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Section 17A of the Malaysian Anti Corruption Commission Act 2009

- Introduced in 2018 and enforced in June 2020
- The Act covers offences committed by Malaysian citizens and PRs outside of Malaysia
- Section 17A(1) A company will have committed a <u>CRIMINAL</u> offence if any person associated with the (employees/agents) commits a corrupt act to obtain **business advantage** for the company

<u>company</u>



What are the Penalties under the Corporate Liability **Provision?**

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?



BOARD OF DIRECTORS AND MANAGEMENT



Prosecutions under Section 17A

MALAYSIA

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Company director charged with offering Annuar Musa bribes to speed up KL Tower deal

Abdul Hamid Shaikh Abdul Razak Shaikh and his company, Hydroshoppe, have claimed trial to the charges against them.



"April 5, 2023: Hydroshoppe Sdn Bhd was charged with offering *RM500,000 a year* for 15 years for the benefit of Annuar Musa regarding the takeover of the KL Tower concession last year"

Ministry division director among 3 nabbed for bribes

FMT Reporters + January 18, 2023 5/28 PM



"January 18, 2023: The ministry's division director has been remanded for seven days while the other two suspects are under remand for three.

Confirming the arrests, MACC senior director of investigation Hishamuddin Hashim said the trio are being probed under Section 17A of the MACC Act."

Defence of the Company under Section 17A(4)

FOR THE COMPANY	Where a company has been charged for the offence under Section 17A(1),	
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In December 2018, MACC had issued Guidelines on Adequate Procedures a **company** can take to defend against corporate liability if it is charged under Section 17A

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



DLMI being part of FC has adopted its existing compliance programmes





Compass

We follow Compass, complete toolkit trainings and elearnings on Compass topics

Speak Up

Our whistle-blowing policy and procedure



Avoiding Bribery, Gifts & Hospitality Policies



nourishing by nature

Defence of BOD and Management under Section 17A(3)

FOR BOD, OFFICERS AND MANAGEMENT	Section 17A(3)	Where a company has committed an offence under Section 17A(1), <u>a director</u> , <u>officer or person concerned in</u> <u>the management of the</u> <u>company's affairs</u> at the time the offence is committed, is deemed to have committed that offence ,
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If charged, BOD and Management of the company are deemed guilty (guilty until proven innocent)

Daily actions (in the day-to-day operations of the Company) will determine if there is a defence.





The Directors and Management must prove:

1. The offences were carried out without their consent or connivance; and

2. They have exercised **<u>due diligence</u>** to prevent the offence.

Management Do's & Don'ts

Do's

- 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
- Raise compliance awareness in your team 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.

 Turn a blind eye to suspicious behaviour 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 **behaviour** 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"