

MACC Amendment Act: Preparing for Corporate Liability

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In an earlier post, I wrote about the **6 key issues arising from the MACC Amendment Bill**. The Bill introduced corporate liability for corruption offences. The Amendment Bill has now been gazetted on 4 May 2018 as the **MACC Amendment Act 2018**. However, this Act has not been brought into force yet.

I set out certain thoughts on how companies can already prepare for the coming into force of the corporate liability provisions under the MACC Amendment Act 2018.

#1: Possible Two-Year Period for Effective Date of Corporate Liability

During the Parliamentary debate of the MACC Amendment Bill, it was made clear that the corporate liability provision would only be brought into force in two years time. On 4 April 2018, the Deputy Minister in the Prime Minister's Department, Dato' Razali Ibrahim, moved the Second Reading of the Bill. He explained that corporate liability would only be enforced in two years' time. This is to allow commercial organisations to prepare themselves and to develop the necessary programmes to prevent corruption.

Companies should actively monitor any announcements of the timeline for the implementation of the corporate liability provision.

#2: Issuance of the Guidelines on Adequate Procedures

As I wrote in my earlier article, a commercial organisation has the defence of having adequate procedures in place to prevent the corrupt conduct. Under the Act, the Prime Minister's Department shall issue guidelines relating to such adequate procedures.

This is very similar to how the UK Ministry of Justice issued its **Bribery Act 2010 Guidance to commercial organisations**. Malaysia's corporate liability provisions are similar to the Bribery Act's provisions. The UK's Guidance sets out six guiding principles:

1. **Proportionate procedures:** the procedures put in place which are proportionate to the risk of corruption and the nature, scale and complexity of the commercial organisation's activities.
2. **Top level commitment:** the top-level management's commitment to prevent corruption.
3. **Risk assessment:** periodic, informed and documented assessment of the external and internal risks of corruption.
4. **Due diligence:** due diligence procedures in order to mitigate risks.
5. **Communication** (including training): internal and external communication, including training, within the commercial organisation.
6. **Monitoring and review:** monitor and review procedures designed to prevent corruption by persons associated with it.

It is possible that Malaysia may adopt similar principles when issuing the Guidelines on the extent of adequate procedures. Transparency International UK has also set out its **Adequate Procedures Guidance**. The page contains a useful guide and various checklists for organisations.

Companies will have to monitor any announcement of the issuance of these Guidelines under the MACC Amendment Act.

#3: Two Case Studies from the UK

Malaysia can also draw lessons from the UK experience. **Sweett Group PLC was convicted** for the act of its subsidiary in making corrupt payments to secure the award of a contract. The subsidiary was a separate entity but was effectively operated by its holding company, Sweett Group plc, as a department or division. It was found that there were inadequate procedures in place to prevent the corrupt acts.

Next, Skansen Interior Limited, a refurbishment company, was charged under the UK Bribery Act. Skansen Interior relied on the defence of adequate procedures. The company relied on the company's relatively small business and limited geographical reach to argue that the company did not need sophisticated procedures in place. Further, the company tried to rely on broadly worded company policies on ethical conduct but it had no specific anti-bribery policies. This defence did not succeed and the company was convicted.

#4: Steps for Companies in Malaysia to Take

The corporate liability provision for corruption has already arrived. There will be a two-year period or so for companies to put in place procedures and safeguards in place.

A robust anti-corruption compliance programme must include well-written policies, procedures and codes of conduct which set out what employees must or must not do to ensure compliance with the anti-corruption laws.

These procedures and training may have to also be extended to third party service providers to companies.