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# Prosecutorial Challenges in Enforcing Corporate Corruption Liability under Section 17A of the Malaysian Anti-Corruption Commission Act 2009

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**ABSTRACT**

Corporate corruption poses significant challenges to Malaysia's economic integrity and governance, prompting the introduction of Section 17A under the Malaysian Anti-Corruption Commission Act 2009 to impose criminal liability on commercial organisations. This study examines prosecutorial challenges in enforcing Section 17A through a qualitative doctrinal–empirical approach, combining legal analysis with semi-structured interviews of prosecutors involved in active corporate corruption cases. Findings reveal four interconnected challenges: Uncertainty in the interpretation and application of adequate procedures, institutional unfamiliarity with Section 17A among judges and legal actors, evidentiary difficulties related to witness credibility and fear of retaliation, and conceptual issues in applying punishment to corporate entities. The study highlights that these challenges collectively constrain the effectiveness of Section 17A, underscoring the need for

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judicial clarification and the adoption of deferred prosecution agreements. By providing empirical insights into the practical realities of prosecuting corporate corruption, this study contributes to enhancing Malaysia's corporate anti-corruption framework in line with international standards.

**Keywords:** Prosecutorial challenge; Corporate corruption liability; Malaysian Anti-Corruption Commission Act 2009; Section 17A

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## 1. Introduction

Corruption has been a long-prevalent issue in Malaysia. The government has introduced a series of anti-corruption plans, strategies and laws to combat the problem. Studies indicate that corruption generally harms a firm's long-term performance, particularly in high-and middle-income economies, and that a strong ethical culture is closely linked to better financial performance (Shamsu et al., 2024). On 1st October 2025, the Prime Minister launched the Keep Malaysia Clean campaign with the aim of achieving a corruption-free country on the Malaysian Anti-Corruption Commission's 58th Anniversary in a drive against corruption (Tee, 2025).

Corruption is a serious issue not only in Malaysia. It is considered a worldwide issue and has become a major concern for all countries. It has impacted the attainment of the United Nations' Sustainable Development Goals (SDGs), especially Goal 16. UNODC has highlighted the impact of corruption on SDGs, including economic loss, poverty, inequality and institutional dysfunctionality. According to Tan Sri Azam Baki (Camoens, 2025), corruption has resulted in a RM277 billion loss in Malaysia's national revenue over the past six years.

Malaysia's commitment to fighting corruption is in line with international conventions. Malaysia ratified the United Nations Convention Against Corruption (UNCAC) in 2008 (Low & Low, 2020), and has done the Implementation Review Mechanism and continues to do so up until now. Based on this review, there are lists of recommendations to be implemented. Following this, Malaysia has amended the Malaysian Anti-Corruption Commission Act 2009 to introduce Section 17A, which is in line with UNCAC Chapter III on criminalisation and law enforcement (Karim, 2025). Parliamentary debates in the Dewan Rakyat indicate that the introduction of Section 17A was driven by the objective of promoting ethical and corruption-free business practices while ensuring fair competition within Malaysia's economic landscape. The provision was envisaged as a mechanism to impose shared responsibility on commercial organisations and their associated persons to actively prevent and combat corruption, thereby advancing broader societal justice (Suhor, 2020).

Under this provision, a commercial organisation may be held criminally liable for corrupt acts conducted by persons associated with it where such acts are intended to obtain or retain business or a business advantage for the organisation, unless the organisation can demonstrate that it had in place adequate procedures to prevent such conduct (Low & Low, 2020).

Section 17A, however, raised some concerns and challenges to be implemented. While this legislative innovation has been welcomed as an important step in aligning domestic law with global best practice, its practical enforcement by prosecutors remains fraught with challenges. Academic commentators have highlighted concerns regarding the clarity and application of Section 17A, including the broad scope of associated persons, evidential burdens, and the operationalisation of the adequate procedures defence (Mohamed et al., 2023). Scholars note that the provision's wide reach and high penalties carry significant implications for both large and small enterprises, which must adapt corporate governance and compliance frameworks accordingly (Che Shaari, 2020). There is no provision establishing what is considered adequate measures (Mohamed et al., 2023). This caused organisations to be expected to perform only the bare minimum to prove their organisations have proper procedures (Mohamed et al., 2023). At the same time, limited prosecutorial experience with corporate corruption cases in Malaysia raises questions about how effectively the law can be applied in practice.

Though passed in 2018, Section 17A was only implemented in 2020. There are only 2 cases that have been prosecuted since its implementation, which are Pristine Offshore Sdn. Bhd. (Chin, 2021), and Hydroshoppe Sdn. Bhd. (Chan, 2026). Both cases are still on the trial stage and have not been decided. The trials have been delayed for some time because there are few applications being made. In Pristine Offshore, the application to transfer the case to the High Court has been rejected by the court as the court ruled that the defence of adequate procedures is not a trivial matter to be decided.[1]

The present study seeks to bridge this gap by examining prosecutorial challenges in enforcing corporate criminal liability under Section 17A of the MACC Act. It draws on semi-structured interviews with prosecutors to identify and analyse the legal, evidentiary and institutional obstacles encountered in prosecuting corporate corruption cases. By situating empirical insights within the doctrinal framework, this article contributes to a deeper understanding of how statutory corporate liability for corruption operates in practice and highlights areas where legal reform or enhanced prosecutorial support may be necessary to realise the legislative objectives of Section 17A.

## 2. Literature Review

Sharija Che Shaari conducted a doctrinal analysis of Section 17A of the MACC Act 2009, examining its salient features, including the scope of commercial organisations, the definition of associated persons, the applicable penalties, and the implementation of the adequate procedures defence (Che Shaari, 2020). Similarly, Low and Low provided a comprehensive doctrinal examination of Section 17A following its initial implementation,

[1] *Chew Ben Ben & Anor v. Public Prosecutor* [2023] Malayan Law Journal Unreported 1534 (High Court).

focusing on the legal framework and interpretive issues arising from the provision (Low & Low, 2020).

In addition, Abdul Raof et al. have contributed to the literature on corporate criminal liability for corruption through a series of scholarly articles. One of their articles, published in 2023, focuses specifically on the concept of associated persons by comparing Section 17A of the MACC Act 2009 with corresponding legal frameworks in the United Kingdom and the United States (Abdul Raof et al., 2024; Abdul Raof et al., 2021). The article clarifies the categories of individuals who may be regarded as associated persons under Section 17A and highlights key similarities and differences across jurisdictions.

### 2.1 Corporate Corruption Liability

Corruption is a complex and contested construct in the academic literature with many definitions proposed by different authors across multiple disciplines (Castro et al., 2020). Castro, Phillips and Ansari define corporate corruption as the misuse of formal power by a corporate representative for personal and/or organisational benefit (Castro et al., 2020). Corporate liability ensures that corporations are held accountable for corruption or bribery committed by their employees, managers, or agents, placing responsibility on the organisation as a whole rather than solely on individual offenders (Harris, 2020).

In Malaysia, the newly introduced corporate liability provision in Section 17A is modelled after the United Kingdom's Bribery Act 2010 (Mohamed et al., 2023). It is clear that Section 17A is designed as a strict liability offence, with its primary objective being the prevention of bribery (Low & Low, 2020). This means the offence requires no intent or knowledge, and there is no requirement to establish the controlling mind of a legal entity (Mukwiri, 2015). This is the evolution from the traditional corporate crime that used the identification principle to prove the intention of the accused. The strict liability under this provision does not stand alone, as it is also seasoned with the defence of adequate procedures (Mukwiri, 2015). The United Kingdom approach does not mandate particular actions on behalf of commercial organisations, but the strict liability and accompanying defence acts to motivate the organisations to curb the potential of bribery within their organisations (Harris, 2020).

However, if we perceived Section 17A as a strict liability offence, there is one issue on whether the commercial organisation will be liable if the associated person is not being charged or convicted. Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act does not expressly require that an associated person be charged or convicted of a corrupt act prior to the conviction of a commercial organisation for a corporate liability offence (Gan et al., 2021). The provision is silent on any prerequisite proceeding against the individual, thereby suggesting that corporate liability may be established independently of the prosecution or conviction of the associated person. This interpretation is consistent with the underlying rationale and the legislative intent of Section 17A, which seeks to impose direct responsibility on commercial organisations for failing to prevent corrupt practices within their operations. Accordingly, the absence of an explicit statutory requirement indicates that the liability of the organisation does not depend on prior or concurrent conviction against the individual involved. (Gan et al., 2021).

The provision is also an extension of the vicarious liability of the corporation. But it differs as it is not limited to the relationship of employment and liability is for the conduct of prohibited acts as opposed to acts within the course of employment (Balasingam & Rukumani, 2020). Notably, its jurisdiction may extend extraterritorially, reflecting the law's intent to address corrupt practices that transcend national boundaries (Low & Low, 2020). Prior to its enactment, the MACC Act focused exclusively on prosecuting individuals involved in corruption, leaving corporate entities largely unaccountable (Che Shaari, 2020).

Another legal issue arises where the prosecution elects to charge the corporate entity without proceeding against the individual employee directly involved in the corrupt act. This gives rise to a doctrinal tension (Mogan et al., 2023). Ordinarily, the law provides for a presumption of corruption upon the establishment of certain foundational facts under Section 50 (1) of the MACC Act 2009. In the absence of a charge against the individual who effected the payment, the prosecution may be deprived of the benefit of such a presumption. Consequently, it would bear a heavier evidential burden, requiring it to independently establish the requisite *mens rea* of the corporation without reliance on the evidential shortcut ordinarily available (Mogan et al., 2023).

Section 17A was enacted to ensure that commercial organisations involved in corrupt activities can be subjected to legal action. Under this provision, persons associated with a commercial organisation are deemed to have committed a corrupt act if the act is carried out to obtain or retain business, or to secure an advantage in the conduct of business for the organisation, unless it can be proven that adequate procedures were in place to prevent such conduct (Che Shaari, 2020). While often described as a corporate liability provision, section 17A also imposes personal liability on top management and controllers, ensuring accountability extends beyond the organisation itself (Balasingam, 2022). They are potentially being made accountable for corporate crimes, notwithstanding the absence of *mens rea* or involvement in the commission of the offence (Ali et al., 2023).

Section 17A of the MACC Act (2009) defines deeming liability in two ways. First, corporate liability, where the Commercial Organisation is believed to have committed the act unless it can prove 'adequate measures to prevent' the behaviour. Second, if the Commercial Organisation is held guilty, the director, controller, officer, or partner of the Commercial Organisation, or any individual participating in its management, is immediately deemed liable unless he can demonstrate the statutory defence under section 17A (3) of the MACC Act (2009). Section 17A (4) of the MACC Act (2009) allows a commercial organisation to defend itself if it can show it took enough steps to prevent its employees from engaging in such conduct (Ismail et al., 2023).

Suhor suggested that Section 17A focuses on three key elements: The corrupt act, its purpose, and the punishment. A corrupt act involves offering or giving gratification by a person associated with a commercial organisation, such as a director, employee, or service provider. However, the mere existence of gratification is insufficient to constitute an offence; Criminal liability arises only when the act is carried out with the requisite intention (Suhor, 2020).

Norazida Mohamed raised some concerns over Section 17A (Mohamed et al., 2023). Since its introduction in 2020, Section 17A of the MACC Act has, surprisingly, led to the prosecution of only a single corporation. This raises the pressing question: is Section 17A merely a 'toothless tiger'? (Mohamed et al., 2023). A closer examination reveals structural weaknesses in the law. Firstly, its scope is narrow, targeting only corrupt suppliers while offering no accountability for those who receive bribes. This creates an asymmetry in enforcement, undermining the provision's effectiveness in curbing corruption.

Secondly, the law provides what can be seen as an 'escape route' for businesses implicated in fraud or corrupt practices (Mohamed et al., 2023). Under Section 17A(4), a company can avoid liability by proving that it has implemented adequate processes to prevent wrongdoing. However, the law leaves open the critical question of what constitutes sufficient measures. Section 17A(5) attempts to clarify by listing criteria a company may use to demonstrate the presence of these processes, but in practice, this often gives corporations significant leeway to argue compliance, potentially weakening the deterrent effect.

### 2.1.1 Commercial Organizations

The definition under Section 17A of the MACC Act 2009 is intentionally broad, encompassing almost all forms of business entities except sole proprietorships. It applies to companies and partnerships incorporated under Malaysian law regardless of whether they conduct business within or outside Malaysia, as well as to foreign companies and partnerships that carry on business in Malaysia (Low & Low, 2020). This wide and extraterritorial scope enhances the effectiveness of Section 17A in combating bribery by preventing commercial organisations from evading liability through cross-border operations (Che Shaari, 2020). By allowing Malaysian authorities to prosecute Malaysian commercial organisations for bribery committed overseas, the provision strengthens corporate accountability and reinforces the deterrent objective of the legislation.

### 2.1.2 Associated Persons

According to Section 17A (1) of the MACC Act, a company commits an offence when its Associated Persons engage in illegal acts for the company's advantage. Section 17A (6) of the MACC Act provides that directors, partners, employees, and individuals providing services on behalf of or for the firm are all considered Associated Persons. The term 'Associated Persons' is broad because it includes people who are involved in running a business, such as senior managers and employees, as well as those who provide services on behalf of or for the company and may be involved in corruption actions. It also includes business partners, consultants, and agents (Abdul Raof et al., 2024). It is suggested that the provision tries to impose statutory liability, imposing a positive duty to behave similarly to the line of where the person with custodial care may be fined for the neglect of a kid (Balasingam & Rukumani, 2020).

### 2.1.3 Penalties

Failure to prevent and control corruption within business organisations will expose them and their associates to an offence. Under Section 17A(2) of the MACC Act, the penalty is a fine of not less than ten times the sum or the value of RM1 million, whichever is greater, for failing to prevent and control corruption within their business entities.

### 2.1.4 Defence of Adequate Procedures

Determining what constitutes adequate procedures under Section 17A is far from straightforward, as there is no one-size-fits-all standard (Low & Low, 2020). The adequacy of such measures depends on a nuanced understanding of a company's operational complexity, scale, and industry-specific risks. Moreover, these procedures cannot remain static; they must be regularly reviewed and adapted to ensure that controls remain effective and proportionate as the business evolves. This requirement underscores the challenge for corporations in balancing legal compliance with practical operational realities.

The TRUST guideline was introduced by the ministry to help corporations determine what appropriate process is needed. TRUST is an acronym that stands for Top Management Commitment, Risk Assessment, Undertake Control Measures, Systematic Review, Monitoring and Enforcement and Training and Communication.

In accordance with Section 17A of the MACC Act 2009, the guideline was created to assist commercial organisations in understanding the appropriate processes that should be put in place to prevent the occurrence of corrupt practices with business activities (Ali et al., 2023). The guidelines also become the guidance for the courts to decide whether the commercial organisation truly established the necessary safeguards which should have prevented the offence from happening (Ahamad Kuris et al., 2023). In deciding whether an organisation has developed the proper measures to avoid corruption, the court is likely to evaluate particular facts, circumstances of the case, existence of policies and procedures, and style of implementation (Balasingam & Rukumani, 2020).

Given the broad reach of Section 17A, which covers not only employees but also persons associated with the company, it is critical for organisations to implement comprehensive systems to prevent corruption and fraud. Companies must be proactive in establishing clear policies and codes of conduct, conducting training for employees and stakeholders to communicate these standards, and performing regular assessments to ensure the effectiveness of such measures (Mohamed et al., 2023). While the regulations are not exhaustive, organisations are encouraged to go beyond the minimum requirements to demonstrate that adequate mechanisms are in place to mitigate the risk of internal misconduct.

A key limitation of Section 17A is that it provides no explicit guidance on how to assess the adequacy of corporate measures. Consequently, companies can satisfy the law by performing the 'bare minimum', effectively allowing them to avoid liability without truly embedding anti-corruption practices within their operations (Che Shaari, 2020). To address this, it is suggested that compliance obligations be tailored according to the size and nature of a company's operations, ensuring that smaller or struggling firms are not unduly burdened while larger organisations implement proportionate and effective controls (Low & Low, 2020).

Given the absence of precedent in Malaysia, it is necessary to refer to United Kingdom case law on the same issue given that our law was developed with reference to Section 7 of the UK Bribery Act. In 2018, the adequate procedure defence was tested for the first time in *R v. Skansen Interior Ltd.* (2018).[2] In this case, a local small business called Skansen in the UK where its managing director paid an improper payment to secure contracts for the company. Following an internal investigation, the company fired its managing director, self-reported to the authority, cooperated with law enforcement, and had adequate procedures in place. Nevertheless, the company was found guilty of failing to prevent bribery by developing a culture of compliance and by designating someone with appropriate legal mandates to monitor compliance. Additionally, the risk management, financial controls and payment approval procedures were operational, but the company failed to demonstrate specific steps used to make its employees aware of those policies and procedures.

Other cases addressing the issue of adequate procedures have not been determined on the basis of fully contested arguments. In *R v. Sweett Group plc* (2016),[3] it was established that the company not only lacked effective policies and procedures to prevent bribery, but also wilfully ignored two reports by KPMG in 2011 and 2014 which highlighted significant deficiencies in its systems and internal controls. Consequently, the company was found guilty of the charges. The case further underscores that the mere existence of policies is insufficient; rather, there must be a clear and demonstrable commitment to anti-bribery practices, extending from senior management to all levels of the organisation (Gan et al., 2021).

There are not many contested cases in UK, even the law has been enacted for quite some time. This is due to the implementation of Deferred Prosecution Agreements (DPAs), which were implemented in 2014 under Schedule 17 of the Crime and Courts Act of 2013. The purpose is to promote corporate self-reporting of criminal wrongdoing as an alternative to criminal prosecution due to the difficulty of meeting the high threshold of initiating a charge and securing the successful prosecution of corporate offenders (Abdul Raof et al., 2022). Although the subsequent cases were resolved through Deferred Prosecution Agreements

[2] *R v. Skansen Interior Ltd.* (Southwark Crown Court, 2018).

[3] *R v. Sweett Group plc* (Southwark Crown Court, 2016).

rather than full prosecution, the factors considered by the courts nevertheless offer valuable guidance on what may constitute adequate procedures (Gan et al., 2021).

The case of *Serious Fraud Office v Airbus S.E.* (2020) demonstrates that,[4] although resolved through a Deferred Prosecution Agreement rather than a fully contested trial, it provides significant guidance on what constitutes adequate procedures. The court found that, despite the existence of formal anti-bribery policies, Airbus had serious deficiencies in its compliance framework, allowing widespread bribery to occur across multiple jurisdictions. Internal controls were ineffective, often bypassed, and in some instances undermined by senior employees. This highlights that the mere presence of policies is insufficient; organisations must ensure that such procedures are effectively implemented, properly enforced, and supported by a strong culture of compliance at all levels.

Despite these valuable doctrinal and comparative contributions, the existing literature on Section 17A remains limited, particularly in relation to empirical analysis. There is a notable absence of research examining the practical challenges faced by prosecutors and legal practitioners in enforcing and applying Section 17A. This study seeks to address this gap by providing an empirical analysis based on interviews, thereby contributing original insights into the practical realities of prosecuting corporate corruption under Section 17A of the MACC Act 2009.

## 3. Methodology

### 3.1 Research Design

This study adopts a qualitative doctrinal empirical research design to examine prosecutorial challenges in enforcing corporate criminal liability for corruption under Section 17A of the Malaysian Anti-Corruption Commission Act 2009 (MACC Act). Given the limited number of reported corporate corruption prosecutions and the novelty of Section 17A, a qualitative approach is appropriate to capture nuanced prosecutorial experiences that are not observable through case law analysis alone.

The study combines legal doctrinal analysis with empirical data obtained through semi-structured interviews, enabling an in-depth examination of how statutory provisions operate in practice.

### 3.2 Data Collection Method

Primary data were collected through semi-structured interviews with two prosecutors attached to Malaysian Anti-Corruption Commission. Semi-structured interviews were selected because they allow for guided discussion while providing sufficient flexibility to explore complex legal, evidentiary, and institutional challenges encountered in practice.

[4] *Serious Fraud Office v. Airbus S.E.* (Southwark Crown Court, 2020).

### 3.3 Sampling and Participants

Participants were selected using purposive sampling, targeting prosecutors personally involved in prosecuting two cases under Section 17A of the MACC Act 2009. This sampling strategy ensured that participants possessed direct institutional knowledge of the enforcement process under Section 17A. Time

| Code | Participant's Profile | Language | Duration |
|---|---|---|---|
| P1 | Sex – M<br>Education – LL.B, IIUM<br>Year of Service – 18 years<br>Service Sector – DPP, MACC | English | 1 hour 11 minutes |
| P2 | Sex – M<br>Education – LL.B, University of London; MBA, UPM<br>Year of Service – 7 years<br>Service Sector – DPP, Appellate Division (Formerly in MACC) | English | 35 minutes |

### 3.4 Data Analysis

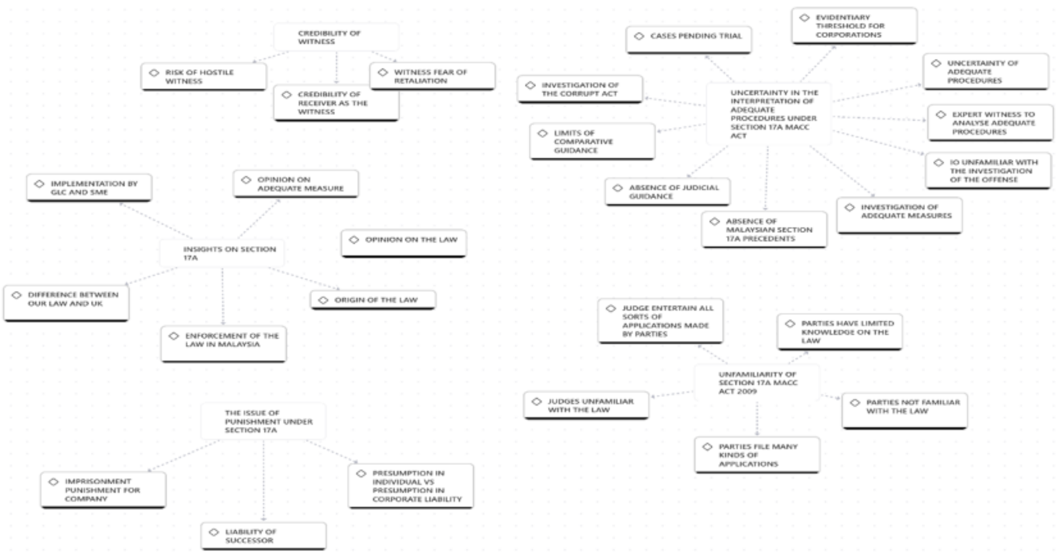
Interview data were analysed using inductive thematic analysis following the six-phase framework developed by Braun and Clarke (Braun & Clarke, 2012). This method was selected to enable themes to be generated directly from the empirical data, rather than being shaped by pre-existing theoretical frameworks or doctrinal assumptions. An inductive approach was particularly appropriate given the limited empirical research examining prosecutorial experiences in enforcing corporate criminal liability under section 17A of the Malaysian Anti-Corruption Commission Act 2009.

The analysis commenced with data familiarisation, achieved through close and repeated reading of the interview transcripts to gain an in-depth understanding of the content. This was followed by the generation of initial codes, which were developed directly from participants' narratives and reflected recurring issues, concerns, and experiences articulated by prosecutors. Consistent with Braun and Clarke's approach, the coding process was data-driven, with codes emerging organically from the dataset rather than being predetermined.-

In the subsequent phase, related codes were collated and organised into potential themes, representing broader patterns in prosecutorial challenges encountered in practice. These preliminary themes were then reviewed and refined to ensure internal coherence within each theme and clear distinction between themes, in line with the fourth phase of Braun and Clarke's framework. Particular attention was paid to retaining participants' original language and perspectives to ensure that the analysis remained firmly grounded in the empirical data.

Once a stable thematic structure had been established, the themes were defined and named, capturing the essence of each pattern identified across the dataset. Only at the final stage were the findings interpreted in relation to the statutory framework of section 17A and existing academic literature. This sequential approach ensured that the themes were inductively derived from the data, while allowing their legal and doctrinal significance to be discussed analytically at a later stage.

## 4. Findings




Analysis of the Interviews using Atlas.ti

Source: Authors

### 4.1 Uncertainty in the Interpretation and Application of Adequate Procedures under Section 17A

A dominant theme emerging from the data is the lack of clarity surrounding the meaning, scope, and evidentiary threshold of adequate procedures under Section 17A. Prosecutors face significant challenges in determining how to assess corporate compliance, particularly in the absence of judicial precedents and clear statutory benchmarks.

Respondents highlighted that ongoing cases and the novelty of Section 17A contribute to inconsistent interpretations by investigators, prosecutors, and the courts. This uncertainty affects charging decisions and trial strategy, as prosecutors are unsure how courts will evaluate corporate preventive measures.

P2 explained:

> "The most difficult part from the prosecution perspective is: What do we mean by ethical procedure? Because until now there's no case law, even though we have UK authority, but the UK authority did not define what actually adequate procedure means."

P1 noted:

> "We do not have good precedent so far, either domestically or internationally, to be specific. Why? Because in Malaysia, there are no cases that have been decided yet."

This finding aligns with the subthemes 'Uncertainty in the interpretation of adequate procedures', 'Absence of judicial guidance', and 'Cases pending trial'. The uncertainty weakens enforcement by creating hesitation at both investigative and prosecutorial stages. Without authoritative interpretation, enforcement risks becoming inconsistent and potentially unfair, undermining the deterrent intent of Section 17A.

### 4.2 Institutional Unfamiliarity with Section 17A among Judges, Prosecutors, and Parties

The data reveals widespread unfamiliarity with Section 17A among key legal actors, including judges, defence counsel, and corporate accused persons. This unfamiliarity leads to procedural inefficiencies, such as excessive interlocutory applications and longer duration before the case can be decided.

P1 observed:

> "That's why they file all kinds of applications. All sorts. Then the judges are also not familiar with this law. Not that they allow everything, but all judges will entertain the applications. 'Entertain' here does not mean approving; it means allowing the parties to argue, to submit their arguments and so on. Because before we even get to the argument stage, we have to file several cause papers and so on. That alone takes a long time. And that is just one application."

This theme corresponds with 'Judges unfamiliar with the law', 'Parties have limited knowledge of the law', and 'Parties file many kinds of applications'. The unfamiliarity increases procedural delays and burdens the judiciary. It also reflects the transitional challenges of shifting from individual-centric to corporate-centric criminal liability.

### 4.3 Challenges in Evidence, Witness Credibility, and Fear of Retaliation

Enforcement of Section 17A heavily depends on internal corporate witnesses, whose credibility and willingness to testify are often compromised by fear of retaliation or hostility.

Prosecutors must therefore navigate evidentiary risks, especially where whistleblowers remain within the corporate structure.

P1 explained:

> "Also, the people who are supposed to support your case may be in the same circle as the accused. When they're compromised, the whole circle may testify against you. They may even be willing to be charged in court or commit perjury just to protect the accused. The same goes for employees who are still working in the company, regardless of whether they leave or stay, but they may not cooperate."

Another issue regarding witnesses is that corruption cases often arise from ongoing relationships of mutual benefit, where witnesses have directly or indirectly profited from the accused's conduct.

As articulated by the P1:

> "The person you want to testify against is someone who has previously helped you, made your life easier, made you richer, or otherwise benefited you. So, when they go to court, they may suddenly become hostile. Not hostile in a violent way, but they don't know, they don't remember, they don't understand, they deny things or misremember."

This observation underscores that hostility in corruption trials is not overt or confrontational, but rather manifests subtly through selective memory loss, denial, or strategic ambiguity. Such behaviour significantly undermines the prosecution's ability to establish factual continuity, intention, and knowledge, which are the elements that are central to proving corporate liability under Section 17A.

From a prosecutorial perspective, this form of hostility is particularly problematic because the most material witnesses are often insiders whose testimony is essential to demonstrating how the corrupt act was facilitated within the corporate structure. However, these individuals may experience moral conflict, fear of reprisal, or a sense of loyalty, especially where the accused had previously provided financial gain or career advancement.

This finding directly aligns with the subthemes 'Risk of hostile witness', 'Credibility of witness', and 'Witness fear of retaliation'. It also reflects the reality that corruption is a relational crime, embedded within networks of reciprocity rather than isolated criminal acts. As a result, witnesses may perceive testifying truthfully as an act of betrayal rather than civic duty.

### 4.4 Punishment, Corporate Liability, and Conceptual Difficulties in Enforcement

A recurring theme in the data concerns the conceptual and practical difficulties surrounding punishment under Section 17A, particularly when corporate criminal liability is imposed alongside individual liability. Respondents highlighted that imprisonment is inherently designed for natural persons and does not translate neatly to corporate entities. This creates uncertainty in how punishment under Section 17A should be understood, applied, and justified.

P1 raised a question on this and said:

> "Then there is another issue regarding punishment. How does punishment work? If, for example, the individual has already been imprisoned, and that same individual is also named as the person representing the company, does he also have to pay the fine, or does he also go to prison again?"

The interviews reveal confusion among legal practitioners and the public regarding whether punishment under Section 17A operates collectively or individually. There is a common misconception that once a company is charged, all directors or board members are automatically subject to the same punitive consequences, including imprisonment. In practice, however, enforcement authorities emphasise that punishment is targeted and proportional, with charges brought only against individuals who were directly involved in, or complicit with, the corrupt act.

This difficulty is compounded by the presumption of liability embedded in Section 17A, which places the burden on the company to demonstrate that it had adequate procedures in place to prevent corruption. While this presumption strengthens deterrence, it also raises concerns about fairness in punishment, particularly where liability may attach to the corporate entity even when corrupt acts were committed by a limited number of individuals.

P1 pointed out that:

> "For individuals, the defence requires rebutting the presumption under Section 50. Whereas for Section 17A, the defence is under subsection (4). You see that? There is a specific defence here—subsection (4)."

Respondents further identified practical enforcement challenges where punishment loses its effectiveness, such as cases involving large corporations, dissolved companies, or successor entities. In such situations, imposing fines may have limited deterrent impact, while imprisonment remains inapplicable to the corporate entity itself. This creates tension between the symbolic function of punishment and its actual preventive effect.

Overall, the theme demonstrates that punishment under Section 17A is not merely a sentencing issue but a structural challenge inherent in corporate criminal liability. The findings suggest a need for clearer sentencing principles, judicial guidance, and prosecutorial consistency to ensure that punishment under Section 17A is proportionate, intelligible, and aligned with its deterrent objectives, without undermining fundamental principles of criminal justice.

## 5. Barriers to Effective Implementation of Section 17A MACC Act 2009 and the Future of Corporate Corruption in Malaysia

This study reveals that prosecutorial barriers in enforcing Section 17A of the MACC Act are interconnected and structural, arising from doctrinal uncertainty, institutional unfamiliarity, evidentiary fragility, and conceptual difficulties surrounding punishment. Collectively, these themes demonstrate that the effectiveness of Section 17A is constrained not by lack of statutory intent, but by the complexities inherent in operationalising corporate criminal liability within Malaysia's existing legal framework.

First, the uncertainty surrounding the interpretation and application of adequate procedures emerges as a foundational challenge that permeates enforcement at every stage. The absence of judicial precedents and clear statutory benchmarks leaves prosecutors without authoritative guidance on how corporate compliance should be evaluated. As a result, decisions on whether to charge, how to frame indictments, and how to present evidence are made cautiously.

This dominant challenge is also supported by doctrinal study. Usharani highlights that the anticipated challenge that the organisations may encounter under section 17A is how they can assure themselves that they have put in place adequate procedures as the required compliance (Balasingam & Rukumani, 2020). Low and Low similarly observed that, while the concept of adequate procedures is recognised, there remains a lack of definitive guidance on how entities can effectively ensure that such procedures have been implemented to achieve compliance (Low & Low, 2020). In discussing adequate procedures in gifts and hospitality, Ahamad Kuris et. al. (2023) stated that commercial organisations are generally free to establish their own policies, with top-level management often granted discretion to determine whether gifts or hospitality are permissible within the company. However, this approach can be problematic, as reliance on self-assessment tends to be inconclusive, inconsistent, and influenced by individual judgment and personal perceptions (Ismail et al., 2023; Ahamad Kuris et al., 2023). The uncertainty in the definition eventually will weaken the deterrent objective of Section 17A, as corporate actors remain unsure of the standards they are expected to meet, while prosecutors remain unsure of how courts will assess those standards.

Second, institutional unfamiliarity with Section 17A among judges, prosecutors, defence counsel, and corporate parties exacerbates these uncertainties. The findings suggest that Section 17A represents a significant shift from Malaysia's traditionally individual-centric approach to corruption offences toward a corporate-centric liability model. This transition has not been fully internalised by legal actors, resulting in excessive interlocutory applications, prolonged proceedings, and procedural delays. While judicial openness to entertaining novel arguments reflects fairness and due process, it also illustrates how unfamiliarity with the law increases the administrative and temporal burden of enforcement. In this sense, enforcement challenges under Section 17A are not merely legal but institutional, reflecting the growing pains of introducing corporate criminal liability into a system still adapting to its implications.

Third, evidentiary challenges, particularly those relating to witness credibility, hostility, and fear of retaliation. This further undermines prosecutorial efforts. The findings demonstrate that corruption under Section 17A is often embedded in relational and organisational networks, where witnesses are not neutral observers but beneficiaries or participants in the corrupt arrangement. Consequently, witness hostility tends to manifest subtly through denial, selective memory loss, or strategic ambiguity rather than overt resistance. This is especially problematic given that insider testimony is often crucial to establishing how corrupt acts were authorised, facilitated, or tolerated within the corporate structure. The relational nature of corruption therefore creates an inherent tension between legal truth-seeking and social loyalty, weakening the reliability of testimonial evidence and increasing the prosecution's evidentiary burden.

Finally, the issue of punishment exposes greater conceptual difficulties in aligning traditional criminal sanctions with corporate liability under Section 17A. The data reveals widespread confusion regarding whether punishment in terms of imprisonment operates collectively or individually, particularly where corporate entities and individuals are charged concurrently. The punishment regime under Section 17A differs significantly from that of Section 7 of the UK Bribery Act, as the latter does not provide for imprisonment as a form of penalty for corporation (Mohamed et al., 2023). UK imposed different sanction towards individual and corporations, while Malaysia imposed the same punishment for individual and commercial organisations. Consequently, the UK position provides little assistance in determining how punishment under Section 17A should be applied.

Additionally, if punishment in terms of a fine is imposed on a corporation, the situation poses significant risks, as a corporate conviction may result in a fine amounting to ten times the value of the bribe or imprisonment for up to twenty years (Balasingam, 2022). Such penalties could disrupt the company's operations, potentially leading to suspension or even complete closure. In turn, this would adversely affect innocent third parties and shareholders, possibly triggering broader financial repercussions (Ismail et al., 2023).

Taken together, the findings suggest that enforcement of Section 17A is constrained by a combination of doctrinal ambiguity, institutional adaptation, evidentiary vulnerability, and conceptual uncertainty regarding punishment. These challenges do not operate in isolation but reinforce one another, creating cumulative barriers to effective enforcement.

The discussion underscores the need for judicial clarification through decided cases. It is proposed that companies should be required to meet a higher evidential threshold in demonstrating their innocence, namely the 'beyond reasonable doubt' standard, given the widespread nature of corruption allegations in the corporate sector (Mohamed et al., 2023). Small organisations should not be imposed the same burden as large corporations. It is unfair to expect small businesses to bear the cost of stricter rules when larger companies can afford them more easily due to their greater resources (Mohamed et al., 2023). Therefore, the burden on small enterprises should be reduced, as they often lack the capacity and funds to implement costly anti-corruption measures.

Another key difference between Malaysian law and UK law is the deferred prosecution agreement (DPA). DPA has been introduced in many countries as it has proven in solving major problems with corporate crime and serves many benefits to both prosecution and corporations. Abdul Raof and others wrote an article to suggest the adoption of DPA in corporate corruption liability (Abdul Raof et al., 2022). DPAs provide prosecutors with a useful middle ground between pursuing a costly and uncertain criminal trial and letting a corporation escape liability because of weak evidence. As a result, DPAs enhance prosecutors' ability to ensure corporations are held accountable for wrongdoing (Parker & Dodge, 2023). An DPA should be taken into account because it can enable businesses to avoid several disadvantages associated with prosecution and conviction. These may include prolonged uncertainty, damage to reputation, exclusion from public funding and contracts, and the loss of licences or restrictions on certain business activities (Ismail et al., 2023). Without such developments, Section 17A risks falling short of its intended role as a robust corporate anti-corruption mechanism, despite its strong legislative foundations.

## 6. Conclusion

This study has examined the prosecutorial challenges in enforcing corporate criminal liability under Section 17A of the Malaysian Anti-Corruption Commission Act 2009. The findings reveal that while Section 17A represents a significant legislative step toward promoting corporate accountability and ethical business practices in Malaysia, its practical enforcement remains fraught with structural, doctrinal, and operational challenges.

Collectively, these challenges demonstrate that the effectiveness of Section 17A is constrained not by legislative intent but by practical obstacles in operationalising corporate criminal liability within Malaysia's legal system. The study underscores the need for judicial clarification and the introduction of a deferred prosecution agreement. Addressing these issues is essential to ensure that Section 17A fulfils its intended role as a strong and effective mechanism to combat corporate corruption, thereby contributing to Malaysia's broader anti-corruption objectives and alignment with international standards.

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**Authors' Contributions**

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**Conflict of Interest Declaration**

The authors declare no conflict of interest.

**Ethics Approval**

This study did not involve human or animal subjects or personal data and therefore did not require ethical approval.

**AI Usage Declaration**

The authors declare that Artificial Intelligence (AI) tools were used only for research assistance and language editing, and not for generating original content presented as our own work.

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