on Tuesday said it has repatriated another \$300 million to Malaysia in recovered money misappropriated from 1Malaysia Development Berhad, or 1MDB..

The government of former Malaysian Prime Minister Datuk Seri Najib Razak set up the 1MDB fund in 2009. The DOJ estimated \$4.5 billion was siphoned out of Malaysia by high-level fund officials and their associates between 2009 and 2014 in a scandal that has also embroiled Goldman Sachs Group Inc

The funds were laundered through financial institutions in several jurisdictions, including the United States, Switzerland, Singapore and Luxembourg.

The Justice Department last year said it had recovered \$1 billion in assets associated with the corruption scandal, its largest-ever civil forfeiture.

Some of those funds have already been returned to Malaysia, though Reuters reported last month that the United States had delayed the return of the latest installment.

The funds were originally scheduled to be returned in February but were delayed first due to technical issues and then because of uncertainty over political upheaval in Kuala Lumpur.

The latest repatriation brings the total the United States has returned or assisted Malaysia in recovering to more than \$600 million (2.6 billion ringgit), the DOJ said in a statement.

"The payment reflects the United States' continuing commitment to the Malaysian people to hunt down, seize, forfeit, and return assets that were acquired in connection with this brazen scheme," Assistant Attorney General Brian A. Benczkowski of the agency's Criminal Division said in the statement.

Assets recovered included high-end real estate in Beverly Hills, New York and London and tens of millions of dollars in business investments made by fugitive financier Low Taek Jho, or Jho Low, allegedly using funds traceable to misappropriated 1MDB money.

The Department of Justice's efforts to recover funds appropriated from Malaysia's 1MDB are continuing, the agency said.

5. PM: Another RM1.3bil in 1MDB funds returned to Malaysia, RM2.38bil received from US govt to date



**PUTRAJAYA:** Malaysia has received another US\$300mil (RM1.3bil) of 1MDB funds from the United States government, which makes it a total of US\$620mil (RM2.38bil) returned to date.

Prime Minister Tan Sri Muhyiddin Yassin said this represents funds recovered from asset seizures related to 1MDB under the US Department of Justice's (DoJ) Kleptocracy Asset Recovery Initiative.

Muhyiddin said that on Oct 30 last year, fugitive businessman Low Taek Jho, also known as Jho Low, had reached a settlement with the DoJ pertaining to the numerous forfeiture claims it filed against assets he had purchased using 1MDB monies.

"The US\$300mil represents some of the assets which had been forfeited and later sold. It also includes proceeds from 1MDB-linked assets that were given up or forfeited by individuals linked to Jho Low.

"The government is pleased to share that so far, inclusive of this most recent tranche of US\$300mil, a total of US\$620mil (RM2.38bil) of 1MDB monies, in the form of sales of proceeds or assets, have been returned," said the Prime Minister in a statement on Wednesday (April 15).

He said the process to sell Low's remaining assets under the DoJ consent forfeiture judgement is ongoing.

"I would like to express my gratitude to the US government, particularly the US Embassy in Kuala Lumpur, on their excellent assistance and cooperation in facilitating the return of the US\$300mil.

"I would also like to commend the Finance Minister and the Attorney General for their role in the negotiation process.

"1MDB asset recovery efforts are ongoing, and the government will continue to work with the United States, the DoJ and other governments to recover and repatriate more 1MDB monies in the future," he said.

In a statement on Wednesday, the Finance Ministry said of the other US\$320mil received previously, US\$57mil were proceeds of a settlement with Red Granite Pictures while the other US\$137mil was from the sale proceeds of Jho Low's interest in the Park Lane Hotel and US\$126mil from the judicial sale of the luxury yacht, Equanimity.

These amounts were credited in March 2019, April 2019 and Dec 2019 respectively.



**6. Committal proceeding against Lokman Adam initiated by former AG to proceed**



**Umno supreme council member Datuk Lokman Noor Adam**

KUALA LUMPUR (Bernama): The committal proceeding against former UMNO Supreme Council member Datuk Lokman Noor Adam, which was initiated by former Attorney-General Tan Sri Tommy Thomas, will proceed although Thomas has stepped down from the post.

Deputy public prosecutor Mohamad Mustaffa P. Kunyalam said the Attorney General's Chambers (AGC) will continue with the case as the action was made on behalf of the AGC's office and not in Thomas' personal capacity.

"As of now, the instruction is to proceed with the case. In fact, today (April 17) was fixed to hear the committal proceeding against Lokman for allegedly intimidating a witness in the 1Malaysia Development Bhd (1MDB) trial.

"However, it was vacated due to the extension of the movement control order (MCO) by the government... a new date will be fixed by the High Court after MCO ends," he said.

The witness referred to is former Prime Minister Datuk Seri Najib Tun Razak's former special officer, Datuk Amhari Efendi Nazaruddin.

Thomas, 68, who was appointed by then prime minister Tun Dr Mahathir Mohamad on June 4, 2018, for a two-year term to replace Tan Sri Mohamed Apandi Ali, has resigned from the post on Feb 29 this year.

On March 6, this year, Federal Court Judge Tan Sri Idrus Harun was appointed to replace Thomas as the AG.

Thomas initiated the committal proceeding against Lokman seeking an order for Lokman to be committed to prison or be fined for his action.

According to Thomas, on Sept 25 last year, Lokman had uttered words in a video interview, constituting an express or implied threat against Amhari Efendi, for having given evidence in Najib's trial at the High Court.

Thomas said that on the same day, Lokman lodged a police report against Amhari Efendi, who was the eighth prosecution witness, in respect of the evidence given by him at the former prime minister's trial.

The object or purpose of the respondent's act, said the AG, was to harass and intimidate Amhari Efendi, other witnesses and any potential witnesses who may come forward to give evidence against Najib in the 1MDB trial.

**7. SC: Only 59% of listed companies have anti-corruption policies**



**As part of its anti-corruption measures for the year, the SC said it had set up the SC Anti-Corruption Committee in April 2019 to identify improvement opportunities to strengthen governance, integrity and anti-corruption measures within the SC itself.**

PETALING JAYA: A review undertaken by the Securities Commission (SC) had found that only 59% of listed companies had anti-corruption policies in place, and the majority of these policies were in need of enhancements.

In its annual report, the SC said the review had been undertaken last year in light of the corporate liability provision (Section 17A3) in the Malaysian Anti-Corruption Commission Act 2009, which comes into force on June 1, 2020.

It said the review found that the majority of these policies required enhancements to bring them in line with the Guidelines on Adequate Procedures issued by the Prime Minister's Department.

As part of its anti-corruption measures for the year, the SC said it had set up the SC Anti-Corruption Committee in April 2019 to identify improvement opportunities to strengthen governance, integrity and anti-corruption measures within the SC itself.

The committee is chaired by the chairman of the SC and its members comprise representatives from its board and management.

The committee is responsible for overseeing the implementation of the SC's initiatives under the National Anti-Corruption Plan (NACP) (2019-2023).

Among the mandatory initiatives under the NACP is for all public institutions to develop and implement an Organisational Anti-Corruption Plan (OACP), which is a policy document that addresses governance, integrity and anti-corruption issues within an organisation.

The SC undertook a planning exercise to implement the OACP, which led to the setting up of the OACP Development Team in November last year.

The OACP is scheduled to be in place in the first half of 2020, it said.

The SC added that it will also be conducting an internal corruption risk assessment with the assistance of the Malaysian Anti-Corruption Commission (MACC) in 2020.

Findings of the SC's review on anti-corruption policies of listed companies and the SC's action plan to support the NACP were presented to the Cabinet Special Committee on Anti-Corruption, chaired by the then Prime Minister, Tun Dr Mahathir Mohamad in July 2019.

#### 8. Roger NG's 1MDB bond cases to be tried at KL High Court



KUALA LUMPUR (Bernama): The High Court here will hear the cases of former Goldman Sachs International banker, Roger Ng Chong Hwa, who was charged with four counts of abetting Goldman Sachs pertaining to the sale of guaranteed notes and bonds belonging to a 1Malaysia Development Berhad (1MDB) subsidiary amounting to US\$6.5bil (RM28.5bil).

Deputy public prosecutor Zaki Asyraf Zubir, however, said that the court had yet to fix the trial dates for the cases.

When contacted, he said the prosecution had applied to transfer the cases from the Sessions Court to the High Court.

"The prosecution had made the application at the High Court before Justice Mohamed Zaini Mazlan and on Feb 26 this year, the judge allowed our application," he said.

The prosecution applied for the cases to be transferred due to, among others, the novel and the complexity of the facts involved.

"These cases involve Section 179(c) of Capital Markets and Services Act 2007 (CMSA) and other provisions of the CMSA wherein questions of law of unusual difficulty are likely to arise.

"Due to novel and difficult issues of law surrounding these provisions, and the complexity of the facts involved, it is expedient for the ends of the justice for this matter to be tried before the High Court," the prosecution said.

On Dec 19, 2018, Ng was charged at the Sessions Court here with four counts of abetting Goldman Sachs pertaining to the sale of guaranteed notes and bonds belonging to a 1MDB subsidiary, amounting to US\$6.5bil (RM28.5bil), by omitting material facts and making false statements.

He was alleged to have committed the offences at the 1MDB office, at Level 8, Menara IMC, No. 8, Jalan Sultan Ismail here between March 19, 2012, and Nov 11, 2013, and was charged Subsection 370(c) of Capital Markets and Services Act 2007, with a punishment of up to 10 years' imprisonment and a fine not less than RM1mil upon conviction.

Ng, 47, however, pleaded not guilty to all the charges.

On Feb 24, 2020, UK-based Goldman Sachs International Ltd and its Asian entities, Goldman Sachs (Asia) LLC and Goldman Sachs (Singapore), pleaded not guilty at the High Court to charges on the sale of the same 1MDB bonds.

A representative of Goldman Sachs, Ng Keng Leong made the plea after all the charges were read out before Justice Mohamed Zaini and the judge has set the hearing to begin on Nov 9 this year.

Asked whether Ng's case to be jointly tried with the case of Goldman Sachs, Zaki Asyraf replied: "most probably".

In May last year, Ng was extradited to the US to face criminal charges by the US Department of Justice in relation to the 1MDB scandal.

**9. JOHOR BARU: A mobile shop owner has been detained for allegedly offering RM500 in bribes to a Kluang Municipal Council (MPK) enforcement officer.**

The Malaysian Anti-Corruption Commission (MACC) arrested the 36-year-old suspect, after he went to the Kluang MACC office to help with investigations at around 2pm on Monday (April 20).

Investigations revealed that the suspect made the offer as an inducement to avoid getting a RM1,000 compound after he ignored a second notice for operating his business during the movement control order (MCO).

The suspect has since been freed on bail after the MACC recorded his statement and the case is being investigated under Section 17(b) of the MACC Act 2009.

MACC investigations director Datuk Norazlan Mohd Razali confirmed the businessman's arrest.

"MACC would like to remind all quarters not to conduct any bribery activities as we would be taking action on any complaints we received even during the MCO," he said when contacted here on Tuesday (April 21).

**10. And now we have attempted MCO bribes: MACC nabs trader**

JOHOR BARU (Bernama): The Malaysian Anti-Corruption Commission (MACC) has detained a trader for allegedly offering a bribe to a Kluang Municipal Council (MPK) enforcement assistant as an inducement not to take action against him for violating the movement control order (MCO).

The 36-year-old man who sells communications equipment was arrested at the Kluang MACC office at 2pm on Monday (April 20) to assist in an investigation into an alleged bribe amounting to RM500.

He was later released on bail after his statement was taken, and the case is being investigated under Section 17 (b) of the MACC Act 2009.

Earlier, the man was issued a compound of RM1,000 by the MPK for ignoring the second notice under Section 109 of the Local Government Act 1976 by operating his business during the MCO period.

MACC Investigation Division director Datuk Norazlan Mohd Razali confirmed the arrest when contacted on Tuesday (April 21).

He also urged all parties not to engage in any corrupt activities as the MACC will take action against any complaints of corruption received during the MCO period.



## 11. MACC: Minding the gap

ACCORDING to the annual Deloitte Asia Pacific Regulatory Outlook, the management of risks and behaviours of employees and persons acting on behalf of the organisation has been viewed as a key area of regulatory focus for three consecutive years.

Prosecutors and regulators across the region are becoming increasingly active in enforcing anti-bribery and corruption legislation, with the number of enforcement actions and amount of regulatory fines and penalties increasing significantly over the last few years.

In Malaysia, the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) was amended in 2018 to incorporate Section 17A on corporate liability for corruption. In this regard, any director, controller, officer, partner or manager of a commercial organisation can be personally liable for an offence committed by the organisation unless the individual can prove that the offence was committed without his consent, and that he had exercised the necessary due diligence to prevent the commission of the offence.

In the event a commercial organisation is found liable under Section 17A of the MACC Act, the organisation must prove that adequate procedures were in place to prevent its employee(s) and/or associated persons from undertaking corrupt practices in relation to its business activities. In simplicity, a commercial organisation is required to have in place an anti-bribery and corruption (AB&C) programme.

The foundation of a holistic anti-bribery and corruption (AB&C) programme is a corruption risk assessment, a process to identify, analyse, assess, and prioritise the internal and external corruption risks of the organisation.

The AB&C programme should focus on the specific risks of bribery and corruption inherent to the organisation, of which derives from the nature, scale and geographies of the operations, and the degree of business dealings with public officials and third parties. In line with understanding its risks, they must then set their risk appetite in regards to bribery and corruption, which is amount of risk they are willing to tolerate in their business operations.

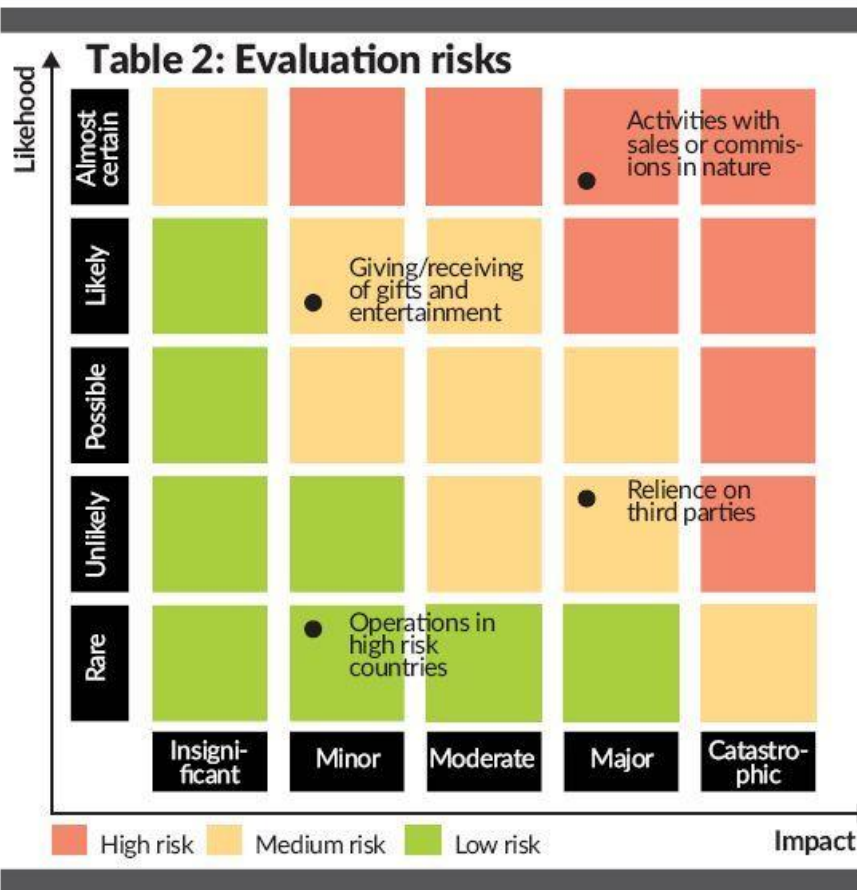
The identification and categorisation of bribery and corruption risks is the first step in the risk assessment framework. This process ensures that all business activities have been considered, with regards to their probability of exposing the organisation to bribery and corruption risk. While there is no universally agreed categorisation of bribery and corruption risk, the UK's Ministry of Justice Guidance has identified five risk categories in the risk identification process: (**Table 1**)

**Table 1: Bribery and corruption risks**

| Risk category | Country risk  | Sectoral risk   | Transaction risk  | Business opportunity risk   | Business partnership risk   |
|---------------|---|---|---|---|---|
| Definition    | Risk derived from the location of business activities   | Risk derived from the activities that the business operating in that sector undertake   | Risk derived from activities involving some form of economic exchange between counterparties  | Risk arising from a complex and high-value transaction with unclear commercial rationale  | Risk derived from the (a) nature of an outsourced activity; (b) association of a third party  |
| Consideration | <ul style="list-style-type: none"> <li>&gt; How strong is the enforcement of the anti-corruption legislation?</li> <li>&gt; What is the Corruption Perception index (CPI) of the country?</li> <li>&gt; Is there a prevalence of requests to make 'grease' or 'facilitation' payments to expedite processes?</li> </ul> | <ul style="list-style-type: none"> <li>&gt; Is there a high degree of government interaction?</li> <li>&gt; Is the nature of business prevalent to high value, complex and/or long term contracts?</li> <li>&gt; Is there a requirement to operate in countries associated with high levels of corruption?</li> </ul> | <ul style="list-style-type: none"> <li>&gt; Is there a high degree of transactions with government officials/high risk counterparties?</li> <li>&gt; What is the objective and subject matter of the transaction?</li> <li>&gt; What is the degree of transparency of the transaction?</li> </ul> | <ul style="list-style-type: none"> <li>&gt; Does the project involve many contractors or intermediaries?</li> <li>&gt; Is the project or transaction undertaken at market prices?</li> <li>&gt; Is there a clear legitimate objective for the project?</li> </ul> | <ul style="list-style-type: none"> <li>&gt; What is the nature, track record, reputation of the associated third party?</li> <li>&gt; Is there an established agreement in place to determine the level of day-to-day controls of each party?</li> <li>&gt; Is the organisation held liable for acts of bribery of the third party/business partner?</li> </ul> |

A risk evaluation process is typically put into place after identifying the types of bribery and corruption risk, using the "likelihood" and "impact" method. Considerations for the likelihood of a risk occurring is usually driven by the frequency of a high risk activity occurring, or the value involved in the same activity. The higher the frequency of occurrence or the higher the value involved, the higher the likelihood of the risk occurring.

Impact, on the other hand, is measured by the level of effect or consequence arising from the occurrence of the risk event. Some considerations to measure impact include size of legal fines, severity of reputational damage, and repercussions to the business profitability. (Table 2)



With a comprehensive understanding of the organisation's inherent risk rating for bribery and corruption, the next step in the risk assessment process is to identify anti-bribery and corruption controls to manage the risks. In the event a particular inherent risks is not fully mitigated by the existing controls in place (i.e. "residual risk"), a remediation plan must be developed to address the gap(s) and to manage the risk appropriately. The controls in place should also be tested periodically, to ensure its effectiveness.

The organisation should also monitor these risks and controls in an organised manner, with regular reports to the board and senior management. A common monitoring approach is key risk indicator "KRI". This is a list of indicators or metrics that are used to measure risks that the organisation is exposed to. KRIs are usually measured against thresholds, which should be set in line with the organisation's risk appetite as mentioned above. (Table 3)

### Table 3: Bribery and corruption risk assessment approach

| Risk identification  | Risk assessment  | Control identification  | Control assessment   | Action plan creation   | Controls effectiveness testing  | KRI monitoring  |
|--|--|---|--|--|---|---|
| To identify the relevant bribery and corruption-related risks in line with the organisation's business activities. | To assess and rate the identified risks affecting the operations according to its likelihood and impact. | To identify existing controls in place to manage the identified risk areas. | To evaluate the effectiveness of the anti-bribery and corruption control design in managing the identified risk areas. | To outline corrective action plans to further address and mitigate the residual risk to an acceptable level. | To periodically perform testing on the existing controls to ascertain the adequacy and effectiveness. | To monitor and report the list of key risk indicators against the established thresholds in line with the organization's risk appetite. |

Bribery and corruption risk assessment is recommended to be performed on an annual basis, or at minimum once every three years.

This ensures that new risks are identified, in line with the constant change of business environment and regulatory landscape.

As part of the organisation's AB&C programme, the risk assessment performed should be independently reviewed and challenged. This ensures that it is comprehensive, accurate, and commensurate with the business nature. This review should be conducted by an independent party who is not involved in performing the risk assessment, such as the internal audit function.

The current era of technological change is dramatically altering the ways in which organisations manage their businesses and risks. Commercial organisations may choose to integrate technology with the existing risk management process, including the AB&C risk assessment. An emerging tool in Malaysia is Deloitte's Enterprise Risk Assessment tool, a web-based, standardised and automated tool that enables consistent risk assessments across an organisation, covering enterprise-wide risk, regulatory compliance risk, and AB&C risk. (Table 4)

**Table 4: Deloitte Enterprise risk assessment tool**

Custom-designed by Deloitte risk assessment specialists, former regulators, and law enforcement officers, based on the understanding of the risks and complexities of Financial Crime Compliance and the application of advanced analytics

One of the tool developed by the Cognitive Analytics Solution Centre (CASC) based on the S.M.A.R.T Risk Management Principles ("Sense", "Mitigate", "Adapt", "Remodel", "Transform")

**Configurable setting for inherent risk, controls and residual risk**

> Provides a platform to design and implement an enterprise-wide risk assessment using both quantitative and qualitative measures to assess the risk based on the Institution's products a services, customers and employees, vendors and suppliers, channels, geographies etc.

**Data collection via online assessments and status tracking**

> Supports the entire data collection process through online surveys  
> Manages assessments end-to-end like a case management workflow process from assignment to completion and provides tracking by legal entity, division, region and enterprise-wide.

**Heatmaps and reporting**

> Enables a single point of aggregation at each level of the organization (e.g., product line, business line, legal entity, country, or region) and facilitates aggregated reporting to support a holistic view of enterprise risk and strategic decision making

Source: MACC

**A flexible and scalable tool that can be configured to meet client specific needs**

|   |   |  |   |
|---|---|--|---|
|  | Define customised risk factors                |  | Manage users and role settings            |
|  | Select applicable control assessment criteria |  | Launch online surveys for data collection |
|  | Scale assessments across the group            |  | Get instant visual heatmap results        |
|  | Set thresholds and weights                    |  | Generate custom reports                   |