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# Anti-corruption compliance worry

## Is Corporate Malaysia ready for new laws against bribery?

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**PETALING JAYA:** Businesses in Malaysia have less than a year to comply with the legal anti-bribery provisions of the Malaysian Anti-Corruption Commission (MACC) Act, but concerns have risen on the readiness and awareness of commercial organisations, especially small-scale businesses.

Questions have also been raised on whether local businesses have implemented adequate internal measures to prevent potential acts of corruption.

If found guilty of an act of corruption under the soon-to-be-enforced Section 17A, the penalties imposed on a commercial organisation would be severe.

A company could be fined not less than 10

times the value of the gratification or RM1mil, whichever is higher, or be subjected to imprisonment not exceeding 20 years, or to both.

Come June 1, 2020, Corporate Malaysia must brace itself for the new anti-bribery measure as the government seeks to weed out corruption in the local business scene.

In just 10 month's time, Section 17A of the MACC Act will come into force and businesses operating in the country are expected to introduce adequate procedures to prevent acts of corruption.

Without such procedures such as internal guidelines or staff training, companies and their directors could be prosecuted under Section 17A if an associated person such as an employee or subcontractor is caught involved in corruption for the benefit of the commercial organisation.

Recall that the Parliament passed a bill in April 2018 to amend the MACC Act 2009, primarily with the insertion of Section 17A. The law was gazetted on May 4, 2018.

Speaking to *StarBiz*, Minority Shareholders Watch Group (MSWG) chief executive officer Devanesan Evanson said that many businesses in Malaysia were still delaying their compliance with the requirements of Section 17A.

"The good thing is, more and more companies, especially the public-listed companies, have started to show interest in preparing for Section 17A.

"It is definitely not difficult to implement the adequate procedures, the companies just need the will to do it," he said.

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## Section 17A widens MACC powers to prosecute companies

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Acknowledging the need to raise awareness on Section 17A, MACC chief commissioner Latheefa Koya said recently that the commission had embarked on an awareness campaign.

The enforcement of Section 17A widens the MACC's powers to prosecute commercial organisations involved in corruption, marking a significant shift from the graft-buster's focus on only individuals before this.

Devanesan said the move to enforce Section 17A – also known as the corporate liability provision – is "long overdue".

"With the legal provision, the board of

directors must be more vigilant in future and must consciously implement anti-corruption measures.

"If you have the guidelines in place, the risk of the company or director being prosecuted for an employee's act of corruption is lower," he said.

According to the Institute of Corporate Directors Malaysia president and CEO Michele Kythe Lim, the enforcement of Section 17A is consistent and aligned with global developments, specifically in the United Kingdom.

"The intention of Section 17A is for boards to oversee the risk of corruption in companies and set the right tone from the top. This means putting in place adequate procedures

and processes, and governance structures.

"Boards and directors cannot disassociate themselves with the issues within the company.

"The fact is that if there are adequate procedures in place, then there is a defence if boards or directors are charged," she said.

Lim pointed out that the MACC only launched the "Guidelines on Adequate Procedures" in December 2018.

"It is a bit premature to determine whether Malaysian companies have adequate internal anti-corruption measures. There is not enough data available just yet.

"There should be greater clarity at least a year after the provision comes into force in

June 2020," she said.

Devanesan said that Section 17A may not completely eradicate corruption in the Malaysian corporate sector.

Quoting the example of Enron Corp. which hit bankruptcy in 2001 after a massive accounting fraud in the US, Devanesan said that businesses would still find ways to skirt the anti-corruption rules.

"To prevent this, the MACC should send a strong message to all stakeholders that severe action will be taken against those who try to bend the rules.

"Through strict enforcement, the MACC must show that any corrupt practice will not be tolerated," he said.