

## Client Alert

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## The Malaysian Anti-Corruption Commission (Amendment) Bill 2018

The Malaysian Anti-Corruption Commission (Amendment) Bill 2018 that was first tabled in the Malaysian Parliament on 26 March 2018 has been passed and gazetted on 4 May 2018 as the MACC Amendment Act 2018 ("**the Act**"). By a gazette dated 20 September 2018, the Act comes into operation on 1 October 2018 save as for Section 4 of the Act on corporate liability.

The key changes include:-

- Obligations previously imposed on the bank are now broadened to include all financial institutions licensed, established or registered under various statutes including, among others, Financial Services Act 2013, Islamic Financial Services Act 2013, Capital Markets and Services Act 2007, Labuan Financial Services and Securities Act 2010, and Cooperative Societies Act 1993;
- There is no longer a partial immunity granted to persons who disclose or produce any information in the course of investigation by the Commission;
- Previously, only an officer of a public body may be directed by the Commission to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold any interest in any property which is excessive having regard to his present and past emoluments and all other relevant circumstances. This limitation is now removed and broadened to 'any person';
- There is a new provision which allows documents obtained by the Commission under the Act to be admitted as evidence in court notwithstanding anything to the contrary in any other written law. Query whether this new provision will override the inadmissibility of documents on grounds of legal privilege.

The much awaited provisions on corporate liability have, however, been put on hold. Considering the significance of these provisions, we have set out below the impact should these provisions come into force.

### Corporate Liability

The corporate liability provisions are modelled on the Bribery Act in the United Kingdom. The provisions criminalises commercial organisations (which includes Malaysian companies and foreign companies conducting any business in Malaysia) if an associated person corruptly gives any gratification with intent to obtain or retain business, or an advantage in the conduct of business, for the commercial organisation.



An "associated person" includes directors and employees, and could extend to third party service providers.

The Act imposes strict liability on commercial organisations so that they can be liable regardless of whether they had actual knowledge of the corrupt actions of its associated persons. To avoid liability, organisations must demonstrate that they had in place adequate procedures designed to prevent associated persons from undertaking corrupt practices.

Where a commercial organisation commits an offence, the directors, officers and management are deemed to have committed the same offence unless they are able to prove that the offence was committed without their consent and that they exercised due diligence to prevent the offence.

The potential penalties are severe. They could be in the form of a fine of not less than ten times the value of the gratification (if capable of being valued), or RM 1 million, whichever is the higher, or imprisonment for a term not exceeding 20 years, or both.

Commercial organisations and management will need to step up monitoring of its associated persons for corrupt practices. They should also revisit their gifts, entertainment and other anti-corruption policies including compliance and awareness training to ensure that they are sufficiently robust to allow the organisation to avoid liability.

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