

By GANESHWARAN KANA
 ganeswaran@thestar.com.my

WITH just four more months before the much-awaited corporate liability law comes into effect, the Malaysian corporate scene has been rocked by an alleged multi-billion-ringggit corruption case that brings into light what the regulators are trying to clean up in Corporate Malaysia.

In this case, the settlement between Airbus and the United Kingdom's Serious Fraud Office revealed a saga that also involves Malaysia's leading budget airline, AirAsia and two of its executives.

Notably, the two top executives of AirAsia have relinquished their executive roles in the company for two months while the company has formed a committee to review the bribery allegations.

This has also kicked into action investigations by the Securities Commission (SC) and the Malaysian Anti-Corruption Commission (MACC), as the case involves Malaysia's securities and anti-corruption laws.

The case is a timely reminder of the corporate liability law or the Section 17A of the MACC Act that will come into force from June 1, 2020.

However, it is found that many businesses in Malaysia are unprepared for the new provision, particularly in establishing a dedicated internal anti-corruption programme. Only less than 50% of businesses surveyed by PricewaterhouseCoopers (PwC) Malaysia have put an anti-corruption framework in place as required by Section 17A, the audit firm's forensic services and risk consulting leader Alex Tan tells StarBizWeek.

This was despite the two-year grace period given by the government previously for businesses in Malaysia to prepare for the enforcement of Section 17A. Section 17A would hold companies and their directors as personally liable if an associated person such as an employee or subcontractor is caught involved in corruption for the benefit of the commercial organisation.

The companies and directors, however, could defend themselves against prosecution if they have implemented "adequate procedures" such as internal guidelines or staff training on anti-corruption.

The enforcement of Section 17A would be the much-needed push in combating corruption in Corporate Malaysia, in tandem with the government's ambitious plan to make Malaysia corruption-free by 2023.

Applauding Malaysia's fight against corruption, Tan says that Section 17A is a good step forward for the country. "In fact, the provision is one of the world's leading anti-corruption laws, emulated from the United Kingdom. Over the last two years, we have seen more focus on anti-corruption actions in Malaysia across all types of organisations including the government-linked companies (GLCs).

"For anti-corruption measures to really work, strict punitive actions must be taken upon those who are found guilty of corruption. In some cases, these people get to walk away free from any punishment by just resigning from their posts.

"This is not enough to send a strong message against corruption," he says. Corruption in the corporate sector, particularly involving large organisations, is not new in the Malaysian context. In the past, several major corruption cases have emerged including Siemens, Alcatel and Alstom that have dogged the Malaysian market (see sidebar).

There is limited information as to how much money is lost by the Malaysian private sector due to corruption. However, a previous estimate by Transparency International Malaysia indicated that the country lost nearly RM46.9bil in 2017 alone due to corruption within the public sector.

A previous study showed that on average, around the world, 5% of a company's annual revenue is lost due to corruption," says Tan of PwC Malaysia. To put it into context, Malaysia's largest company by revenue – oil producer Petronas – could have lost over RM12bil

Corporate Malaysia: Waging war on corruption

Many businesses still unprepared for Section 17A to come into force on June 1



in 2018, assuming 5% of its revenue of RM251bil is lost to corruption.

Deloitte Malaysia forensic leader Oo Yang Ping says corruption reduces investor confidence, increasing the cost of doing business and makes it harder for ethical companies to thrive.

Oo adds that the introduction of Section 17A brings the Malaysian anti-corruption legislation in line with similar legislation in advanced economies.

"Because of this, companies are now taking the risks of bribery and corruption more seriously with senior management putting in place anti-corruption policies. For listed companies, Bursa Malaysia has made it mandatory for them to have an anti-corruption policy and to publish this on their website.

"Having said that, the challenge will be in the implementation of these policies. There are some who still believe that certain 'favours' are acceptable, and changing the attitude and mindset of employees and other stakeholders will be a key challenge for companies," says Oo.

Ernst & Young (EY) Malaysia partner and head of Malaysia forensic and integrity services, Joyce Lim, says fraud and corruption seem to be on an uptrend in Malaysia, similar to global trend.

This is despite the country's overall improvement in the latest Corruption Perception Index (CPI), she points out.

Under the 2019 CPI, released by Transparency International (TI), Malaysia's ranking has gone up 10 places to 51 out of 180 countries.

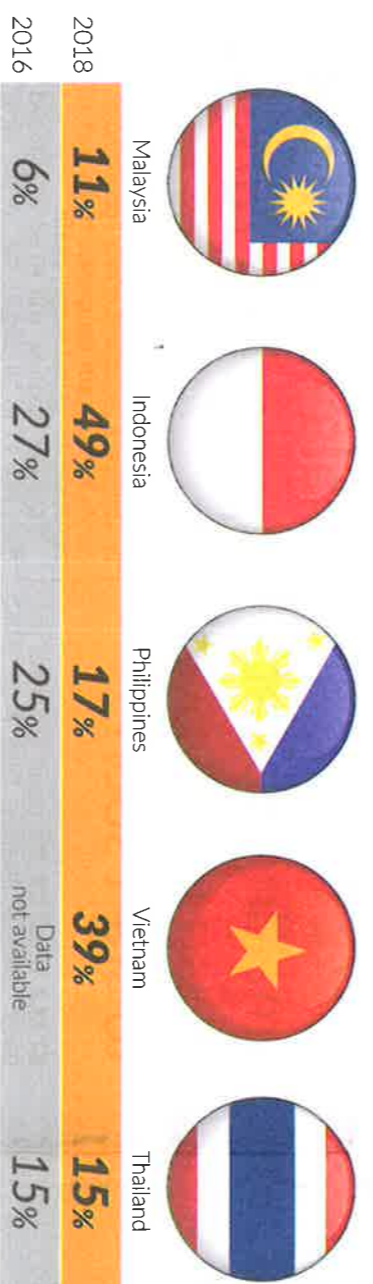
The country also improved in terms of score, going up six points to 53 in the anti-graft index.

In 2018, Malaysia ranked 61 out of 180 countries, scoring 47 out of 100.

TI-Malaysia president Dr Muhammad Mohan has said previously that Malaysia's CPI rankings had improved from 2012 to 2014, but the 1Malaysia Development Bhd (1MDB) issue had caused a downward trend.

"But in 2018, the new government took over and you see a rise in our score. The

In the last two years, has your organisation been asked to pay a bribe?



Source: PricewaterhouseCoopers Malaysia

new government has committed to make Malaysia free of corruption," he said on Jan 23.

EY's Lim says that Malaysia's improved attention paid to combating corruption, higher public awareness in fighting corruption and greater transparency in the reporting of fraud and corruption cases in the media.

"The government and authorities in Malaysia have also implemented various strategies and taken actions to curb bribery and corruption, for example, by introducing Section 17A of the MACC Act, which is a legal provision dealing with corporate liability," she says.

On the requirement to have "adequate procedures" under Section 17A, Lim says "it should go beyond simply policies and procedures".

"Continuous and smart monitoring are required, with clear accountability, transparency and enforcement being the most effective ways to combat corruption and promote confidence in the organisation and community.

"Also, anti-corruption measures should not just be a "tick-the-box" approach," she adds.

GLCs: Cleaning up act

Within the Malaysian private sector, the government-linked companies or GLCs have often been the centre of criticism for corruption such as in procurements.

The federal government owns equity interest in the GLCs through seven government-linked investment companies – the Minister of Finance Inc, Permodalan Nasional Bhd, Khazanah Nasional, the Employees Provident Fund, Lembaga Tabung Angkatan Tentera (LTAT), Lembaga Tabung Haji and Kumpulan Wang Persaraan.

In addition, GLCs could also mean companies that are owned by the state governments.

In the past, the authorities have investigated a number of GLC directors for abuse of power and corruption.

In September last year, the Malaysia Anti-Corruption Commission said it has identified government bodies and GLCs that are at risk of abuse and corruption.

Alra Azhari, research manager at the Institute for Democracy and Economic Affairs, says that the key to tackling corruption is by ensuring those who commit corruption are brought to justice.

"Within GLCs, we need to widen the scope of discussion beyond the top biggest GLCs, which to a certain extent are well governed and credible. The problem with GLCs in Malaysia is that not all of them are listed and there are numerous GLCs at the state level as well as under ministries.

"With these GLCs, transparency and accountability is a problem, as we do not have much information on them. Furthermore, the appointment of politicians to boards and using positions GLCs as a reward for former politicians must stop," she tells StarBizWeek.

Seasoned corporate personality T. Sri Megat Najmuddin says the larger corporate sector have cleaned up their act over the years.

"Recall that decades ago, markets in Malaysia, Hong Kong and even Australia were rife with all sorts of shenanigans since then as rules and their enforcement by strong regulators have created stronger viable capital markets."

Where governance is still severely lacking, he says, is in the government sector and in government-linked companies (GLCs) and government-link

Reported incidents of bribery and corruption continued to increase in Malaysia



Source: PricewaterhouseCoopers Malaysia

“The provision is one of the world’s leading anti-corruption laws, emulated from the United Kingdom. Over the last two years, we have seen more focus on anti-corruption actions in Malaysia across all types of organisation including the government-linked companies.”

Alex Tan

Investment companies (GLICs). “GLICs and GLICs really have to get their governance act together,” he enthuses.

Malaysia’s upping anti-corruption game

Over the last two years, the country has seen significant improvements to its anti-corruption policies.

Malaysian lawmakers passed the Section 17A of the MACC Act on April 5, 2018. The introduction of the corporate liability provision was necessary to fulfil Malaysia’s obligation under Article 26 of the United Nations Convention Against Corruption (UNCAC) to establish a provision for liability of legal persons in the domestic anti-corruption framework.

For context, Malaysia had already signed and ratified the UNCAC, making the requirements legally binding for Malaysia.

Soon after taking office post-14th general election, the Pakatan Harapan government formed the National Centre for Governance, Integrity and Anti-Corruption (GIACC) which reports directly to the Prime Minister. The GIACC was tasked to roll-out a comprehensive national anti-corruption policy and to work with state governments to implement the national aspiration.

Following this, a Special Cabinet Committee on Anti-Corruption (consisting senior ministers, public officials and chaired by the prime minister) was also established.

Several months later on Jan 29, 2019, the government launched the five-year National Anti-Corruption Plan that comprises 115 initiatives, out of which 22 are deemed priority initiatives.

These priority initiatives represent the six strategies of NACP namely:

- > Strengthening political integrity and accountability
- > Strengthening the effectiveness of public service delivery
- > Increasing the efficiency and transparency in public procurement
- > Enhancing credibility of legal and judicial system
- > Institutionalising credibility of law enforcement agencies
- > Inculcating good governance in corporate entity

On its part, the Securities Commission (SC) said on July 22, 2019, that it will be

implementing an anti-corruption action plan, particularly for listed companies in Malaysia.

According to the SCS review as of May 31, 2019, only 59% of listed companies have an anti-corruption policy, and the majority of these policies contain gaps when compared to the Guidelines on Adequate Procedures.

On Dec 18 last year, Bursa Malaysia announced that it has amended the Main and ACE Market Listing Requirements to include anti-corruption measures to support the National Anti-Corruption Plan 2019-2023.

“To take effect on June 1, 2020, the Anti-Corruption Amendments will require listed issuers to establish and implement policies and procedures to prevent corrupt practices, thereby providing them with a measure of assurance and a defence against corporate liability for corruption under section 17A,” it said.

Recently on Feb 5, the SC released the Annual General Meeting (AGM) corporate governance checklist for shareholders to promote “meaningful dialogue between shareholders and board directors at AGMs”.

One of the areas covered under the checklist is anti-corruption, which recommends shareholders to ask at the AGM about whether a company has an adequate anti-corruption policy and the company’s assessment of corruption risk for the year.

Minority Shareholders Watch Group (MSWG) chief executive officer Devanesan Evanson was asked to comment about anti-corruption measures or regulations for public listed companies (PLCs).

To this, he says there are more exacting requirements when it comes to PLCs. “MSWG is satisfied with the required increased disclosures by PLCs in the area of anti-corruption,” he says.

Devanesan points out that beginning June 1, the PLCs are required by Bursa Malaysia to assess the effectiveness of their anti-corruption policies and procedures at least once every three years. The companies must also include corruption risk in their annual risk assessment.

“Finally, the revised Listing Requirements of Bursa Malaysia require the policy on anti-corruption to be disclosed on the PLC’s website to ensure transparency,” he says.

High-profile corruption cases that shook the corporate world

By P. ARUNA
aruna@thestar.com.my

It is no secret that corruption and bribery is rampant in the corporate world. Across the globe, many corporations have offered – and continue to offer – some form of payment in return for contracts or favours from government or other companies.

Large multinational companies (MNCs) are no exception, having been involved in numerous high-profile corruption scandals over the years, tainting their image and brand names.

MNCs, especially when they have a newly set-up in a foreign market, are often faced with the need to secure the necessary licensing, permits and other approvals, and may choose to offer some payment or gifts to government officials to help quicken the process.

Others, which have been operating in the country for some time, may take the unethical path of offering – or agreeing to provide – cash or gifts in order to secure certain jobs or contracts.

In the past, international corporations like Siemens AG, BAE Systems and Alcatel-Lucent, among others, have been embroiled in high-profile corruption scandals that involved the resignations of their top officials, and ultimately hefty fines and penalties for the companies.

Today, the latest case involving Airbus will see the aerospace MNC pay a record £3bl in penalties after admitting it had paid huge bribes to land contracts in 20 countries.

Backhome, there is, of course, the multi-billion dollar 1Malaysia Development Bhd (1MDB) corruption scandal, which has made headlines globally, involving top government officials, civil servants and even banks in a few countries.

Here is a quick look at some of the biggest corruption scandals involving MNCs based in Malaysia and elsewhere, in recent history.

Siemens AG

Back in 2008, German engineering firm Siemens AG was embroiled in a massive corruption scandal that ended with the company being penalised some US\$1.6bl – among the largest fines for bribery in corporate history at the time.

According to reports from the New York Times, the firm was accused of routinely using bribes and slush funds to secure huge public work contracts around the world.

The company also pleaded guilty to charges that it violated a 1977 law banning the use of corrupt practices in foreign business dealings.

According to the charges against the company, Siemens had paid bribes and kickbacks to foreign officials to secure government contracts like a national identity card project in Argentina, mass transit work in Venezuela, a nationwide cellphone network in Bangladesh and a United Nations oil-for-food programme in Iraq.

In Argentina, the company is said to have paid US\$16ml to the country’s president, and over US\$100ml in total to government officials, to secure a US\$1bl contract to produce identity cards.

In December 2008, the corporation reached a settlement to pay US\$1.6bl in fines in the US and Germany.

Alstom SA

French MNC Alstom SA faced corruption investigations in several countries including Malaysia, Latvia and Tunisia after auditors for the Swiss Federal Banking Commission found documents revealing possible corrupt payments to various parties.

According to reports, Alstom, which

develops systems, equipment and services for the transport sector, had attempted to conceal the bribes by retaining consultants who acted as conduits for the payments to government officials.

In Switzerland, the company was ultimately fined 38.9 million Swiss francs (US\$43.4ml) in 2011 by the Swiss Attorney General’s office for failing to implement proper controls to prevent bribery in Malaysia, Latvia and Tunisia.

This was in relation to payments made to middlemen to secure government contracts to build power plants.

In November last year, Alstom’s UK arm was fined £15ml for bribery in relation to a train contract in Tunisia, according to Britain’s Serious Fraud Office.

In the US, Alstom pleaded guilty and agreed to pay a record US\$72ml fine, back in November 2015, to charges that it violated the federal Foreign Corrupt Practices Act by falsifying its books and records, and failing to implement adequate internal controls.

Alcatel-Lucent

In December 2010, Paris-based telecommunications equipment company Alcatel-Lucent SA, admitted it bribed government officials in “many countries,” including Taiwan, Malaysia and Costa Rica.

Overall, Alcatel-Lucent reportedly admitted to making US\$48.1ml in profits as a result of its bribery.

In Malaysia, it was alleged that Alcatel-Lucent had paid bribes to employees of Telekom Malaysia Bhd (TM) to obtain confidential information relating to a public tender for a contract worth US\$85ml that the MNC eventually won.

According to a filing in the United States’ Securities and Exchange Commission (SEC), two Malaysian consultants were paid a total of US\$700,000 for “non-public information” related to competitors’ pricing and bids.

In Costa Rica, a subsidiary of Alcatel had wired about US\$18ml to two consultants, with more than half of the amount later transferred to Costa Rican government officials, the Department of Justice (DoJ) said.

The bribes then resulted in contracts worth more than US\$300ml for Alcatel and a profit of more than US\$23ml.

At the end of 2010, Bloomberg reported that Alcatel settled its bribery case with the DoJ in 2010 by agreeing to pay US\$137ml, including US\$45ml to the SEC.

Maxis Communications

In July 2018, billionaire tycoon T. Ananda Krishnan and his right hand man Ralph Marshall were among several people charged in the Aircel-Maxis scandal in India.

The scandal had erupted following allegations of power abuse in March 2006 by the Finance Ministry in India.

Among the allegations was the Foreign Investment Promotion Board (FIPB) clearance given to Maxis Communications, which was used to bring in 3,200 crore rupees, far in excess of the ceiling of 600 crore rupees it was authorised to clear on its own.

According to *The Economic Times*, the Central Bureau of Investigation (CBI) filed charges on more than a dozen people, including several high profile personalities.

Other than the two personalities in Malaysia, the CBI also charged former Indian finance minister P. Chidambaram, his son Karu Chidambaram and five other government officials, who include the then secretary, joint secretary, under secretary and joint director of economic affairs.