



Amendment to the Malaysian Anti-Corruption Commission Act - the New Corporate Liability Offence For Corruption

In 2019, the Malaysian Anti-Corruption Commission has amended the Malaysian Anti-Corruption Commission Act (“MACC Act”). Under the Act, Section 17 A introduces the implementation of the corporate liability provision involving commercial organisations and came into force on 1st June 2020. A commercial organisation includes a company, limited liability partnership or partnership which is formed under Malaysian law, or a company or partnership which carries on a business or a part of a business in Malaysia.

The provision under Section 17A MACC Act 2009 stipulates a corporate liability principle where a commercial organisation can be considered guilty if any of its employees and/or associates commit corruption for the benefit of the organisation. The commercial organisation is also considered guilty regardless whether the upper management or its representatives are aware about the corruption acts committed by its employees or associates.

If a commercial organisation is found guilty under Section 17A, the penalty under Section 17A (2) is:

- i. a fine of not less than 10 times the value of the bribe or RM 1 million, whichever is higher, or
- ii. imprisonment for up to 20 years, or
- iii. both.

Key Takeaway



- ❖ Pooling of resources and cost savings as compare to an entity itself alone to engage consultancy to implement the procedures
- ❖ Encouraging positive behaviour and assuring best practice and internal control throughout the organization
- ❖ Promote strong brand reputation
- ❖ More resilient to risk of fraud, corruption and contingency loss



However, a commercial organisation can defend itself if it can demonstrate that the organisation implemented 'Adequate Procedure' in its operation. The commercial organization has to prove its establishment of appropriate internal management procedures to prevent its related personnel from being involved in corruption and bribery acts.

In order to assist the commercial organization to have further understanding of the mentioned Adequate Procedure, the Prime Minister's Department has issued Guidelines on Adequate Procedures pursuant to Section 17A.

In essence, the Guidelines on Adequate Procedures outline five guiding principles, represented by the acronym 'T.R.U.S.T'.

- i. Top Level Commitment.
- ii. Risk Assessment.
- iii. Undertake Control Measures.
- iv. Systematic Review, Monitoring and Enforcement.
- v. Training and Communication.

Due to this amendment, the potential for commercial organisations and its directors, partners or managers to be prosecuted for bribery committed by their employees, agents and other associated parties will increase drastically. It is therefore crucial for commercial organisations to implement the relevant procedures to prevent bribery from being committed.

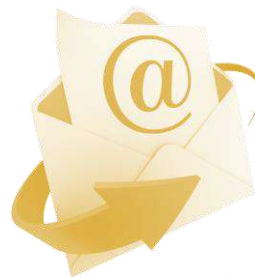
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