

## **CORPORATE LIABILITY UNDER THE MALAYSIAN ANTI-CORRUPTION COMMISSION ACT 2009 (MACC Act 2009)**

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Section 17A of the MACC Act 2009 which takes effect on 1<sup>st</sup> June 2020 affects commercial organization and associated persons to be subject to legal proceedings if the commercial organization commit an offence through any person associated with the commercial organization who corruptly gives, agrees to give, promise or offers any gratification to any persons with the intent to obtain or retain business for the commercial organization or obtain or retain an advantage in the conduct of the business for the commercial organization.

Commercial Organization means :-

- a company incorporated and carries on business in Malaysia or elsewhere
- a company wherever incorporated and carried on a business or part of a business in Malaysia.
- a partnership under the Partnership Act 1961 or a LLP under the LLP Act 2012.
- a partnership wherever formed and carries on a business or part of a business in Malaysia

Any person associated with the commercial organization comprise:-

- Director
- Controller
- Officer
- Partner

Or, whoever is concerned with the management affairs at the time of the offence may be implicated with legal proceedings in the event of any presumption of gratification and bribe being corruptly given and received or agree to give and receive unless proven otherwise.

Upon conviction under Section 17A of MACC Act 2009, there is a possible liability of a fine not less than 10 times the value of the gratification whichever is higher OR to imprisonment for a term not exceeding 20 years OR Both.

In view of the above corporate liability, it is advisable for the commercial organization to set up defensive measures to protect its senior personnel and directors by building up a T.R.U.S.T in the organization to prevent any corruption to take place. The Prime Minister's Department has published a set of Guidelines on Adequate Procedures of T.R.U.S.T which stands for :-

- **T**op-Level Commitment
- **R**isk Assessment
- **U**ndertaking Control Measures
- **S**ystematic Review, Monitoring and Enforcement
- **T**raining and Communication

Actions to be taken:-

1. Assess the Possible Risks and Establish Due Diligence Procedures and Policies
2. Set up whistleblowing channels
3. Implement Policies particularly to common risks like conflict of interests, gifts, entertainment, hospitality, donations etc and framework of control over each function of the department within the commercial organization.