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Malaysia News:

Malaysia takes a hard turn
on corruption

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Malaysia takes a hard turn on corruption

The Malaysian Anti-Corruption Commission (“**MACC**”) is working on the introduction of new far-reaching corporate liability provisions into the Malaysian Anti-Corruption Commission Act 2009 (the “**MAAC Act**”) in order to reinforce the country’s anti-bribery legal arsenal. The amendments, set forth in the Malaysian Anti-Corruption Commission (Amendment) Bill 2018 (“**Bill**”), have been presented in Parliament for first reading on 26 March 2018. If passed, the amendments will namely render corporations liable for the corrupt practices of its associated persons.

Corporate liability

Under the new Bill, commercial organizations will be held liable if any person associated with them has committed a corrupt act in order to obtain or retain business or advantage for the said commercial organization.

The impact is threefold:

- Firstly, the amendments considerably broaden the scope of application of the MACC Act. The term “*commercial organization*” is meant to include Malaysian companies carrying out business locally or abroad and foreign companies conducting any business in Malaysia. Malaysian partnerships or Malaysian Limited Liability Partnerships carrying on business in Malaysia or elsewhere also appear to be concerned.

“*Associated person*” will now include directors, partners and employees as well as any person who performs services for or on behalf of the commercial organization, namely third-party service providers. The broad wording serves to ensure that the question of whether or not a person performs services for or on behalf of a commercial organization will be determined based on all relevant circumstances.

- Secondly, the Bill hardens corporate liability of commercial organizations as they could now be held liable if they are found to have failed in preventing the corrupt actions of its associated persons. Organizations will only avoid liability if they are able to prove that they had adequate procedures in place which are specifically designed to prevent associated persons from undertaking corrupt practices.

- Thirdly and foremost, where an offence has been committed by the organization, certain persons will automatically be considered as having also committed that offence. Therefore, directors, controllers, officers, partners and persons concerned in the management of the affairs of the organization will also be held liable for the offence. It will then be up to them to personally prove that the offence was committed without his/her consent and that he/she exercised due diligence to prevent the commission of the offence, taking into account the nature of his/her function in that capacity and to the circumstances.

The potential penalties are severe, and could be in the form of a maximum fine of ten times the sum of gratification involved, or MYR 1 million, whichever is higher or imprisonment for a term not exceeding 20 years. Both penalties can be applied simultaneously.

The combination of a broad scope of application with strict corporate liability and personal liability of the corporation’s management and officers creates a “legal weapon” that will have drastic effects on both foreign and Malaysian companies. Companies and management must be aware of these changes and take key steps to prepare for the entry into force of the Bill.

How to protect your company

Vital steps need to be taken by commercial organizations in order to prevent liability. On a corporate level, it is important that companies now monitor their associated persons in order to effectively detect corrupt practices and conduct regular audits / spot checks. Management may also consider to implement strict anti-bribery policies applicable to their company as well as the revision of their gifts and entertainment policies.

On an employment level, updating employment contracts by inserting anti-bribery clauses and other legal provisions may help the company ensure compliance with the Bill and provide them with effective means of preventing associated persons from undertaking corrupt practices.

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