

**CORPORATE INVESTIGATIONS AND COMPLIANCE IN
MALAYSIA: SECTION 17A OF THE MACC ACT 2009 AND THE
CONVERGING RISK OF AMLATFPUAA 2001 ENFORCEMENT***

by

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ABSTRACT

This article examines the evolving landscape of corporate investigations and compliance in Malaysia following the introduction of corporate criminal liability for corruption under section 17A of the Malaysian Anti-Corruption Commission Act 2009, alongside the increasingly assertive enforcement of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 ('**AMLATFPUAA**'). It analyses how allegations of corruption now engage parallel and independent asset-based consequences, including freezing, seizure, and civil forfeiture, even in the absence of criminal prosecution. Particular attention is given to the Federal Court's decision in *JJ Power Groups Enterprise & Ors v. PP*, which clarified the civil standard of proof applicable to forfeiture under section 56 of the AMLATFPUAA. The article considers how compliance frameworks and corporate investigations must be designed not only to address criminal liability, but also to defend the legitimacy of transactions and assets on a civil evidential footing.

Keywords: Section 17A MACC Act 2009; Corporate criminal liability; Adequate procedures; Director and senior management liability; Corporate investigations; Section 25 MACC Act; AMLATFPUAA 2001; Asset freezing and forfeiture; Civil standard of proof; Compliance and asset defence.

INTRODUCTION

Corporate investigations in Malaysia now operate within a significantly more exacting legal environment. The introduction of corporate criminal liability for corruption under section 17A of the Malaysian Anti-

Corruption Commission Act 2009 (‘MACC Act’), coupled with increasingly assertive enforcement of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (‘AMLATFPUAA’), has reshaped how organisations must respond to allegations of misconduct.

Where corruption risk arises, the legal analysis no longer ends with individual wrongdoing. Investigations must now address corporate exposure, personal liability of directors and senior management, the adequacy of compliance procedures, and parallel AMLATFPUAA consequences, including compulsory investigations, asset freezing, seizure, and civil forfeiture. These regimes do not operate independently. In practice, they converge around the same evidential core: financial transactions, controls, and contemporaneous documentation.

This article examines how corporate investigations should be structured to respond to that convergence, focusing on (i) the impact of section 17A on investigative design, (ii) AMLATFPUAA enforcement as an independent and front-loaded risk, and (iii) why compliance, investigation, and asset defence can no longer be treated as separate disciplines.

SECTION 17A MACC ACT: CORPORATE CRIMINAL LIABILITY

Statutory Framework

Section 17A, in force from 1 June 2020, creates a discrete offence of corruption by a commercial organisation.^[1] A commercial organisation commits an offence where a person associated with it corruptly gives, agrees to give, promises, or offers gratification with the intent to obtain or retain business or an advantage in the conduct of business for that organisation.^[2]

The statutory definitions are deliberately broad. A “commercial organisation” includes companies, partnerships, and limited liability partnerships, whether incorporated in Malaysia or elsewhere, so long as they carry on business or are part of a business in Malaysia.^[3]

A “person associated” extends beyond employees and directors to include agents, consultants, and other service providers, assessed by reference to all relevant circumstances.^[4]

Section 17A further introduces deemed liability for directors, partners, and persons concerned in the management of the organisation, subject to specific statutory defences.^[5]

The “Adequate Procedures” Defence (Section 17A(4))

The principal statutory defence available to a commercial organisation is that it had adequate procedures designed to prevent associated persons from undertaking corrupt conduct.^[6]

Pursuant to section 17A(5), the Prime Minister’s Department issued the Guidelines on Adequate Procedures, structured around the five principles commonly summarised as T.R.U.S.T.^[7] These Guidelines constitute the primary compliance benchmark for corporate liability under section 17A.

There remains, however, a paucity of reported Malaysian jurisprudence on how courts will assess adequacy in contested proceedings. Adequacy should therefore be understood as a fact-sensitive, evidential inquiry rather than a question of formal policy adoption. Crucially, the same procedures relied upon for section 17A purposes will often be scrutinised in parallel under AMLATFPUAA, particularly where financial controls, third-party due diligence, and transaction monitoring are concerned.

Personal Liability of Directors and Senior Management (Section 17A(3))

It is critical to distinguish between the corporate defence under section 17A(4) and the personal defence available to directors and senior management under section 17A(3).

Where an offence is committed by a commercial organisation, a director, controller, officer, partner, or person concerned in the management of its affairs is deemed to have committed that offence unless he proves both that

the offence was committed without his consent or connivance and that he exercised due diligence to prevent its commission, having regard to the nature of his function and the circumstances.^[8]

This is a distinct and personal statutory burden. Corporate compliance frameworks may be relied upon only insofar as they evidence personal due diligence exercised by the individual concerned. The existence of organisational policies does not, of itself, discharge the obligation imposed by section 17A(3).

CORPORATE INVESTIGATIONS IN A SECTION 17A ENVIRONMENT

A Shift in Investigative Focus

Section 17A fundamentally reshapes the purpose of a corporate investigation. The inquiry must extend beyond whether an individual engaged in corrupt conduct to consider whether the conduct was intended to benefit the organisation, whether internal controls failed or were bypassed, and whether the organisation can prove that adequate preventive procedures were in place at the material time.

Investigations must therefore proceed on dual and interconnected tracks: factual reconstruction of the alleged misconduct and forensic assessment of the compliance framework that existed when the conduct occurred.

Evidential Priorities

In practice, the most probative evidence often lies not in the gratification itself but in the surrounding control environment. Investigators should expect scrutiny of third-party onboarding records, procurement and tender approvals, controls governing gifts and hospitality, financial approval workflows, audit findings, and training records.

These same categories of evidence are also those most frequently compelled under AMLATFPUAA investigation powers, reinforcing the need for consistency and accuracy at an early stage.^[9]

DUTY TO REPORT BRIBERY: SECTION 25 OF THE MACC ACT

In addition to the corporate liability regime under section 17A, the MACC Act imposes a personal statutory duty to report bribery transactions under section 25.^[10]

Any person to whom gratification is given, promised, or offered, or from whom gratification is solicited or obtained, must report the matter to the MACC or the police. Failure to do so constitutes a separate criminal offence.

In the context of corporate investigations, section 25 introduces a further layer of complexity. Once credible information emerges suggesting bribery, organisations must carefully manage the personal reporting obligations of relevant individuals alongside internal investigations, privilege considerations, and parallel AMLATFPUAA risks.

AMLATFPUAA AS A PARALLEL AND FRONT-LOADED ENFORCEMENT RISK

Investigative and Compulsion Powers

AMLATFPUAA confers extensive investigative powers, including compulsory examination of persons and production of documents.^[11]

These powers explain why AMLATFPUAA investigations are often document-driven and front-loaded. Care must also be taken to avoid contravening AMLATFPUAA tipping-off provisions.^[12]

Freezing and Seizure of Property (Sections 44–54 of the AMLATFPUAA)

Asset risk under AMLATFPUAA frequently arises before any forfeiture application is contemplated. Section 44 empowers enforcement agencies to freeze property at the investigation stage.^[13]

Sections 45–54 then regulate seizure, prohibit dealings with seized property, and render void certain transactions.^[14]

These provisions explain how property becomes “seized under this Act”, a statutory precondition to forfeiture.

CIVIL FORFEITURE UNDER AMLATFPUAA

Section 56: Forfeiture Where There is No Prosecution

One of the most developed areas of Malaysian jurisprudence under AMLATFPUAA concerns forfeiture of property under section 56, which permits forfeiture without any prosecution or conviction.^[15]

Federal Court Authority: *JJ Power Groups Enterprise & Ors v. PP*^[16]

The Federal Court confirmed that section 56 constitutes a special civil forfeiture regime, distinct from criminal prosecution and applicable even where no charges are brought.^[17]

The Court held that every element and every question of fact must be proved on the balance of probabilities, rejecting any hybrid standard of proof.^[18]

It further emphasised that cogent documentary evidence is required.^[19]

This approach is reinforced by section 56A of the AMLATFPUAA, which provides that an acquittal does not affect the power to order forfeiture.^[20]

Protection of Bona Fide Third Parties (Section 61 of the AMLATFPUAA)

Section 61 of the AMLATFPUAA protects bona fide purchasers for valuable consideration, underscoring the importance of transactional due diligence and demonstrable good faith.^[21]

INTEGRATING AMLATFPUAA RISK INTO SECTION 17A INVESTIGATIONS

Where corrupt conduct is alleged to have been undertaken for the benefit of a commercial organisation, the same facts will often engage AMLATFPUAA scrutiny of the resulting funds. A section 17A

investigation that focuses solely on culpability, without addressing asset provenance and transaction legitimacy, is therefore incomplete.

Adequate procedures under section 17A and asset defensibility under AMLATFPUAA are thus two sides of the same inquiry.

CONCLUSION

Section 17A of the MACC Act 2009 and the enforcement architecture of AMLATFPUAA 2001 together mark a decisive shift in Malaysia's approach to corporate misconduct. Investigations, reporting duties, and asset exposure now arise early and often in parallel.

The Federal Court's clarification in *JJ Power Groups Enterprise & Ors v. PP*, read together with the wider AMLATFPUAA framework on freezing, seizure, and forfeiture, confirms that compliance programmes must be investigation-ready and evidentially robust. For Malaysian corporates, the message is clear: adequate procedures must be real, operational, and provable—because the consequences of failure extend well beyond the criminal courtroom.

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Endnotes:

[¹] MACC Act 2009, s 17A(1).

[2] MACC Act 2009, s 17A(1)(a)–(b).

[3] MACC Act 2009, s 17A(8).

[4] MACC Act 2009, s 17A(6).

[5] MACC Act 2009, s 17A(3).

[6] MACC Act 2009, s 17A(4).

[7] Prime Minister’s Department, Guidelines on Adequate Procedures Pursuant to Subsection 17A(5) of the Malaysian Anti-Corruption Commission Act 2009.

[8] MACC Act 2009, s 17A(3)(a)–(b).

[9] AMLATFPUAA, ss 29–32.

[10] MACC Act 2009, s 25.

[11] AMLATFPUAA, Part V.

[12] AMLATFPUAA, s 35.

[13] AMLATFPUAA, s 44.

[14] AMLATFPUAA, ss 45–54.

[15] AMLATFPUAA, s 56.

[16] [2025] 7 CLJ 378 (FC).

[17] *JJ Power Groups Enterprise & Ors v. PP* [2025] 7 CLJ 378 (FC) [41], [45] and [60].

[18] *Ibid* [36]–[39], [45]–[47].

[19] *Ibid* [56]–[58].

[20] AMLATFPUAA, s 56A.

[21] AMLATFPUAA, s 61.