



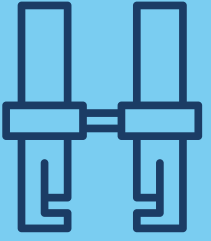
INCOMING LEGISLATION UPDATE

Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (“MACCA”)



Imposition of Corporate Liability

- Section 17A of MACCA has come into force on 1 June 2020.
- This amendment introduces a statutory corporate liability on commercial organizations for corrupt offences committed by their employees or *persons associated*.
- In essence, a commercial organization can now be held to have committed an offence of corruption if any *person associated* with it commits a corrupt act in order to obtain or retain business, or to otherwise obtain an advantage, for the commercial organization.



Persons Associated



- “Persons Associated” has been defined in MACCA to mean not only directors, partners or employees of the commercial organisation, but also includes any person who performs services for and on its behalf.
- Hence a commercial organisation can also be held liable for the corrupt acts of its third party business associates, where the acts are undertaken for the former’s benefit or advantage.

Penalty

- A breach of Section 17A carries a fine of not less than 10 times the sum or value of the bribe or RM1,000,000, whichever is the higher.
- Directors or officers having control of management of the commercial organisation are also subject to a parallel liability, and liable to imprisonment for a term of up to 20 years.



Defence of Adequate Procedures

- The amendments to MACCA provide for a defence to a charge under Section 17A, if a commercial organization can show that there are **Adequate Procedures** put in place at the time of the commission of the offence.
- Whether or not an organisation’s procedures are considered adequate shall be determined in reference to the Guidelines on Adequate Procedures that have been issued under Section 17A(5) of MACCA.
- The 5 main principles (T.R.U.S.T) are briefly: (1) Commitment from, and participation by **Top Level Management** in all anti-bribery and corruption (ABAC) matters, (2) The conduct of periodic **Risk Assessment** exercises to assess corruption risks faced by the organisation, (3) **Undertake Control Measures** and mechanisms to mitigate the risk of occurrence of corrupt acts, (4) **Systematic Review, Monitoring and Enforcement** to assess and improve implemented ABAC policies and (5) Regular **Training and Communication** to ensure optimal levels of awareness and understanding of the organisation’s ABAC policies.



Reach out to us



We recommend that your existing ABAC policies and procedures be reviewed and constructed to satisfy the new tests required as a defence to Section 17A.

If you require any advice please reach out to our Corporate Liability and Risk Management Practice Group by contacting Farah Mohamed Said at farah@zulrafique.com.my, Hamdi Abdullah at hamdi.abdullah@zulrafique.com.my or Idza Hajar Ahmad Idzam at idza.hajar@zulrafique.com.my.