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Corporate Liability: How can we Prevent?

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Abstract

Corporate liability ensures organizations are accountable for unethical actions, particularly in combating bribery and corruption. Section 17A of Malaysia's MACC Act 2009 mandates corporate responsibility for corrupt practices by associated persons, guided by TRUST principles: Top-Level Commitment, Risk Assessment, Undertaking Control Measures, Systematic Review, Monitoring and Enforcement, and Training and Communication. This study explores and discuss on the corporate liability, relevant laws, and the initiative undertaken for corporate liability prevention. It is revealing that adherence to TRUST principles enhances governance, transparency, and financial outcomes. Leadership commitment, risk management, and employee training emerge as critical drivers of compliance. However, there is still law of research conducted on corporate liability, especially on the compliance elements among the corporations. Hence, this study provides insights on the development of corporate liability and the initiatives undertaken by the government in preventing corruption, especially in Malaysia's context. It underscores the importance of sustained efforts to refine governance policies, ensuring ethical practices and improved organizational performance. Future study may extend the study by looking into the compliance level to ensure the effectiveness of the initiatives introduced by the government.

Keywords: Corporate Liability, Section 17A, MACC Act 2009, TRUST Principles, Anti-Corruption Compliance, Corporate Governance.

Introduction

Corporate liability is an organisation's legal obligation for whatever deeds or omissions it commits. The main purpose of implementing corporate liability is to deter unwanted behaviour from upholding society's core principles by penalising violations or unethical behaviour committed by organisations or people (Muhwezi, 2016). The possibility of unethical behaviour by company employees, especially those at a high management level to commit is high, as they have business expertise compared to shareholders (Li, 2022). To prevent unethical behaviour such as corruption and bribery among the members of an organisation, organisations must adhere to and conduct business by anti-corruption legislation.

Corruption are widespread problems that impact many different industries globally. These issues are widespread and have a big influence on the socioeconomic environment of Malaysia. PwC's (2020) Global Economic Crime and Fraud Survey states that numerous disruptive fraud incidents affected Malaysian firms throughout the previous two years. The most significant occurrences were cybercrime (16%), customer fraud (20%), bribery and corruption (18%), and asset misappropriation (16%). These numbers demonstrate the complexity of corruption and the demand for all-encompassing anti-corruption initiatives (PwC, 2020).

The corruption index in Malaysia averaged 49.56 points from 1995 until 2023, reaching an all-time high of 53.20 points in 1996 and the lowest record of 43.00 points in 2011. Figure 1.1 shows the histogram of the Malaysia corruption index from 2012 to 2023.

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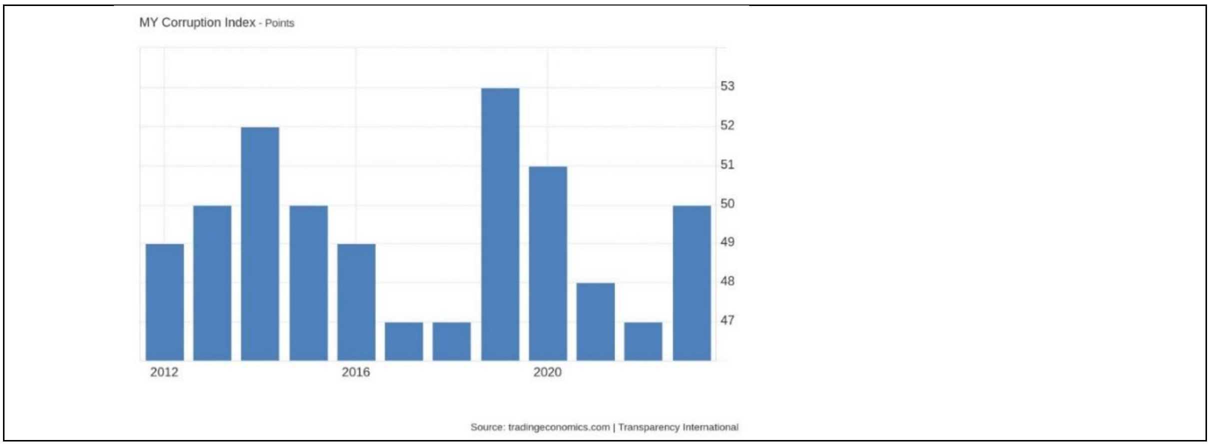

Figure 0.1: Malaysia Corruption Index from 2012 to 2023

Studies suggest that, in most cases, corruption have a negative impact on a firm's long-term performance. This is especially true in high and middle-income economies. There is a strong correlation between a company's ethical culture and financial performance. When top management demonstrates a commitment to anti-corruption practices, it fosters a culture of trust and transparency, leading to improved decision-making, employee morale, and, ultimately, profitability (Nemr & Liu, 2021). Without a commitment from senior management, firms may lack strategic direction, resulting misaligned objectives and demotivate workforce to uphold integrity and ethical standards. Jones (2022) states that cronyism, corporate links, and politics are the prominent factors in the occurrence of corruption in Malaysia.

Consequently, Section 17A of MACC Act was introduced as game-changer in the nation's fight against corruption, especially at the organisational level. Activated on June 1, 2020, this Section imposes corporate liability for corrupt practices done to receive or retain business advantage in commercial organisations within Malaysia. In order to battle corruption in firms, it is intended that laws motivate organisations to take proper measures against corruption. Heavy penalties, including fines and imprisonment, are given for violations of this law. The organisation must demonstrate sufficient mechanisms to deter corrupt behaviour or face these penalties. This includes creating a comprehensive anti-corruption plan, educating employees, frequent auditing, and risk assessment.

The Prime Minister's Department released recommendations on Adequate Procedures in December 2018, outlining five core of TRUST principles, namely Top-Level Commitment, Risk Assessment, Undertaking Control Measures, Systematic Review, Monitoring and Enforcement, Training, and Communication. These principles provide a first line of defence for commercial organisations and those tasked with governance and administration.

Corporate Liability

Corporate liability refers to the legal principle that assigns responsibility to corporations for illicit or unethical actions carried out by their personnel, executives, or representatives. According to Hew and Lim (2021), Section 17A (1) of the MACC Act provides that a commercial organisation is said to commit an offence if a person associated with the organisation corruptly gives, offers, or promises any gratification to any person with an intent to; obtain or retain business for the commercial organisation, obtain or retain an advantage in the conduct of business for the commercial organisation. Notably, a commercial organisation on the receiving end of a bribe will not fall within the ambit of Section 17A. The provision is specifically targeted at the giver, promisor, or offeror of a bribe. That said, recipients of a bribe may still be liable, individually, under sections 16 and 17 of the MACC Act (which provides that a person or agent commits an offence by accepting a bribe).

According to Harris (2020), corporate liability is important in ensuring that corporations, as distinct legal entities, are held accountable for the misconduct of their employees, managers, or agents who engage in the acts of corruption or bribery. This concept is important because it holds the entire corporation accountable for such misconduct, not just the individual perpetrators. Supported by Nell (2009), corporate liability in the context of corruption at the organisational level is a challenge in determining when and to what extent a corporation should be held accountable for the corrupt actions of its employees.

Hence, it is crucial to differentiate between individual actions, including top-level management to employees and corruption that involves the corporation itself, to effectively enforce corporate criminal liability (Wibisana & Marbun, 2018). When a corporation is discovered to have profited from bribery or corruption conducted by individuals representing it, it may encounter substantial consequences. The consequences may include penalties, exclusion from professional organisations, potential criminal charges, harm to its reputation, etc, depending on the jurisdiction and the seriousness of the wrongdoing.

Moreover, corporations are encouraged or mandated by law to establish "adequate procedures" to manage and reduce the risk of such liability to prevent bribery and corruption (Harris, 2020). The example of adequate procedures involves implementing thorough compliance programmes, ongoing risk assessments, employee training, establishing reporting and whistle-blower systems, and a strong commitment at the highest level to fighting corruption (Posthuma, 2022). By demonstrating their proactive procedures, corporations may reduce their liability or, in certain instances, establish a defence against allegations of bribery and corruption (Harris, 2020).

In Malaysia, the MACC Act 2009 of Section 17A has introduced adequate procedures using TRUST principles. These TRUST principles will act as guidelines that commercial organisations should implement to prevent corrupt practices in their business activities (Prime Minister Department, 2019; Prime Minister Department, 2021).

Adequate Procedures

Adequate procedures refer to the well-designed policies, controls, and practises implemented by an organisation to prevent, detect, and deal with bribery and corruption (Harris, 2020; Malgwi, 2016). These procedures must be proportionate to the organisation's risks, informed by a thorough bribery risk assessment (Veselovská et al., 2020). Based on Veselovská et al. (2020) and Posthuma (2022), these procedures comprise implementing financial controls, conducting training, creating a clear anti-corruption policy, and having monitoring and reporting systems in place.

Under Section 17A of the MACC Act, the Guidelines on Adequate Procedures of TRUST were introduced, consisting of Top-level Commitment, Risk Assessment, undertaking control Measures, Systematic Review, Monitoring and Enforcement, Training, and Communication (Transparency International Malaysia, 2020; Prime Minister Department, 2021 and Prime Minister Department, 2019). This will give a thorough grasp of compliance to combat corruption effectively. According to Chang and Chu (2006), top-level commitment entails the leadership to take a firm stand against corruption. Risk assessment finds possible places where the bank may be corrupted (Sharma & Chauhan, 2023). Installing strong internal controls and processes is known as "undertaking control measures" (Fauzi & Suryani, 2019) to combat corruption. Systematic review, monitoring, and enforcement include monitoring transactions, reviewing processes regularly, and imposing penalties for unethical behaviour (Basyal et al., 2018). According to Wıjaya et al. (2021), training and communication guarantee that all bank workers are informed of anti-corruption rules and procedures.

Kafidipe et al. (2021) recommend that proper corporate risk management practices must be encouraged, with financial institutions carrying out frequent quality control checks to ensure compliance as it influences financial performance. Inadequate risk assessment can leave firms vulnerable to unforeseen financial crises and damage the firm’s reputation and performance. Control measures such as internal control have been proven to influence firm performance through internal audits, control activities, and risk management control (Abiodun, 2020). Firms cannot prevent or detect fraud, errors, and other irregularities without proper control measures.

Moreover, systematic review, monitoring, and enforcement help to prevent non-compliance with laws and regulations. Regularly evaluating and updating anti-corruption programmes can ensure firm effectiveness and adaptability, thereby improving performance. Equipping employees with anti-corruption knowledge empowers them to identify and report suspicious activity, and communication channels create a culture of transparency and accountability. Without adequate training and communication, employees may not be aware of the firm’s policies or the importance of compliance, leading to inconsistent practices and a higher likelihood of errors. Therefore, failing to implement TRUST principles can undermine a firm's ability to maintain performance and achieve long-term sustainability.

TRUST Principle

The independent variables that have been used in this study refer to the TRUST principles from Transparency International Malaysia (2020), and the Prime Minister Department (2021), which are 'T' for top-level commitment, 'R' for risk assessment, 'U' for undertaking control measures, 'S' for systematic review, monitoring and enforcement, and 'T' for training and communication.

Top-level Commitment

The MACC Act 2009 described top-level management as a group of people occupying considerable influence within an organisation. Top management refers to directors or managers who oversee the organisation's operations and establish its priorities, culture, and values. According to Transparency International Malaysia (2020), top-level commitment in the context of anti-corruption refers to the commitment and backing shown by senior management for anti-corruption initiatives within the company. The commitment requires setting good examples, in addition to fostering an integrity-conscious culture within the company, such as not condoning corruption.

Besides, Slemp et al. (2018) explain that strong top-level management motivates and influences staff by voicing a powerful vision of the future. It can lead to higher engagement, productivity, and performance levels because workers feel a sense of common purpose and commitment (Slemp et al., 2018). Moreover, Chatterjee et al. (2020) highlight that the commitment and involvement of the top management is an important constituent element of the effectiveness of key account management. According to the views research by Pereira et al. (2019), an evident relationship exists between organisational performance and top management. This means that the attitudes and behaviours of top-level managers might play a major role in the success of important account management strategies.

The top management sets an example to other staff members in ethical behaviour. This is supported by a study done by Tefera et al. (2020), which looked at the function of top management as a role model for moral decisions within firms. Therefore, top management's commitment, involvement, and action significantly influence a business's culture, strategic priorities, and overall performance. In that respect, senior management may play an extremely important role in raising integrity and performance by showing commitment to anti-corruption efforts.

Risk Assessment

Risk assessment is the systematic process of identifying and assessing potential risks that may negatively impact organisational goals and operations. According to Transparency International Malaysia (2020), a risk assessment will enable firms to know those parts of their operations that are particularly vulnerable to corruption. In essence, it will involve scrutiny of the internal and external organisational environment to point out potential sources of corruption risk. Based on the research done by Vertakova et al. (2021), where risk identification and tracking will be done faster, adopting appropriate risk management strategies will also be hastened. Therefore, prudent risk management decisions enable businesses to deal with probable issues even before they turn serious and reduce the impact of these issues to produce the best results possible. (Shatnawi & Eldaia, 2020).

Other authors, for example, Raghunath and Devi (2018), emphasise the importance of supply risk assessment for providing the necessary steps in risk management for business transactions and relationships. Risk assessment can be used in many corporate operations domains, far from corruption. Organisations can reduce corruption risks through the active assurance of the integrity and reliability of their suppliers by detecting any risk in the supply chain.

In this respect, Ali et al. (2020) state that good risk assessment increases the effectiveness of operations, builds stakeholders' trust and ensures regulatory compliance, all of which have a significant positive business performance impact. Organisations could take effective measures to increase overall performance and resilience by systematically evaluating all types of risks in different activities for optimum resource allocation, opportunities, and threat mitigation (Ali et al., 2020).

Undertake Control Measures

Under adequate procedures of TRUST, this principle represents the cornerstone of an organisation's commitment to moral business conduct and goes far beyond the mere letter of the law in compliance (Prime Minister Department, 2021). To prevent corrupt behaviour from affiliated persons, a business has to employ several control mechanisms (Transparency International Malaysia, 2020). According to Gan Partnership (2020), the first element to be included is steps to recognise corruption's warning signs and risks. Policies and procedures appropriate to prevent corruption should be developed, and such documents should be published and shared with the public and staff.

Identifying the warning signs and potential threats is the first step to combating corruption (Sihombing, 2018). As such, Veselovská et al. (2020) state that the organisation's operations should be analysed to identify possible weak points and places where corruption might arise. Identifying the risks would enable the organisation to implement the necessary rules and procedures to prevent corruption. This could include tightening regulations, improving transparency, teaching personnel how to identify and avoid corrupt activities, and setting up channels for reporting suspicions of corruption (Srinivasan & Goldberg, 2020).

However, it depends on how these control mechanisms are implemented and whether business organisations are held accountable for corruption (Peltier-Rivest, 2018). Practices can help reduce the possible risks, provide openness, and effectively stop corruption. Implementing such procedures protects an organisation from legal and financial liabilities. Thus, improving trust and reputation among stakeholders.

Systematic Review, Monitoring, and Enforcement

Systematic review, monitoring, and enforcement measures have become the main elements in many fields to gauge the effectiveness of interventions and policies. Through systematic review, monitoring, and enforcement, an organisation would realise and reduce corruption and bribery risks. According to the Institutes of Internal Auditors Malaysia (IIAM, 2020), it requires a careful review of the organisation's activities to identify weak points and potential hot spots where corruption might be bred. Organisations can identify areas and develop and implement necessary policies and procedures to minimise risk.

A successful systematic review, monitoring, and enforcement of organisational procedures and activities will be needed to identify possible non-compliance areas (Prime Minister Department, 2021). This agrees with Zin et al. (2023) findings, emphasising the importance of enforcement and monitoring systems in ensuring compliance. In addition to identifying and resolving problems, monitoring, and enforcement will also mean establishing an environment that breathes honesty and accountability within the organisation.

Commercial firms can deny corruption, stay compliant, and build up an integrity and accountability culture by establishing a strong review system and enforcing adherence to set rules. Besides saving the company from financial and legal implications, this preventive measure increases the reputation of the organisation with the stakeholders. Therefore, a successful anti-corruption strategy entails systematic review, monitoring, and enforcement for the organisation's success.

Training and Communication

Training and communication are indispensable parts of any area. Good communication skills help professionals reach colleagues, customers, and the community. Training and communication play a crucial role in establishing effective anti-corruption procedures and enhancing the performance of organisations. Research has shown that strategies such as transparency, accountability, and civic participation impact corruption risk (Vian, 2020). Anti-corruption education programmes have improved awareness of corruption, enhanced knowledge of anti-corruption policies, and built necessary skills for policy implementation (Mohammed et al., 2023). Communication and training in anti-corruption policies and procedures are important indicators of a firm's commitment to reducing corruption risk (Sari et al., 2021). Disclosure on anti-corruption, including policies, training programmes, risks, and performance indicators, remarkably influences firms' performance among stakeholders (Etxeberria & Odriozola, 2018; Ghazwani et al., 2023). It is also suggested that comprehensive anti-corruption disclosure frameworks increase transparency and improve performance in financial institutions (Nobanee et al., 2020).

In this respect, proper communication and training on anti-corruption policies and procedures indicate a high commitment to minimising the risk of corruption (Sari et al., 2021). It allows an employee to clarify any doubts or report violations they might find. This is supported by Al-Okaily (2023) as he stated that as one of the key measures that may be taken to prevent corruption by training management and employees, which also will help in evaluating the application of the corruption prevention efforts.

Another effort in the prevention of corruption includes the implementation of responses after corruption incidents. According to Asare et al. (2021), this process is essential because it enables the organisation to learn from past errors and take corrective measures against similar incidents. Besides, the members also intend to report corrupt acts that should be present within the organisation. As Prabowo and Cooper (2016) stated, this indicates organisational culture in which if the employees are at ease when reporting corrupt acts, this is a sign of a strong culture of integrity and accountability within the organisation. Therefore, all employees, including senior management, should be offered training in anti-corruption efforts to comply with the laws related to corporate liability and improve the performance of work. However, these initiatives can only be effective with the support from the top management of the organisation. Hence, the following section will discuss on the corporate governance elements which also focuses on the ethics and integrity of the organisation.

Conclusion

Corporate liability is crucial to deter unwanted behaviour from upholding society's core principles by penalising violations or unethical behaviour committed by organisations. Previously, there was no clause introduced to allow MACC charges on organisations, but with the implementation of Section 17A of MACC Act, the organisation is now liable for any corruption happening in the organisation. However, the main responsibility is placed on the top management of the organisation. They are responsible for ensuring adequate procedures are done at their organisation. In addition, there is some similarity between the Malaysian Code on Corporate Governance and the TRUST Principles introduced, as both focuses on strengthen the governance of an institutions working towards ethical environment, although the TRUST principles focus more anti-corruption initiatives. Hence, future research may discuss further the component of TRUST principles and Malaysian Code on Corporate Governance on its similarities and differences, to provide an insight on the best framework in achieving safe and ethical organisations.

References

Abiodun, E. A. (2020). Internal control procedures and firm's performance. *International Journal of Scientific & Technology Research*, *9*(2), 6407-6415.

Ali, M. S. B., Fhima, F., & Nouira, R. (2020). How does corruption undermine banking stability?. A threshold nonlinear framework. *Journal of Behavioral and Experimental Finance*, 27, 100365.

Chang, E. C., & Chu, Y. H. (2006). Corruption and trust: exceptionalism in Asian democracies?. *The Journal of Politics, 68*(2), 259-271.

Chatterjee, S., Ghosh, S. K., & Chaudhuri, R. (2020). Knowledge management in improving business process: an interpretative framework for successful implementation of AI–CRM–KM system in organizations. *Business Process Management Journal, 26*(6), 1261-1281.

Fauzi, A. A., & Suryani, T. (2019). Measuring the effects of service quality by using the CARTER model towards customer satisfaction, trust, and loyalty in Indonesian Islamic banking. *Journal of Islamic Marketing*, *10*(1), 269-289.

Harris, H. (2020). Corporate liability for bribery - in favour of systematic approach. *Current Issues in Criminal Justice, 32*(3), 309–329.

Jones, D. S. (2022). Challenges in combating corruption in Malaysia: issues of leadership, culture and money politics. *Public Administration and Policy, 25*(2), 136-149.

Kafidipe, A., Uwalomwa, U., Dahunsi, O., & Okeme, F. O. (2021). Corporate governance, risk management and financial performance of listed deposit money bank in Nigeria. *Cogent Business & Management*, *8*(1), 1888679.

Li, Z. (2022). Characteristics and trends in unethical pro-organizational behavior research in business and management: a Bibliometric analysis. *Frontiers in Psychology, 13*, 877419.

Mohammed, N. F., Lokman, N., Mohamed, N., & Bakar, N. A. (2023). Exploring anti-corruption education in Malaysian educational institutions. *Journal of Money Laundering Control*, (ahead-of-print).

Muhwezi, M. (2016). The case for corporate criminal liability. *Journal of Corporate Criminal, 2*.

Nell, M. (2009). Contracts obtained by means of bribery: should they be void or valid?. *European journal of law and economics, 27*, 159-176.

Nemr, M. A. A., & Liu, Y. (2021). The impact of ethical leadership on organizational citizenship behaviors: Moderating role of organizational cynicism. *Cogent Business & Management*, *8*(1), 1865860.

Peltier-Rivest, D. (2018). A model for preventing corruption. *Journal of Financial Crime, 25*(2), 545-561.

Pereira, G., Tzempelikos, N., Trento, L. R., Trento, C. R., Borchardt, M., & Viegas, C. V. (2019). Top managers' role in key account management. *Journal of Business & Industrial Marketing, 34*(5), 977-993.

Posthuma, R. A. (2022). High-compliance work systems: Innovative solutions for firm success and control of foreign corruption. *Business Horizons, 65*(2), 205-214.

Prime Minister's Department. (2019). *Guidelines on Adequate Procedures.* ICDM. Retrieved from https://pulse.icdm.com.my/wp-content/uploads/2019/12/Prime-Ministers-Department-Guidelines-on-Adequate-Procedures.pdf

Prime Minister's Department. (2021). *MACC Act Section 17A Adequate Procedures.* ICDM. Retrieved from https://pulse.icdm.com.my/wp-content/uploads/2021/05/MACC-17A-ACT-ADEQUATE-PROCEDURES-BEST-PRACTICE-HANDBOOK.pdf

PWC. (2020). *Global Economic Crime and Fraud Survey - Malaysia Report*. Retrieved from https://www.pwc.com/my/en/assets/publications/2020/PwC-Global-Economic-Crime-and-Fraud-Survey-2020-Malaysia-report.pdf

Sharma, A. K., & Chauhan, R. (2023). Impact of Basel III liquidity and capital regulations on bank lending and financial stability: Evidence from emerging countries. *Journal of Corporate Accounting & Finance, 34*(4), 28-45.

Sihombing, S. O. (2018). Youth perceptions toward corruption and integrity: Indonesian context. *Kasetsart Journal of Social Sciences, 39*(2), 299-304.

Slemp, G. R., Kern, M. L., Patrick, K. J., & Ryan, R. M. (2018). Leader autonomy support in the workplace: A meta-analytic review. *Motivation and Emotion, 42*(5), 706-724.

Srinivasan, S., & Goldberg, J S. (2020). *Recovering Trust After Corporate Misconduct at Wells Fargo.* https://www.hbs.edu/faculty/Pages/item.aspx?num=58343

Tefera, M. A., Yuanqiong, H., & Luming, L. (2020). A link between top managers' perception and corporate social responsibility: Transformational leadership as a moderator. *International Journal of Research in Business and Social Science* (2147-4478), 9(1), 01-14.

Transparency International Malaysia. (2020). *A Nation Without Corruption, A Society With Integrity.* Retrieved from https://www.transparency.org.my/images/posts/Pvx483HJveC0msmD5Vq7ncjgKNexv6JX8VFBS7VM.pdf

Veselovská, L., Závadský, J., & Závadská, Z. (2020). Mitigating bribery risks to strengthen corporate social responsibility in accordance with ISO 37001. *Corporate social responsibility and environmental management, 27*(4), 1972-1988.

Wibisana, A. G., & Marbun, A. N. (2018). Corporate criminal liability in Indonesia anti-corruption law: does it work properly?. *Asian Journal of Law and Economics, 9*(1), 20170029.

Wijaya, T., Nasuka, M., & Hidayat, A. (2021). Salesperson ethics behavior as an antecedent of Islamic banking customer loyalty. *Journal of Islamic Marketing, 13*(7), 1535-1550.