

Crowe Perspectives

5 August 2020

Yet to Implement Anti-Corruption Measures Under MACC Section 17(A)?

By Amos Law, Executive Director of Risk Advisory



What if your company has not implemented anti-corruption measures as required by **MACC Section 17(A)?**

Two months have already lapsed since Section 17 (A) of the Malaysian Anti-Corruption Commission (Amendment) Act 2018 came into force on 1st June 2020. However, there are still companies out there who have yet to implement any anti-corruption measures as required by the Act.

Who are liable?

As long as one is incorporated under the Companies Act 2016 and carries on business in Malaysia and elsewhere and a partnership under the Partnership Act 1961 or a limited liability partnership registered under the Limited Liability Partnerships Act 2012, one could be liable.

It is time for those charged with governance such as Directors, Partners and Management in commercial organisations to sit up and take stock of the situation because if an offence has been committed by a commercial organisation, they are deemed to have committed that act. The onus is now on them to demonstrate that they had put in place Adequate Procedures to prevent the offence from being committed by persons associated by the organisation.

What are the consequences?

One should not adopt a wait-and-see attitude, even though till to-date, no one has yet to be charged under this new Act which does not apply retrospectively. The hefty penalties imposed, i.e. a fine of not less than ten times the sum or value of the gratification or RM1 million, whichever is higher; and/or a jail sentence not exceeding twenty years underscores the Government's seriousness in combating corruption and it is not worth leaving things to chance.

The MACC foresees that there will be more reports on corruption in commercial organisations falling under this new Act and said more individuals are expected to be arrested and charged with the enforcement of the new provision – see <https://www.nst.com.my/news/nation/2020/07/610600/more-expected-be-charged-under-section-17a>

In line with this new Act, Bursa Malaysia Securities Berhad had also amended the Main Market and ACE Market Listing Requirements. The Securities Commission had also issued a questionnaire to companies that fall under the Capital Markets and Services Act 2007 to assess their extent of compliance to the Ministerial Guidelines on Adequate Procedures (T.R.U.S.T Guidelines).

Assess your risks!

To prevent and fight corruption effectively, one has to understand the risks that one faces and ensure that adequate controls are designed and implemented to mitigate these risks. Sectors such as infrastructure development, construction and property development, heavy manufacturing and oil and gas are more prone to corruption, especially when there is a lot of interaction with domestic or foreign public officials.

A case in point is international corporations like Siemens AG, BAE Systems, Alcatel-Lucent, Alstom SA, amongst others; which have been embroiled in high-profile corruption scandals that eventually resulted in resignations of their top officials and hefty fines and penalties being imposed upon them.

Apart from that, one also has to exercise caution if one has business or plans to set up a business in countries that rate low in Transparency International's Corruption Index where in order to secure the necessary licensing, permits and other approvals, payments or gifts to government officials are expected to be given to expedite the process.

All the above do not preclude companies that are in the low risk sectors such as retail which should not let their guard down. Great care needs to be taken by businesses and individuals in knowing where to draw the line between effective networking and potentially criminal behaviour.





▶ Take action

For companies who have yet to adopt or implement any preventive measures as required under the T.R.U.S.T Guidelines, it is time to expedite matters before it is too late. Without adopting adequate procedures, a commercial organization will be left defenseless if it is implicated by the acts of individuals associated with them.

Kudos to those who have already adopted the preventive measures and it is imperative that they are implemented accordingly, communicated to persons associated with them and strict compliance to them is monitored, failing which, it will only remain a box-ticking exercise.



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Need help regarding MACC Section 17(A)?

We can help you assess your current position vis-à-vis the Act and develop adequate procedures in line with the T.R.U.S.T Ministerial Guidelines to address this regulatory requirement. Get in touch with us today.



Contact us

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