

Compass

for good business conduct

DOING HONEST BUSINESS

Briefing on Corporate Liability for
Corrupt Practices – Section 17A
Malaysian Anti Corruption
Commission Act 2009





Introduction- Section 17A Malaysian Anti Corruption Commission Act 2009

Section 17A is an amendment to the MACC Act.

Introduced in 2018

Enforcement began on **1 June 2020**

Section 17A(1) - A company will have committed a **CRIMINAL** offence if *any person associated with the company* (employees/agents) commits a **corrupt act** to obtain **business advantage** for the company

The Act also covers offences committed by Malaysian citizens and PRs outside of Malaysia

When has the Company committed an offence? Section 17A(1)

Section 17A(1):

Offence is committed if a *person associated with the company* gives, agrees to give, promises or offers, any bribe, facilitation payment or gratification with the intent to obtain business or advantage *for the company*



Very wide!
Can include employees, agents, contractors, individuals, etc. who are acting on behalf of the company

Penalties - Section 17A(2)

Penalty: the value of the bribe/gratification or RM1 million, whichever is higher;
OR

imprisonment for up to 20 years; OR BOTH



If imprisonment term imposed, who will be liable for imprisonment term?

**DIRECTORS, OFFICERS
AND MANAGEMENT**

“March 18, 2021: *Pristine Offshore Sdn Bhd* was charged today with one count of bribery involving RM321,350 to ensure that it was awarded with a subcontract from *Petronas Carigali Sdn Bhd*.”

Highlight (Updated)

Offshore vessel company first to be charged with MACC Act's new corporate liability provision

Emir Zainul / theedgemarkets.com

March 18, 2021 12:27 pm +08



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Defences under Section 17A- Sections 17A (3) and (4)



	Provision		Defence
FOR BOD, OFFICERS AND MANAGEMENT	Section 17A(3)	Where a company has committed an offence under Section 17A(1), <u>a director, officer or person concerned in the management of the company's affairs</u> at the time the offence is committed, is deemed to have committed that offence,	Unless the <u>director, officer or person concerned in the management of the company's affairs</u> proves that: <ul style="list-style-type: none"> (i) the offence was committed without his consent or connivance; and (ii) he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances
FOR THE COMPANY	Section 17A(4)	Where a company has been charged for the offence under Section 17A(1),	It is a defence for the <u>company</u> to prove that it had in place adequate procedures to prevent the associated persons from undertaking such conduct

Defences to BOD and Management under 17A(3)

If charged under 17A(3), directors and management are *deemed guilty*

- *Burden of proof is reversed from prosecution to the defendant*
- **GUILTY UNTIL PROVEN INNOCENT!**



Defence

BOD and Management must prove:

- 1) *That the offences were carried out without their consent or connivance; and*
- 2) *That they have exercised **due diligence** to prevent the commission of the offence having regard to the nature of his function in that capacity and to the circumstances*



As members of the Management Team who is involved in the **day-to-day operations** of the Company, your **daily actions** will determine if you have a defence!






DO:

- **Actively** ensure that corrupt practices are not carried out by your team members
- Ensure **Adequate Procedures** are in place and actively followed
- Set the right **example** through your own **actions**
- Make Compass and compliance a part of your DNA
- Raise compliance, anti-bribery and anti-corruption **awareness** with your teams consistently
- Always ask reasonable questions if there are **reasons to suspect**

What is suspicious?
Transactions which are:
Unusual;
Has no clear purpose;
Seems illegal;
Payment is not commensurate;
etc.

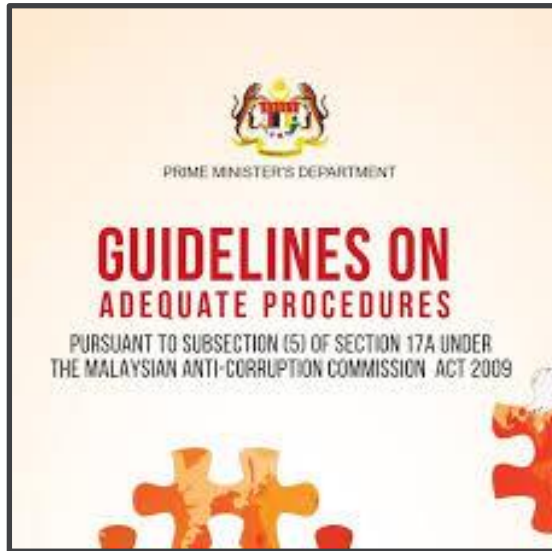


DO NOT:

- Turn a **blind eye** to suspicious behavior
- Be **indifferent** or deliberately ignorant of suspicious transactions
- Give your team the **impression** that compliance is not important
- Give ambiguous instructions which encourages non-transparent behavior such as:
 -  "do whatever it takes, just get it done"
 -  "I am willing to overlook this, just this one time"
 -  "just meet your targets, I don't need to know how"

Defences for the Company under 17A(4): Have in place “Adequate Procedures”

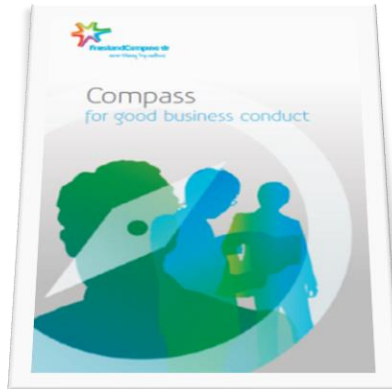
What are the Adequate Procedures a Company can rely on?



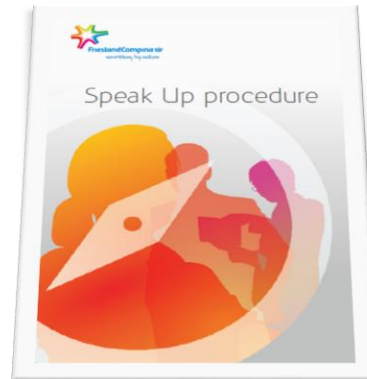
In Dec 2018 MACC issued Guidelines on Adequate Procedures a company can take to defend against corporate liability when that company is charged with an offence under Section 17A(4)

DLMI is a part of the RFC Group and has adopted its existing compliance programmes

We follow Compass and give toolkit trainings and e-learnings on Compass topics



We have adopted "Speak Up" which is the whistle-blowing policy and procedure



We have adopted the Doing Honest Business Policy which is our policy on Anti-Bribery and Corruption



Does DLMI have Adequate Procedures in place?

- A review was carried out on DLMI's existing procedures against the Guidelines in Aug 2019
- Gaps identified – action taken to meet practices in the Guidelines
- On going training and awareness for employees and relevant agents/contractors





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You know what's right