



# LIABILITI KORPORAT Seksyen 17A **ASPRM 2009**

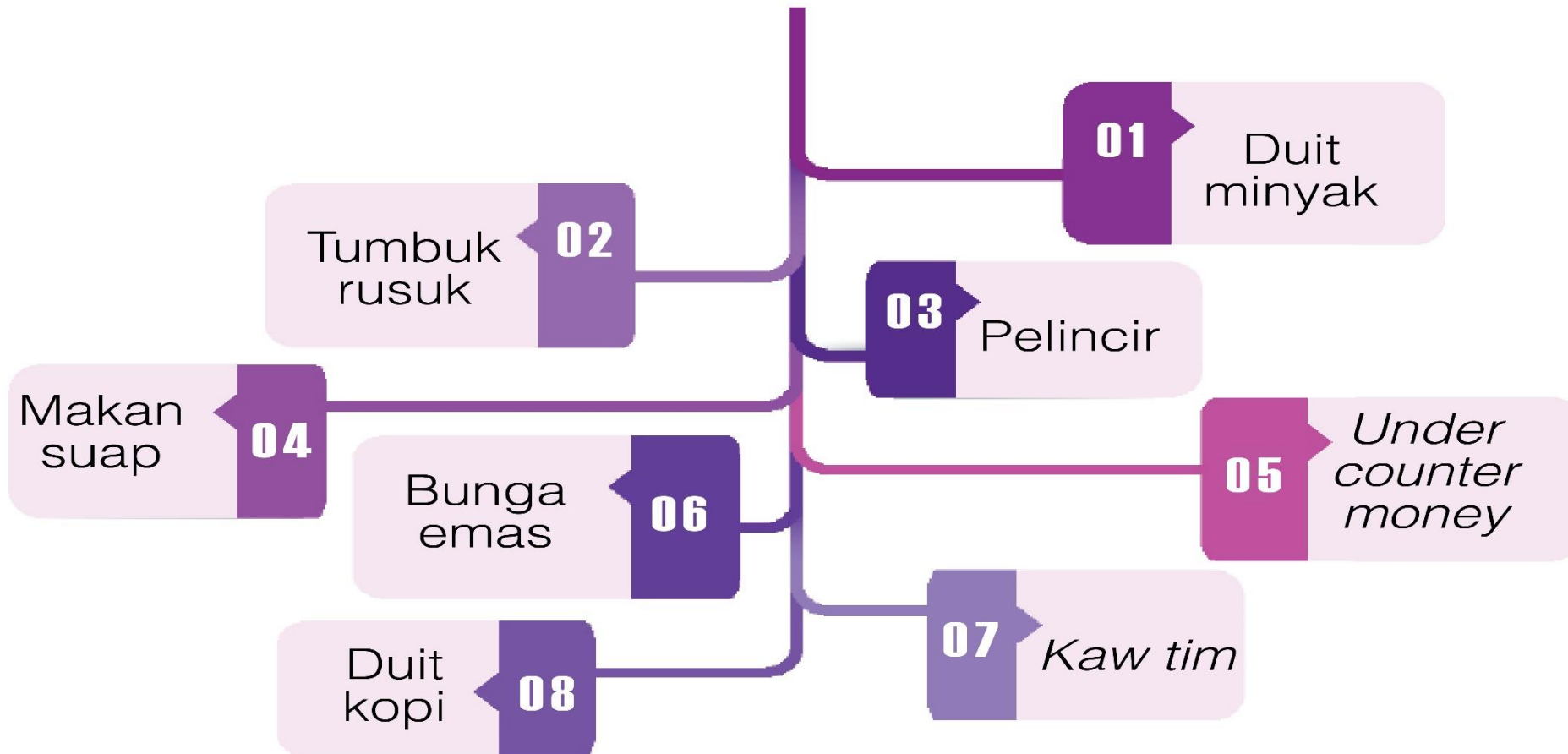
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Suruhanjaya Pencegahan  
Rasuah Malaysia (SPRM)

# RASUAH

Penerimaan atau pemberian **suapan** (rasuah) bertujuan supaya seseorang itu melakukan sesuatu perbuatan yang berkaitan dengan tugas rasminya.

# Di MALAYSIA, rasuah juga dikenali dengan **nama-nama** berikut:



# BENTUK RASUAH



**Meminta/  
Menerima  
Rasuah**

**1**

**Menawar/  
Memberi  
Rasuah**

**2**

**AKTA  
SURUHANJAYA  
PENCEGAHAN  
RASUAH  
MALAYSIA 2009**

**3**

**Membuat  
Tuntutan  
Palsu**

**Menggunakan  
Kedudukan/  
Jawatan Untuk  
Suapan**

**4**

# PENDAHULUAN LIABILITI KORPORAT

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- Merupakan peruntukan baharu dalam Akta SPRM 2009.
- Seksyen 17A Akta SPRM 2009 - kesalahan rasuah oleh organisasi komersial
- **Diluluskan** oleh Parlimen pada 5 April 2018 & berkuatkuasa pada 1 Jun 2020

## Seksyen 17A Akta SPRM 2009

# 3

objektif

- Menggalakkan aktiviti perniagaan dijalankan secara **jujur** dan bebas daripada rasuah.
- Menggalakkan organisasi komersial melaksanakan **langkah pencegahan** rasuah dalam organisasi.
- Mempromosikan **tadbir urus baik** dan pematuhan undang-undang pencegahan rasuah.

# **NEGARA LAIN YANG MEMPUNYAI PERUNTUKAN INI**

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- Seksyen 7, UK Bribery Act 2010
- Foreign Corrupt Practices Act of 1977 (FCPA)



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# LIABILITI KORPORAT

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Syarikat atau organisasi komersial dikenakan hukuman kerana membenarkan pegawai dan kakitangan mereka melakukan rasuah untuk memperoleh sesuatu projek (atau mendapat sesuatu faedah).

## **SUB-SEKSYEN 17A (1) – KESALAHAN (ORGANISASI KOMERSIAL)**

1) Suatu **organisasi komersial** melakukan kesalahan jika **seseorang yang bersekutu** dengan organisasi komersial itu **secara rasuah memberikan, bersetuju untuk memberikan, menjanjikan atau menawarkan** kepada mana-mana orang apa-apa **suapan** sama ada bagi faedah orang itu atau bagi faedah orang lain dengan niat:-

(a). **untuk memperoleh atau mengekalkan perniagaan bagi organisasi komersial itu; atau**

(b). **untuk memperoleh atau mengekalkan faedah dalam menjalankan perniagaan bagi organisasi komersial itu.**

*Definisi*

*“organisasi komersial”*

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4

kategori organisasi yang boleh didakwa kerana rasuah.

*S17A (8)*

# Organisasi komersial?

1

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Organisasi yang diperbadankan di bawah **Akta Syarikat 2016**

2

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Perniagaan yang didaftarkan di bawah **Akta Perkongsian 1961**

3

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Perniagaan yang didaftarkan di bawah **Akta Perkongsian Liabiliti Terhadap 2012**

4

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Syarikat/ perniagaan **luar negara** yang menjalankan perniagaan di Malaysia

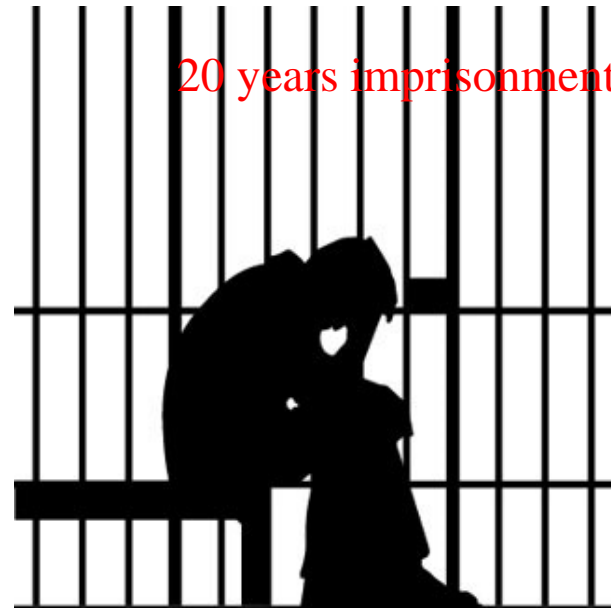
## Sub-Seksyen S17A (2) – *Hukuman*

(2) Mana-mana organisasi komersial yang melakukan kesalahan di bawah seksyen ini apabila disabitkan boleh didenda tidak kurang daripada **sepuluh kali ganda jumlah atau nilai suapan** yang menjadi hal perkara kesalahan itu, jika suapan itu dapat dinilai atau berbentuk wang, **atau satu juta ringgit**, mengikut mana-mana yang lebih tinggi, atau **dipenjarakan** selama tempoh tidak melebihi **dua puluh tahun** atau **kedua-duanya**

**10x**

or RM1.0 million fine

OR



OR BOTH

# **Sekiranya** organisasi komersial didapati bersalah, siapa yang boleh dihukum?

- (a) Organisasi komersial itu sendiri
- (b) Pengarah, orang yang mempunyai kawalan (terhadap organisasi komersial), rakan kongsi atau pegawai.
- (c) Sesiapa yang terlibat dalam pengurusan organisasi komersial berkenaan.

## **Sub-Seksyen S17A (3) – *Kesalahan dan Pembelaan (Orang)***

Jika sesuatu kesalahan dilakukan oleh organisasi komersial, seseorang—

- (a) yang menjadi pengarah, pengawal, pegawai atau pekongsinya; atau
- (b) yang **terlibat dengan pengurusan hal ehwalnya,**

pada masa kesalahan itu dilakukan, disifatkan telah melakukan kesalahan itu melainkan jika orang itu membuktikan bahawa kesalahan itu dilakukan **tanpa keizinannya atau pembiarannya** dan bahawa dia telah menjalankan segala **usaha yang wajar** dilakukannya untuk menghalang pelakuan kesalahan itu dengan mengambil kira jenis fungsinya atas sifat itu dan kepada hal keadaan.

## **Sub-Seksyen S17A(4) – *Pembelaan Organisasi Komersial***

(4) Jika suatu organisasi komersial dipertuduh bagi kesalahan yang disebut dalam subseksyen (1), menjadi pembelaan bagi organisasi komersial itu untuk membuktikan bahawa organisasi komersial itu mempunyai tatacara yang mencukupi **untuk menghalang orang yang bersekutu dengan organisasi komersial itu daripada melakukan perbuatan itu**

## **Sub-Seksyen S17A (5) – *Garis Panduan***

(5) Menteri hendaklah mengeluarkan garis panduan yang berhubungan dengan tatacara yang disebut dalam subseksyen (4).



**Adequate  
Procedures**

**AND**



**Execute &  
Monitor**



# MENGELAKKAN LIABILITI KORPORAT

- Organisasi komersial yang dituduh di mahkamah mesti membuktikan **tatacara (usaha) yang mencukupi** untuk mencegah jenayah rasuah telah dilaksanakan dalam organisasi terbabit.

Prinsip

**T.R.U.S.T**

# T.R.U.S.T | Top level commitment

- *Tone from the top*
- Jaminan kepada *stakeholders* bahawa organisasi akan mematuhi sepenuhnya undang-undang dan peraturan yang berkuat kuasa
- Memantau tahap integriti dan tadbir urus organisasi
- Menyediakan bajet dan sumber manusia berkaitan usaha pencegahan rasuah

# T.R.U.S.T

# Risk assessment

- Melaksanakan penilaian risiko rasuah dan fraud dalam organisasi.
- Dicapadangkan, dibuat setiap 3 tahun
- Menambah baik sistem dan prosedur yang lemah
- Turut melibatkan pihak luar yang dilantik oleh organisasi komersial.

# T.R.U.S.T

## Undertake control measures

- Polisi syarikat mengenai rasuah
- Melaksanakan *due-diligence*
- *Menggalakkan pelaporan rasuah*
- *Conflict of interest*
- Hadiah dan keraian
- Sumbangan dan penajaan termasuk sumbangan politik
- *Bayaran kemudahan (Facilitation payment)*

**Penting:** Memastikan polisi, prosedur dan inisiatif antirasuah didokumentasi

# T.R.U.S.T | Systematic review, monitoring & enforcement

- *Penilaian/penambahbaikan berterusan terhadap:*
  - *polisi dan prosedur antirasuah*
  - *program antirasuah*
- Melantik individu kompeten untuk **audit dalaman** inisiatif antirasuah
- Melantik **audit luar** untuk melihat pematuhan terhadap prosedur antirasuah – contoh, ISO 37001
- Memantau pegawai/kakitangan
- Mengambil tindakan terhadap mereka yang terlibat rasuah dan salah laku

# T.R.U.S.T

# Training & communication

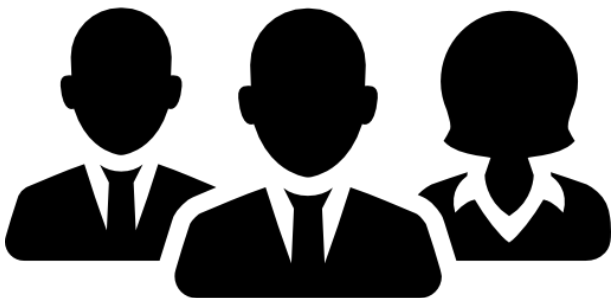
- Polisi dan prosedur antirasuah mesti dihebahkan
- Latihan warga dalam pencegahan rasuah
- Program kesedaran antirasuah

## **Sub-Seksyen S17A(6) – *Orang yang Bersekutu***

(6) Bagi maksud seksyen ini, seseorang itu bersekutu dengan organisasi komersial jika dia ialah seorang pengarah, pekongsi atau pekerja organisasi komersial itu atau dia ialah **orang yang melaksanakan perkhidmatan untuk atau bagi pihak organisasi komersial itu**

## **Sub-Seksyen S17A(7) – *Persoalan Fakta***

(7) Persoalan sama ada seseorang melaksanakan perkhidmatan untuk atau bagi pihak organisasi komersial atau tidak hendaklah ditentukan dengan merujuk kepada semua hal keadaan yang berkaitan dan bukan hanya dengan merujuk kepada sifat hubungan antara dia dengan organisasi komersial itu





# ***SEKIRANYA SYARIKAT TERLIBAT RASUAH LUAR MALAYSIA?***

Seksyen 66 (1) ASPRM memberi kuasa kepada SPRM untuk mengambil tindakan prosiding jenayah di Malaysia terhadap warganegara/pemastautin tetap walaupun kesalahan berlaku di luar negara.



**CONTOH KES**  
**LUAR NEGARA**  
**BERKAITAN**  
**LIABILITI**  
**KORPORAT**

# Standard Bank

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UK Bribery Act 2010



Standard Bank disiasat oleh Serious Fraud Office (SFO) apabila anak syarikatnya, Stanbic Bank Tanzania dikatakan memberi rasuah USD6 juta kepada sebuah syarikat Tanzania, Enterprise Growth Market Advisors (EGMA).



Rasuah yang dibayar sekitar bulan Mac 2013 bertujuan memujuk pegawai kerajaan Tanzania supaya membuat pinjaman USD600 juta daripada Stanbic Bank. Hasil pinjaman tersebut, Stanbic Bank dan Standard Bank akan berkongsi caj yuran berjumlah USD8.4 juta.

Pada 30 November 2015, Standard Bank bersetuju membayar penalti US\$32.2 juta melalui *Deferred Prosecution Agreement* (DPA).

Standard Bank juga dikehendaki membayar kos siasatan dan pengurusan DPA kepada SFO berjumlah £330,000.

**Standard Bank adalah organisasi pertama yang bersetuju memasuki prosiding DPA bagi mengelakkan pendakwaan di bawah UK Bribery Act 2010.**

# Rolls-Royce

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UK Bribery Act 2010



Rolls-Royce didakwa membayar jutaan pound bagi memperoleh kontrak kejuruteraan awam dan ketenteraan di beberapa buah negara.

Rasuah dibayar oleh pegawai Rolls-Royce atau melalui orang tengah, dari tahun 1999 sehingga 2013.



# The Daily Telegraph

Monday 16 January 2017

Business

## Rolls-Royce to pay £671m to settle bribery and corruption claims

By Alan Tovey, INDUSTRY EDITOR

Rolls-Royce is to pay almost £700m to settle bribery and corruption allegations which have dogged the company for years.

In a statement after the market closed, the FTSE 100 engineering group revealed it had reached a provisional deal with UK and other international regulators over claims it paid bribes to land international deals and was involved in fraud.

The company has struck a "deferred prosecution agreement" (DPA) with Britain's Serious Fraud Office (SFO) in which Rolls will pay £497m plus interest and costs to settle the claims that the regulator has been investigating since 2012.

Investigators are understood to have been examining claims that Rolls paid millions of pounds in bribes - or used middlemen to pay them - to win civil and military deals in about a dozen countries.

Allegations include Rolls paying a \$20m (£12.9m) bribe in return for persuading Indonesia's country's flag-carrier, Garuda, to buy Rolls' Trent 700 engines for its Airbus A330 airliners.

A deal to supply jet engines for Hawk fighter training aircraft to India has also been under scrutiny, with claims a "suspicious payment" was made to win the deal.

Rolls is also caught up in a massive investigation in Brazil over bribery at state-run oil company Petrobras, with claims the FTSE 100 business

paid kick-backs in return for being awarded contracts.

The SFO has also been looking into contracts Rolls signed with airlines in China to supply engines for new jets.

It is not known whether the settlement covers all the claims or just some of them.

Under the terms of the DPA, Rolls is given a suspended prosecution as long as it abides by certain terms including paying the penalty.

Other requirements of a DPA can include a business being monitored by regulators for a certain amount of time to ensure it is meeting ethical standards and mandatory training of staff to prevent future incidents of bribery and corruption.

As well as settling with the SFO, Rolls has struck similar deals with the US Department of Justice and Brazil's equivalent body.

The company will pay the US authorities \$170m (£111m) and \$26m to Brazilian regulators to settle claims against it in those countries.

The DPA requires the judicial approval for it to be finalised and Rolls and the SFO are due to appear before Sir Brian Leveson QC at the Royal Courts of Justice on Tuesday morning for the deal to be approved.

Once the court has approved the DPA - which is a voluntary arrangement to avoid potentially

tougher legal penalties - fuller details of the settlement are expected to be released.

In a statement, Rolls said it has "co-operated fully with the authorities and will continue to do so", adding that the penalties will be paid over a five-year period, with it handing over £293m in the first year of the deal.

The size of the settlement is a record for the SFO, dwarfing the £30m it hit BAE Systems with over corruption charges in 2010, though this was part of a joint arrangement with US prosecutors in which the defence group paid a total of close to £200m.

The penalty will put further pressure on Rolls's balance sheet which is in a parlous state as chief executive Warren East tries to rebuild the the business after a string of profit warnings.

The company warned at an investor day in November that new accounting rules will hit its profits in the future, with cash-flow expected to be essentially zero or negative this year, then £500m the next and £1bn the year after.

Mr East has already cut the dividend - the first such move in a generation - to help get Rolls back on its feet but the impact of the settlement could drive Rolls into the red when it posts annual results next month.

However, one City analyst forecast Rolls shares could rise in response to the announcement, saying the SFO had been "generous" in both the size of the penalty and the

timeframe Rolls has to pay it in.

"Investors don't seem to have been bothered by Rolls having this hanging over it," the analyst said, speaking on the condition of anonymity. "The shares have been trading at a premium for a while. But it's put even more pressure on Rolls's cashflow which is already awful - we'll have to see if the company can cover its dividend come results."

Sandy Morris, aerospace analyst at Jefferies, said that Rolls is unlikely to see its debt rating cut by ratings agencies as a result of the settlement, though the scale of it was "higher than I hoped", he said.

However, he said he expects Rolls to weather the settlement, adding he is forecasting the company will deliver a free cashflow of £200m better than it has been guiding at the full year, driven by Mr East's turnaround of the business and helped by currency exchanges movements.

The fine was described as "a very large bolt from the blue" by Nick Cunningham, an aerospace and defense equity analyst at Agency Partners, who added that settlements are "usually moderate compared to the size of the company".

Financial crime and risk advisers Exiger said the size of the penalty is an example of the SFO showing its teeth.

"It dwarfs the first few DPAs struck year ago under new UK legal powers granted to the SFO and sends a clear

signal that the UK means business in cracking down on global bribery and corruption," said Lisa Osofsky, European chair of Exiger.

"It's a sea change in the SFO's war on bribery and corruption, and helps the UK to be seen as more on an equal footing with powerful US enforcement authorities led by the Department of Justice," the former FBI deputy general counsel said.

"In the UK it has often been seen as a high stakes gamble to obtain a successful prosecution in the first place, putting huge pressure on the SFO to bring wrong-doers to account, often with limited resources, to secure corporate pleas of guilt," Ms Osofsky said. "The scale of the penalties provisionally agreed with Rolls shows that the advent of a DPA has been a key step in the right direction."

Despite the scale of the penalty, it does remove an unknown for Rolls. Howard Wheelon, an independent aerospace and defence analyst, said: "This will be a weight off the minds of senior Rolls management as it ends a near four-year period of investigation and uncertainty, Rolls-Royce and has fully cooperated with the investigating authorities, undoubtedly shortened a process that could have taken much longer."

ValueAct - the US investment fund which became Rolls's largest investor in 2015 with an 11pc stake - declined to comment on the implications of its holding of the settlement.

Pada Januari 2017, Rolls-Royce bersetuju membayar penalti sebanyak **£671 juta** bagi mengelakkan pendakwaan oleh pihak berkuasa United Kingdom, United State of America dan Brazil.

Walaupun Rolls-Royce telah dikenakan penalti, perkara itu tidak menghalang individu yang terlibat didakwa.

## November 2017

- Tiga **bekas pegawai** Rolls-Royce mengaku bersalah atas dakwaan merasuah.
- Seorang pekerja syarikat **perunding** yang bertindak bagi pihak Rolls-Royce turut mengaku bersalah atas dakwaan rasuah.
- Seorang lagi yang didakwa adalah '**orang tengah**' kepada Rolls-Royce.



# Siemens AG

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**The Foreign Corrupt Practices Act 1977**

# Siemens didenda USD1.6 bilion



**Siemens AG** merupakan antara syarikat kejuruteraan elektronik terbesar di dunia.

Didakwa membuat bayaran rasuah berjumlah €1.3 bilion untuk memenangi bidaan bagi projek-projek besar.

Disember 2008 - Siemens mengaku bersalah. Siemens bersetuju membayar penalti **USD1.6 bilion** kepada pihak berkuasa Amerika dan Eropah.

Laporkan **RASUAH**

**Kegagalan melapor adalah  
kesalahan jenayah**

*- Seksyen 25 ASPRM 2009 -*

# Melaporkan Rasuah: Apa yang **penting**?

- Tarikh, masa dan tempat kejadian.
- Identiti pemberi, penerima dan orang tengah (jika ada).
- Apa yang berlaku dan siapa yang terlibat dalam kejadian.
- Saksi-saksi yang mengetahui atau melihat kejadian.
- Dokumen-dokumen yang berkaitan.



- *Terima kasih* -