

FREQUENTLY ASKED QUESTIONS

Section 17A (“Corporate Liability Provision”) of the Malaysian Anti-Corruption Commission (Amendment) Act 2018 (“MACC Act”)

As at September 2021

NO.	QUESTION	RESPONSE
1.	What does Section 17A of the MACC Act highlight?	<ul style="list-style-type: none"> Section 17A governs the offence of corruption committed by persons associated with a commercial organization leading to the organisation being liable for such acts. Section 17A(1) provides that a commercial organization commits an offence if an associated person promises gratification to any person with an intent “to obtain or retain business” or “an advantage in the conduct of business for the commercial organization”.
2.	What is the definition of ‘commercial organization’?	<ul style="list-style-type: none"> Section 17A(8) has listed down the criteria for a body to be considered as a commercial organization, i.e. organizations that are established under the Companies Act 2016, Local Partnerships established under the Partnership Act 1961 and Limited Liability Partnership Act 2012, together with the Foreign Companies and Partnerships carrying out businesses in Malaysia.
3.	What is the definition of ‘associated persons’?	<ul style="list-style-type: none"> Section 17A(6) stated that the associated persons would include the director, partner, employee and those who perform services for or on behalf of the commercial organization.
4.	What are the penalties under the corporate liability provision?	<ul style="list-style-type: none"> Section 17A(2) provides that the penalty for an offence under Section 17A shall be a fine of not less than ten times the value of the gratification in question or RM 1 million, whichever is higher, and/or imprisonment for not more than 20 years, or both. Section 17A(3) provides that senior personnel, such as a director, controller, officer, partner or person who is concerned with the management of a commercial organization found to be liable for corruption under Section 17A at the time of the commission of the offence, shall be deemed to have also committed the same offence.
5.	What are the punishments for a recipient of bribery and/or corrupt practice?	<ul style="list-style-type: none"> Any person who commits any act of bribery or corruption, shall on conviction, be liable to imprisonment of not exceeding 20 years and a fine not less than 5 times of the sum/value of the gratification or RM10,000, whichever is higher.
6.	What are the punishments for someone who knows and/or is the recipient of the corrupt practice and fails to report the offence?	<ul style="list-style-type: none"> If convicted, the individual who fails to report corrupt act will be fined up to RM100,000 or be imprisoned for a term not exceeding 10 years or both.
7.	Is there any defence for the commercial organizations under the Corporate Liability Provision?	<ul style="list-style-type: none"> Section 17A(4) states that a commercial organization shall be acquitted of a charge under Section 17A if it proves that it <u>“had in place adequate procedures designed to prevent persons associated with the commercial organization from undertaking such conduct.”</u>

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		<ul style="list-style-type: none"> • The defence would be in the form of the commercial organization proving that they have implemented adequate procedures to prevent such mishap. • The Government has also provided the Guideline on Adequate Procedures (“Guideline”) to assist commercial organizations in drafting up their adequate procedures. • Although it is not a legal obligation for commercial organizations to apply the items highlighted in the Guideline, the Court would make use of the existence of such a Guideline to decide whether the commercial organization had taken the right steps in composing adequate procedures to be implemented throughout the organization.
8.	Is there any defence for the senior personnel of the commercial organizations for the offence under the Corporate Liability Provision?	<ul style="list-style-type: none"> • The personal liability of the senior personnel in these commercial organizations can be prevented or defended by ensuring that he or she has exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances and to prove that the misconduct was done without his or her consent. • Both the defences laid down in items 7 and 8 would complement each other whereby the senior personnel would have a solid defence if the commercial organization implemented the adequate procedures. As an additional effort on his or her part, the senior personnel would also have to prove that such misconduct was not under his or her direction and was carried out without his/her consent.
9.	What does ‘adequate procedures’ highlighted in Section 17A(4) refers to?	<ul style="list-style-type: none"> • As the Corporate Liability Provision creates a strict liability offence for commercial organizations, commercial organizations must be aware of the defence of having adequate procedures in place. • Adequate procedures can be prepared, implemented, and enforced effectively following the Guidelines issued by the Prime Minister’s Office in December 2018. • The Guidelines are issued pursuant to Section 17A(5) of the MACC Act and will assist commercial organizations in understanding the concept, implementation and enforcement of the adequate procedures referred to in Section 17A(4).
10.	What is facilitation of payments?	<ul style="list-style-type: none"> • Facilitation of payments (also known as ‘duit kopi’) are usually the smaller amount of money paid to an official to expediate official procedures which the citizen has a legal entitlement to. • As it is a form of corruption, facilitation payments are forbidden and may result in prosecution. • CapitaLand expressly forbids the provision of facilitation payments.

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11.	What are the TRUST principles?	<ul style="list-style-type: none">• With reference to the Guidelines, a commercial organization’s adequate procedures should be based on the principle of T.R.U.S.T, which consists of the following:<ol style="list-style-type: none">1. Top-Level Commitment:<ul style="list-style-type: none">• The top-level management of the commercial organization (“Top-Level Management”) must ensure that the highest level of integrity and ethics is practised in the commercial organization. There should be full compliance with the applicable laws and regulatory requirements on anti-corruption and key corruption risks of the organization must be effectively managed.• The Top-Level Management must provide assurance to its internal and external stakeholders that the organization is operating in compliance with its policies and applicable regulatory requirements.• The Top-Level Management must establish, maintain and periodically review an anti-corruption compliance program and communication of the organization’s anti-corruption policies and commitment internally and externally.• The Top-Level Management must encourage the use of any reporting (whistleblowing) channel. The results of any audit, reviews of risk assessment, control measures and performance are reported to all top-level management including the full Board of Directors and acted upon.2. Risk Assessment<ul style="list-style-type: none">• Comprehensive risk assessments are advised to be conducted every three (3) years, with intermittent assessments to be conducted whenever necessary.• Risk assessment should be used to establish appropriate processes, systems and controls approved by the Top-Level Management to mitigate specific corruption risks and/or potential corruption risks that the commercial organization may be exposed to.3. Undertake Control Measures<ul style="list-style-type: none">• Appropriate controls and contingency measures, which are reasonable and proportionate to the nature and size of the commercial organization, are advised to be implemented and enforced to address any corruption risks arising from weaknesses in the commercial organization’s governance framework.• The said controls and measures should include due diligence and reporting channels.• Policies and procedures should be endorsed by Top-Level Management, which should be up-to-date and easily available.

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		<p>4. Systematic Review, Monitoring and Enforcement</p> <ul style="list-style-type: none">• The Top-Level Management is advised to ensure regular reviews are conducted to assess the performance, efficiency, and effectiveness of the anti-corruption programme of the commercial organization and to ensure the anti-corruption programme is enforced effectively.• Reviews may take the form of an internal audit or an external audit.• Reviews should form the basis of any efforts to improve the existing anti-corruption controls in place in the organization. <p>5. Training and Communication</p> <ul style="list-style-type: none">• Commercial organizations should develop and disseminate internal and external training and communications relevant to their anti-corruption management system, in proportion to their operations.• The commercial organization’s anti-corruption policy should be made publicly available and appropriately communicated to all personnel and business associates.• When planning strategies for communicating the organization’s position on anti-corruption, the organization should take into account what key points should be communicated, to whom they should be communicated, how they will be communicated, and the timeframe for conducting the communication plan.• Employees and business associates should be provided with adequate training to ensure their thorough understanding of the organization’s anti-corruption position, especially in relation to their role within or outside the commercial organization.
12.	Is CLMT considered a commercial organization?	<ul style="list-style-type: none">• No, CLMT as a real estate investment trust is not considered a commercial organization as a commercial organisation refers to a company or partnership that is formed under Malaysian law or a company or partnership that carries on business or a part of a business in Malaysia.• However, CMRM being the Manager of CLMT is considered a commercial organization and is subjected to the provisions of corporate liability of the MACC Act. CRMSB, CCMSB, SDCMA and Special Coral S/B are commercial organisations too.

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13.	<p>What are the practical measures that CMRM has taken to defend itself and/or the Board of Directors against corporate liability charges under Section 17A of the MACC Act?</p> <p>Does CMRM/CL MY comply with the five TRUST Principles of the Guidelines?</p>	<ul style="list-style-type: none"> • CMRM/CapitaLand companies in Malaysia (“CL MY”) has always adopted a culture of due diligence across all parts of its business with third parties to help the company to carry out a baseline level of due diligence in areas, such as identifying high-risk individuals and entities. • We have also put in place some adequate procedures based on the principle of TRUST, which consists of the following: <ul style="list-style-type: none"> • Top Level Management (T) <ul style="list-style-type: none"> (a) We have briefed our top management on the implications of corporate liability for our top management to understand this new provision, provided sufficient oversight on the management of bribery and corruption risks within CMRM/CL MY and placed awareness that management implement appropriate adequate procedures. (b) Our Board of Directors and the Senior Management have been trained on the implications of corporate liability in 2019 and ongoing efforts are being made since then to tighten the adequate procedures placed. (c) In 2021, we have revised our compliance plan as one of the practical measures to enhance any defence for CMRM and our Board of Directors against corporate liability charges. • Risk Assessment (R) <ul style="list-style-type: none"> (a) Comprehensive risk assessment is done every year, with intermittent assessments conducted when necessary. • Undertake Control Measures (U) <ul style="list-style-type: none"> (a) We also have an anti-corruption clause for third party contracts as well as policies which address corporate liability issues (i.e., Whistleblowing Policy / Fraud Policy). (b) We have updated the CapitaLand Pledge with corporate liability implications and the CapitaLand Pledge has been executed by our current and newly joined employees. (c) We have also encouraged reasonable and appropriate controls and contingency measures in dealing with third parties by conducting due diligence prior to their appointment. • Systematic Review, Monitoring and Enforcement (S) <ul style="list-style-type: none"> (a) Several departments will be audited for the purposes of monitoring their understanding of the corporate liability provision and the adequate procedures being implemented. (b) Continuous reviews are made to improve the existing anti-corruption controls in place in CMRM/CL MY. • Training and Communication (T) <ul style="list-style-type: none"> (a) Training has been conducted to all levels of employees in CMRM/CL MY in October 2019, followed by an email blast from HR in November 2019 and in March 2021 for all

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		<p>employees to understand and be aware of the corporate liability implications on the corporation we are employed by. A refresher training is scheduled to be done in May 2021.</p> <p>(b) External training and communications on the corporate liability provision are disseminated to the Senior Management where applicable, in proportion to their operations.</p> <p>(c) The FBC policy and the Whistleblowing Policy has been made available on CLMT’s website and the same has been communicated to all personnel and business associates.</p> <p>(d) An eLearning module with incorporation of information and assessments was completed by all the employees in May 2020. New employees are also required to complete the eLearning module. A refresher module will be launched to the employees in due course.</p> <p>(e) The Human Resource department will consider the employee’s record of disciplinary action (which includes bribery and corruption) before granting the employee promotion and bonus.</p>
14.	Are donations and sponsorships allowed under the MACC Act?	<ul style="list-style-type: none"> • Only charitable donations and sponsorships for legitimate reasons and as permitted by laws and regulations are allowed to be made. ‘ • However, top management’s approval should be required for these donations and sponsorships. • Due diligence must also be conducted to identify whether there are any red flags. • The recipient of the donations should be registered with the Registrar of Society (ROS) or any official government agency for registrations.
15.	Are political donations allowed to be made?	<ul style="list-style-type: none"> • The Fraud, Bribery and Corruption Risk Management Policy (“FBC”) provided that CL does not make any donation to any political donation recipients. Although there is no prohibition on such donations in the FBC policy, any political donations should be avoided.
16.	Can I offer a government official money/holiday package so that the company that I represent gets the license/approval from the local authority?	<ul style="list-style-type: none"> • You cannot as such money/holiday package can be categorised as facilitation payments, • Please refer to item 10 for the definition of facilitation payments.
17.	Can I offer an ang pow/gift to the client before the tender and award process of a project?	<ul style="list-style-type: none"> • You cannot. You should not exercise any preferential treatment towards anyone including your subordinates and colleagues.

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18.	Can I buy a cup of coffee for a client of the company?	<ul style="list-style-type: none">• Generally, you cannot buy a cup of coffee for a client of the company. This however depends on whether the amount of coffee bought is an incentive to gain a benefit. Generally, the “gratification” must be of a substantive value so ordinarily a mere cup of coffee is not tantamount to gratification.
19.	What should I do if I need to present a gift or donation to a business partner on behalf of the Company?	<ul style="list-style-type: none">• If you need to present a gift or donation to business partner on behalf of the Company, you are required to seek clearance from the appropriate authority by completing the Gift to Be Presented on Behalf of The Company Form.
20.	What should I do if I am aware of the act of bribery and corruption and it will have an impact on my company?	<ul style="list-style-type: none">• If you are aware of any acts of bribery and corruption, you should identify the person who committed the offence and make a report via email to Whistleblowing.ACChair@capitaland.com.• The report also must be made to the relevant authorities such as the RMP, Customs, RTD, MACC, Immigration, EPF, IRB, SC and CCM.• However, CapitaLand’s FBC Policy states that prior approval from the SBU CEO is required before you can lodge a report to the authorities.• Your failure to report such offence may lead to you being fined up to RM100,000 or imprisonment for a term not exceeding 10 years or both.