

LEMBAGA PERKHIDMATAN KEWANGAN LABUAN
(LABUAN FINANCIAL SERVICES AUTHORITY)

Our ref: LFSA.400-15/LM/Gen/2019

Date : 11 December 2019

Chairman

Association of Labuan Trust Companies

Association of Labuan Banks

Labuan International Insurance Associations

Labuan Investment Bank Group

Dear Sirs,

RE : New Section 17A of the Malaysia Anti-Corruption Commission Act 2009 – The New Corporate Liability Offence for Corruption.

The above refers.

2. As you are aware, Malaysia Anti-Corruption Commission have amended the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) and introduces a new section 17A on corporate liability for corruption.

3. The new Section 17A of the MACC Act not only establishes a new statutory corporate liability offence of corruption by a commercial organization under Malaysian law, but also deems any director, controller, officer, partner or manager of a commercial organization to be personally liable for the same offence if the commercial organization is found liable, unless the relevant individual can prove that the offence was committed without his or her consent, and that he or she had exercised the requisite due diligence to prevent the commission of the offence.

4. Section 17(8) of the Act defines further on the "commercial organization" as follows:-

(8) For the purposes of this section, "commercial organization" means–

(a) a company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;

(b) a company wherever incorporated and carries on a business or part of a business in Malaysia;

(c) a partnership–

(i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or

(ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or

(d) a partnership wherever formed and carries on a business or part of a business in Malaysia.”.

4. By the definition of “commercial organization”, the Labuan entities i.e. Labuan companies, Labuan Limited Partnership and Labuan Limited Liability Partnership would be impacted.

5. This amendment is carried out by taking into consideration among others the following new issues:-

- I. To encourage businesses to operate in a corruption-free environment, and to encourage commercial organizations to take appropriate and consistent steps to ensure that businesses conducted are not engaged in corruption activities for their interest and purposes.
- II. Actions of an ordinary employee will have an impact on the company engaging the employee as well as on officers and members of senior management of the company.

6. The introduction of the corporate liability offence will bring Malaysia’s anti-bribery laws closer into line with its international obligations under the OECD Anti-Bribery Convention, in particular the provisions recommending corporate liability for bribery.

7. Moving forward, although there may be a two years grace period for companies to put these procedures in place, it would be in your best interest to start performing risk assessments of your business to ascertain what resources its needs and steps it needs to take to put in place some form of bribery prevention mechanisms.

As such, please inform your members accordingly.

With kind regards,


Mohamed Fairudz Mohd Hanif
Legal and Business Management Department
For and on behalf of Labuan FSA