

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

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I. INTRODUCTION

The significance and urgency of International Cooperation was greatly highlighted and emphasized to all State Parties in the United Nations Convention against Corruption¹. Coherently, the modus operandi in corruption is becoming even more challenging and diverse, hence both enforcement agencies and prosecution agencies should engage in close cooperation with their counterparts and possess the same stance in terms of exchanging information relating to investigation and prosecution of corruption cases as well as to recover illicit proceeds of corruption from overseas.

In order to work effectively and efficiently to curb the ever-changing operations and forms of corruption, anti-corruption agencies from every country should emphasize a higher level of understanding and collaboration, working hand in hand without any prejudice towards the common goal of eradicating and wiping out corruption on a global scale. Cooperation and mutual work ethic should not be limited to formal means but should also be open to informal means; hence in order to enhance international or regional cooperation between law enforcement agencies, State Parties are encouraged to enter into bilateral or multilateral agreements or have arrangements for direct cooperation between law enforcement agencies². International cooperation is important.

II. ANTI-CORRUPTION BUREAU (ACB) BRUNEI DARUSSALAM AND MALAYSIAN ANTI-CORRUPTION COMMISSION (MACC) MALAYSIA—BILATERAL COOPERATION NETWORK AND WORKING GROUP

A. Bilateral Cooperation Network

The two anti-corruption agencies of Brunei Darussalam and Malaysia have formed a bilateral cooperation network to resolve resistance and obstacles that occurred between the two states during the course of work, especially when there is an issue of jurisdiction and power of investigation. From 22 to 24 July 2002, the ACB Brunei Darussalam and the Anti-Corruption Agency (ACA) Malaysia³ held the 1st Annual Bilateral Meeting in Brunei Darussalam, and during the meeting the two agencies agreed to collaborate in the area of investigation, intelligence, law, prevention, inspection, and consultancy and training.

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¹ Article 43-50, United Nations Convention against Corruption.

² Article 48, United Nations Convention against Corruption.

³ The ACA is known as the Malaysian Anti-Corruption Commission (MACC) since 1 January 2009.

B. Working Group

From 24 to 25 June 2003, the first meeting of the 'Working Group' (WG) was held in Penang, Malaysia, and Terms of Reference for Mutual Assistance were developed between MACC, Malaysia and ACB, Brunei.

The functions of the Working Group are as follows:

- i. To act as a focal point in
 - a. Receiving and coordinating requests for Mutual Assistance
 - b. Providing feedback on Mutual Assistance
- ii. To organize discussion on mutual assistance when required, and
- iii. To present an annual report for Bilateral Cooperation meeting between MACC and ACB

The types of assistance that can be rendered through the Working Group cover the following scope:

- i. Intelligence: Exchange of intelligence information, assistance on intelligence work, and tracking witnesses or subjects
- ii. Investigation: To keep a record of any person who has given a statement or assisted an investigation, recording a statement of a witness or subject, collection and delivery of documents or case exhibits, seizure, freezing and forfeiture of assets, delivery and execution of any orders in relation to any offences issued by authorities of both states, handing over of criminals, joint operations and other cooperation agreed upon by both agencies.

III. BRUNEI DARUSSALAM – PARTY TO THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Brunei Darussalam is a party to the Treaty on Mutual Legal Assistance in Criminal Matters. The legal framework for Mutual Legal Assistance (MLA) in Brunei Darussalam is primarily provided for in the Mutual Assistance in Criminal Matters Order 2005 (MACMO 2005). Under the MACMO 2005, Brunei can make and comply with requests for assistance to obtain evidence, make arrangements for persons to give evidence or assist in investigations, confiscation of property, service of documents, identification and location of persons, search and seizure, provision of documents or any other types of assistance not contrary to our domestic laws.

IV. CASE STUDY

A. Case Overview

Information was received by the Anti-Corruption Bureau (ACB) sometime in 2010 stating that one male had demanded money from a person caught by the Brunei Royal Customs and Excise Department for illegally smuggling 86 cartons of contraband cigarettes from Miri,

Sarawak, Malaysia through the Sungai Tujoh Immigration Control Post. The said money was an inducement to reduce the number of cartons smuggled by a smuggler, hence lowering the amount of the compound duty.

B. Investigation Findings

- i. Investigations by the ACB established that the subject of this case was Kharol Azmi Bin Hj Kula, a male of Bruneian nationality who was unemployed during the alleged period. He was a former Examining Officer under the Royal Customs and Excise Department, and his service was terminated in 2007. In 2010, Kharol Azmi was involved in several alleged fraud cases.
- ii. Investigation revealed that Kharol Azmi had contacted a smuggler on the pretext that Kharol Azmi wanted to purchase cartons of cigarettes. Kharol Azmi and the smuggler then arranged for meet ups; however, Kharol Azmi then tipped off the Royal Customs and Excise Department which led to the arrest of the smuggler.
- iii. After the smuggler was arrested by the Royal Customs and Excise Department, investigation by the ACB revealed that Kharol Azmi had used several different lines to contact the smuggler and to impersonate a Customs Officer, a Prosecuting Officer and an anonymous person who knew a Customs Officer could help to falsify the number of cigarettes confiscated in order to get a lower compound duty imposed by the court. Kharol Azmi then asked the smuggler to remit BND 2000 through a remittance service ‘Western Union’ addressed to a named individual.
- iv. On 10 March 2011, following the instruction of Kharol Azmi, the smuggler remitted BND 2,000 via Western Union to the name mentioned by Kharol Azmi. With the assistance from the Malaysian Anti-Corruption Commission, MACC (Miri Branch), through the ACB and MACC Working Group, it was revealed that the money had been withdrawn on the same day.
- v. Investigation by the ACB then revealed that the recipient of the BND 2,000 remitted by the smuggler is of Malaysian nationality.
- vi. Since Kharol Azmi was known to have dealt with a Malaysian and the evidence showed that the money had been withdrawn from a bank account in Malaysia which MACC has jurisdiction over, ACB sought assistance from MACC in order to obtain information and evidence.
- vii. Collecting intelligence information and evidence gathering: Assistance from the Malaysian Anti-Corruption Commission (MACC), Malaysia
 - MACC conducted an investigation under Section 16 of the Malaysian Anti-Corruption Act 2009⁴.
 - As a result of the investigation conducted by MACC, investigators were able:

⁴Section 16 of the Malaysian Anti-Corruption Act 2009, “Accepting gratification as an inducement or reward for doing or forbearing to do any act in relation to his principal affairs”.

- i. To establish the identity and locate the recipient of money from Western Union.
- ii. To obtain a statement from the witness and obtain confirmation that the witness had communicated with Kharol Azmi, which was supported with evidence such as text messages that showed instructions from Kharol Azmi to withdraw the money and the details relating to it, as well as evidence to show the instruction from Kharol Azmi for the witness to deposit the money into Kharol Azmi's bank account in CIMB, Malaysia.
- iii. To assist the ACB to arrange and call several witnesses for taking statements by ACB officers in MACC, Malaysia for the purpose of trial.

C. Conviction in Court

Kharol Azmi was charged with one count under section 420 of the Penal Code for cheating by falsely representing himself as a customs prosecuting officer who had the power to reduce the number of cigarettes that the smuggler would be charged for possession of unexcisable goods and to hand over the customs investigation papers to the smuggler to dispose, and thereby dishonestly induced the said smuggler, so deceived, to deliver BND 2,000 by Western Union money transfer to the Malaysian man.

Kharol Azmi pleaded guilty to the charge and a sentence of 18 months' imprisonment was imposed by the court. The court did not order Kharol Azmi to return the money since Kharol Azmi had no means to pay. On 24 August 2013, when the sentencing was read, Kharol Azmi was serving a 56-month prison sentence for another case for 4 offences under section 420 of the Penal Code, which were all committed in 2010. The 56-month sentence took effect from 26 March 2012.

V. CONCLUSION

The bilateral agreement and cooperation between the agencies has strengthened their relationship, and it has produced fruitful and productive outcomes. The international cooperation via the working group not only proved to be successful but beneficial to both countries. The success of this case may not have been achieved wholly if not for the cooperation and support contributed through this mutual agreement given by the Malaysian Anti-Corruption Commission (MACC), without which the defendant would not have been brought before the court. Hence the importance of close and resilient relationships, and understanding is imperative in producing such success and prominent results of two-way cooperation in fighting and eradicating corruption for both countries.

It is to be noted that international cooperation is very important among agencies in order to combat corruption, and one of the tools is having bilateral cooperation as shown in the actual case ACB shared during this seminar. Due to the long-standing relationship between ACB and MACC, ACB is able to pursue seeking international cooperation through both formal and informal means. This is made possible through the working group coalition and agreement in carrying out the best interests of both countries. It enables investigation officers involved to communicate and correspond with each other by simple phone calls, text messages, e-mail and eventually meeting in person. The flexibility and convenience of such means of working and contacting, more importantly the assistance and commitment which is a means of international

cooperation efforts, has contributed to the success of this case. It is hoped the joint harmony will be extended further to achieve a greater working inspiration that benefits both countries in the objective and aim of zero corruption in the region.