

Corporate Liability under Malaysian Anti-Corruption Laws

Are you at risk?

Be advised. Be prepared.

In line with global trends in anti-corruption legislation, the amendments to the **Malaysian Anti-Corruption Commission Act 2009** will come into force on 1 June 2020 to introduce **corporate liability for corruption** in Malaysia.

Following this, commercial organisations will be held to account if a person associated with the organisation engages in corrupt practices with the intention to obtain or retain business or an advantage for the organisation. This may, amongst others, happen unwittingly in the case of overzealous employees acting without the knowledge of the management. As such, it is important for organisations to exercise greater oversight over the conduct of their employees.

It is equally important for organisations to take reasonable and proportionate measures to ensure their businesses do not participate in corrupt practices. The existence of adequate procedures afford organisations a statutory defence in the event of corrupt practices by any of their employees.

It is critical for all MNCs and Corporates to be ready for this onerous new corporate liability provision which will come into force very soon.

Guidelines on Adequate Procedures (“Guidelines”)

These Guidelines issued by the Prime Minister’s Department are intended to facilitate commercial organisations in minimising / preventing the occurrence of corrupt practices.

Principles under the Guidelines: T.R.U.S.T

Five principles must be observed; Top Level Commitment; Risk Assessment; Control Measures, Systematic Review, Monitoring and Assessment; Training and Communication.

- 1. Top Level Commitment** — Responsibility falls on top management to ensure the organisation is compliant and is managing the corruption risks of the organisation (if any). This includes the establishment of an anti-corruption compliance programme and promoting a culture of integrity.

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2. **Risk Assessment** — To meet that responsibility, a comprehensive corruption risk assessment is necessary. This should be carried out every three years. Intermittent assessments may be necessary to ensure systems and processes keep abreast with evolving law and business circumstances.
3. **Undertake Control Measures** —
 - a. Establish criteria for conducting due diligence prior to entering into relationships;
 - b. Establish a secure and confidential whistleblowing platform; and
 - c. Establish policies and procedures to safeguard against the risk of corrupt practices.
4. **Systematic Review, Monitoring and Enforcement**
 - a. Conduct regular reviews to assess the performance, efficiency and effectiveness of the anti-corruption programme; and
 - b. Ensure enforcement and monitoring of the programme;
5. **Training and Communication** — Communicate the organisation's anti-corruption policy. Provide training to employees and business associates on the organisation's anti-corruption position.

Are You Ready for this Sea Change?

To assist Clients with the implementation of the above, Shearn Delamore & Co. offers the following:

- We assist corporations with a review of their processes and policies in place to counter corrupt practices, conduct a risk assessment and a gap analysis exercise, recommend/vet processes and practices;
- We provide training to management and staff as part of ongoing compliance efforts;
- We assist with the setting up and the implementation of an integrity hotline to facilitate confidential disclosures by whistleblowers — this includes training on the legal protection and rights afforded to whistleblowers and how to deal with them; and
- We provide updates and refresher reviews of processes and policies, compliance manuals and training.

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