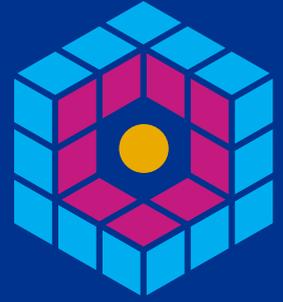


# IARCS Update

## Business implications from the introduction of Section 17A, Malaysian Anti-Corruption Act 2009



The Malaysian Anti-Corruption Commission (Amendment) Act 2018 was passed by Parliament in April 2018. The act introduced a number of amendments, including the introduction of Section 17A – Offence by Commercial Organisations, which came into effect on 1 June 2020.

Unlike before when prosecution was limited to individuals involved in corrupt activities, the enactment of Section 17A of the Malaysian Anti-Corruption Act 2009 now enables legal action to be instituted against commercial organisations, including persons associated with the organisation, for involvement in corrupt activities.

### What does this mean?

A commercial organisation, as well as persons associated with that commercial organisation becomes liable for an act of corruption (giving of bribes, etc.). The said person can be a director, partner, or a manager, even if he/she was not directly involved in the act.

### What are the penalties?

- 1 Maximum fine of 10 times the sum of gratification, or RM1,000,000, whichever higher;
- 2 Maximum jail term of 20 years; or
- 3 Both penalties comprising of fine and jail term.

### Who is liable?



### How should companies respond?

If charged, companies have to demonstrate that it has in place **adequate procedures** to detect and prevent the occurrence of corrupt practices in their business activities. Guided by the moniker **“TRUST”**, companies can approach the implementation of **adequate procedures** in a systematic method.

- T** **Top Level Commitment:** The Board endorses highest level of integrity and ethics, compliance with relevant legislation and is able to provide assurance to stakeholders the company is operating in compliance with its policies and regulatory requirements.
- R** **Risk Assessment:** Corruption risk assessment should be bedrock of the company's anti-corruption efforts. Listed issuers are required to perform this annually.
- U** **Undertake Control Measures:** Appropriate controls and contingency measures should be in place relative to the nature and size of the company to address corruption risk.
- S** **Systematic Review, Monitoring and Enforcement:** Management should establish regular reviews on the performance, efficiency and effectiveness of the anti-corruption programme.
- T** **Training and Communication:** The company should develop and disseminate internal and external training and communications relevant to its anti-corruption management system.

## How can an internal audit by KPMG help?

KPMG can lend our experience by assisting the Board of Directors to independently assess the adequacy and integrity of the system of internal controls which had been established to serve as **adequate procedures** to detect, prevent and minimise acts of corruption. Examples of areas we can deep dive to assess and make appropriate recommendations thereof include:

### Governance and policies

Existence of organisational structures, including establishment of policy and procedures that support mitigation of corruption risk within the company.

### Recruitment process management

Standard checks prior to recruitment of employees in key positions, where corruption risks is perceived to be more prevalent.

### Corruption risk assessment

Process to conduct of corruption risk assessment, including embedding results in the overall enterprise risk management process of the company.

### Engagement with third parties

Due diligence procedures and sanction checks prior to engaging with third parties, including from countries with high corruption perception index.

### Whistle-blowing hotline

Effectiveness of whistle-blowing hotline, including measures to maintain confidentiality and timely response to legitimate feedback.

### Contract management

Modus operandi to communicate expectation to third parties, including reiteration of company's expectation regarding anti-corruption.

### Review of staff related expenses

Assessment of staff expenses in relation to gifts, charitable and political donations and sponsorship in accordance with company policies.

### Training and communication

Appositeness of training provided, including communication of policies, timely dissemination of updates and refresher of company policies.

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