



Newsletter 03/2021

A brief write-up on Section 17A of the Malaysian Anti-Corruption Commission Act 2009 which introduced the “offence by commercial organization” provision.

Section 17A MACC Act 2009: Top` Level Individuals Beware!

Introduction

The Malaysian Anti-Corruption Commission Act (“MACC Act”) 2009 came into force on 1st January 2009.

The MACC Act, amongst others, established the Malaysian Anti-Corruption Commission and introduced further and better provisions for the prevention of corruption.

Section 17A MACC Act 2009

Section 17A of the MACC Act 2009 was passed by Parliament in 2018¹ and came into force on 1st June 2020.²

¹
<https://www.sprm.gov.my/admin/files/sprm/assets/pdf/penguatkuasaan/akta-A1567-bi.pdf>

²
<https://www.malaymail.com/news/malaysia/2020/06/01/section-17a-of-macc-act-2009-in-force-today/1871398>

Section 17A of the MACC Act 2009 introduced the “offence by commercial organization” provision.

The formula for the provision can be summed up as follows:

Person associated with the commercial organization

+

Corruptly gives, agrees to give, promises or offers to any person gratification

+

Intent to obtain/retain
i) business for the commercial organization; or ii) advantage in the conduct of business for the commercial organization



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A commercial organization commits an offence if all three of the above elements of the formula are present.

Why should top level individuals beware?

Prior to Section 17A of the MACC Act 2009, under the MACC Act 2009, a person was only liable if he/she committed the offence.

With the introduction of Section 17A of the MACC Act 2009, a person can be liable for an offence even if an associated person committed the offence.³

An associated person is defined as:

- (i) a director, partner or an employee of the commercial organization; or

- (ii) a person who performs services for or on behalf of the commercial organization.

Once an associated person commits an offence, the commercial organization is deemed to have committed the offence.

Once an offence has been committed by a commercial organization, the following people are deemed to have committed the offence:⁴

- (i) director, controller, officer, partner of the commercial organization; and
- (ii) person concerned in the management of affairs of a commercial organization.

³ Section 17A(1) of the Malaysian Anti-Corruption Commission Act 2009

⁴ Section 17A(3) of the Malaysian Anti-Corruption Commission Act 2009



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(collectively referred to as “deemed persons”)

What is the punishment?

The prescribed punishment⁵ is:

- (i) A fine not less than 10x graft sum/value OR RM1,000,000.00 (whichever is higher); and/or
- (ii) Imprisonment not exceeding 20 years

What are the defences available?

The MACC Act 2009 expressly provides two defences, namely where:

- (i) The offence was committed by the person associated with the commercial organization without

the consent/connivance of the deemed person and that he exercised due diligence to prevent the commission of the offence (“**Without Consent/Connivance + Due Diligence Defence**”);⁶ and

- (ii) The commercial organization had in place adequate procedures to prevent persons associated with the commercial organization from undertaking such conduct (“**Adequate Procedures Defence**”).⁷

Regarding the Without Consent/Connivance + Due Diligence Defence, it is for the deemed persons to prove the absence of knowledge, consent or connivance and that due diligence was exercised.

⁵ Section 17A(2) of the Malaysian Anti-Corruption Commission Act 2009

⁶ Section 17A(3) of the Malaysian Anti-Corruption Commission Act 2009

⁷ Section 17A(4) of the Malaysian Anti-Corruption Commission Act 2009



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As for the Adequate Procedures Defence, the Prime Minister’s Department has provided a guideline on adequate procedures. They include the following:⁸

- (i) Top level commitment;
- (ii) Risk assessment;
- (iii) Undertaking control measures;
- (iv) Systematic review, monitoring and enforcement;
- (v) Training and communication

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⁸ Guidelines on Adequate Procedures by the Prime Minister’s Department
(<http://giacc.jpm.gov.my/garis-panduan-tatacara/>)