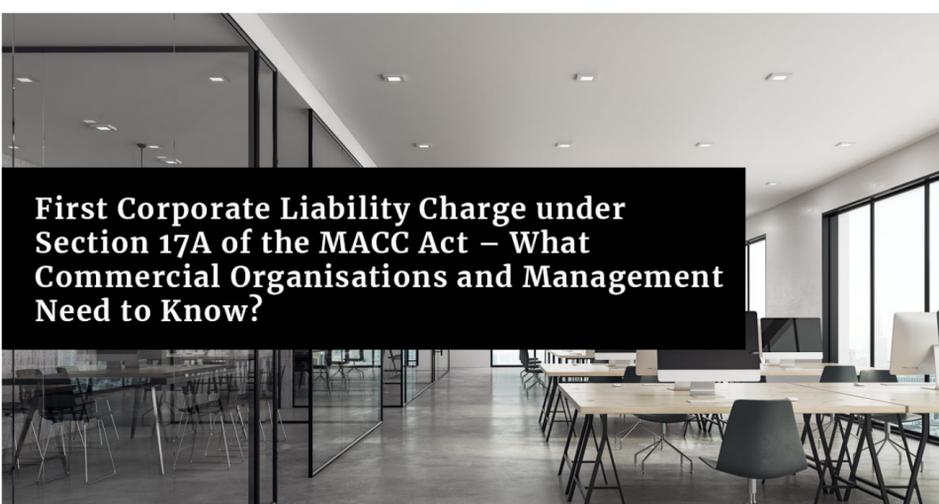


25 March 2021

MACC's first prosecution under the corporate liability provision (Section 17A of the MACC Act) came about within 9 months of the enforcement of the said provision in June 2020, in contrast the equivalent legislation in the UK (Bribery Act 2010) took at least 5 years before its first prosecution. The MACC has made its intention clear, commercial organisations and its senior management cannot afford to sit back and adopt a lackadaisical attitude. Immediate steps should be taken to evaluate and assess the adequacy of existing anti-bribery and corruption initiatives.

Should you have any queries on the MACC Act, please feel free to contact the authors or your usual Skrine contacts.



#### Who was charged?

On 18 March 2021, Chew Ben Ben ("**Chew**"), a former director of Pristine Offshore Sdn Bhd ("**Pristine**"), was charged under section 16(b)(A) of the Malaysian Anti-Corruption Commission Act 2009 ("**MACC Act**").

In a first prosecution of its kind since the enactment of the corporate liability offence for corrupt practices, the corporate entity, Pristine, was also charged under Section 17A of the MACC Act.

#### What is the corporate liability charge for?

Pristine, in association with its then director, Chew, is accused of giving a bribe of RM321,350 to the chief operating officer of Deleum Primera Sdn Bhd ("**Deleum**"), as a reward to ensure Pristine was awarded a subcontract from Petronas Carigali Sdn Bhd. The subcontract was for the supply of workboats, a master and crew and other related marine services and offshore support, along with other marine support for maintenance, construction and modification services for Petronas Carigali.

#### When was the alleged offence committed?

The bribe was allegedly made by Chew between 29 June 2020 and 14 October 2020. The corporate liability provision was introduced into the MACC Act by way of an amendment to the MACC Act that came into force on 1 June 2020.

#### Are the senior management of Pristine liable under the corporate liability provisions?

If the company is found guilty, the senior management, namely any director, controller, officer or other person who is concerned in the management of its affairs, at the time of the commission of the offence is deemed to have committed the offence (Section 17A(3)) unless they succeed in establishing the "*due diligence*" defence (see below for further discussion).

#### Is the company that awarded the subcontract, Deleum, also subject to the corporate liability provision?

No. Section 17A(1) states that a commercial organisation commits an offence if a person associated with the organisation *corruptly gives, agrees to give, promises or offers to any person any gratification* whether for the benefit of that person or another person with intent:

1. to obtain or retain business for the commercial organisation; or
2. to obtain or retain an advantage in the conduct of business for the commercial organisation.

However, the recipient of the bribe, may be individually liable under sections 16 or 17 of the MACC Act.

#### What are the potential penalties?

If convicted, Pristine will face a fine of not less than 10 times the amount of the bribe or RM1.0 million whichever is higher. Based on the value of the alleged bribe, Pristine may be fined RM3.21 million at the minimum. The company was allowed bail in the sum of RM200,000 with a surety.

Chew, if found guilty, may be imprisoned up to 20 years and fined up to five times the bribe amount, i.e. RM1.6 million. He was allowed bail of RM150,000 with one surety and ordered to surrender his passport to the court.

The senior management at the time of the commission of the offence may be imprisoned up to 20 years.

#### What are the defences available for a corporate liability offence?

*Pristine* – must prove that it had in place "adequate procedures" designed to prevent persons associated with the organisation (i.e. Chew while he was a director of the company) from undertaking such corrupt conduct.

*Directors, controller, officers and management* – each of these individuals must show that the offence was committed without his consent or connivance; and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of his function and circumstances.

#### What are "adequate procedures"?

Guidelines on Adequate Procedures ("**GAP**") was issued by the Prime Minister's Department on 11 December 2018 to assist commercial organisations in understanding what are adequate procedures that should be implemented to prevent the occurrence of corrupt practices in relation to their business activities.

The GAP has been formed based on five key principles known as the 'TRUST Principles':

- **T**op Level Commitment  
Top management to be directly involved in anti-corruption compliance matters
- **R**isk Assessment  
Organisations ought to conduct periodic risk assessments based on its size and needs
- **U**ndertake Control Measures  
Appropriate due diligence, screening, policies and procedures ought to be in place
- **S**ystematic Review, Monitoring & Enforcement  
The effectiveness of anti-corruption policies and procedures ought to be reviewed and assessed periodically; audit and investigations ought to be conducted
- **T**raining & Communication  
Communication of policies and procedures; periodic training for employees and stakeholders

#### Comments

This charge is a wake-up call for commercial organisations that have not adopted sufficient measures to mitigate against the risk of corporate liability, and for management who have hitherto been wilfully blind to the commission of gratification by their colleagues.

Alert by [Lim Koon Huan](#) (Partner), [Selvamalar Alagaratnam](#) (Partner) and [Shaleni Sangaran](#) (Partner) of the Regulatory Compliance Practice of Skrine.

#### Additional Notes

It was reported in *The Edge Markets* on 15 December 2020 that Deleum had lodged a formal report to the Malaysian Anti-Corruption Commission pursuant to section 25 of the MACC Act over the alleged illegal scheme on 25 November 2020 and commenced legal proceedings over the said scheme. It is seeking RM19.88 million from its executives, Petronas Carigali executives and its own subcontractors in a civil suit filed against them in November 2020.

The alleged scheme was purportedly initiated to defraud Petronas Carigali in relation to multiple maintenance and services contracts between a Petronas unit and Deleum.

On 21 December 2020, *The Edge Markets* wrote, citing sources, that the Malaysian Anti-Corruption Commission was following closely, the money trail from Petronas Carigali through Deleum and its subcontractors, and into the bank accounts of Petronas Carigali executives, to understand the *modus operandi* of the illegal scheme, as it suspects it is a wider scheme involving the Petronas subsidiary and its main contractors through their subcontractors. It was understood that Petronas Carigali has taken action against its staff, based on a message from Petronas' President and Chief Executive Officer, Tengku Muhammad Taufik Tengku Aziz, who noted that an internal investigation is being conducted.