



CORPORATE LIABILITY SECTION 17A MACC ACT

LEGAL LIABILITY ON COMMERCIAL ORGANIZATIONS

The legal responsibility of a corporation for **CRIMINAL ACTIONS**, or the **FAILURE TO ACT** in some cases, committed by the company's employees.

If the actions were done for the benefit of the company, as a result of negligence or if they occurred due to a lack of responsible management by the company, the corporation can be prosecuted and punished.

Commercial organization would be liable for any act of bribery committed by an associated person to the organization.



KEY QUESTIONS ON SECTION 17A

1. Who are liable under this provision?
2. What are the misconducts under this provision?
3. Who are associated persons?
4. What are the penalties?
5. What are the defences?
6. What should members of a company know?



LEGAL LIABILITY

Who is liable under Section 17A

PROVISION OF SECTION 17A

A COMMERCIAL ORGANIZATION
commits an offence if a person
associated with the commercial
organization corruptly gives, agrees
to give, promises or offers to any
person any gratification...



Local companies that are established under the Companies Act 2016 and foreign companies that carry on businesses in Malaysia

Local partnerships established under the Partnership Act and Limited Liability Partnership Act accordingly

Foreign partnerships that carries on business in Malaysia

COMMERCIAL ORGANIZATIONS SECTION 17A(8)



QUIZ TIME!

Choose a Corporation Body that is NOT liable under Section 17A of the MACC Act:-

- A) AIR ASIA BERHAD
- B) ACCENTURE TECHNOLOGY SDN. BHD.
- C) LEMBAGA TABUNG HAJI
- D) MAJ TRADING



ANSWER!

Choose a Corporation Body that is NOT liable under Section 17A of the MACC Act:-

- A) NOPE
- B) WRONG
- C) LEMBAGA TABUNG HAJI
- D) INCORRECT

Are Statutory Bodies considered as Commercial Organizations?

Although Statutory Bodies may carry on businesses in Malaysia, it is established under Federal Law and would be pursuant to its own Act.

Therefore, it is NOT a commercial organization within the meaning of Section 17A as it is NOT established under the Companies Act, Partnership Act or the Limited Liability Partnership Act.



THE MISCONDUCT

What are the wrongs done under Section 17A

PROVISION OF SECTION 17A

A commercial organization commits an offence IF A PERSON ASSOCIATED WITH THE COMMERCIAL ORGANIZATION CORRUPTLY GIVES, AGREES TO GIVE, PROMISES OR OFFERS TO ANY PERSON ANY GRATIFICATION...





WHAT ARE GRATIFICATIONS

Money and Property i.e
movable and immovable

Valuable consideration
i.e discount, rebate

Office and employment

Release of monetary
legal liability

Release of liability
against any loan

Service or favour i.e
protection against penalty
or forbearance of the same

Offer or promises towards
the actions mentioned
above



QUIZ TIME!

Choose one situation whereby there is NO gratification:-

- A) Obtaining a position due to familial relationships
- B) Paying less for a shirt on discount
- C) Offering to pay a certain sum to be granted a Tender
- D) Withdrawing summons upon receiving a certain sum



ANSWER

Choose one situation whereby there is NO gratification:-

- A) **NOPE**
- B) Paying less for a shirt on discount
- C) **WRONG**
- D) **INCORRECT**

INTENTION OF MISCONDUCT

Section 17A (1) classifies the intentions:-

- To obtain or retain business for the commercial organization
- To obtain or retain an advantage in the conduct of business for the commercial organization

This provision is **ONLY** applicable IF it can be proven that this intention exists in offering or receiving such gratifications by the associated persons



ASSOCIATED PERSONS

Who are the associated persons under Section 17A

PROVISION OF SECTION 17A

A commercial organization commits an offence IF A PERSON ASSOCIATED WITH THE COMMERCIAL ORGANIZATION corruptly gives, agrees to give, promises or offers to any person any gratification...



PARTNER

EMPLOYEE

**SERVICE
PROVIDER**



DIRECTOR



**ASSOCIATED
PERSONS
SECTION 17A(6)**

WHO ARE SERVICE PROVIDERS?

Service providers include agents, partners of Joint Venture and is determined by relevant circumstances instead of the nature of the relationship i.e – The Adequate Procedure extends the definition further

No need for a formal Agency Agreement or Service Agreement, so long as the circumstances can show such a relationship





QUIZ TIME!

Choose one category of a NON-associated person:-

- A) The RELA employees in IIM
- B) GIACC
- C) The Scheduler for the MSS Section
- D) The Cook at the Cafeteria



ANSWER!

Choose one category of a NON-associated person:-

- A) NOPE
- B) GIACC
- C) WRONG
- D) INCORRECT

PENALTIES IMPOSED

What are the penalties under Section 17A

PENALTIES IMPOSED BY SECTION 17A(2)

On conviction be liable to a fine of not less than 10 times the sum of the gratification if it is able to be calculated, or RM1,000,000.00 whichever is higher, or imprisonment up to a maximum term of TWENTY (20) years or BOTH



IMPRISONMENT UP TO 20 YEARS

Section 17A has introduced parallel personal criminal liability whereby:-

The criminal liability NOT only falls on the commercial organization but it is as if the senior personnel such as the DIRECTOR, CONTROLLER, PARTNER or PERSON WHO IS CONCERNED WITH THE MANAGEMENT of a commercial organization has also committed corruption and is personally liable to the act of corruption unless it is **DISPROVED**





QUIZ TIME!

Choose the person NOT considered as a Senior Personnel:-

- A) General Manager of Corporate Services
- B) Senior General Manager of Operations
- C) Legal Officer
- D) Head of the System Management Section



ANSWER!

Choose the person NOT considered as a Senior Personnel:-

- A) NOPE
- B) WRONG
- C) Legal Officer
- D) INCORRECT

DEFENCES AVAILABLE FOR SENIOR PERSONNEL

The offence is committed without his consent or knowledge

He has exercised due diligence to prevent such commission as he ought to based on his position

SUCCESSFUL DEFENCE

In the event that the Senior Personnel is successful in disproving personal liability, IT DOES NOT MEAN THAT THE CHARGE IS DROPPED.

The Commercial Organization would STILL BE LIABLE TOWARDS THE MONETARY PENALTY of 10 times the gratification value or RM1,000,000.00 whichever is higher.



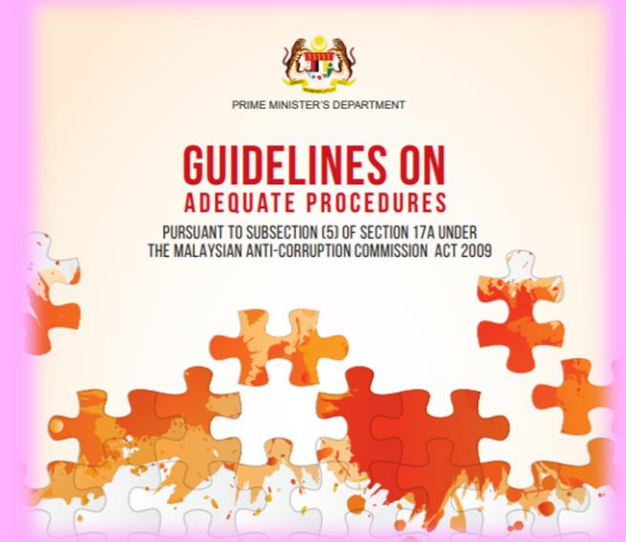
DEFENCES AVAILABLE

What are the defences under Section 17A

DEFENCES UNDER SECTION 17A(4) AND SECTION 17A(5)

It is a defence for the commercial organization to prove that the commercial organization HAD IN PLACE ADEQUATE PROCEDURES to prevent....

The Minister SHALL ISSUE GUIDELINES relating to the procedures mentioned in subsection (4)



EARNING THE TRUST FOR DEFENCE

1. Top Level Commitment – highest level of ethics and integrity
2. Risk Assessment – to be undertaken once in 3 years
3. Undertake Control Measures – establish policies and procedures
4. Systematic Review, Monitoring and Enforcement – ISO 37001 (ensure compliance)
5. Training and Communication – adequate training & communication of polices





QUIZ TIME!

Choose the action **IRRELEVANT** to the element of **TRUST** in the Adequate Procedures:-

- A) Establishing SOPs
- B) Displaying the Anti Bribery Policy at an accessible space
- C) Ensuring training on Self-Grooming
- D) Ensuring the Board of Directors agree with the Anti Bribery Policy



ANSWER!

Choose the action **IRRELEVANT** to the element of **TRUST** in the Adequate Procedures:-

- A) Ensuring training on Self-Grooming
- B) **WRONG**
- C) **NOPE**
- D) **INCORRECT**



SUCCESSFUL DEFENCE BY COMPANY

The Associated Person proven to be offering,
or receiving gratification WOULD THEN BE
CHARGED UNDER SECTION 16 OR SECTION 17
OF THE MACC ACT 2009 UNDER HIS
PERSONAL CAPACITY.


DUTIES OF MEMBERS OF COMPANY

What should members know?

DUTY TO REPORT UNDER SECTION 25

Any person to whom any gratification is given, promised, or offered, in contravention of any provision of this Act SHALL REPORT SUCH GIFT, PROMISE OR OFFER TOGETHER WITH THE NAME, IF KNOWN, OF THE PERSON WHO GAVE, PROMISED OR OFFERED such gratification to him to the nearest officer of the Commission or police officer





Provide such
information to the
nearest Police
Station or MACC
officer

Provide the name
of the person
offering or
receiving
gratification

Provide
information of
the offer that
has been
promised or
requested

DUTY TO REPORT BRIBERY TRANSACTION

OFFENCES OF NOT REPORTING

Section 25(2) of the MACC Act 2009 imposes a penalty on those that do not fulfil the duty to report bribery transactions as such:-

1. Liable to a fine at a maximum of RM100,000.00;
2. Imprisonment at a term of 10 years maximum; or
3. BOTH



CASE STUDIES

AIRBUS SE v THE UK, USA AND FRANCE



KEY TAKEAWAYS!

Determination of Service Providers include business partners who facilitate in procuring international projects and senior personnel

Adequate Procedures must include **ACTUAL** implementation!

KEY TAKEAWAYS!



Bribery Act undertaken by Malaysian commercial organization in a different country is still liable



If it happened in Malaysia, the directors would have been personally liable.

CASE STUDIES

SWEETT GROUP PLC



HOW WAS IT INADEQUATE

Relaxed corporate control and decentralised operations



Inadequate internal systems to deal with a global business with widespread operations



Lack of transparent process for procuring contracts

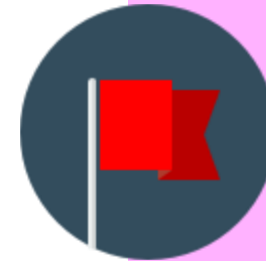


HOW WAS IT INADEQUATE

Red-flags identified in transactions that were not efficiently responded to

Inadequate audit trail of money flows

Personnel involved in procurement that were not properly monitored or managed for competence or integrity.



QUESTIONS?