

First Charge under Section 17A of the MACC Act

Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act 2009 has been set in motion today by seeing the first charge made against an offshore vessel company¹, since the provision came into force on 1 June 2020.

Previously, we had written about the implications and possible defence under Section 17A of the MACC Act.² To recap, Section 17A of the MACC Act imposes corporate liabilities on commercial organisations for corrupt act committed for their advantage by a person associated with the organisations. A director or any person who is in the management of the commercial organisations' affairs at the time of commission of the offence is deemed to have committed the same offence.

A commercial organisation which is charged under Section 17A of the MACC Act may be absolved of liability, if it had in place adequate procedures to prevent persons associated with the commercial organisation from undertaking the corrupt act. On the other hand, the director may defend himself by proving that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission.

It was reported that the offshore vessel company was charged because its former director, being an associated person, allegedly gave a bribe of RM321,350.00 to a third party to secure a subcontract in favour of the company. The offence allegedly took place between June 29 and October 14 last year.

This case will surely invite arguments on the standard of "adequacy" of anti-bribery procedures required of a commercial organisation and examination of the steps taken by the commercial organisation in preventing the corrupt act after Section 17A of the MACC Act came into force. Here, where the offence allegedly involved a person in the top management, it would be intriguing to see whether it might alleviate the adequacy of the company's anti-bribery procedures on account of poor tone at the top.

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¹ Report: Pristine Offshore Sdn Bhd becomes first company charged under Malaysia's new corporate liability anti-corruption law <<https://www.malaymail.com/news/malaysia/2021/03/18/report-pristine-offshore-sdn-bhd-becomes-first-company-charged-under-malays/1958863>> Accessed on 18 March 2021.
² Section 17A of MACC Act – How to safeguard your company against corporate corruption; Section 17A of MACC Act – Have you adopted Adequate Procedures



To know more about Section 17A of the MACC Act, please refer to “**Manoeuvring Corporate Governance in Malaysia: Litigation Perspectives**” authored by **Gan Khong Aik, Foo Joon Liang and Tan Min Lee**, which is available at [Lexis Nexis Online Store](#).

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