NEWSLETTER

Anti-Bribery and Anti-Corruption Compliance in Asia (Part 2)

Malaysia: Anti-Bribery and Anti-Corruption Framework and Corporate Liability

Asia & Corporate Crisis Management Newsletter July 17, 2025

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1. Introduction

Many Japanese companies are expanding into Malaysia due to its strong economic growth and political stability, positioning it as one of the most promising countries in Southeast Asia.

Malaysia ranks 57th in the 2024 edition of the Corruption Perceptions Index, published annually by Transparency International, which serves as a representative indicator of corruption levels in various countries. On April 29, 2025, the Southeast Asia Anti-Corruption Conference was held in Putrajaya, Malaysia; the Putrajaya Declaration was adopted by anti-corruption agencies from eight countries, including Singapore, Indonesia, and Malaysia. The Putrajaya Declaration, which was presented by the Malaysian Anti-Corruption Commission ("**MACC**") and Indonesia's Corruption Eradication Commission, affirms the importance of each agency's independence and transparency.

This newsletter will provide an overview of Malaysia's anti-bribery and anti-corruption framework.

2. Malaysia's Anti-Bribery and Anti-Corruption Framework

The Malaysian Anti-Corruption Commission Act 2009 ("**MACC Act**") is the primary legislation governing corruption and bribery in the public and private sectors in Malaysia. It defines and criminalizes various forms of offenses, including bribery and related crimes.

Generally, the MACC Act governs the following offenses relating to corruption:

Section 16 (offense of accepting gratification)	It is an offense if a person corruptly gives or receives any gratification as an inducement for any other person to do or forbear from doing anything.
Section 17 (offense of giving or accepting gratification by agent)	It is an offense if an agent corruptly receives or attempts to obtain any gratification as an inducement to do or forbear from doing anything, or for showing or forbearing to show favor or disfavor to any person in relation to his principal's affairs or business.
Section 17A (offense by	It is an offense if a person associated with a commercial organization corruptly gives any gratification with intent to obtain or retain business or an advantage for the

commercial organization)	commercial organization.
Section 21 (bribery of officer of public body)	It is an offense for a person to offer a public officer any gratification as an inducement or a reward for the officer aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage.

The MACC was established under the MACC Act as the dedicated body to investigate and prevent corruption and abuse of power; its primary function is to investigate corrupt acts.

In addition to the MACC Act, other Malaysian legislation that governs bribery and related offenses includes the Penal Code, which contains provisions relating to the giving and receiving of gratification involving public bodies, and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001, which includes bribery within its scope by reference to the MACC Act. These laws frequently are invoked in tandem, particularly in cases involving bribery and corruption, to ensure comprehensive enforcement and prosecution of those offenses.

Gratification and Lack of Minimum Monetary Threshold

The MACC Act defines "gratification" broadly; the term includes any forms of gratification, including money, gifts, employment opportunities, discounts, commissions, and more. The MACC Act does not establish a minimum monetary threshold at which gratification constitutes bribery. Any gratification given or received with corrupt intent falls within the ambit of the MACC Act, regardless of form or value.

For reference, the circular "*Tatakelakuan dan Pengurusan Tatatertib Pegawai Awam Versi 1.0 (2022)*" (unofficially translated "Code of Conduct and Disciplinary Management of Public Officers") issued by the Public Service Department of Malaysia ("**PO GES Policy**"), which applies only to public officers (meaning members of the federal civil service appointed by the Public Services Commission of Malaysia on a permanent, temporary, or contract basis), generally prohibits public officers from giving or receiving gifts in any manner that is connected with their official duties. However, acceptance of gifts unrelated to official duties may be permitted, subject to certain conditions — for example, where the value of the gift is less than 1/4 of the officer's emolument or MYR 500, whichever is lower.

Although the PO GES Policy applies only to public officers, it provides useful guidance to the private sector. The MYR 500 threshold often is used as the parameter to consider whether or not the value of gratification is "excessive" in connection with allegations of public and private bribery.

Based on publicly available information about the practices of companies in Malaysia, public listed companies and multinational companies adopt a variety of approaches to their anti-bribery policies. Some have strict no-gift policies, while others set specific monetary thresholds for gifts and entertainment.

3. Corporate Liability under Section 17A of the MACC Act

The amendment to the MACC Act that came into effect on 1 June 2020 extended liability to commercial organizations. Section 17A(1) of the MACC Act establishes a corporate liability framework, under which a commercial organization commits an offense if any person associated with the commercial organization corruptly gives, agrees to give, promises, or offers any gratification to any person, whether for the benefit of that person or another person, with intent to obtain or retain business or an advantage for the commercial organization.

Upon conviction, any commercial organization found guilty of an offense is liable to a fine of not less than 10 times the value of the gratification involved (if it can be assessed in monetary terms) or RM1 million, whichever is higher, or to imprisonment for a term not exceeding 20 years, or both. Notably, if the commercial organization is found guilty, its director, controller, officer, partner, or a person who was concerned with the management of the commercial organization's affairs at the time of commission of the offense also will be deemed to have committed the same offense. Section 17A(3) of the MACC Act provides a defense for the relevant officers of the commercial organization, if they can prove that the offense was committed without their consent or connivance and that they exercised due diligence to prevent the commission of the offense as they ought to have done, with regard to the nature of their functions in that capacity and the relevant circumstances.

Defense Against Corporate Liability

If a commercial organization is charged with an offense under Section 17A, it is a defense for the commercial organization if it can prove that adequate procedures were in place to prevent persons associated with the commercial organization from engaging in corrupt conduct.

The Guidelines on Adequate Procedures ("**Guidelines**") were issued by the Prime Minister's Office in December 2018 to help commercial organizations understand the adequate procedures necessary to prevent corrupt practices in their business activities. The Guidelines are structured around five 'TRUST' principles, which serve as reference points for a commercial organization's anti-corruption program. The TRUST principles are (1) Top Level Commitment; (2) Risk Assessment; (3) Undertake Control Measures; (4) Systematic Review, Monitoring and Enforcement; and (5) Training and Communication.

When implementing adequate procedures through anti-bribery and anti-corruption policies and programs, commercial organizations are encouraged to take the Guidelines into consideration, and to establish clear policies and objectives to address bribery and corruption risks. In addition, it is common for some established or listed corporations to adopt ISO 37001 Anti-Bribery Management Systems, which are higher standards of anti-bribery and anti-corruption management, to showcase their implementation of adequate procedures.

4. Recent Cases under Section 17A of the MACC Act

(Commercial Bribery Case)
In 2021, it was reported that Pristine Offshore Sdn. Bhd., an offshore vessel support company, was the first company in Malaysia charged under Section 17A of the MACC Act, for allegedly paying a RM 321,350 bribe to the chief operating officer of Deleum Primera Sdn. Bhd. to secure a subcontract from Petronas Carigali Sdn Bhd (a wholly owned subsidiary of Petroliam Nasional Berhad (PETRONAS), which is the Malaysia's national oil and gas company). The defendant company's former director also was charged with bribery under Section

16(b)(A) of the MACC Act[1].

(Public Bribery Case)
Separately, in 2023 it was reported that Hydroshoppe Sdn. Bhd. was charged under Section 17A of the MACC Act in connection with an alleged offer of RM 500,000 per year for 15 years made by its director for the benefit of the then-Communications and Multimedia Minister, in exchange for expediting the company's takeover of the KL Tower concession. The defendant company's director also was charged with bribery under Section 16(b)(B) of the MACC Act[2].

5. Conclusion

Bribery is strictly prohibited in Malaysia, whether or not the giver or recipient is a public officer or a private individual. Under the corporate liability framework, where a person associated with a commercial organization engages in bribery, both the corporation and its officers may be held legally accountable. In recent years, several enforcement actions have been taken against corporations in connection with corporate liability for corrupt practices. As the implementation of adequate procedures is statutorily recognized as a defense under the law, it is imperative for corporations to implement comprehensive anti-bribery compliance systems, not only to prevent the commission of bribery, but also to mitigate the risk of corporate liability arising from corrupt acts committed by their employees, officers, or other associated persons.

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[1] https://theedgemalaysia.com/article/offshore-company-first-be-charged-under-maccs-new-law

[2] https://theedgemalaysia.com/node/662161