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StarBizweek

Corporate Malaysia's anti-corruption crusade

Will the much-anticipated enforcement of Section 17A of the MACC in less than a year result in a corruption-free business scene? > 12 & 13, 16

Muhammad Mohan: The problem is many organisations have wasted so much time by not implementing or preparing for it.

Enough time: Ruslan says there should be adequate time for corporates to implement the guidelines by June 1, 2020.

Thumbs up: Soh says FMM supports the introduction of Section 17A.

Lim: Section 17A imposes a duty on all businesses to be honest in their dealings.

Chong: Taking the bold step forward is a success in its own right.

Anti-corruption crusade in full force in Corporate Malaysia

SC presented anti-corruption action plan to Cabinet recently

By GANESHWARAN KANA
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THE Pakatan Harapan government envisions a corruption-free Malaysia in five years' time, but the journey towards the ambitious objective will be a bumpy one – especially for Corporate Malaysia.

According to PricewaterhouseCoopers' Global Economic Crime Survey 2018, about 35% of the Malaysian companies surveyed have suffered as a result of bribery and corruption in their daily operations. This marks a sharp increase from just 19% in 2014.

Speaking with *StarBizWeek*, Transparency International Malaysia (TI-M) president Muhammad Mohan cautions that "corruption is rampant and has worsened in the Malaysian business sector over the last few years".

Despite the worrying trend in Corporate Malaysia, preventive anti-corruption measures among local companies remain limited.

As at end-May 2019, only 59% of listed companies in the country had an internal anti-corruption policy, according to the Securities Commission (SC).

The good news is, the Pakatan administration has been ramping up its anti-corruption initiatives over the last one year.

About a month after the 14th general election (GE14), the government established the Governance, Integrity and Anti-Corruption Centre (GIACC) to monitor and coordinate all activities related to combating graft, integrity and governance.

In January 2019, the National Anti-Corruption Plan 2019-2023, which was developed by GIACC, was launched by Prime Minister Tun Dr Mahathir Mohamad. The five-year plan has outlined six priority areas and 115 initiatives to achieve zero-tolerance to corruption and bolster good governance.

On July 18, the SC presented its anti-corruption action plan to the Cabinet Special Committee on Anti-Corruption chaired by Dr Mahathir, with recommendations to prevent corruption, misconduct and fraud.

Section 17A comes into force

In addition to these efforts, beginning June 1, 2020, Corporate Malaysia will take its next step towards a corruption-free business environment via the enforcement of Section 17A of the MACC Act.

The new provision, which was inserted into the anti-bribery act before the GE14, establishes the principle of corporate liability among businesses. Under Section 17A, companies and their directors could be deemed personally liable if an associated person such as an employee or subcontractor is caught involved in corruption for the benefit of the commercial organisations.

Section 17A covers companies, partnerships and limited liability partnerships operating in Malaysia.

The companies and directors could defend themselves against prosecution if they have implemented "adequate procedures" such as internal guidelines or staff training within the commercial organisations.

However, senior lawyer and former Malaysian Bar president Datuk Lim Chee Wee says the existence of adequate procedures does not preclude a commercial organisation or the directors from being charged or prosecuted.

"That is to say, a company may still be charged or prosecuted for corruption offence under section 17A (1), but the fact that the company has in place adequate anti-corruption procedures may absolve it from any finding of criminal liability by the court," he says.

"However, Section 17A does not put an undue amount of responsibilities on the management. While the definition of associated person under section 17A (6) appears to be general and extensive, there is a safeguard in section 17A (7) which provides for the need for a holistic assessment of the relationship between the company and the associated person to be conducted before any liability of the associated person can be imputed on the company," he says.

With the anti-bribery provision, companies can no longer hide behind third parties such as consultants or subsidiaries. In the past, holding companies and the board of directors could absolve themselves of any blame if there were corrupt practices at the subsidiary levels.

"Now, the directors and companies are accountable for everything. Even consultants who act for companies come under the MACC Act and the employee hiring processes must be accounted for," says a CEO of a listed firm.

He adds that the focus should be more on the wide implications of Section 17A, rather than the cost of compliance.

"It is not whether the corporate liability provision is difficult or adds to costs of Malaysian companies.

It is a question of whether the companies and directors are aware of the wide implications with the act coming into force next year.

"The MACC act together with the beneficial ownership laws gives MACC the bite to act on corporations, directors and owners. If they want to get you, they can," he says.

If found guilty of an act of corruption under the soon-to-be-enforced Section 17A, the penalties imposed on a commercial organisation would be severe.

A company could be fined not less than 10 times the value of the gratification or RM1mil, whichever is higher, or be subject to imprisonment not exceeding 20 years, or to both.

In short, it will not be "business as usual" for Corporate Malaysia come 2020.

Delay in compliance

While there are only 10 more months before Section 17A is enforced, many businesses in the country have yet to introduce adequate procedures to prevent corruption in their organisations, in line with the "Guidelines on Adequate Procedures".

On Dec 10, 2018, Dr Mahathir launched the "Guidelines on Adequate Procedures", which serve as reference points for any anti-corruption policies and controls an organisation may choose to implement towards the goal of having adequate procedures as required under Section 17A.

SC says that even among the listed companies that have an anti-corruption policy, "the majority of these policies contain gaps when compared to the Guidelines on Adequate Procedures".

TI-M's Muhammad Mohan hinted that not all government-linked companies (GLCs) will be ready by June 2020 for Section 17A.

"GLCs especially the larger ones are making preparations to handle the corruption risks involved. The problem is many GLCs and non-GLCs have wasted so much time by not implementing or preparing their organisations for this.

"Many businesses are expecting U-turns or extensions to be given," he says.

Federation of Malaysian Manufacturers president Datuk Soh Thian Lai says the organisation supports the introduction of Section 17A and has undertaken several sessions to educate its members on the implementation of "adequate procedures" as well as the ISO 37001 Anti Bribery Management System.

As the deadline for the enforcement of Section 17A nears, Soh points out that concerns remain on the readiness and capacity of the small and medium enterprises (SMEs) in ensuring that adequate internal measures have been put in place to prevent any potential acts of corruption.

"SMEs especially still lack the know-how about implementing such measures. There needs to be greater capacity building efforts put in place to assist SMEs," he says.

However, among major corporations in Malaysia such as those related to Khazanah Nasional and the Employees Provident Fund, the guidelines are being strictly followed, says a CEO of a listed company.

"The compliance department has grown bigger," he says.

In an email interview with StarBizWeek, SC says that it will take steps to mandate listed companies to establish and implement anti-corruption measures.

"While there may be additional costs involved in putting these anti-corruption measures in place, it is important for companies to realise that these measures will enable them to avail themselves of the statutory defence provided for under Section 17A (4) of the MACC Act," says the commission.

Vulnerable businesses

Past experiences indicate that companies involved with procurement, government contracts and the construction sector are most vulnerable to corruption and kickbacks.

While the government and key industry players have introduced several anti-corruption measures such as open tender practices, corrupt practices continue to be prevalent in such sectors.

In fact, between 2013 and 2018, nearly 43% of the total complaints received by MACC were on the procurement sector.

Experts say that the trend is expected to change as businesses in Malaysia fully comply with Section 17A, following its enforcement. The adoption of anti-bribery ISO 37001 standards will also bolster Corporate Malaysia zero-tolerance approach towards corruption.

Facilities management service provider GFM Services Bhd, which is actively involved in government contracts, welcomes the enforcement of Section 17A.

Group managing director Ruslan Nordin believes the corporate liability provision not only upholds a business' integrity, but also protects shareholders' value and preserves profitability of the company.

"We view that there is adequate time for corporates in Malaysia to implement the guidelines by June 1 next year," he says.

Senior lawyer Lim says that Section 17A imposes a duty on all businesses, its directors and officers to be honest in their internal and external dealings.

"This is to be welcomed, corruption increases the cost of transaction, and with this new provision, it should reduce the cost of business," he says. UHY Malaysia managing director Steven Chong Hou Nian believes that compliance with Section 17A offers businesses an opportunity to exhibit positive values in their corporate culture.

"I opine that the qualitative gains from Section 17A compliance outweigh the additional costs," he says.

He was also asked whether Section 17A will be successful in reducing corruption within procurement and tendering for government contracts.

To this, he said that the government has pledged to re-design the entire public procurement system while introduce relevant technologies to facilitate a clean, efficient and transparent procurement regime.

"The effectiveness of what Section 17A seeks to achieve, would naturally be premised upon the ecosystem that the MACC Act would operate within.

"The eventual success of the initiative is anyone's guess, yet I applaud the nation for boldly taking this step forward. This is indeed a success in its own right," says Chong.

Guidelines on Adequate Procedures

ON Dec 10, 2018, Prime Minister Tun Dr Mahathir Mohamad launched the "Guidelines on Adequate Procedures", which seek to provide further clarity on the soon-to-be-enforced Section 17A of the Malaysian Anti-Corruption Commission (MACC) Act.

Under the new legal provision, commercial organisations in Malaysia such as companies, partnerships and limited liability partnerships are required to introduce "adequate procedures" to prevent acts of corruption related to the organisations.

Without such procedures such as internal guidelines or staff training, companies and their directors could be prosecuted under Section 17A if an associated person such as an employee or subcontractor is caught involved in corruption for the benefit of the commercial organisation.

Section 17A will be enforced from June 1, 2020 onwards.

The "Guidelines on Adequate Procedures" are based on five principles or "T.R.U.S.T" that serve as reference points for any anti-corruption policies, procedures and controls an organisation may choose to implement towards the goal of having adequate procedures as required under Section 17A.

The five principles are:

> Top-level commitment

The top-level management is primarily responsible to ensure that a commercial organisation upholds integrity, complies fully with anti-corruption regulations and provides assurance to its internal and external stakeholders that it is operating in compliance with its policies and any applicable regulatory requirements.

Among the measures that a commercial organisation could undertake under this principle are the establishment of an anti-corruption compliance programme, encouraging the use of any reporting or whistle-blowing channel, assigning a competent person to undertake all anti-corruption compliance matters, as well as issuing instructions on the organisations' policies and commitments on anti-corruption to both internal and external parties.

In addition, the results of any audit or review of risk assessment should be reported to all top-level management and must be acted upon.

> Risk assessment

A commercial organisation should conduct risk assessments on internal and external corruption risks periodically, or when there is a change in law or circumstance of the business. Under the Guidelines on Adequate Procedures, it is recommended that a comprehensive risk assessment is done every three years, with intermittent assessments conducted when necessary.

The assessment may include opportunities for corruption and fraud activities resulting from weaknesses in the organisation's governance framework, financial transactions that may disguise corrupt payments or relationships with third parties in the supply chain such as agents, vendors and contractors, among others.

> Undertake control measures

A commercial organisation should put in place appropriate control measures that are reasonable and proportionate to the nature and size of the business.

One such measure is the creation of a reporting channel for acts of corruption.

The commercial organisation should establish key criteria for conducting due diligence on any relevant parties or personnel such as board members, employees and suppliers prior to entering into any formalised relationships.

Not only that, internal policies and procedures must be created on several matters such as conflicts of interest, gifts, donations and sponsorships (including political donations) and facilitation payments.

> Systematic review, monitoring and enforcement

Regular reviews in the form of internal or external audits must be conducted to assess the effectiveness of the anti-corruption programme.

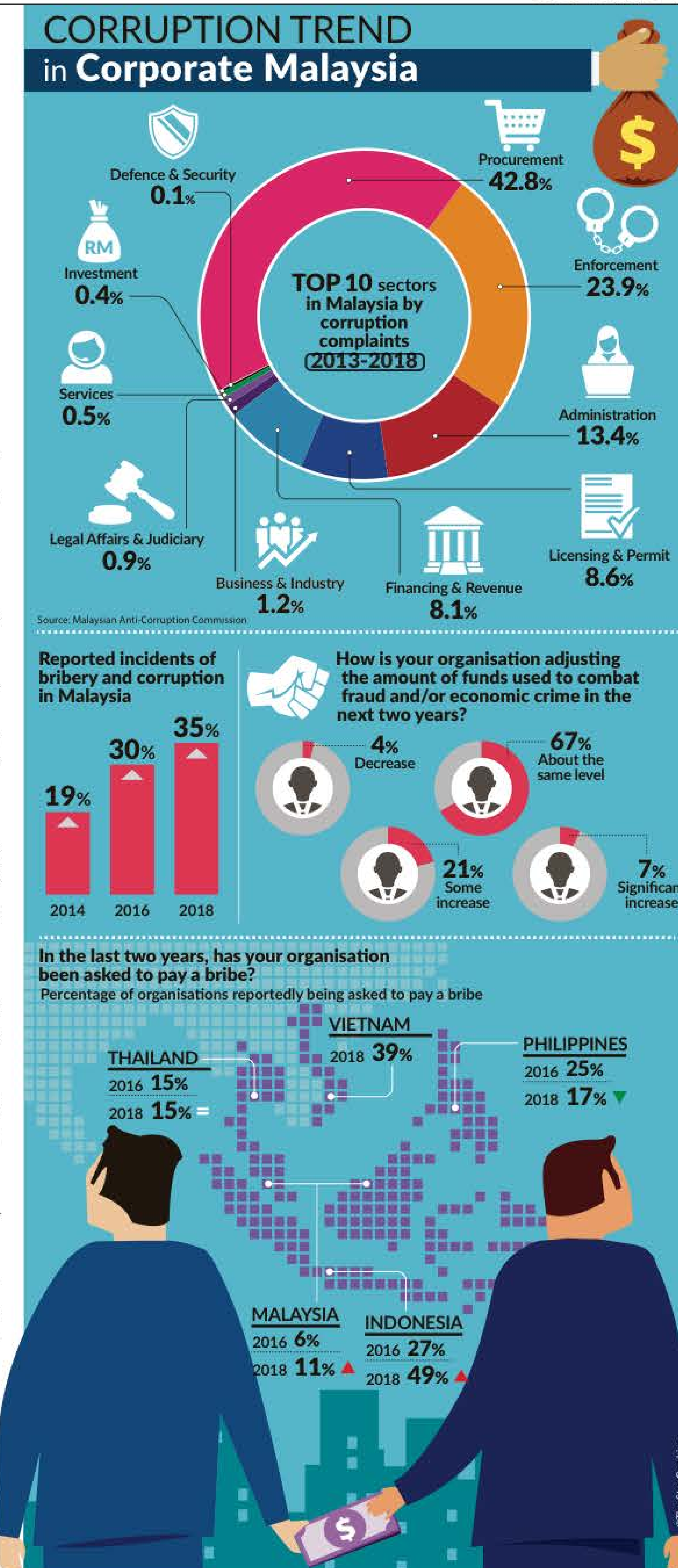
For this purpose, the commercial organisations should consider establishing a monitoring programme for review, engaging in external audit at least once every three years and taking disciplinary action against personnel found to be non-compliant to the programme.

> Training and communication

The commercial organisation should develop and disseminate internal and external training and communications relevant to its anti-corruption management system, in proportion to its operation.

This should cover several areas such as policy, training, reporting channel and consequences of non-compliance.

> See also page 16



US economic growth seen slowing in second quarter

Inventories, trade expected to restrain expansion

By LUCIA MUTIKANI

THE US economy likely grew at its slowest pace in more than two years in the second quarter as an acceleration in consumer spending was probably offset by weak exports and business investment.

The anticipated moderation in growth will come against the backdrop of rising risks to the economy's outlook, especially from a trade war between the United States and China as well as slowing growth overseas, which are seen encouraging the Federal Reserve to cut interest rates next Wednesday for the first time in a decade.

With a strong labour market supporting consumer spending, a recession is, however, not on the horizon.

"The slowing in the economy spooked the Fed and markets, but the sky is not falling," said Ryan Sweet, a senior economist at Moody's Analytics in West Chester, Pennsylvania. "If we do get a recession next year it would be because we shot ourselves in the foot with the trade tensions."

Gross domestic product probably increased at a 1.8% annualised rate in the second quarter, also because of a smaller inventory build, according to a *Reuters* survey of economists, after surging at a 3.1% pace in the January-March period.

But with the volatile exports and inventory categories accounting for much of the expected step-down in GDP, the slowest growth pace since the first quarter of 2017 will likely mask some underlying strength in the 10-year economic expansion, the longest in history.

The survey was completed before the release of June wholesale and retail inventories as well as durable goods and goods trade deficit data, which led the Atlanta Fed to cut its forecast by three-tenths of a percentage point to a 1.3% rate.

The economy is slowing largely as the stimulus from the White House's US$1.5 trillion tax cut package fades. The tax cuts together with more government spending and deregulation were part of measures adopted by the Trump administration to boost annual economic growth to 3% on a sustained basis.

The economy grew 2.9% in 2018 and growth this year is expected to be around 2.5%. Economists estimate the speed at which the economy can grow over a long period without igniting inflation at between 1.7% and 2.0%.

Spillover effect: Employees walk by the end of a 737 Max aircraft at Boeing's factory in Washington. Design problems at aerospace giant Boeing have hurt business investment, with some spillover to exports. — Reuters

"As the benefits of fiscal stimulus fade and trade policy uncertainty and slowing global demand remain headwinds to business investment, US GDP growth should moderate," said Sam Bullard, a senior economist at Wells Fargo Securities in Charlotte, North Carolina.

The US GDP report is also expected to show a pickup in inflation last quarter, but the overall trend likely remained benign. The government will also publish revisions to GDP data from 2014 through the first quarter of 2019.

Growth in consumer spending, which accounts for more than two-thirds of US economic activity, is expected to have surged after slowing to a 0.9% rate in the first quarter, the weakest in a year. Some of the slowdown in consumer spending early in the year was blamed on a 35-day partial shutdown of the government. Spending is being supported by the lowest unemployment rate in nearly 50 years, which is lifting wages.

The jump in consumer spending was, however, likely blunted by a sharp drop in exports, in a reversal of the strong growth experienced in the first quarter. Weak exports are expected to have resulted in the deterioration of the trade deficit in the second quarter. Trade is believed to have subtracted from GDP growth last quarter after contributing 0.94 percentage point in the January-March period.

The acceleration in consumer spending likely helped businesses to whittle down an inventory overhang, resulting in a smaller inventory build. While that probably weighed on GDP growth in the second quarter, it is a potential boost to manufacturing. Businesses have been placing fewer orders with factories while working through stockpiles of unsold goods, which contributed to undercutting manufacturing production.

Business investment was probably weak in the second quarter, with spending on equipment expected to have contracted again after declining at its steepest pace in three years in the January-March period.

Fed chairman Jerome Powell early this month flagged business investment as one area of weakness in the economy, noting it had "slowed notably," and that this might "reflect concerns about trade tensions and slower growth in the global economy."

Design problems at aerospace giant Boeing have hurt business investment, with some spillover to exports.

Boeing reported its biggest-ever quarterly loss on Wednesday due to the spiralling cost of resolving issues with its 737 MAX airplane and warned it might have to shut production of the grounded jet completely if it runs into new hurdles with global regulators to getting its best-selling aircraft back in the air.

The plane was grounded worldwide in March after two fatal crashes in Ethiopia and Indonesia. Production of the aircraft has been reduced and deliveries suspended. Economists estimate the 737 MAX troubles cut at least two-tenths of a percentage point from GDP growth in the second quarter.

"There could be more noticeable effects on various growth components, with weakness in related equipment spending and exports and a partially offsetting increase in inventories," said Daniel Silver, an economist at JPMorgan in New York.

Business spending on structures, which include oil and gas well drilling, is expected to have declined last quarter. Spending on intellectual products, including research and development, likely increased.

Strong growth in government investment is expected, but spending on homebuilding likely contracted for a sixth straight quarter. — Reuters

Corporate liability laws in other countries

CORPORATE corruption is found in almost all countries.

However, due to a variety of circumstances, the problem tends to be more acute in certain countries than others.

With the Corporate Liability Provisions coming into effect on June 1, 2020, under the new Section 17A Malaysian Anti-Corruption Commission (Amendment) Act 2018, Malaysia is now seen as taking a major step in addressing the problem corruption among corporations that incur huge economic costs to the country.

The impending Corporate Liability Provisions in Malaysia are quite similar to the UK Bribery Act 2010 and US Foreign Corrupt Practices Act (FCPA) 1977.

The United Kingdom and the United States have had laws holding commercial organisations liable for their employees and/or associates' corrupt practices car-

on corporate liability, aimed at criminalising commercial organisations if their employees or associates had committed acts of bribery, include Hong Kong, Australia and Singapore.

Penalties imposed by these countries upon conviction include heavy fines and imprisonment.

While the existence of laws on corporate liability and stiff penalties may not entirely wipe out corrupt practices among corporations, they are helpful and effective measures to help deter and minimise corruption among commercial organisations, and bring the guilty to book.

In the UK, for instance, aerospace and defence major Rolls-Royce was once caught in one of the biggest corruption cases in British corporate history.

After a five-year investigation, Rolls-Royce reached a settlement that involved penalties of about

aries to pay bribes to foreign politicians and officials to secure export contracts.

Retailer Tesco, on the other hand, was investigated for accounting fraud in October 2014 after the company admitted it had overstated profits by £263mil because it had incorrectly booked payments from suppliers. Three former senior directors of the company were subsequently charged with offences of fraud and false accounting.

Nevertheless, in the UK, the Law Commission has since 2010 been calling the UK corporate liability laws "inappropriate and ineffective". Amid mounting calls for reform of the country's corporate liability, the UK government is expected to look into changes that could include a new corporate offence of failing to prevent economic crime.

According to Transparency International UK, the UK generally

in large part due to the much stronger corporate liability laws, as well as more aggressive enforcement of the regulation, in the world's largest economy.

But the US also has its fair share of corporate scandals. Take the scandal of energy giant Enron, which surfaced in October 2001, after being involved in corporate corruption and accounting fraud.

Several Enron executives were charged with conspiracy, insider trading and securities fraud; and the Wall Street darling subsequently collapsed in bankruptcy.

Singapore had also been hit by scandals before such as the one involving China Aviation Oil (CAO), which posted derivative losses of US$550mil (RM2.3bil) in 2004. The debacle involving the Singapore-listed jet fuel supplier was the city-state's most serious financial scandal since the collapse of Barings

and three months in prison.

In general, countries that have taken pro-active measures to counter corruption – be it for the public and private sector – tend to score well in the Corruption Perceptions Index (CPI).

Singapore, for instance, ranked third in CPI 2018 out of 180 countries, with a score of 85 points, up from the sixth spot and 84 points in the preceding year.

The UK was tied with Germany on the 11th spot, with a score 80 points. This was a slight deterioration from its 8th spot in the preceding year, with 82 points.

Australia's ranking in the CPI was unchanged at 13th spot, with 77 points, in both 2017 and 2018.

Hong Kong was ranked 14th in CPI 2018, with 76 points, down one rung from 13th and 77 points in 2017.

The US, on the other hand, ranked lower at 22nd, with 71