

A BILL

i n t i t u l e d

An Act to amend the Malaysian Anti-Corruption Commission Act 2009.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Malaysian Anti-Corruption Commission (Amendment) Act 2018.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

Amendment of section 3

2. The Malaysian Anti-Corruption Commission Act 2009 [Act 694], which is referred to as the “principal Act” in this Act, is amended in section 3—

(a) by deleting the definition of “bank”;

(b) by substituting for the definition of “financial institution” the following definition:

‘ “financial institution” means—

- (a) a licensed bank, licensed insurer and investment bank under the Financial Services Act 2013 [Act 758];
- (b) a licensed international Islamic bank, licensed international takaful operator, licensed Islamic bank and licensed takaful operator under the Islamic Financial Services Act 2013 [Act 759];
- (c) a prescribed institution under the Development Financial Institutions Act 2002 [Act 618];
- (d) a licensee under the Money Services Business Act 2011 [Act 731];
- (e) a person licensed or registered under the Capital Markets and Services Act 2007 [Act 671];
- (f) the central depository established under the Securities Industry (Central Depositories) Act 1991 [Act 453];
- (g) a bank licensee, an insurance licensee, a securities licensee and any entity licensed or registered under the Labuan Financial Services and Securities Act 2010 [Act 704];
- (h) an Islamic bank licensee, a takaful licensee, an Islamic securities licensee and any entity licensed or registered under the Labuan Islamic Financial Services and Securities Act 2010 [Act 705]; and
- (i) any other financial institution established or licensed under any other written law or any co-operative society registered or deemed to have been registered under the Co-operative Societies Act 1993 [Act 502];’.

Amendment of section 17

3. Paragraph 17(*b*) of the principal Act is amended in the national language text, by inserting after the word “*dia*” the words “*secara rasuah*”.

New section 17A

4. The principal Act is amended by inserting after section 17 the following section:

“Offence by commercial organization

17A. (1) A commercial organization commits an offence if a person associated with the commercial organization 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—

- (a) to obtain or retain business for the commercial organization; or
- (b) to obtain or retain an advantage in the conduct of business for the commercial organization.

(2) Any commercial organization who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.

(3) Where an offence is committed by a commercial organization, a person—

- (a) who is its director, controller, officer or partner; or
- (b) who is concerned in the management of its affairs,

at the time of the commission of the offence, is deemed to have committed that offence unless that person proves 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 in that capacity and to the circumstances.

(4) If a commercial organization is charged for the offence referred to in subsection (1), it is a defence for the commercial organization to prove that the commercial organization had in place adequate procedures designed to prevent persons associated with the commercial organization from undertaking such conduct.

(5) The Minister shall issue guidelines relating to the procedures mentioned in subsection (4).

(6) For the purposes of this section, a person is associated with a commercial organization if he is a director, partner or an employee of the commercial organization or he is a person who performs services for or on behalf of the commercial organization.

(7) The question whether or not a person performs services for or on behalf of the commercial organization shall be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between him and the commercial organization.

(8) For the purposes of this section, "commercial organization" means—

(a) a company incorporated under the Companies Act 2016 [Act 777] and carries on a business in Malaysia or elsewhere;

(b) a company wherever incorporated and carries on a business or part of a business in Malaysia;

(c) a partnership—

(i) under the Partnership Act 1961 [Act 135] and carries on a business in Malaysia or elsewhere; or

- (ii) which is a limited liability partnership registered under the Limited Liability Partnerships Act 2012 [Act 743] and carries on a business in Malaysia or elsewhere; or
- (d) a partnership wherever formed and carries on a business or part of a business in Malaysia.”.

Amendment of section 30

5. Section 30 of the principal Act is amended—

- (a) by deleting subsection (7); and
- (b) in subsection (8), by substituting for the words “An officer of the Commission examining a person under paragraph (1)(a) shall record in writing any statement made by the person” the words “A statement of a person examined under paragraph (1)(a) shall be recorded in writing by any officer of the Commission”.

Amendment of section 33

6. Subsection 33(4) of the principal Act is amended by substituting for the word “bank” the words “financial institution”.

Amendment of section 35

7. Section 35 of the principal Act is amended—

- (a) in subsection (1), by substituting for the word “bank” the words “financial institution”;
- (b) in subsection (2), by substituting for the word “bank” the words “financial institution”;
- (c) in paragraph (2)(a)—
 - (i) by substituting for the words “bank account” the word “account”; and

- (ii) by substituting for the word “bank” the words “financial institution”; and
- (d) in paragraphs (2)(b) and (c), by substituting for the word “bank” the words “financial institution”.

Amendment of section 36

8. Section 36 of the principal Act is amended—

(a) in paragraph (1)(c)—

- (i) by deleting the words “bank or” appearing after the words “officer of any”; and
- (ii) by deleting the words “any bank or” appearing after the words “affairs of”; and

(b) in subsection (3)—

- (i) by substituting for the words “any officer of a public body” the words “any person”; and
- (ii) in the English language text, by substituting for the word “or” appearing after the words “his present” the word “and”.

Amendment of section 37

9. Section 37 of the principal Act is amended—

- (a) in subsections (1) and (2), by substituting for the word “bank” wherever appearing the words “financial institution”; and

(b) by inserting after subsection (1) the following subsection:

“(1A) An officer of the Commission shall forthwith notify Bank Negara Malaysia, the Securities Commission or the Labuan Financial Services Authority, as the case may be, of any order made under subsection (1).”.

Amendment of section 38

10. Subsection 38(1) of the principal Act is amended in the national language text—

- (a) by substituting for the words “harta alih” the words “harta tak alih”; and
- (b) by substituting for the words “harta itu” the words “harta tak alih itu”.

New section 41A

11. The principal Act is amended by inserting after section 41 the following section:

“Admissibility of documentary evidence

41A. Where any document or a copy of any document is obtained by the Commission under this Act, such document shall be admissible in evidence in any proceedings under this Act, notwithstanding anything to the contrary in any other written law.”.

EXPLANATORY STATEMENT

This Bill seeks to amend the Malaysian Anti-Corruption Commission Act 2009 (“Act 694”). The main purpose of the amendment is to introduce a new section 17A into Act 694 in *clause 4* of the Bill which provides that a commercial organization commits an offence if any person associated with the commercial organization commits a corruption in order to obtain or retain business or advantage for the commercial organization. The aim of the new provision is to encourage business and commercial activities being carried out in an environment which is free from corruption and to encourage all commercial organizations to take adequate measures to prevent corruption in their organization.

2. *Clause 1* contains the short title and the power of the Minister to appoint the commencement date of the proposed Act.

3. *Clause 2* seeks to amend section 3 of Act 694 by deleting the definition of “bank” and by substituting the definition of “financial institution”. The purpose of the amendment is to update and widen the scope of the definition of financial institution to include all the institutions established under the relevant laws. Currently, the definition of financial institution is only confined to person carrying on any banking or finance company business as defined in the Banking and Financial Institutions Act 1989 [Act 372]. With the purposed amendment consequential, amendments are made to subsection 33(4) in *clause 6*, section 35 in *clause 7*, paragraph 36(1)(c) in *subclause 8(a)* and section 37 in *subclause 9(a)*.

4. *Clauses 3* and *10* seek to amend paragraph 17(b) and subsection 38(1) respectively of the national language text of Act 694 to make the provisions consistent with the English language text while paragraph 8(b)(ii) seeks to amend subsection 36(3) of the English language text of Act 694 to make it consistent with the national language text.

5. *Clause 5* seeks to amend section 30 of Act 694. *Subclause 5(a)* seeks to delete subsection 30(7) of Act 694. With the deletion of subsection 30(7), a person who discloses any information or produces any book, document, record, account, computerized data or article pursuant to subsections 30(1), (2) and (3) of Act 694 is no longer immune from any prosecution, proceedings or claims. *Subclause 5(b)* seeks to amend subsection 30(8) of Act 694 to clarify that any officer of the Commission may record the statement made by a person examined under paragraph 30(1)(a) of Act 694.

6. *Subclause 8(b)* seeks to amend subsection 36(3) of Act 694. Paragraph 8(b)(i) seeks to amend subsection 36(3) of Act 694 to provide that the officer of the Commission of the rank of Commissioner and above may direct any person who has been served with the written notice under subsection 36(1) to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold any interest in any property which is excessive. Before the proposed amendment, subsection 36(3) of Act 694 only applies to an officer of a public body.

7. *Subclause 9(b)* seeks to introduce a new subsection (1A) into section 37 of Act 694 to provide that an officer of the Commission shall forthwith notify Bank Negara Malaysia, the Securities Commission or the Labuan Financial Services Authority, of any order made under subsection 37(1) of Act 694.

8. *Clause 11* seeks to introduce a new section 41A into Act 694 to enable any document or copy of the document obtained by the Commission to be admissible as evidence in any proceedings under Act 694.

FINANCIAL IMPLICATIONS

This Bill will not involve the Government in any extra financial expenditure.

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