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### **Enforcement of s 17A of the MACC Act: How Will it Play Out?**

It has been almost two months since the coming into force of s 17A of the Malaysian Anti-Corruption Commission Act 2009, and there is anxious anticipation of how the implementation of this corporate liability provision will play out.

One of the issues that is frequently raised post-implementation of s 17A is whether the provision is capable of operating retrospectively. Generally, criminal laws do not have retrospective effect, based on the reasoning that no person should be punished for an act which was not punishable by any law at the time of its commission. Further, protection against retrospective criminal laws is a fundamental liberty guaranteed under Art 7 of our Federal Constitution. Consistent with this position, the investigation director of the Malaysian Anti-Corruption Commission (**MACC**), Datuk Norazlan Mohd Razali, confirmed in a recent statement that s 17A does not have retrospective effect. This means corruption offences prior to 1 June 2020 would not trigger the application of s 17A.

Datuk Norazlan also anticipated a surge in the number of individuals who will be charged with corruption, subsequently implicating the commercial organisation that they are associated with, pursuant to s 17A. This signals that the MACC does not only intend to crack down on corrupt acts, but will also strictly enforce s 17A in the near future. This is in line with the MACC's aspiration of positioning Malaysia as a corruption-free nation.

Considering this, for commercial organisations that have yet to equip themselves with the necessary preventive measures, it is a timely reminder to speed up the process before it is too late. Without adequate procedures being implemented, a commercial organisation would not be able to avail itself of the defence accorded under s 17A if any offence arises thereunder.

Section 17A is closely modelled after s 7 of the United Kingdom Bribery Act 2010 (**UKBA**), which came into effect in July 2011. It is interesting to note that the first successful conviction under s 7 of the UKBA took place some five years after its effective date, in February 2016. Also noteworthy in the UK is the introduction of the deferred prosecution agreement (**DPA**) in 2014, which is aimed at strengthening the enforcement of the corporate liability provision against commercial organisations and achieving the objective of elevating the standards of corporate governance and integrity. A DPA works by deferring the prosecution against the commercial organisation involved, and the organisation is required to enter into an agreement to fulfil certain arrangements imposed by the prosecutor, such as the implementation of measures to prevent corruption.

Given that s 17A is modelled after the UKBA and the UK has since implemented the DPA to strengthen the enforcement of its corporate liability provision for corruption offences, it would be interesting to see how the enforcement of s 17A plays out in Malaysia, particularly whether the DPA will be introduced to achieve the same objective envisaged in the UK.

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