



As the nation is grappling with corruption perception after a series of high profile court proceedings and conviction recently, Malaysians are trying to make sense of the charges that have been framed against these individuals. Amongst the charges reported in the headlines include corruption and money-laundering. What exactly do these terms entail and have we taken part in these transactions unknowingly?

Corruption is often referred to as bribery, whereby gratification is given, in exchange of an advantage of some sort. 'Donating' a sum of money to university in order to secure a place would be considered corruption. It is likely that you have come across either from hearsay or personally being asked for 'duit kopi' by public or private officers. While to some, this is widely accepted as common practice, we should be aware that both the giver and recipient of the bribe would be liable under the Malaysian Anti-Corruption Commission Act 2009 (MACC Act). Based on the Corruption Perceptions Index (CPI) reported by Transparency International, Malaysia's corruption score is 53 in 2019, whereby a lower corruption score means the country is perceived to be more corrupt. To draw a comparison with our neighbouring countries, Thailand's corruption score is 36, Indonesia's score is 40 while Singapore's score is 85 for the year 2019. Relative to 2018, where Malaysia had a CPI of 47, it has made an improvement of 6 points in 2019. We hope that this improvement is not a one-off incident and can be maintained in 2020 and beyond.

### **New Kid On The Block**

Section 17A of the MACC Act has been an interesting addition that came into force on 1<sup>st</sup> of June 2020, where a director, officer or member of the management may be held liable for the corrupt acts of their employees or associates. This means that such persons can no longer "turn a blind eye" to corrupt practices and now bear a heavy responsibility to curb corruption in the workplace. Certain departments such as finance, which oversee the flow of money, approval of claims and issuance of payment vouchers, is well positioned to notice potential red flags. Hence, they have a significant role in the check and balance mechanism within a commercial organization (CO). Failing to investigate a suspicious transaction may result in serious legal and economic consequences for the CO, such as loss of business and reputation apart from personal liability of the directors and members of the management.

Where a CO has been charged for a Section 17A offence, it can defend itself by proving that the CO had in place "adequate procedures" that are effectively implemented and enforced.

Where a CO is liable under Section 17A of the MACC Act, a director, officer or a person concerned in the management of the CO's affairs will also be deemed personally liable. In light of this, such persons have to be well armed with the relevant evidence to prove that *'the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.'*

### **Money-Laundering**

A charge for corruption is oftentimes intertwined with a money-laundering charge, as seen in recent headlines. Why is this the case? Whilst many may understand money-laundering to mean disguising or transferring proceeds of an unlawful activity, it also includes any usage or disposal of such proceeds. Section 4 of the Anti-Money Laundering, Anti-Terrorist Financing and Proceeds of Unlawful Activities Act 2001 is wide enough to include practically any dealings related to unlawfully acquired proceeds, be it unlawful proceeds being passed through bank accounts or spending such proceeds to acquire an asset. This provision makes it easier for a money-laundering charge to be framed against an individual so long as it can be established that he has acquired proceeds from an unlawful activity.

Although some of the recent charges involving high profile individuals are still being hotly debated, it seems that Malaysia has taken a stance against corruption and money laundering and with that, a hope that we can improve on our CPI.

***"There are still those of us who work to overcome corruption and believe it to be possible"*** – Padmé Amidala, Star Wars.

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