



SPEECH TEXT

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KEYNOTE ADDRESS

**2ND MALAYSIA ANTI-CORRUPTION FORUM:
RESTORING TRUST AND BUILDING A CULTURE OF INTEGRITY**

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THE EVERLY PUTRAJAYA

Assalamualaikum warahmatullahi wabarakatuh and a very good morning.

Before i begin, please allow me to express my sincere gratitude to the organizer, the International Strategy Institute (ISI), for giving me the opportunity to deliver a keynote on in this prestigious event today. It is my great honour to be present here and i will try my best to share some insights on Corporate Liability provision in the Malaysian Anti-Corruption (Amendment) Act 2018, which is the theme and focus of this forum, including its core liability in corruption as a legal concept; the concept of “adequate procedures”, and how the new provision will

be able to bring Malaysia to the forefront of the global fight against corruption. I assure you that we will take note of all ideas and recommendations that come up at this forum.

Distinguished guests, ladies and gentlemen,

Good ethics and and transparency are integral to the achievement of good corporate governance and the eventual eradication of corrupt practices from both the public and private sectors. Both elements are widely known as the fundamental factors in determining a country's economic competitiveness.

This is in line with the contemporary global development, as shown by the World Economic Forum global competitiveness index that the top ranked economies in the world are characterized by world-class educational attainment, focus on innovation, as well as good governance framework. Malaysia is ranked 27th on a global platform in the World Economic Forum global competitiveness index 2019. This would also mean that Malaysia has one of the most competitive economies in the system.

Meanwhile, in terms of our fight against corruption, Malaysia in the Transparency International Corruption Perception Index (CPI) has jumped 10 places to rank 51 with total score of 53 points in 2019, comparing to rank 61 with 47 points in 2018. The index measures public sector corruption including bribery, diversion of public funds, use of public office for private gains and nepotism in the civil service. One of the factors for the improved ranking would be the introduction

of the Corporate Liability law and the launching of the National Anti-Corruption Plan 2019-2023 (NACP).

In fact, the Government had also made significant decisions to bring about a more transparent administrative and governance system for Malaysia. Parliamentary proceedings are more open and free. There is more spirited debate. Select committees and caucuses have been formed to address specific issues and to allow citizen groups to participate in policy formulation and legislative reform. A lot have been done by our government and what we need to do next is to convey and communicate these initiatives and policies to the general public.

As we all know, the MACC (Amendment) Act 2018 was passed by the Parliament and was given Royal Assent in 27 April 2018. Brought into force on June this year, Section 17A of the Act sets out that commercial organizations may be held liable to corrupt practices of any person associated with them in cases where such corrupt practices were carried out for the benefits or advantages of the organization.

Although two years grace period was given to provide ample time for commercial organizations to prepare themselves towards this new obligation, introduction and enforcement of the Act has no doubt stirred up worries among commercial organizations in Malaysia as many until today still do not have sufficient knowledge or understanding about the new provision.

Therefore, i think it is important for me to shed some lights on the new legislation here today so that all of you can have some basic understanding on Section 17A under the Act. Here are the six key things that you need to know about the provision:

1. The New Corporate Offence

Under this new law, a commercial organisation will now commit an offence if a person associated with the commercial organization does the following:

- (i) That person corruptly gives, agrees to give, promises or offers to any person any gratification; and
- (ii) That person has the intention to obtain or retain business or an advantage for the commercial organization.

So the corrupt act of such an associated person will now be attributed to the commercial organization.

2. Entities that Falls under the Term “Commercial Organization”

There is a wide list of entities that fall within the term commercial organization.

Firstly, any Malaysian company is included, whether carrying on a business in Malaysia or elsewhere. Secondly, the liability also extends to foreign companies carrying on a business or part of a business in Malaysia. Thirdly, the section applies to a Malaysian

partnership or Malaysian Limited Liability Partnership, whether they carry on business in Malaysia or elsewhere.

3. Who are “Person Associated with Commercial Organization” Referring to?

Next, the categories of the associated person (who carried out the corrupt act) are also wide. The list of individuals falling within the term “person associated with a commercial organization” includes:

(i) Director;

(ii) Partner;

(iii) Employee; and

(iv) A person who performs services for or on behalf of the commercial organization.

4. Deemed Offence by Directors and Management

Significantly, once the offence is committed by the commercial organization, the law will deem that certain persons have also committed that offence.

These persons are:

(i) The director, controller, officer (and this would include an employee) or partner; or

(ii) A person who is concerned in the management of its affairs.

The onus now shifts on the individual who is deemed to have committed the offence to prove two elements to defend himself:

(i) The offence was committed without his consent; and

(ii) He exercised due diligence to prevent the commission of the offence, taking into account the nature of his function in that capacity and to the circumstances.

It will therefore be critical for directors and management to have systems in place to demonstrate due diligence in preventing such corrupt offences.

5. Defence for Commercial Organizations (Adequate Procedures)

Where a commercial organization is charged with this new corporate offence, it is an absolute defence to show that the organization had adequate procedures in place to prevent such associated persons from carrying out the corrupt conduct. This is very important to safeguard both the company itself, as well as the company's directors and officers.

6. Penalties

And last but not least, the penalties. The penalties for this offence are high. For instance, upon conviction, it exposes the commercial organization, its directors, officers and management to:

- (i) A maximum fine of 10 times the sum of gratification involved, or RM1 million, whichever is higher;
- (ii) A maximum jail term of 20 years; or
- (iii) Both penalties of the fine and jail term.

I am aware that many have a lot of questions regarding “adequate procedures” mentioned in the new provision. What does “adequate procedures” really mean? How adequate is adequate?

Under Subsection (5) of Section 17A, a Minister is required to issue guidelines relating to “adequate procedures”. Hence, the Ministerial Guidelines on “Adequate Procedures” has been drawn up to assist commercial organizations in understanding what are the “adequate procedures” that should be implemented to prevent the occurrence of corrupt practices in relations to their business activities. The Guidelines has put forward five principles known as T.R.U.S.T which can be further elaborated as the followings:

T- Top Level Commitment

R- Risk Assessment

U- Undertake Control Measures

S- Systematic Review, Monitoring and Enforcement

T- Training and Communication

Therefore, to be frank, i truly think that there is no need for commercial organizations to worry or panic as long as the said adequate corruption prevention measures are in place. These

measures may include (but not limited to) initiatives such as the Anti-Bribery Management System (ABMS) ISO 37001, Corruption Risk Management (CRM), Corporate Integrity Pledge 2.0, as well as the Corruption Free Pledge and many more.

As no shoes shall fits all, therefore adequate procedures may varies from one commercial organization to another. For instance, companies that are listed in Bursa Malaysia may have more allocations in terms of finance and human capital in adopting a more comprehensive corruption prevention measures in their organizations in comparison to small and medium enterprises.

For me, what's important is for us to embrace the spirit of the new legislation. We need to understand that the main objective or function of this new provision is to promote good governance in commercial organizations via emphasis placed on corruption prevention measures or initiatives. This is very crucial because not only a good governance promotes transparency in bussiness dealings, but it also plays a prominent role in ensuring sustainability of a particular business or industry.

Distinguished guests, ladies and gentlemen,

Such development is also in line with the launching of the National Anti-Corruption Plan (NACP) in 29th January 2019 replacing the National Integrity Plan (PIN) introduced in year 2004. The Plan is an anti-corruption policy formulated for the first time in history to reflect Rakyat's and the Government's expectations to create a corruption-

free Malaysia by practicing the element of transparency, responsibility and integrity among all Malaysians by year 2023.

Six risk areas have been identified by the Plan as the thrust in combatting corruption in Malaysia. These areas are:

- (i) Political governance
- (ii) Public sector administration
- (iii) Public procurement
- (iv) Legal & Judicial
- (v) Law enforcement
- (vi) Corporate governance**

Corporate governance here refers to the system of rules, practices and processes by which a firm is directed and controlled. A good corporate governance regime will help to ensure that corporations use their capital efficiently by taking into account the interests of all stakeholders instead of just their shareholders. And as corporations become more accountable, they will then operate for the benefit of the society as a whole while at the same time maintain the level of confidence of both local and foreign investors. This also implies that corporate sector, like everyone else in the society, also has a role to play in our common goal to achieve the vision, mission and objectives set out by the Plan.

We need to bear in mind that integrity is the key in our fight against corruption and the fight against corruption is not an exclusive responsibility of the MACC or the Government, but instead, it is the responsibility that need to be shared by all members of our society.

Thus, everyone must play their part in the efforts to eradicate corruption by working hand-in-hand with the Government and its machineries in order to create a corruption-free environment for the sake of our future generations.

As Sir Jack Cater, founding commissioner of ICAC Hong Kong once remarked: “there can be no real victory in our fight against corruption unless there are changes of attitude throughout the community”. Therefore, I sincerely urged each and every one of you to join hands with the MACC and speak up against corruption because a large, united public outcry could provide us the force of change that reformed infrastructure alone cannot. And the greater the number of people who speak up against corruption, the more likely the desired change will occur.

On this note, it is my great pleasure to extend to you again my deepest appreciation for being able to be present here today and on behalf of the MACC, my gratitude.

Wabillahi taufik wal hidayah wassalamualaikum warahmatullahi wabaraktuh.

Thank you.