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**REGULATING ORGANISATIONAL CORRUPTION THROUGH
CORPORATE LIABILITY: MALAYSIA PERSPECTIVE**

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Abstract

Corporate liability provision has been widely used in the developed countries such as the United States and United Kingdom to criminalise organisational corruption. However, the provision was just introduced in Malaysia in 2018, under the Section 17A of the Malaysian Anti-Corruption Commission Act 2009. Corruption is getting more prevalent by the day, and corrupt practices are frequent on both a national and global scale. The corruption act was mainly focusing on penalising the individuals although it was done on behalf of the organisation. Therefore, corporate liability was introduced as an initiative to penalize the organisations who are involved in the corruption. However, limited study has discussed this criminal liability practices, especially in the Malaysia context. Therefore, this study aims to understand the corporate liability framework in Malaysia to create awareness to the public, especially the organisations on corporate liability. This study contributes to the body of knowledge by creating awareness on corporate liability provision in Malaysia and at the same time emphasize on the importance of having an anti-bribery or corruption in house.

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1. Introduction

Bribery and corruption is an issue that has a significant negative impact on the country's performance. Malaysia continues to drop points to 47 points in the Transparency International's (TI) 2022 Corruption Perceptions Index (CPI) (New Straits Times, 2023). Several high-profile corruption cases involve commercial organisations, including 1MDB, FELDA, MARA, SRC International, Sabah Water Department, and Tabung Haji. The 1MDB scandal, which was originally revealed in 2016, is considered one of the world's greatest exposés of corruption, including banks, celebrities, and organisations from six countries. Former Prime Minister Najib Razak was imprisoned for his involvement in 2022 (Transparency International, 2022). It leads to economic stagnation, social unrest, and a loss of public trust in government, especially the foreign direct investment (New Straits Times, 2023). The Malaysian government has taken some steps to combat corruption. In 2009, the Malaysian Anti-Corruption Commission (MACC) was established to investigate and prosecute corruption cases. The MACC has made some progress in combating corruption, but the problem remains serious.

The Malaysian Parliament amended the Malaysian Anti-Corruption Commission Act 2009 (Act 694) to strengthen Malaysian anti-corruption laws, particularly in the business sector. This act has been amended to include corporate liability under the offence of Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (Amendment 2018) (Act A1567), which defines bribery by commercial organisations. Several countries have used provisions that allow commercial organisations, particularly those in the private sector, to be prosecuted for corruption offences, such as Hong Kong, Australia, and Singapore.

The concept of corporate criminal liability is widely promoted in various legal systems in different countries, including the United States of America, the United Kingdom and France where the provisions concerning corporate criminal liability are established (Luangthanakun, 2017). Among the legislation in other countries that contain provisions for bribery by commercial organisations are the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977, and Brazil's Federal Law No. 12,846/2013. Canada employs the Criminal Code & Corruption of Foreign Public Authorities Act, whilst Australia employs the Criminal Code Act 1995. In establishing this provision, the Malaysian Anti-Corruption Commission (MACC) relies to several legal sources both domestic and international, including Section 7 of the UK Bribery Act 2010 (UKBA 2010) and the Foreign Corrupt Practices Act 1977 (FCPA 1977), United States (The Star, 2019).

The increase of bribery and corruption cases such as 1MDB and Sabah Water Department happening has currently call for prosecution of corruption against companies and partnerships, which means that these entities can be charged with the offences. With this provision, a corporate climate that is fair, clean, and devoid of corruption may be developed. Commercial organisations have now taken the initiative to develop corruption prevention procedures within the company, as an initiative to comply with the newly introduced clause. It's important for all levels of management in the organisation to be involved, whether it's the CEO, the general manager, or a member of the board so that business is done with high integrity and ethically (Utusan Malaysia Online, 2022). However, there are still a significant number of company directors and partnership firms who are unaware of or confused about the existence of Section 17A (Raof et al., 2021; The Star, 2019). Hence, this study aims to discuss the corporate

liability offences in Malaysia involving commercial organisations, analyse legal principles related to the crime of corruption, and investigate the application of law enforcement in Malaysia associated to corruption. The preliminary examination of this study's conclusions is based on relevance information related to corruption trends and law enforcement, from year 2018 to 2022.

2. Corporate Liability For Corruption Offences

The organisation in charge of eradicating corruption in Malaysia is the Malaysian Anti-Corruption Commission (MACC). Beginning with the Anti-Corruption Act 1961, it was followed by the Anti-Corruption Act 1997, and most recently, the Malaysian Anti-Corruption Commission Act 2009 (Anti-Corruption Commission Act., 2009). The Anti-Corruption Agency, which has been in existence since 1967, has been renamed the Malaysian Anti-Corruption Commission. The Malaysian Anti-Corruption Commission Act 2009 was enhanced by expanding the power to combat corruption in corporate criminal liability under Section 17A of the Malaysian Anti-Corruption Commission Act (2009).

According to data from the Malaysian Anti-Corruption Commission (MACC) from 2016 to October 2021, a total of 12, or 5,050, reported cases of corruption involving the private sector. According to MACC Chief Commissioner Tan Sri Azam Baki, a total of 1,391 employees in the private sector and government link companies (GLC) were detained for corruption. Private-sector corruption should not be overlooked. According to the 'Global Corruption Barometer-Asia,' 27 percent of respondents believe the most significant executive management are complicit in corruption offences. Private sector employees are cautioned not to utilise bribery to win contracts or get any other advantages for the business. With the implementation of Section 17A of the MACC Act 2009 on 1 June 2020, corruption offences may result in the prosecution of the corporation and its management. To combat corruption, all employees in the private sector must thus become more knowledgeable about it, improve their personal integrity, practise good governance, avoid engaging in corrupt behaviour, theft, and power abuse, and execute these strategies.

Prior to the implementation of Section 17A, the MACC Act 2009 mainly focused on the investigation of persons involved in corruption. Section 17A allows those involved in corrupt activities to be prosecuted. For example, those who work for the company will be prosecuted for engaging in corrupt activity in order to get or keep business or to gain an advantage in conducting business for the company, if the adequate procedure is not followed (SC Shaari, 2020).

3. Impact of Corporate Liability in Malaysia

The main purpose of the government is to defend the public interest by establishing a strong and efficient governance system that ensures citizens' rights as well as responsibility in doing their daily activities (Abd Aziz et al., 2015). The Transparency International report summarises the findings of an international study into corruption that involves the abuse of power for personal gain, which has become the primary indicator of corrupt conduct in a nation (Harun & Hassim, 2017; Transparency International, 2019). The existence of corporate criminal responsibility will make businesses more cautious in their daily business activities to avoid prosecution (Ali, 2017). Uncertainty commercial organisation is charged

under this law, it can defend itself by showing that it has adequate procedures in place to prevent corruption in its operations or business activities.

The National Governance, Integrity, and Anti-Corruption Centre (GIACC) (2019) has published adequate procedural rules as reference to commercial organisation. According to Section 17A MACC Act, a commercial organisation may be punished if a person associated with the commercial organisation is participating in the crime of corruption in order for the commercial organisation to gain or sustain an interest or contract. A commercial organisation may be found guilty if its top management or representatives are knowledgeable of corrupt activities performed by its employees or associates. Under Section 17A (2) MACC Act, a commercial organisation convicted of bribery is punished with a penalty of at least 10 times the value of the bribe or RM1 million, whichever is higher, or imprisonment for up to 20 years, or both.

4. Conclusion

The enforcement of anti-corruption legislation in both the commercial and government sectors is essential to the country's social and legal development. Bribery in the corporate environment must be managed and penalised as a good step towards combating corruption in commercial organisation. At all levels, including in the government and business sectors as well as within the society, corruption must be outlawed. The use of more sophisticated technology by people trying to hide their corrupt activities, interference and lack of cooperation from politicians, and a lack of support and trust from the public all make it harder to fight. With the existence of corporate liability under section 17A Macc Act 2019, if a company is involved in a case of corruption, the management is not held liable if it has taken measures to prevent corruption, such as providing adequate procedures. The MACC Act 2009 was strengthened by the implementation of the 2018 amendment, which also included laws regulating corporate liability. Hence, the organisations need to implement precautionary actions within the organisation to safeguard the business entities from corporate liability charges. This study contributes to the body of knowledge by creating awareness on corporate liability provision in Malaysia and at the same time emphasize on the importance of having an anti-bribery or corruption in house.

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