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## Corporate Criminal Liability for Corruption in Malaysia – Taking Action

*Key message: Companies engaged in the Malaysian market – particularly those that participate in government contracts and tenders – should assess their potential risk exposure and review whether their compliance programs satisfy the “adequate procedures” defense.*

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Malaysia has been shaken by several notable corruption scandals in the past decade, chief among them the 1MDB scandal, in which Malaysia’s then-prime minister Najib Razak was convicted<sup>1</sup> of siphoning billions in public funds through a joint venture and in to his personal accounts.<sup>2</sup>

The Malaysian government has tried to take steps to enhance its anti-corruption regulation and enforcement. However, public perception of anti-corruption enforcement efforts remains pessimistic, and criticism and lack of confidence in the Malaysian Anti-Corruption Commission (MACC) persists. Malaysian media has described corruption in the country as a pandemic and expressed skepticism that the MACC is up to the task of responding to this threat.

For more than a year since his appointment as Chief Commissioner of MACC, Azam Baki has repeatedly voiced his commitment to tackling corruption in Malaysia and restoring public trust.

### Introduction of Corporate Criminal Liability

In June 2020, through Section 17A of the Malaysian Anti-Corruption Commission Act, the government introduced corporate liability for bribery offences and along with it harsh penalties – up to ten times the sum of the bribe and / or 20 years’ imprisonment.<sup>3</sup> Similar to the UK Bribery Act, “adequate procedures” in place to prevent corrupt actions may act as a defense.<sup>4</sup>

Despite the introduction of corporate liability, initially Commissioner Baki appeared to focus on graft in the civil service. This may have been to allow time for companies to implement or enhance anti-corruption compliance frameworks,<sup>5</sup> as well as perhaps the impact of COVID-19. However, Commissioner Baki now seems to be turning his attention towards corporate corruption.

### Enforcing Corporate Criminal Liability

In March 2021, MACC arrested a former director of Pristine Offshore, Chew Ben Ben, for allegedly bribing the Chief Operating Officer of Deleum Primera in order to secure a subcontract from Petronas Carigali. Pristine Offshore was also charged with violation of Section 17A. Both parties have pled not guilty, with its director Datuk Abdul Kamal Mohd Mydeen appearing for Pristine Offshore in court.<sup>6</sup>

<sup>1</sup> <https://www.thehansindia.com/news/international/ex-malaysian-pm-to-appeal-corruption-sentence-680265>

<sup>2</sup> <https://www.sarawakreport.org/2015/02/heist-of-the-century-how-jho-low-used-petrosaudi-as-a-front-to-siphon-billions-out-of-1mdb-world-exclusive/>

<sup>3</sup> [https://www.sprm.gov.my/admin/files/sprm/assets/images/sprm/laman-utama/s-17/Act\\_A1567.pdf](https://www.sprm.gov.my/admin/files/sprm/assets/images/sprm/laman-utama/s-17/Act_A1567.pdf)

<sup>4</sup> [https://www.sprm.gov.my/admin/files/sprm/assets/images/sprm/laman-utama/s-17/Act\\_A1567.pdf](https://www.sprm.gov.my/admin/files/sprm/assets/images/sprm/laman-utama/s-17/Act_A1567.pdf)

<sup>5</sup> <https://www.thestar.com.my/news/nation/2020/09/15/macc-chief-public-listed-companies-must-have-adequate-anti-corruption-procedure>

<sup>6</sup> <https://www.lexology.com/library/detail.aspx?g=ccefd8ff-4ee5-4fb3-a77a-a974c2aee268>

## Government Contracts and Tenders

In April 2021, MACC arrested seven members of a conspiracy which illegally obtained government contracts worth nearly USD one billion, and further arrests are pending.<sup>7</sup> MACC sources said that the conspiracy involved the creation of around 150 companies to submit tenders to various government ministries while conspirators simultaneously bribed government insiders responsible for evaluating the tender offers.<sup>8</sup> This alleged cartel has been operating since 2014, and at least one senior government official was among the arrests.<sup>9</sup>

Tenders appear to be a notable hotspot with other Malaysian regulators as well; the Malaysian Competition Commission recently revealed that more than 3,000 companies are being investigated for rigging various public and private tender offers.<sup>10</sup>

## Practical Recommendations

How Malaysian authorities will evaluate “adequate procedures” remains to be seen. But experience with other regulators, particularly those in the U.S. and UK, show that they are increasingly focusing on the execution, implementation and outcome of anti-corruption and other compliance programs.

Risk mitigation is not static. Monitoring of appropriate data and evaluation efforts should be carried out regularly, and oversight should be continuous. Corporations should take a tailored approach taking into account their particular risk exposure as well as intangible factors such as their culture and management leadership.

<sup>7</sup> <https://www.nst.com.my/news/crime-courts/2021/04/680417/more-arrests-expected-project-tender-cartel-case>

<sup>8</sup> <https://www.theedgemarkets.com/article/project-tender-cartel-crippled-seven-arrested-%E2%80%94-macc>

<sup>9</sup> <https://www.malaymail.com/news/malaysia/2021/04/06/macc-nabs-senior-government-official-linked-to-project-cartel/1964183>

<sup>10</sup> <https://www.malaymail.com/news/malaysia/2021/04/30/over-3000-companies-under-investigation-for-rigging-tenders-worth-rm5.6b-my/1970547>