

Client Alert

April 2018

Malaysia Introduces "Corporate Liability" Bill

The Malaysian Government has proposed amendments to the Malaysian Anti-Corruption Commission Act 2009 that will make corporations liable for the corrupt practices of its associated persons. The amendments are set out in the Malaysian Anti-Corruption Commission (Amendment) Bill 2018 ("**Bill**") that was tabled for first reading in the Malaysian Parliament on 26 March 2018.

Corporate Liability

The corporate liability provisions are modelled on the Bribery Act in the United Kingdom. It criminalises commercial organisations (which includes Malaysian companies and foreign companies conducting any business in Malaysia) if an associated person corruptly gives any gratification with intent to obtain or retain business, or an advantage in the conduct of business, for the commercial organisation.

An "associated person" includes directors and employees, and could extend to third party service providers.

The Bill imposes strict liability on commercial organisations, in that organisations can be liable regardless of whether they had actual knowledge of the corrupt actions of its associated persons. To avoid liability, organisations must be able to demonstrate that they had in place adequate procedures designed to prevent associated persons from undertaking corrupt practices.

Where a commercial organisation commits an offence, the directors, officers and management are deemed to have committed the same offence unless they are able to prove that the offence was committed without their consent and that they exercised due diligence to prevent the offence.

The potential penalties are severe, and could be in the form of a fine of not less than ten times the value of the gratification (if capable of being valued), or RM 1 million, whichever is the higher, or imprisonment for a term not exceeding 20 years, or both.

In light of these penalties, commercial organisations and management will need to step up monitoring of its associated persons for corrupt practices. Commercial organisations should also revisit their gifts and entertainment policies and other anti-corruption policies to ensure that they are sufficiently robust to allow the organisation to avoid liability.

For further information, please contact:

Brian Chia
Partner
+603 2298 7999
Brian.Chia@WongPartners.com

Chew Kherk Ying
Partner
+603 2298 7933
KherkYing.Chew@WongPartners.com

Eddie Chuah
Partner
+603 2298 7939
Eddie.Chuah@WongPartners.com

Adrian Wong
Senior Associate
+603 2298 7952
Adrian.Wong@WongPartners.com



Conclusion

The Bill seeks to enhance Malaysia's combat against corruption, in particular corruption arising from commercial transactions. The Bill will also have the effect of promoting better corporate governance and legal compliance in Malaysia by requiring corporations to take a proactive role in preventing corruption.

We expect that further guidelines will be issued on the procedures that commercial organisations will need to have in place to avoid liability. Commercial organisations should take these guidelines into account when preparing or revising their compliance policies.

www.wongpartners.com

Wong & Partners
Level 21
The Gardens South Tower
Mid Valley City
Lingkaran Syed Putra
59200 Kuala Lumpur



©2018 Wong & Partners. All rights reserved. Wong & Partners is a member of Baker & McKenzie International, a Swiss Verein with member law firms around the world. In accordance with the common terminology used in professional service organizations, reference to a "partner" means a person who is a partner, or equivalent, in such a law firm. Similarly, reference to an "office" means an office of any such law firm.

This may qualify as "Attorney Advertising" requiring notice in some jurisdictions. Prior results do not guarantee a similar outcome.