

Client Alert

21 April 2020

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Corporate Liability for Corruption Offences - Dateline for compliance by Listed Companies, Licensed Intermediaries and Registered Persons - 1 June 2020

The new corporate liability provision under Section 17A Malaysian Anti-Corruption Commission Act 2009 ("**MACCA**") is set to come into force **1 June 2020** and imposes a criminal liability on commercial organisations if a person associated to it corruptly gives any gratification with the intent to obtain or retain any business or advantage for the commercial organisation. The offence comes with a heavy penalty of (i) **a fine not less than 10 times the value of the bribe or MYR 1 million, whichever is higher**, (ii) **imprisonment of term not exceeding 20 years**, or (iii) **a combination of both**.

The sole defence available for an offence under Section 17A MACCA is for the commercial organisation to prove that there are in place "**Adequate Procedures**" to prevent corruption. The Prime Minister's Department has published a set guidelines to provide guidance on what adequate procedures are ("**Guidelines**").

In addition to the Guidelines, Bursa Malaysia and the Securities Commission have recently amended listing requirements and the Licensing Handbook to set out new obligations to be complied with by 1 June 2020. We will examine these requirements in turn.

Main Market and ACE Market Listing Requirements

In line with Section 17A MACCA and the Guidelines, Bursa Malaysia has amended the Main and ACE Market Listing Requirements to introduce new obligations for listed companies and its board of directors in relation to anti-corruption measures. The key amendments include, among others:

- establishing and maintaining policies and procedures on anti-corruption that are, at minimum, guided by the Guidelines;
- establishing and maintaining policies and procedures on whistleblowing;
- ensuring that policies and procedures above are reviewed periodically, at least once every three years;
- expanding the annual risk assessment to include corruption risk; and
- publishing the anti-corruption policy and whistleblowing policy on the listed issuer's website.

These listing requirements are to take effect from **1 June 2020**.

Licensed Intermediaries and Registered Persons

Under the Capital Markets and Services Act 2007, licensed intermediaries and registered persons are subject to guidelines issued by the Securities Commission



Malaysia, including the Licensing Handbook. On 16 April 2020, the Securities Commission Malaysia followed suit in efforts to strengthen by amending its Licensing Handbook and relevant guidelines for registered persons to include new obligations in light of the corporate liability provision under Section 17A MACCA.

Pursuant to the amendments by Securities Commission Malaysia, licensed intermediaries and registered persons are expected to have in place policies and procedures on anti-corruption and whistleblowing, which should be in line with and guided by the Guidelines.

Similar to the Bursa Listing requirements, these amendments are effective **1 June 2020**.

Conclusion

With less than two months until Section 17A MACCA comes into force, it is important that commercial organisations, in particular listed companies, licensed intermediaries and registered persons, take immediate steps to ensure that it has in place robust anti-corruption policies and procedures to safeguard itself and its senior management against the heavy penalty under the new corporate liability regime. These companies should seek legal advice to ensure that the current anti bribery system is sufficiently compliant with the new listing requirements, Licensing Handbook and more importantly, the "**Adequate Procedures**" requirements under Section 17A.

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