
Corporate Governance

First Corporate Liability Charge under the Malaysian Anti-Corruption Commission Act 2009 – What Directors Need to Know

Introduction

On 18 March 2021, the Malaysia Anti-Corruption Commission ("**MACC**") charged a company providing ship rental services under Section 17A of the Malaysian Anti-Corruption Commission Act 2009 ("**MACC Act**"). This is the first charge under Section 17A, which came into force on 1 June 2020. For context, Section 17A imposes liability on a company and its officers holding managerial positions ("**management**") if persons associated with the company offer a bribe to a third party for the company's benefit. The maximum penalty for this offence is a fine of up to RM1 million or at least 10 times the value of the bribe (whichever is higher), or up to 20 years imprisonment, or both. An analysis of Section 17A and the defence to a charge under this section can be found [here](#).

Set out below is a brief background of the case, followed by the key issues directors and management should consider in light of these charges.

Background Facts of the Case

Chew Ben Ben, the former director of Pristine Offshore Sdn Bhd ("**Pristine**"), allegedly bribed the chief operating officer of Deleum Primera Sdn Bhd ("**Deleum**") with RM312,350 to secure a subcontract from Petronas Carigali Sdn Bhd for Pristine. The alleged offences took place in June and October 2020; Chew was charged under Section 16 of the MACC Act and Pristine was charged under Section 17A.

Pristine's current sole director, Datuk Abdul Kamal, attended the Court hearing on behalf of Pristine. He pleaded not guilty to the charge, and was granted bail at RM200,000. Chew also pleaded not guilty, and was granted bail at RM150,000 with the surrender of his passport pending the next hearing date.

Points to consider

In light of this charge, a few key issues which directors and management should keep in mind are:

Corporate Governance

A) What should you do before accepting a directorship or management position?

Assess the company's compliance with anti-corruption and anti-money laundering laws. Some of the red flags which should set off alarm bells ringing include:

- the company not having an anti-bribery or anti-money laundering policy in place;
- there being low awareness among staff of the company's anti-bribery and anti-money laundering policies and processes;
- the company not regularly reviewing or independently auditing its anti-bribery and anti-money laundering policies and processes;
- being offered an excessively high compensation package compared to market rates;
- there being a high turnover of board and management members;
- there being current or previous board members who are involved in corruption scandals; and
- the company being reluctant to provide information on its business for you to assess the nature of its business or your suitability as a member of the board or management.

B) If you are already a director or in management, what can you do to protect yourself?

The strongest defence for directors and management against a Section 17A charge is to ensure the company has adequate procedures in place, as the deeming provision will not be triggered so long as the company is not convicted of a Section 17A offence. In other words, directors and management need to ensure the company implements the TRUST principle, a summary of which can be accessed [here](#).

Briefly, the key requirements under the TRUST principle include having robust anti-corruption policies, thorough corruption checks prior to onboarding business associates or hiring employees, having an effective whistleblowing system, allocating resources to conduct continuous monitoring of high risk business associates, offering anti-corruption training to persons associated with the company, and ensuring top management endorse a zero tolerance stance against bribery.

C) What should you do if the other board members or management are not in agreement on Section 17A matters?

You should document each decision or proposal to the board or management in sufficient detail to justify your decision or proposal, especially when your decision or proposal differs from the majority. Do note that succumbing to peer pressure to vote in line with the majority, or to execute a board decision, is not a defence or a mitigating factor for sentencing under law. In the event the company continues to take a direction which you believe is in violation of relevant laws despite multiple reminders or warnings, you should promptly seek independent legal advice.

Corporate Governance

D) Do you need to analyse the specifics of each transaction?

As a director of the company, you are allowed to rely on management representations and expert or professional advice in exercising your duties under the Companies Act. This is provided your reliance on them is made in good faith and you have made an independent assessment of the transaction presented to you. In other words, whilst you do not need to personally conduct the corruption due diligence and KYC checks on the proposed transaction, you must still analyse the information presented to you and ask the requisite questions to satisfy yourself that the transaction you are about to approve does not expose the company to a corruption risk.

The same principle applies for management where reliance on peers and middle management is allowed, provided the ultimate responsibility to analyse, assess and make an independent assessment of the transaction remains with you.

E) What should you do if someone approaches you asking for a bribe, or if you are offered a bribe?

In addition to your duty to act in the best interest of the company as a director or officer of the company, you must report such instances to the authorities. Failing to report a bribe offered to you exposes you to a fine of up to RM100,000, or imprisonment for up to 10 years, or both. On the other hand, failing to report an instance where you are asked for a bribe exposes you to a fine of up to RM10,000, or imprisonment for up to 2 years, or both, if you do not have a reasonable excuse for not reporting this request for bribe.

F) Is Directors & Officers Liability insurance a safeguard against a Section 17A offence?

No. Companies are prohibited under the Companies Act to purchase insurance for criminal charges against directors and officers, and a Section 17A offence is a criminal offence.

We will issue further updates once more details of this charge is made available or the case is decided by the Court. In the meantime, please feel free to contact the team if you would like to find out more about the recommended safeguards directors and management should consider in such instances.

Contacts



Kuok Yew Chen
Partner

T +603 2267 2699
M +601 7211 1320
yew.chen.kuok@christopherleeong.com



Tan Yi Li
Partner

T +603 2267 2691
M +601 11239 1023
yi.li.tan@christopherleeong.com



Steven Cheok
Partner

T +603 2267 2648
M +601 2975 5497
steven.cheok@christopherleeong.com

Our Regional Contacts

RAJAH & TANN | *Singapore*

Rajah & Tann Singapore LLP

T +65 6535 3600
sg.rajahtannasia.com

R&T SOK & HENG | *Cambodia*

R&T Sok & Heng Law Office

T +855 23 963 112 / 113
F +855 23 963 116
kh.rajahtannasia.com

RAJAH & TANN 立杰上海

SHANGHAI REPRESENTATIVE OFFICE | *China*

**Rajah & Tann Singapore LLP
Shanghai Representative Office**

T +86 21 6120 8818
F +86 21 6120 8820
cn.rajahtannasia.com

ASSEGAF HAMZAH & PARTNERS | *Indonesia*

Assegaf Hamzah & Partners

Jakarta Office

T +62 21 2555 7800
F +62 21 2555 7899

Surabaya Office

T +62 31 5116 4550
F +62 31 5116 4560
www.ahp.co.id

RAJAH & TANN | *Lao PDR*

Rajah & Tann (Laos) Co., Ltd.

T +856 21 454 239
F +856 21 285 261
la.rajahtannasia.com

CHRISTOPHER & LEE ONG | *Malaysia*

Christopher & Lee Ong

T +60 3 2273 1919
F +60 3 2273 8310
www.christopherleeong.com

RAJAH & TANN | *Myanmar*

Rajah & Tann Myanmar Company Limited

T +95 1 9345 343 / +95 1 9345 346
F +95 1 9345 348
mm.rajahtannasia.com

GATMAYTAN YAP PATACSIL

GUTIERREZ & PROTACIO (C&G LAW) | *Philippines*

Gatmaytan Yap Patacsil Gutierrez & Protacio (C&G Law)

T +632 8894 0377 to 79 / +632 8894 4931 to 32
F +632 8552 1977 to 78
www.cagatlaw.com

RAJAH & TANN | *Thailand*

R&T Asia (Thailand) Limited

T +66 2 656 1991
F +66 2 656 0833
th.rajahtannasia.com

RAJAH & TANN LCT LAWYERS | *Vietnam*

Rajah & Tann LCT Lawyers

Ho Chi Minh City Office

T +84 28 3821 2382 / +84 28 3821 2673
F +84 28 3520 8206

Hanoi Office

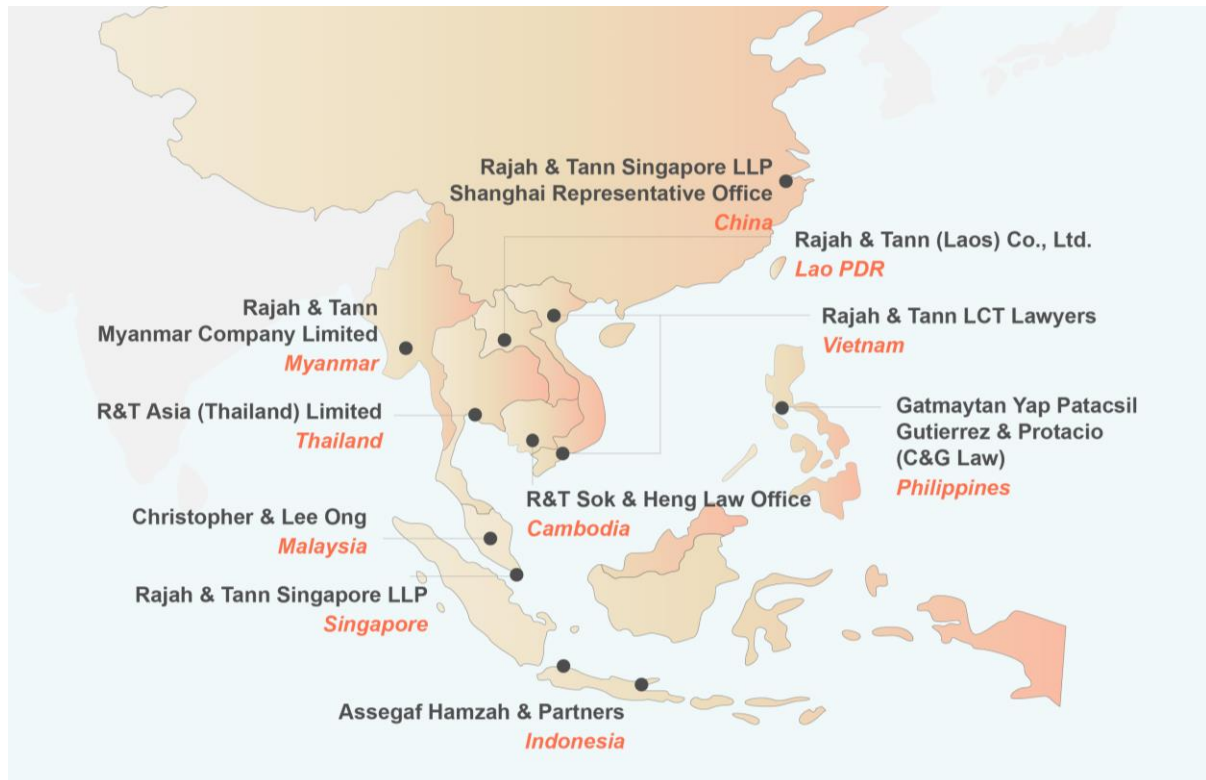
T +84 24 3267 6127
F +84 24 3267 6128
www.rajahtannlct.com

Rajah & Tann Asia is a network of legal practices based in Asia.

Member firms are independently constituted and regulated in accordance with relevant local legal requirements. Services provided by a member firm are governed by the terms of engagement between the member firm and the client.

This update is solely intended to provide general information and does not provide any advice or create any relationship, whether legally binding or otherwise. Rajah & Tann Asia and its member firms do not accept, and fully disclaim, responsibility for any loss or damage which may result from accessing or relying on this update.

Our Regional Presence



Christopher & Lee Ong is a full service Malaysian law firm with offices in Kuala Lumpur. It is strategically positioned to service clients in a range of contentious and non-contentious practice areas. The partners of Christopher & Lee Ong, who are Malaysian-qualified, have accumulated considerable experience over the years in the Malaysian market. They have a profound understanding of the local business culture and the legal system and are able to provide clients with an insightful and dynamic brand of legal advice.

Christopher & Lee Ong is part of Rajah & Tann Asia, a network of local law firms in Singapore, Cambodia, China, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam. Our Asian network also includes regional desks focused on Brunei, Japan and South Asia.

The contents of this Update are owned by Christopher & Lee Ong and subject to copyright protection under the laws of Malaysia and, through international treaties, other countries. No part of this Update may be reproduced, licensed, sold, published, transmitted, modified, adapted, publicly displayed, broadcast (including storage in any medium by electronic means whether or not transiently for any purpose save as permitted herein) without the prior written permission of Christopher & Lee Ong.

Please note also that whilst the information in this Update is correct to the best of our knowledge and belief at the time of writing, it is only intended to provide a general guide to the subject matter and should not be treated as a substitute for specific professional advice for any particular course of action as such information may not suit your specific business or operational requirements. It is to your advantage to seek legal advice for your specific situation. In this regard, you may call the lawyer you normally deal with in Christopher & Lee Ong.
