TWELFTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

THE LATEST REGIONAL TRENDS IN CORRRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

Hosted by UNAFEI

With the support of the Supreme People's Procuracy of Viet Nam

27-29 November 2018, Da Nang, Viet Nam

UNAFEI

UNITED NATIONS ASIA AND FAR EAST INSTITUTE
FOR THE PREVENTION OF CRIME
AND THE TREATMENT OF OFFENDERS

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The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policies of UNAFEI, the Government of Japan, or other organizations to which those persons belong.

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FOREWORD

It is my great pleasure and privilege to present this report of the Twelfth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Da Nang, Viet Nam from 27–29 November 2018. The Good Governance Seminar was held in Viet Nam for the second time, and, we were once again deeply impressed and touched by the warm hospitality afforded to us by our Vietnamese hosts.

The main theme of the Seminar was *The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities*. The Seminar was attended by two visiting experts—one from the United Nations Office on Drugs and Crime (UNODC) and one from Malaysia—and 19 criminal justice practitioners from the countries of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. The Seminar was co-hosted by UNAFEI and the Supreme People's Procuracy of the Socialist Republic of Viet Nam (SPP).

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The main theme of the Twelfth Seminar focused on providing updates on the latest anti-corruption measures and corruption-related trends across Southeast Asia.

The Seminar explored existing and emerging corruption trends in the participating countries, identified challenges which frustrate Mutual Legal Assistance and shared best practices for anti-corruption enforcement in the participating countries. Through discussion of issues such as private-sector corruption and corporate criminal liability, proactive asset confiscation and recovery techniques, the utilization of special investigation measures, extensive use of international cooperation, among others, the participants exchanged knowledge, experiences, effective strategies, and best practices in the field of anti-corruption. The Chair's Summary, published in this report, details the key conclusions and recommendations of the Seminar. In addition, the Seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

It is a pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy. Finally, on behalf of UNAFEI, I would like to express my sincere appreciation to the Supreme People's Procuracy of Viet Nam for their tremendous support in co-hosting the Twelfth Regional Seminar.

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Takeshi Seto
Director, UNAFEI

March 2019

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Mr. Takeshi Seto
Director of UNAFEI

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Mr. Tran Cong Phan
Deputy Prosecutor General
Supreme People's Procuracy
Socialist Republic of Viet Nam

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Keynote Address by
Mr. Takeshi Seto
Director of UNAFEI

OPENING REMARKS

Takeshi Seto[*]

The Honourable Dr. Tran Con Phan, Deputy Prosecutor General of the Supreme People's Procuracy of Viet Nam, the Honourable Mr. ASAZUMA Shinichi, Deputy Chief of Mission, Embassy of Japan in Viet Nam, honourable guests, distinguished experts and participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Twelfth Regional Seminar on Good Governance for Southeast Asian Countries. I would like to extend my heartfelt welcome to our honourable guests, distinguished speakers and participants who have come to join this significant forum. I would like to take this opportunity to express my deepest appreciation to the government of Viet Nam, especially to the Supreme People's Procuracy of Viet Nam, for their great contribution and assistance in co-hosting this seminar.

UNAFEI is one of the United Nations Crime Prevention and Criminal Justice Programme Network Institutes (PNI), established in 1962 by an agreement between the United Nations and the Government of Japan. The PNI consists of the United Nations Office on Drugs and Crime (UNODC) in Vienna and several interregional and regional institutes and specialized centres around the world. UNAFEI's main activities are to hold international training courses and seminars for criminal justice practitioners from around the world and to undertake research in the field of the prevention of crime and the treatment of offenders. Every year, UNAFEI offers four multinational training courses, each of which addresses a different subject. In choosing the specific topic to be addressed in each programme, every effort is made to incorporate the priority issues identified by the United Nations. As a result, we find ourselves more frequently and regularly choosing topics related to the challenges posed by transnational organized crime and corruption.

This sets the background for the present seminar. The Regional Seminar on Good Governance for Southeast Asian Countries is an initiative, begun in 2007, in order to enhance our capacity-building and networking efforts in the field of good governance and anti-corruption. Every year, we choose one topic of substantive importance in line with the United Nations Convention against Corruption and invite participants from Southeast Asian countries for discussion. This time, the main theme of the seminar is "The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities". UNAFEI has hosted the seminar for 11 years to prevent and combat corruption. Our previous Seminar dealt with the best practices of investigation, prosecution, adjudication and prevention of corruption to review and recognize the developments in the field of anti-corruption over the past decade. Based on the outcome of the 11th seminar, I believe it is worth reviewing the latest corruption

[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

trends in each participating country, identifying problems which need to be addressed and exploring the way forward by reviewing and recognizing the developments in the field of anti-corruption over the past decade.

I look forward to seeing this seminar provide a useful forum to exchange expertise and experience in our common endeavour against corruption, contributing further to the promotion of good governance in Southeast Asia.

Thank you very much for your attention.

OPENING REMARKS

Dr. Tran Cong Phan[*]

Mr. Seto Takeshi, Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI),

Mr. Shinichi Asazuma, Deputy Chief of Mission, Embassy of Japan to Viet Nam,

Distinguished guests,

Ladies and gentlemen,

The Supreme People's Procuracy (SPP) of the Socialist Republic of Viet Nam closely cooperated with the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders to successfully co-organize the Eleventh Good Governance Seminar for Southeast Asian Countries from 17 October to 19 October 2017 in Ha Noi. The Eleventh Seminar focused on the theme of *Best Practices in Anti-Corruption: A Decade of Institutional and Practical Development in Southeast Asia*.

Today, it is a great honour for the SPP of Viet Nam to keep cooperating with UNAFEI to co-host the Good Governance Seminar for Southeast Asian Countries for the second time, the twelfth Seminar, in the glamorous city of Da Nang, one of the most livable cities in Viet Nam. On this occasion, on behalf of the leadership of the SPP of Viet Nam, I would like to give the warmest welcome to all of participants and the distinguished guests attending the Twelfth Seminar; wishing all of your good health, happiness and success.

Ladies and gentlemen,

Corruption has become a global problem that gradually spoils the institutions of democracy and rule of law of each country. The countermeasures against corruption have been tougher and more effective in the Southeast Asian countries generally and in Viet Nam particularly, as it has been done in other regions worldwide.

Through co-organizing the international and regional Seminars or Training courses, UNAFEI and the judicial agencies of Japan have been the fellow-travellers with the Southeast Asian countries in the fight against corruption over the past decade. The SPP of Viet Nam highly appreciates and expresses the gratitude to UNAFEI and the judicial agencies of Japan for their kind cooperation and their dedicated support.

[*] Deputy Prosecutor General of the Supreme People's Procuracy of Viet Nam.

Based on the accomplishment of the Eleventh Seminar organized in Ha Noi last year, at the Twelfth Seminar this year, we will focus our attention on the theme of "The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities". I hope that, with the above-mentioned theme, our meaningful Seminar will be a legal science forum in the region for law enforcement officers, legal experts and all participants to share information about the latest trends of corruption in each country, to clarify the problems to be solved, to introduce the best practices and effective countermeasures taken by criminal justice authorities and to propose the direction and solutions for further effectively combating corruption crime.

Ladies and gentlemen,

To demonstrate the hardest determination and the strongest effort of the Party and State of Viet Nam devoted in the fight against corruption, the law enforcement agencies of Viet Nam have detected, initiated, investigated, prosecuted and adjudicated a number of large-scale corruption, and economic cases over the past years. These cases related to offenders who had committed crime by using artifice with extremely serious degree or by transnationally using high-tech. Corruption in Viet Nam has recently arisen in the fields of finance, banking, public-asset management, infrastructure-building investments, etc., Therefore, prevention and the fight against corruption are considered as the common responsibility of the whole political system and one of the most important, urgent and long-term tasks during the process of socio-economic development and building the State of the rule of law in Viet Nam.

Viet Nam has been putting a lot of effort into the improvement of legal framework on prevention and the fight against corruption. The National Assembly (or the Parliament) of Viet Nam adopted the Law on Prevention and Fight against Corruption (Revised) on 20 November 2018. It will officially come into effect on 1 July 2019. The revised Law stipulates in detail a variety of corruption acts, the prevention and detection of corruption in agencies, organizations and units, and the responsibilities of the heads of agencies, organizations, and units in the work of prevention and fight against corruption.

With the hardest determination and the strongest effort put into the prevention and fight against corruption, the SPP of Viet Nam, the Central Authority of the Socialist Republic of Viet Nam in Mutual Legal Assistance in Criminal Matters, is willing to further strengthen cooperation with judicial agencies of ASEAN member states and Japan for the more effective prevention and fight against corruption and other types of crime in the coming time.

Based on the traditional friendship and cooperation among ASEAN member states and Japan, as well as the close ties among agencies participating in the Seminar and UNAFEI, I firmly believe that the Twelfth Good Governance Seminar for Southeast Asian Countries will achieve success and obtain the designed objectives.

Finally, I would like to express my best wishes for the success of our Twelfth Good Governance Seminar for Southeast Asian Countries. To Mr. Seto Takeshi, Director of UNAFEI and all of you, I wish for your good health, happiness and successful careers.

Thank you very much.

KEYNOTE ADDRESS

Takeshi Seto[*]

Dr. Tran Con Phan, honourable Deputy Prosecutor General of the Supreme People's Procuracy of Viet Nam,

Distinguished members and staff of the SPP,

Distinguished delegates, experts and guests,

Ladies and gentlemen,

First, I would like to express my heartfelt gratitude to all the representatives from Southeast Asian countries and visiting experts for their dedicated preparation and forthcoming contributions to this seminar. Also, I would like to extend my sincere appreciation to the Supreme People's Procuracy of Viet Nam for co-hosting this Twelfth Good Governance Seminar, for their dedicated efforts, and for their warm hospitality in welcoming us.

It is my great honour and privilege to be here before you to deliver the keynote speech as the Director of UNAFEI. Personally, I am particularly grateful to attend this seminar again, as I participated in the First Good Governance Seminar in Thailand 11 years ago as the Deputy Director of UNAFEI. The first seminar has remained in my memory as a truly unforgettable and exciting experience.

Ladies and gentlemen,

This regional seminar began in 2007, just a few years after the adoption of the United Nations Convention Against Corruption, otherwise known as UNCAC, in 2003, and its entry into force in 2005. This seminar was launched, in order to enhance the capacities of anti-corruption agencies and to establish and strengthen the network of competent authorities within Southeast Asia. This annual seminar has surely contributed to the development of effective countermeasures against corruption in each participating country, by sharing experiences and maintaining close relationships among our respective agencies and among us as practitioners.

Ladies and gentlemen,

This Twelfth Seminar, upon consultation with our partner, the Supreme People's Procuracy of Viet Nam, is entitled "The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities". Last year, at the Eleventh Seminar, we

[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

focused on institutional and practical developments to fight corruption that took place over the past decade in the Southeast Asian Region. As stated in the keynote speech at the Eleventh Seminar last year, by our former Director, Keisuke Senta, the past ten years since the first seminar in 2007, can be described as the "UNCAC decade". Starting with the accession by Cambodia in 2007, and culminating with the ratification by Myanmar in 2012, all eleven Southeast Asian countries, including Timor-Leste, have become State Parties to UNCAC. In addition, Japan finally ratified UNCAC at the end of this period, in 2017.

Without doubt, efforts towards the implementation of UNCAC led to many legislative improvements and the enhancement of investigative and prosecutorial capacity and skills of anti-corruption authorities in the region. As we reviewed at the previous seminar, we observed tremendous advances in the adoption of implementing legislation, including laws on the criminalization of corruption offences, asset recovery, and mutual legal assistance and extradition. Taking a few examples, Malaysia enacted its new Anti-Corruption Law in 2009, which established a new anti-corruption body, the Malaysian Anti-Corruption Commission, known as the MACC, and has undergone a number of legislative developments to criminalize specific corruption offences, introduce plea bargaining, strengthen asset forfeiture and recovery, and witness and whistle-blower protection. Cambodia has established an anti-corruption framework through a series of laws such as the Code of Criminal Procedure 2007, the Criminal Code 2009, the Law on Anti-Corruption 2010, the 2011 amendment thereto and the Law on Public Procurement 2012. Myanmar adopted the Anti-Corruption Law in 2013 and the Anti-Money-Laundering Law in 2014.

In addition to these legislative developments, all countries made great steps towards the adoption of national anti-corruption strategies, establishing anti-corruption frameworks, and implementing effective anti-corruption enforcement—all of which facilitated the investigation and prosecution of corruption offences in practice.

Here, I would like to make a brief observation on some of the interesting steps taken in this regard by each representing country. Over the years, the Anti-Corruption Bureau of Brunei Darussalam, which is the country's sole independent investigative authority, has invested in creating specialized officers for information technology, accounting and legal expertise from the viewpoint of effective evidence management. Following the evolving trends of corrupt transactions, the Bureau's investigative measures have shifted from conventional methods to more proactive and innovative ones such as wiretapping, undercover operations, telecommunications interception and consensual recordings.

Cambodia established the Anti-Corruption Institution (ACI), which has two bodies: the National Council against Corruption (NCAC) and the Anti-Corruption Unit (ACU). The NCAC is an advisory body involved in formulation and recommendation of anti-corruption policies and strategies. The ACU is an investigative body that has exclusive authority to investigate corruption cases, and has the power, for instance, to arrest, obtain bank records, subpoena documents, conduct wiretapping, and freeze assets.

In Indonesia—although very few convictions had been rendered against corporations for corrupt conduct due to ambiguities of previous regulations on corporate liability—Supreme

Court Regulation No. 13 in 2016 clarified the conditions for corporate liability. Pursuant to the regulation, liability is triggered by a criminal act done by any person who is employed by or has some other relationship with the corporation, both in respect of domestic and foreign corporations.

Laos structured the anti-corruption framework in four layers: the national level through the State Inspection and Anti-Corruption Authority (SIAA), the ministry and agency level, the provincial level, and the district level. Over the past decade, the SIAA has coordinated corruption prevention and enforcement efforts, prioritizing prevention and encouraging public participation to combat corruption. Measures for prevention include anti-corruption education at all levels, anti-corruption promotion by the mass media, and declaration of assets and income by public officials.

In Malaysia, the Anti-Corruption Commission has developed a number of best practices for anti-corruption investigation. Important practices include establishment of the Malaysian Anti-Corruption Academy to provide training in advanced investigation techniques, the use of video technology during interviews and interrogations, the implementation of team-based investigation, private-sector investigation, intelligence-based investigation, introduction of a technology-based complaint management system, and enhancement of forensic-accounting skills. In this seminar, Mr. Mohamad Zamri Bin Zainul Abidin, our visiting expert from the MACC, will lecture on the keys to successful witness and whistle-blower protection in corruption cases. I believe that his lecture will bring us valuable insights and knowledge in dealing with corruption crimes.

Myanmar has undertaken significant efforts over the past decade to enhance anti-corruption enforcement. The Anti-Corruption Commission has the power to conduct investigations and to take action against offenders who commit corruption. The Commission can examine financial records, issue prosecution orders and confiscation orders of money and property, and provide witness protection.

The Philippines has a number of best practices in terms of implementation of UNCAC's provisions, in particular, those related to law enforcement, such as the Witness Protection, Incentive and Rewards System, the use of special anti-graft courts known as *Sandiganbayan*, among others.

In Singapore, the CPIB is the only agency authorized to investigate corruption and related offences. The CPIB is a founding member of the new International Anti-Corruption Coordination Centre (IACCC) launched in July 2017. The IACCC, serves to improve information sharing and coordinate law enforcement actions between law enforcement officers of its member countries. In terms of initiatives to address corruption in the private sector, the CPIB developed "PACT", a practical guidebook for businesses in Singapore which sets out to guide business owners in Singapore in developing and implementing anti-corruption systems within their companies.

In Thailand, a new type of corruption called "policy corruption" was reported. Policy corruption involves the creation of illegal schemes or management mechanisms for certain beneficiaries. The National Anti-Corruption Commission, established in 1997, expanded its

power to engage in mutual legal assistance. In addition to a Criminal Division for Persons Holding Political Positions to adjudicate cases involving high-ranking level public officials including ministers and members of parliament, the Supreme Court has established the Central Criminal Court for Corruption and Misconduct Cases to deal with cases involving other public officials.

Viet Nam has made efforts in applying measures in criminal laws to freeze and confiscate proceeds of corruption, to distrain and seize property and to impose fines for the purpose of recovering them, as well as administrative and civil measures provided in civil laws, at relevant stages of proceedings, such as investigation, prosecution and adjudication.

Ladies and gentlemen,

As I summarized, in the past decade, we have seen significant developments in the Southeast Asian countries in the legislation, institutional frameworks, strategies and practices in anti-corruption prevention, investigation, prosecution and adjudication. However, during the past decade, our society has drastically changed. For instance, rapid progress of information technology and its communication tools have brought about massive and interactive information flows worldwide through a variety of media, as well as an increase in cross-border financial transactions by various means, which have reached a level far greater than what we had expected ten years ago.

Despite the efforts and considerable level of developments that have been made by criminal justice authorities in this region, due to negative impacts stemming from recent rapid social development, corruption has become more complicated and sophisticated, and has become highly secretive in nature, making it more difficult to detect, investigate and prosecute. Moreover, the increasing trend towards the transnationalization of corrupt practices has made these tasks even more complicated and difficult. We must recognize that, following this "UNCAC decade", we have now entered a new phase in the fight against corruption. Simply relying on conventional methods to fight corruption may no longer be sufficient to suppress the increasingly transnational and complex nature of corruption.

In order to respond to new and forthcoming challenges, we should examine the current trend of corruption and share experience to tackle it. In this regard, this seminar is designed to share information on the current trends in corruption typologies observed in each country, exchange investigative and prosecutorial experiences and explore the way forward to address the identified challenges.

I may not be able to give a full overview of forthcoming challenges, yet it is clear that, in this new era of anti-corruption enforcement, practitioners will continue to face traditional challenges as new challenges arise. These new challenges may include: insufficient investigation skills to respond to new trends; insufficient legal tools and equipment to collect admissible evidence, including evidence in electronic form; poor interaction between intelligence and criminal justice officials; differences in systems and practices in cases involving international elements; the lack of modern equipment; the lack of legal basis for special investigation

techniques; dealing with underground banking systems; and the dissipation of illicit assets prior to confiscation.

In regard to challenges pertaining to international cooperation, Dr. Claire Armelle Leger, our visiting expert from the OECD, will lecture on common challenges in, and best practices of, mutual legal assistance in the region based on her expertise gained through the Anti-corruption Asia-Pacific Initiative. I am certain that her analysis will provide helpful clues to successful MLA practice.

Ladies and gentlemen,

Corruption has become increasingly transnational. Of course, this means that international cooperation is increasingly important. But it also means that corruption trends in one country may appear in other countries. From such perspective, it is effective and helpful to share with one another knowledge and experience of current corruption trends. Through such exercise, we may be able to prepare for new *modus operandi* and make use of other countries' experiences, once we come across similar corruption allegations. Further, introducing other countries' effective anti-corruption practices may well result in formulating and implementing good anti-corruption measures in our own countries. Therefore, it is quite valuable to share each country's experience and expertise in this seminar in the fight against corruption.

Ladies and gentlemen,

It is evident that many of the challenges that we face in Japan in combating corruption are also challenges for other developed and developing countries. On the other hand, it is also clear that the causes of corruption are deeply connected with each jurisdiction's own customs, culture, economy and other social environments. It will continue to be quite a challenge for each country to address all underlying social and economic factors to prevent and suppress corruption. Further, it would be impossible to collectively respond to all the challenges without due regard to diversity among jurisdictions. In order to respond, each country is expected to address its own challenges in a manner suited to its own legal system, customs, culture, economy and social environments, making use of the knowledge and experience shared in this seminar as a valuable basis.

Ladies and gentlemen,

After its adoption in 2003, Japan ratified UNCAC in 2017. Meanwhile, UNAFEI, as a United Nations Crime Prevention and Criminal Justice Programme Network Institute, has conducted annual multilateral UNAFEI-UNCAC training courses for criminal justice practitioners, which aim at facilitating effective implementation of UNCAC, as well as this annual Good Governance Seminars. Such activities contribute to the promotion and implementation of United Nations standards and norms, including UNCAC, and contribute to the achievement of the Sustainable Development Goals, in particular, Goal 16.5, to substantially reduce corruption and bribery in all their forms.

UNAFEI, through these training courses and seminars, has endeavoured to support participating countries around the world in preventing and combating corruption, with considerable focus on Southeast Asian countries. I am sure that these courses and seminars have offered good opportunities to share knowledge and experiences for fighting corruption effectively. Moreover, relationships built among the participants facilitate and enhance international cooperation in the effort to prevent and fight corruption.

I strongly believe that UNAFEI's courses and seminars have largely facilitated each country's efforts in improving its criminal justice system and practices in the fight against corruption. Given its importance, I am fully convinced that UNAFEI's continuous efforts in the field of capacity-building for criminal justice practitioners have contributed to enhancing the region's anti-corruption measures and have played an important role in our collective fight against corruption. Bearing this in mind, UNAFEI will continue to hold these training courses and seminars to enhance our collective capacity to fight corruption.

Ladies and gentlemen,

In this Twelfth Seminar, the knowledge and experience of nine participating countries will be exchanged and discussed. Facing a new era of complex transnational corruption, closer cooperation will add more value than ever to the fight against corruption. Let us continue to work hand in hand in this tough and endless fight.

In closing, expressing my sincere hope and expectation for successful and fruitful discussions at this Good Governance Seminar and my heartfelt thanks to all of the participants for attending, and again my deepest gratitude to the Supreme People's Procuracy of Viet Nam for co-hosting this seminar in Da Nang, I would like to conclude my keynote address.

Thank you for your kind attention.

CHAIR'S SUMMARY

Twelfth Regional Seminar on Good Governance
for Southeast Asian Countries
Da Nang, Viet Nam
27 – 29 November 2018

GENERAL

1. The Twelfth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Supreme People's Procuracy of Viet Nam (SPP) and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), was held in Da Nang, Viet Nam from 27 to 29 November 2018. Mr. Takeshi Seto, Director of UNAFEI, served as the Chair of the Seminar. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

OPENING CEREMONY

2. Mr. TAKESHI SETO, Director of UNAFEI and Dr. TRAN CONG PHAN, Deputy Procurator General delivered opening addresses, welcoming the participants, introducing the theme of *The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities* and emphasizing the importance of reviewing and recognizing advancements in anti-corruption practices through the sharing of knowledge, skills and strategies from the ASEAN region and beyond. Director Seto and Dr. Tran Cong Phan both addressed the importance of international cooperation in combating transnational crime and corruption.

3. MR. SHINICHI ASAZUMA, Deputy Chief of Mission of the Embassy of Japan in Viet Nam, expressed the sincere gratitude of the government of Japan to the SPP and UNAFEI for their dedicated preparation for the Seminar. He stressed the importance of the rule of law in fighting corruption, noting that corruption is a significant factor in hindering social and economic development, as well as strengthening relationships between the participating countries.

KEYNOTE ADDRESS

4. DIRECTOR SETO delivered his keynote, addressing the importance of international cooperation. In the decade following the adoption of UNCAC, many countries have developed their anti-corruption strategies and practices by, for example, establishing special anti-corruption agencies and courts, implementing prevention measures, and employing special investigation measures, such as undercover operations, telecommunications interception, and enhancing witness protection. However, drastic societal changes over the past ten years, including the rapid

expansion of information and communications technologies and cross-border financial transactions, have led to a new era of transnational corruption. Simply relying on conventional methods to fight corruption may no longer be sufficient to suppress the increasingly transnational and complex nature of corruption. In addition to developing new countermeasures, anti-corruption practitioners must work more closely than ever to overcome transnational corruption with the aim of ensuring sustainable social and economic development.

VISITING EXPERTS' LECTURES

5. DR. CLAIRE ARMELLE LEGER, Anti-Corruption Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, Organization for Economic Cooperation and Development, delivered her lecture on the topic of *Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*. Dr. Leger introduced the OECD Anticorruption Initiative for Asia-Pacific, including the results of a regional survey on challenges and best practices for effective Mutual Legal Assistance (MLA).

Common Challenges to Effective MLA in Corruption Cases

The first challenge is the *legal basis for cooperation,* which can be based on multilateral or bilateral treaties or domestic law. If two countries do not have a treaty, article 46 of UNCAC can serve as a basis. Second, *differences in legal and procedural frameworks* were reported by several countries as posing challenges to obtaining MLA due to misunderstanding of the applicable legal basis, grounds for requests, legal and procedural requirements, among others. Third, although many countries use English, *language barriers* remain, as some countries lack translation resources. Fourth*, some requests lack sufficient descriptions of the assistance requested*. In that case, the ability to communicate through informal means can help the efficient processing of requests. Fifth, some countries reported *delays, insufficient responses, or receiving no response* at all to requests. While most requests are fulfilled within 6 months to 1 year, delays in the provision of MLA frustrate efficient international cooperation and law enforcement, enabling shell companies to disband, offenders to transfer and conceal corruption proceeds, and offenders and witnesses to relocate. Sixth, *resource issues* were also reported as barriers to effective MLA. The greater need for MLA has increased financial and other burdens on anti-corruption enforcement agencies, such as processing a greater number of MLA requests, the need for more staff and training programmes, and greater need for technology and equipment. Finally, *traditional grounds for refusing MLA* include dual criminality, evidentiary and information issues, among other grounds. According to the survey, the most cited reason for refusal was the failure of the request to meet evidentiary requirements of the requested state. Evidentiary issues come into play as a practical matter as well. If necessary documentation is not included in the request, it may be impossible to execute, even if the information is not legally required. While dual criminality can be a hurdle, many jurisdictions take the conduct-based approach, meaning that as long as the conduct constitutes an offence in the requested state, the dual criminality requirement is deemed to be met.

Best Practices for MLA in Corruption Cases

First, networks and relationships lead to trust and effective communication, but they take time to develop. Countries are encouraged to engage in regular bilateral meetings among law enforcement officials, as well as networking and exchange of practices. Second, requests must be

accompanied by supporting information that provides executing authorities with (i) adequate grounds to undertake the requested action and (ii) necessary facts and other details. Training on MLA practices and request writing is also important. Third, consultations between parties are encouraged under Article 48 of UNCAC. Law enforcement officials should consider consultations at all stages of the process: from pre-request to consultation after the request is submitted. Consultations should be viewed as complimentary to the request writing process. Fourth, transmission and prioritization of requests is important, as several governmental bodies may be involved in processing the request, and clear procedures are essential. Finally, modern technology permits the efficient tracking of incoming and outgoing MLA requests. While a number of countries have such case management tools, other jurisdictions primarily rely on in-person contacts; the ideal approach to case management combines these two approaches.

Practical Tools for Facilitating Effective MLA

To facilitate the MLA process, all jurisdictions should consider, where possible in accordance with law, engaging in direct law enforcement cooperation, spontaneous exchanges of information, and the utilization of international networks. Direct cooperation between law enforcement agencies, such as anti-corruption authorities, FIUs, police forces, tax authorities, and prosecution authorities, is indispensable to investigating transnational corruption. However, the MLA process is formal and bureaucratic. Informal cooperation between law enforcement agencies can lead to valuable intelligence to further an investigation, such as obtaining legal advice about the process, company records, general information about persons or companies, information needed to facilitate witness interviews, and so on. Additionally, many jurisdictions are recognizing the importance of spontaneous exchanges of information. The primary goal of such exchanges is to serve the interests of the receiving state, but the receiving state is obligated to maintain confidentiality. Finally, practitioners should make use of international networks to facilitate assistance, such as holding periodic meetings, involvement in international or regional networks, and stationing liaison officers abroad. Informal and spontaneous exchanges of information must only be provided in accordance with a jurisdiction's legal framework.

6. MR. MOHAMAD ZAMRI BIN ZAINUL ABIDIN, Deputy Commissioner, Malaysia Anti-Corruption Commission (MACC), delivered his lecture on the topic of *The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities—Malaysian Perspectives.* While prosecuting offenders for corruption is an important step, this traditional approach is insufficient to combat corruption. Anti-corruption practitioners must prioritize the confiscation of assets obtained through corruption and pursue corporate liability. In Malaysia, these priorities are reflected in the MACC's four operating divisions: the AMLA Division, the High Level Task Force, Forensic and Financial Expertise, and Joint Operations. Mr. Zamri introduced three cases to further demonstrate the issues faced in Malaysia and the MACC's anti-corruption approaches. In the first case, smuggling was introduced as a common form of corruption faced in Malaysia, particularly in reference to avoiding customs duties in Free Trade Zones in which imported goods are underdeclared and smuggled out of warehouses. To counter this practice, the MACC stationed undercover officers in the Free Trade Zone to identify and track smuggled goods, gathered intelligence on the bribery of customs officials, and conducted simultaneous arrests of key suspects. Other key factors to disrupting this scheme included gathering financial information, working with and protecting informants and whistle-blowers, conducting Intelligence Based Investigation (IBI) and conducting parallel investigations into

each criminal offence and money laundering. In the second case, a transnational case in which the corruption took place in Hong Kong, the MACC obtained suspicious transaction reports and other banking information to detect the flow of the bribes, but the criminals changed their modus operandi by using proxies to transfer bribe money via cash. Thus, the use of informants was important to investigate the case and follow the cash flow. When attempting to trace bribe money, the MACC looks at the criminal's family tree to identify which proxies may be in possession of the illicit funds, and persons of interest typically include the criminal's spouse, children, mistresses, etc. Furthermore, suspects need to be investigated with consideration of the source of the bribe money, money laundering, and tax evasion. Finally, Mr. Zamri introduced a high-profile corruption case, in which a former Prime Minister of Malaysia received bribe money. The MACC collaborated with at least seven countries to investigate the case. These countries established an international task force to facilitate the exchange of information. The MACC also learned information about the scheme through court cases in other jurisdictions, when important information became part of the public domain. Based on the information collected using these measures, the former Prime Minister was arrested in July 2018, his residence was searched and assets were seized, including a $250 million superyacht. The Prime Minister was charged in September 2018, along with his wife, and his lawyer, as well as the former Deputy Prime Minister. The amount seized in Malaysia was over 286,000,000 ringgit (191 accounts); Singapore returned SGD15 million; and the superyacht was returned. Based on these high-value forfeitures, more assets were voluntary returned.

COUNTRY PRESENTATIONS

7. BRUNEI DARUSSALAM: The delegation reported that fuel smuggling is a common problem, and the bribery of customs officers is frequently one of the means for smuggling the fuel. The fuel smuggling case illustrated the use of undercover operations, video surveillance, and joint operations. Other forms of corruption include public procurement corruption, bribery of public officials and schemes to defraud the state. Brunei Darussalam also places great emphasis on corruption education and awareness programmes for the government and the private sector, with the objective of instilling integrity and core values and promoting awareness of fighting corruption in day-to-day dealings. The ACB has launched education programmes for primary through tertiary levels of education and has incorporated Corruption Prevention Education into the National Curriculum.

8. CAMBODIA: The fight against corruption in public education has been a recent trend, and great efforts have been taken by the ACU to monitor the administration of high school graduation exams. Monitoring is performed by 196 ACU staff members (one per testing centre) and nearly 5,000 volunteers (one per exam room). The integrity of judges and public officials remains a challenge in Cambodia, as illustrated by the embezzlement case presented, in which the Secretary General of the Ministry of Post and Telecommunication was found guilty and sentenced to imprisonment and fines in the amount of 200,000 USD, and 500,000 USD was confiscated from his bank account.

9. INDONESIA: Stressing the impact of corruption on economic and social development, the delegation introduced Indonesia's strategies for corruption prevention and law enforcement, including enhanced measures to institute e-procurement, protect whistle-blowers, accelerate the

resolution of cases, the establishment of the TP4P and TP4D initiatives and the Special Task Force for Countermeasure Acts and Disposal of Corruption Case (Satgasus P3TPK), etc. These efforts recovered nearly 475 billion rupiah in 2017. The delegation reported on the misuse of legitimate business transactions as a latest corruption trend. The e-ID case, in which fraudulent companies were established for the specific purpose of submitting losing bids in the public procurement process, resulted in the loss of approximately 2.3 billion rupiah. Other schemes include set-off debt and the use of money changers to conceal illicit money transfers.

10. JAPAN (UNAFEI): The most prevalent form of corruption in Japan is bid rigging in public procurement. A case involving four big construction companies was introduced. In 2018, Japan introduced "cooperative agreements" (a kind of plea agreement) as an investigative measure, which is useful in corruption cases.

11. LAOS: Corruption among public officials remains a challenge in Laos, resulting in significant financial losses to the state. Forms of corruption include abuse of position, power and duty, swindling state property, and bribery. Corruption in the financial system was also reported as a significant problem, through which offenders open and close loan accounts as a form of corruption. To address these problems, Laos requires public officials at all levels to submit asset declarations. Moreover, Laos is making efforts to promote public understanding and awareness of corruption in its education system from the kindergarten level to high school, increase capacity and anti-corruption awareness of public officials at all levels, increase research on corruption, adopt stricter laws and regulations, implement the National Anti-Corruption Strategy and cooperate with other countries.

12. MALAYSIA: Corruption offences in Malaysia include receiving and giving gratification, false claims, abuse of power, money laundering and other penal code offences. In addition to prosecution of corruption cases, the MACC places great emphasis on the seizure and forfeiture of the proceeds of corruption with and without prosecution. Due to strict banking rules in Malaysia, criminals are avoiding financial institutions by storing massive amounts of cash in their homes. Four cases were introduced, demonstrating the characteristics of the most common forms of corruption: misuse of public funds, involvement of huge amounts of cash, involvement of lawyers and dummy documents, and the use of proxies. The delegation addressed operational and preventive countermeasures including effective investigation management techniques, "Corruption-Free Pledges", Integrity Units etc.

13. MYANMAR: Corruption among public officials remains widespread in Myanmar. A trend in developing leads in corruption cases is the investigation of credible news reports of corruption. The delegation also reported the use of administrative actions and rules to prevent corruption, such as establishing rules on the acceptance of gifts by public officials and their family members. Moreover, the Myanmar Investment Commission issued the Anti-Corruption Code of Ethics for private-sector companies. Three bribery cases were introduced, dealt with by the Anti-Corruption Commission, addressing the examination of bank records, witness testimony, and discovering corruption leads based on "notorious news".

14. PHILIPPINES: Corruption is a constant concern in the Philippines, and the delegation reported numerous high-profile cases involving legislators and former presidents. From 1979 to 2016,

53.58% of 33,772 corruption cases involved malversation and graft committed by high-ranking officials. Corruption in the Philippines generally includes bribery, kickbacks, abuse of function, influence peddling and illicit enrichment, as well as a number of other forms unique to the Philippines, such as technical malversation, political dynasty, "ghost" projects, etc. To counter corruption, the Philippines has developed effective prevention strategies and programmes developed through broad-based partnerships. Prevention measures include inter-agency partnerships, strengthening legislation, enhanced transparency, integrity programmes, taking a sectoral approach to licensing and permitting, digitization of systems, merit-based incentive programmes, and the creation of an anti-corruption hotline. Several law enforcement measures and international cooperation and asset recovery measures were also reported.

15. SINGAPORE: Corruption in Singapore occurs predominately in the private sector, such as in construction, wholesale and retail businesses, warehousing, and logistics. In response, Singapore has undertaken measures to engage the private sector in anti-corruption efforts. The CPIB places emphasis on disgorging illicit gains by pursuing money laundering offences, as highlighted by the introduction of cases involving money laundering and the confiscation of unexplained wealth. In the current era of transnational corruption, working with other countries to seize and freeze assets is a key priority. An evolving challenge is the tracking and tracing of crypto-currencies. The participant from the Attorney General's Chambers reviewed seminal cases in the sentencing of private-sector corruption cases and explained Singapore's legislative approach to inchoate corruption offences, in which an attempt, or aiding and abetting, to commit a corrupt act is deemed as commitment of the corrupt act itself. Potential future developments include the prosecution's proposed introduction of sentencing matrices for corruption crimes and possible legislative amendments that enhance penalties for corruption.

16. THAILAND: In July 2018, the new Organic Act on Counter Corruption, B.E. 2561 came into force. The new law (i) expands the coverage of the law to include "Public Officers" (including certain judges and officers of independent organizations, and other officials prescribed by law); (ii) requires the review of corruption cases by the National Anti-Corruption Commission; (iii) requires the transfer of all corruption arrestees to the NACC office in Bangkok within 48 hours; and (iv) provides for time limits in the process of filing corruption cases in court. The "Temple Corruption Scheme", which involved defrauding the government of public funds and took place in temples throughout Thailand, was introduced to illustrate the complexity of corruption schemes. Problems faced in Thailand include the lack of manpower of investigators, time limits under the new organic law, and the complexity and difficulty of the extradition process. In response, the NACC is appointing more than 600 new investigators, and specialized corruption courts have recently been opened in Bangkok and 9 other regions.

17. VIET NAM: Property embezzlement has been, and will continue to be, a common corruption crime in Viet Nam, especially in the private sector. The Criminal Code 2005 has been revised in order to deal with the current corruption situation in Viet Nam and to meet the public's requirements for, and interest in, the legal reform process. The presentation from Viet Nam addressed the supervision of investigation, prosecution and adjudication of embezzlement cases. After introducing the substantive law and elements of embezzlement, practical tips on matters to be proven and evidence required to prove embezzlement were presented. Key matters during the supervision of the investigation process include determination of the legal foundation for

instituting criminal proceedings, collecting documents and evidence through search and seizure, preparation and interrogation of offenders, taking testimony of witnesses, conducting appraisals to establish damages caused by the corruption, and drafting the indictment. Prosecutors also need to improve their trial preparation, practice and presentation skills, such as conducting a thorough review of all documents, evidence, and witness statements, preparing for and making arguments at trial, making rebuttals and other responses.

CONCLUSIONS AND RECOMMENDATIONS

18. Corruption undermines the rule of law, erodes public confidence in the state, and hinders sustainable social and economic development. While the widespread adoption of UNCAC has led to improved anti-corruption enforcement, the increasingly transnational and complex nature of corruption has increased the challenges faced by anti-corruption practitioners, particularly in the area of international cooperation. While anti-corruption authorities struggle to overcome challenges in obtaining MLA—which range from different legal and procedural frameworks to language barriers—delays in the provision of assistance enable criminals to conceal the proceeds of corruption and evade justice. Many countries continue to face traditional forms of corruption, such as bribery, embezzlement, and smuggling. Meanwhile, new modi operandi have been evolving, such as avoiding traditional financial systems through the misuse of various forms of legitimate business transactions, the role of lawyers in corruption schemes, set-off debt, the use of money changers to transfer illicit funds, and the use of cryptocurrencies for corruption. Among these trends, private-sector corruption is becoming a greater priority in many jurisdictions.

19. To overcome these challenges, all countries are encouraged to: (i) enhance efforts to engage in international cooperation, and, in doing so, strengthen the use of informal cooperation mechanisms, direct law enforcement cooperation, and networking among anti-corruption agencies; (ii) proactively seize and confiscate the proceeds of corruption and related assets; (iii) utilize special investigation measures, such as telecommunications interception, undercover operations, cooperative agreements, etc.; (iv) provide training to respond to new corruption trends; and (v) continue anti-corruption prevention efforts, including through public education and awareness programmes.

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VISITING EXPERT'S PAPER

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THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

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I. INTRODUCTION

As we all know, crime is evolving and so do the corruption trends. Traditionally, corruption refers to moral impurity, but the concept of corruption has changed over time and varies across cultures and different jurisdictions. Corruption is a phenomenon that can occur in any country in the world. No matter whether the country is poor or prosperous, democratic or authoritarian, big or small, it cannot avoid corruption. Corruption is one such problem that has been prevalent in our country for ages. Dishonesty of the people in power and bribery at various levels is what leads to corruption. What people do not realize is that their attempts at small personal gains are greatly affecting the country's economic and social development.

Forms of corruption vary but include bribery, extortion, cronyism, nepotism, parochialism, patronage, influence peddling, graft, and embezzlement. Corruption may facilitate criminal enterprise such as drug trafficking, money laundering, and human trafficking, though it is not restricted to these activities.

The Malaysian Anti-Corruption Commission (MACC) is one of the anti-corruption agencies in the world that is venturing to combat corruption. What I am going to share here is more than most people know: how we receive information, conduct investigations and case projects and the end results. Corruption trends are evolving, people are more educated, smarter and, with the help of the new technologies, it is even easier to engage in corruption. To keep abreast with it, we need to stay ahead of the criminals.

II. PRACTICAL ASPECTS OF INVESTIGATING THE NATURE OF CORRUPTION

While great information can be received from whistle-blowers, corruption often goes unchallenged when people do not speak out about it. Witness accounts offer invaluable insights into corruption and are powerful tools in the fight against it. From exposing multi-million-dollar financial frauds to dangerous medical practices, whistle-blowers play a crucial role in saving resources and even lives.

But in some countries, blowing the whistle can carry high personal risk — particularly when there is little legal protection against dismissal, humiliation or even physical abuse. Controls on information, libel and defamation laws, and inadequate investigation of whistle-blowers' claims can all deter people from speaking out.

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Whistle-blowers are less likely to report workplace misconduct when their employers do not provide clear internal reporting channels. And in some settings, whistle-blowing carries connotations of betrayal rather than being seen as a benefit to the public. Ultimately, societies, institutions and citizens lose out when there is no one willing to cry foul in the face of corruption.

The Whistleblower Protection Act 2010 was passed by Parliament in June 2010 and brought into force on 15 December 2010. The law was enacted to combat corruption and other wrongdoing by encouraging and facilitating disclosures of improper conduct in the public and private sectors, to protect persons making those disclosures from detrimental action, to provide for the matter disclosed to be investigated and to provide remedies connected therewith. The objective of this act is to give protection to the whistle-blower in the form of confidentiality of their information, immunity from civil and criminal action and protection from detrimental action being taken against them.

The Whistleblower Protection Act 2010 provides protection to whistle-blowers who voluntarily come forward to report or reveal information on corruption activities. This Act also encourages the public from all sectors to disclose corruption related activities. The identity of the whistle-blower and the information provided are kept confidential from any party. Whistle-blowers are also given immunity from any civil, criminal or disciplinary action due to revealing the act of corruption.

The law covers any member of the public and private sectors who discloses wrongdoing, such as abuse of authority, violation of laws and ethical standards, danger to public health or safety, gross waste, illegality and mismanagement. The disclosure should be made in "good faith" based on "honest and reasonable grounds at the material time" without necessitating hard evidence from the whistle-blower. The duty of gathering evidence will be tasked to the investigation unit of the enforcement agencies to ensure that the whistleblower is not compromised. However, whistleblowers can provide evidence if it is legally available through the course of their work.

Disclosure of confidential information is punishable by fine not exceeding RM 50,000 or imprisonment for a term not exceeding ten years or both. A whistle-blower will not be subject to any civil action or criminal liability, and no administrative process can be taken against the whistle-blower for making disclosure of improper conduct. Under the act, no person shall take detrimental action against any whistle-blower or person related to or associated with the whistle-blower in reprisal for a disclosure of improper conduct.

III. POWERFUL INFORMATION OF THE WHISTLEBLOWER

A. OPS B2

'OPS B2', is a project-based investigation under the Special Taskforce (STF), Attorney General Chambers (AGC) and being reported directly to the ex-AG and monitored by the MACC Chief Commissioner and his Deputy (Operations).

This case had started in 2012, and information about the case was derived from the whistle-blower regarding the abuse of facilities in Port Klang Free Zone (PKFZ) by organized syndicates involving smuggling of some high-risk items such as alcohol and cigarettes. Furthermore, there is also information from the public which revealed that the syndicates were involved directly in the smuggling activities in PKFZ by bringing in items such as alcohol and non-taxable cigarettes into the Malaysian market. Thus, the STF with MACC have come together in comprehensive planning to ensure and implement this task as a project-based case using "Intelligence & Analysis Based Investigation (IABI)". In this case, thorough covert operations had been done for a period of more than 1 year. The purpose of the covert operations is to ensure the modus operandi and smuggling activities are clearly shown.

Instead of covert operations, we have also ventured into data analysis. We have derived the data from the PKFZ system which is ZBI (Import) and ZB2 (Export) and Malaysian Customs which is Kl, K2 and K8 forms from the 'target' companies themselves, showing that from 2011 to 2014 there were losses of customs duties in the amount of MYR 2 billion. Bank data (suspects personal and company accounts), CTR, STR and ITIS from Bank Negara Malaysia also played a big role in this analysis. All were merged together in order for us to obtain the most accurate indicative decisions before the operations launch.

We have also initiated our 'Undercover Officer' (UCO) programme as value added to data analysis. Two officers were planted as general workers in PKFZ and were tasked to monitor the movement of the transport and containers in and out from the warehouse in PKFZ. Live monitoring was also captured through CCTV from our bogus warehouse and the use of technical devices such as vehicle movement GPS (trackers) and cameras.

This operation involved almost 150 MACC personnel from a few states and divisions in MACC including the Prosecution Division.

The major operations launched on 3 September 2014. There was also involvement from the Royal Malaysian Police (RMP), Bukit Aman Special Branch. It was a collaborative operation launched together called 'Op Sting'. RMP assisted MACC to stop all the suspects' lorries (Alcohol loading) headed out from PKFZ. RMP also assisted by interrogating the suspects on the smuggling issues and corrupt payments to the customs officials.

The operations lasted for a month after the launch date. It later followed Ops B2 Phase 1, Phase 2 and Phase 3. In the operation itself, there were 10 public persons being arrested and 34 customs officials remanded. Out of 10 arrested public persons, 6 of them were protected under the Witness Protection Programme for 3 months.

Throughout the investigations, 32 senior customs officials and 1 public person were charged under Section 17 a of the MACC Act 2009 and the Penal Code in Kuala Lumpur and Shah Alam Sessions Court involving bribery of MYR 1,098,401 for 212 charges.

MACC managed to seize as cash in the amount of MYR 2,172,388.00, jewelry, 4 luxury cars, 4 lorries, alcohol products valued at MYR 200,000.00 and froze the suspects' bank accounts with the value of MYR 18,132,337.00.

This is a parallel investigation of predicate offences under the MACC Act 2009 and Anti Money Laundering offence of AMLATFPUAA 2001.

MACC is also proposing to Royal Malaysian Customs to enhance their ability in monitoring and handling the process of importing goods to the Free Trade Area (FTA) through the policy review with the assistance from MACC Consultation and Inspections Divisions. This is to improve the existing system and procedures and to avoid lack of monitoring in port and FTA.

B. OPS BS

At the end of 2014, MACC received information from another whistle-blower regarding smuggling issues involving cigarettes, alcohol, cooking oil, diesel, petrol and human trafficking in Sabah. This is due to corruption issues related to enforcement agencies there; as a result, Malaysia lost billions of Ringgit in taxes avoided by the culprits.

Hence, the renamed STF called the AML Task Force instructed MACC to continue another covert operations analysis on smuggling in Sabah. Monitoring had been done in Sabah for about 8 months. 527 individual accounts and 361 company accounts were investigated throughout the periods, which were later presented to the former Malaysian Attorney General, Tan Sri Gani Patail. Then MACC was instructed to lead the operations under codename "OPS BS".

It was a joint operation consisting of MACC, Inland Revenue Board (IRB), Royal Malaysian Police (RMP), Royal Malaysian Customs (RMC), Companies Commission of Malaysia (CCM), Ministry of Domestic Trade and Consumer Affairs Malaysia (IQDNKK), Central Bank of Malaysia (BNM), Cyber Securities Malaysia (CSM) and Eastern Sabah Security Command (ESSCOM). Technically this major operation involved 400 personnel from all the participating agencies. Almost the same analysis approach was used in this operation, such as the use of CTR, STR and ITIS data, RMC data, IRB data and data from CCM. This data was combined to ensure the right target would be raided on the operation day.

The operations launched on 15 May 2015 concurrently in some Districts throughout Sabah which included LABUAN, KOTA KNABALU, KENINGAU, TAWAU, SANDAKAN, SEMPORNA. On the same day, the amount of the frozen accounts totaled MYR 559,486,123,000.00, involving 1,623 accounts of individuals and companies. 51 locations were raided, and 3 people were arrested.

MACC seized cash for MYR 465,428.53, jewelry and other currencies worth more than MYR 1 million. MACC Sabah (State office) opened an investigation specifically for corruption payments to public officials.

RMC also managed to seize 20 containers containing alcohol products and 600 master cases of cigarettes and their transportation. The KPDNKK also seized 746,871.3 liters of diesel, diesel smuggling goods with the approximate confiscated value of MYR 1,025,614.38. For this operation itself, the IRB managed to collect taxes of more than MYR 30 million.

C. OPS BORION

Ops Borion involved one of the most high-ranked politicians in Sabah (Sabah's former Chief Minister). In this case, MACC had applied various approaches in the method of investigation, which was tailored from the quality information of the whistle-blower and informers, the use of technical informational data from the Financial Intelligence and Investigation Division (FIED) of the Central Bank of Malaysia (formerly known as the Financial Investigation Unit (FIU)), covert investigations, international joint operations and the biggest mass arrest in MACC history.

One of the most crucial roles of the FIED is to spearhead the National efforts in combating money laundering and serious crime by providing value-added contributions to national and international supervisory and enforcement agencies, formulation and implementation of a comprehensive national anti-money-laundering regime and promoting awareness of money laundering and terrorism financing issues.

The database supplied (CTR/STR/ITIS) was fully utilized in analysing and specifying the case. Instead of being a Chief Minister (CM), he also held a position at the Foundation of Sabah Trust Fund. From 2003 to 2009, he awarded 147 timber concessions to his 8 proxies through 28 companies, and the payment was directed to Singapore and Hong Kong. The corrupt payments were later being paid by the contractors to one of his trusted proxy UBS AG accounts in Hong Kong, which is the total amount of USD 47.6 million. There were three (3) accounts opened for this purpose in 2006 and 2007. The proxy who is also a prominent lawyer in Sabah was tied by the document called "Letter of Trust", and the deeds stated that this former CM was the beneficiary of the said accounts.

In March 2008, the trusted proxy was instructed to transfer all the funds from UBS AG Hong Kong to UBS AG Zurich. The transactions were discovered by JFIU Hong Kong in pre-STR disclosure and were disallowed. This investigation was also being conducted by the Independent Commission Against Corruption (ICAC) Hong Kong whereby they had made an "ex-parte application" in the High Court of Hong Kong involving the three accounts and the funds stated. The applications were granted, and its last from 30 October 2008 and was continued twice until 21 October 2011.

MACC launched an operation in May 2010, and 8 proxies were arrested. The arrest was conducted in Sabah, and the remand proceeding was conducted in Putrajaya. All of the proxies were remanded for 7 to 11 days; all of them cooperated with MACC during the remand period.

On 5 November 2018, this former CM was charged in Kuala Lumpur Session Court for 35 corruption charges under Section I I(a) of the Anti-Corruption Act 1997 for receiving bribes amounting to USD 63 million or MYR 243 million. The court allowed him to be released on bail for MYR 2 million and both his passport and diplomatic passport were surrendered to the court.

COUNTRY PRESENTATION PAPERS

Ms. Hajah Rozaimah bint Haji Abd Rahman & Ms. Yeo Mian Yie, Brunei Darussalam

***

Mr. Nuon Sothimon & Mr. Tan Senarong, Cambodia

***

Mr. Fauzy Marasabessy & Ms. Arin Karniasari, Indonesia

***

Mr. Vilavong Phomkong & Mr. Thepphathai Phanka, Lao PDR

***

Mr. Azhari Bin Karim & Mr. Premraj Isaac Dawson Martin Victor, Malaysia

***

Mr. Kap Tluang & Mr. Aung Khant, Myanmar

***

Mr. Melchor Arthur Hernandez Carandang & Ms. Jennifer Angeles Balboa-Cahig, Philippines

***

Mr. Lam Seow Kin & Ms. Chew Xizhi Stephanie, Singapore

***

Ms. Tharanee Konchanat Davison, Thailand

***

Mr. Nguyen Dang Thang & Mr. Nguyen Duc Bang, Viet Nam

BRUNEI DARUSSALAM'S PERSPECTIVE: THE LATEST REGIONAL TRENDS IN CORRUPTION & EFFECTIVE COUNTERMEASURES

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Capt (Rtd) Hajah Rozaimah Haji Abd Rahman[†]

I. INTRODUCTION

Corruption, broadly defined, is the single greatest obstacle to economic and social development around the world. The devastating effects of corruption can evidently be seen from the stifled economic growth and stagnant social conditions suffered primarily by the low-income earners within the masses. The huge financial disparity within the different levels of society resulting from corrupt practices by those in power or in positions of trust is an ever-increasing problem faced by nations worldwide. Corruption distorts markets, stunts economic growth, debases democracy and undermines the rule of law. Corruption is not a problem exclusive to the public sector. It also affects the activities in the private sector, either in transactions involving private sector actors only or in public-private sector engagements.

A. Brunei Darussalam's Stance on Corruption

Under the leadership of His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, the Sultan and Yang Di-Pertuan of Brunei Darussalam, Brunei Darussalam is a nation that places great emphasis on the need to continuously fight corruption. Combatting the evils associated with corruption is one of the utmost priorities of the Government of Brunei Darussalam in its efforts to promote progress in all areas, such as good governance, economic growth and social development.

His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, the Sultan and Yang Di-Pertuan of Brunei Darussalam has often highlighted the grave impact of corruption on the overall development of the Government, the private sector and the society at large.

In a Titah in conjunction with Brunei Darussalam's 33rd National Day Celebration, 2017, His Majesty Sultan Haji Hassanal Bolkiah Mu'izzaddin Waddaulah Ibni Al-Marhum Sultan Haji Omar 'Ali Saifuddien Sa'adul Khairi Waddien, the Sultan and Yang Di-Pertuan of Brunei Darussalam addressed the nation as follows –

> Although we have the infrastructure, technology, equipment, mechanism and a good system, if our intention is not good, the outcome will also be not good. For instance, if there is corruption in the government, it will drag the nation towards a bad state, even though the workforce is highly skillful or comprised of scholars. We should

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control this to prevent the nation from experiencing undesirable developments. We have been seeing or hearing about many untoward incidents taking place everywhere such as breach of trust, corruption and so on. Places affected by these ills face various sorts of difficulties. In this context, Brunei should be vigilant and learn lessons from it.

B. Anti-Corruption Laws

Committed to eradicate corruption from all walks of life, Brunei Darussalam enacted the Emergency (Prevention of Corruption) Order, 1981. This Order then soon became known as the Prevention of Corruption Act ("PCA"), Chapter 131.

To this very day, this legal framework has significantly contributed towards the nation's fight against corruption. Cases involving alleged corrupt activities have been investigated and prosecuted under the various offences prescribed in the said PCA.

LEGAL PROVISION	OFFENCE	PENALTY
Section 5	Corruption	Fine of $30,000 and imprisonment for 7 years
Section 6	Corrupt transaction with agents (a) Corruptly accepts/obtains or agrees to accept or attempts to obtain (b) Corruptly gives or agrees to give or offers	Fine of $30,000 and imprisonment for 7 years
Section 7	Corrupt transaction under Section 5 or 6 relates to a contract or proposal for a contract with any public body	Fine of $30,000 and imprisonment for 10 years
Section 9	Corruptly procuring withdrawal of tenders	Fine of $30,000 and imprisonment for 7 years
Section 10	Bribery of member of legislature	Fine of $30,000 and imprisonment for 7 years
Section 11	Bribery of member of public body	Fine of $30,000 and imprisonment for 7 years
Section 12	Possession of unexplained property	Fine of $30,000 and imprisonment for 7 years

An Amended Order to the PCA came into force on 22 September 2015, to which these additional provisions were inserted:

LEGAL PROVISION	OFFENCE	PENALTY
Section 12 A	Public officer's use of public funds for private purposes, giving undue preferential treatment and misusing information	Fine of $30,000 and imprisonment for 7 years
Section 12B	Public officer's wilful misconduct or neglect of duty to such a degree as to amount to an abuse of public trust in the officer holder	Fine of $30,000 and imprisonment for 7 years

C. The Anti-Corruption Bureau

The Anti-Corruption Bureau ("ACB") is a specialized, independent body established on 1st February 1982 entrusted with the main function to investigate into complaints against corruption. Under the PCA, the ACB is also conferred with powers to investigate other offences under the Penal Code, Chapter 22 and other written laws which had been disclosed during the course of investigations into corruption matters. In executing its function, the ACB has employed 3 core strategies to combat corruption namely investigation, prevention and education.

Under the provision of Section 3 of the PCA, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam shall appoint a Director who will be responsible for the direction and administration of the ACB. The provision also stipulates that the Director of ACB is not subject to any other person apart from His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam.

Since its creation, the ACB has investigated a large number of cases involving a range of offences varying from petty to grand corruption, as well as other Penal Code offences, such as forgery, criminal breach of trust, money-laundering as well as investigations involving foreign jurisdictions. The ACB is also actively engaged in promoting awareness programmes so as to educate the mass society of the dangers of corruption and to instil core values of integrity, responsibility, accountability and trustworthiness.

The ACB's close cooperation with foreign enforcement agencies has significantly contributed in the effective investigation of corruption and corruption related offences.

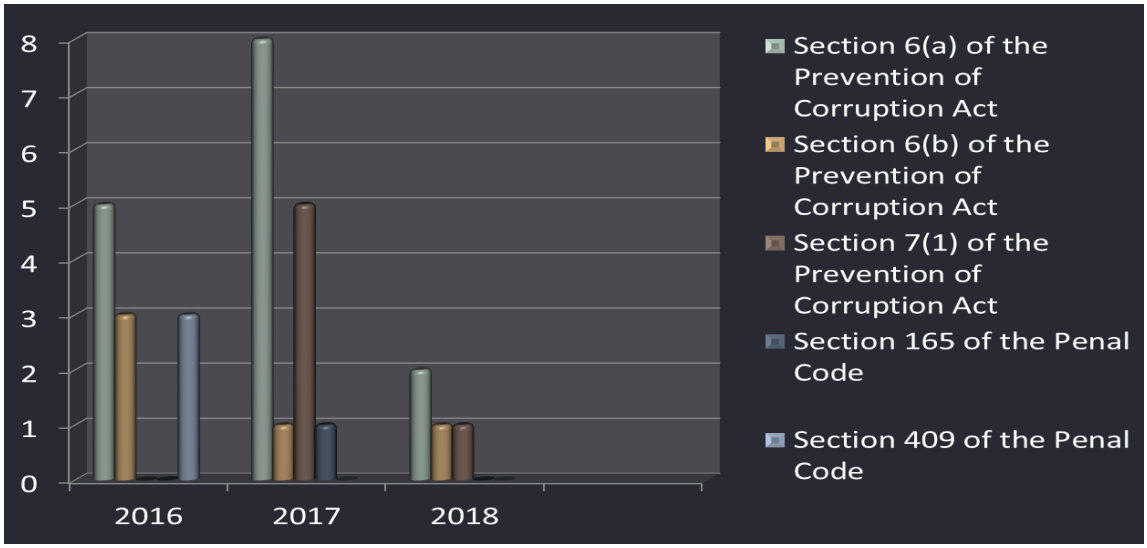
II. LATEST TRENDS IN CORRUPTION: BRUNEI DARUSSALAM'S PERSPECTIVE

A. Statistics of Cases Investigated by the ACB Concluded before the Courts of Brunei Darussalam between January 2016 and October 2018

As with other jurisdictions, the investigation and prosecution of corruption cases in Brunei Darussalam sometimes take a significant period of time to complete, due to the nature and complexity of corruption offences. Long protracted trials are also sometimes due to the unavailability of the Court, the Prosecution and the Defence to have the matters heard all at once.

Often the entire corrupt operations are undertaken under the cover of darkness and in a manner which reveals a systematic pattern of sinister premeditation – thus making such operations difficult to detect.

Below are the statistics of cases investigated by the ACB which have been concluded before the Courts of Brunei Darussalam within the period from January 2016 to October 2018:



Key:

- Section 6(a) of the PCA – corruptly accepts or obtains or agrees to accept or attempts to obtain gratification as an inducement or reward.
- Section 6(b) of the PCA – corruptly gives or agrees to give or offers any gratification as an inducement or reward.
- Section 7(1) of the PCA - Corrupt transaction under Section 5 or 6 relates to a contract or proposal for a contract with any public body.
- Section 165 of the Penal Code – Public servant obtaining a valuable thing, without consideration, from person concerned in proceeding or business transacted by such public servant.
- Section 409 of the Penal Code – Criminal breach of trust by public servant.

B. Recent Corruption Cases in Brunei Darussalam

1. A Royal Brunei Customs & Excise Officer: Mohd Sanip Bin Ura v Public Prosecutor (Criminal Appeal No. 7 of 2016)

Mohd Sanip bin Ura ("Sanip Ura") was a Royal Brunei Customs and Excise Officer whose duty included border control to prevent prohibited and restricted goods to be imported or

exported. At the time of the offence, Sanip Ura was posted at the Brunei–Malaysia Control post near the border of Miri, Malaysia. As an oil rich country, fuel is subsidized by the Government of Brunei Darussalam. The price of Dieseline fuel is BND 0.31 (USD 0.21) per litre. As with all subsidies, the export of fuel is prohibited.

Due to the low cost of fuel compared to that of our neighbouring country, fuel smuggling is a prevalent offence in Brunei Darussalam. The modus operandi of the fuel smuggling syndicate is to obtain a few Brunei Darussalam registered cars to buy fuel at the fuel station closest to the border between Brunei Darussalam and Malaysia. These cars are then required to cross the border to the nearest pit-stop for the fuel smuggling operator to syphon the fuel from the fuel tank of the said cars. This routine is then repeated by the said cars for a number of times in a single day.

Some of these cars had modified fuel tanks to increase the maximum capacity of fuel in order to avoid arousing suspicion at the Brunei Darussalam – Malaysia border.

In a joint operation between the ACB and the Malaysian Anti-Corruption Commission (MACC), undercover agents were used to pose as fuel smugglers to bribe Customs Officers in Brunei Darussalam. In November 2008, a legitimate fuel smuggler Kan was approached by officers from the MACC who had been jointly investigating him together with the ACB. Kan had been smuggling fuel and bribing Customs Officers since 2007. Kan was instructed to continue his fuel smuggling activities with another officer from MACC by the name of Lee.

In early December 2008, Kan introduced Lee to Sanip Ura at a coffeeshop in Kuala Belait, in Brunei Darussalam. During that meeting Sanip Ura told Lee that he had to pay him money at the end of every month based on the number of cars used to smuggle diesoline. If the car had a modified fuel tank, Lee had to pay $100.00 for each car and if the car's fuel tank was unmodified, Lee had to pay $50.00. Sanip Ura instructed that Lee pay him at a later date and asked Lee not to make arrangements with anyone else.

In mid-January 2009, Sanip Ura contacted Kan to ask Lee to pay him the monies that were due to him. Two meetings were arranged between Sanip Ura and Lee at a coffeeshop in Kuala Belait. During the first meeting, Lee who was wired with a pinhole camera gave Sanip Ura $200.00. Sanip Ura reminded Lee that he was supposed to pay $350 for 4 cars and Lee informed Sanip Ura that he will pay the balance on the next day. Video recording from the pinhole camera was tendered showing Lee holding money in his hand, followed by footage showing the absence of money in his hand as evidence of the handover.

During the meeting the day after, Lee who was again wired with a pinhole camera met with Sanip Ura at the same coffeeshop. Lee handed over $150 to Sanip Ura. The video recording that was tendered in Court showed Lee holding out the money in his hand and also showed footage of Lee handing over the money to Sanip Ura. It was at this meeting that Sanip Ura informed Lee that he was going to Miri, Malaysia and that he wanted Lee to arrange for him a young sexy Filipina prostitute and to provide him with Viagra tablets.

Lee and Kan arranged for a Filipina prostitute to meet with Sanip Ura at a hotel in Miri, Malaysia and also purchased Viagra tablets for Sanip Ura. A video recording of the sex between Sanip Ura and the said Filipina prostitute was tendered in evidence.

Sanip Ura was charged with two counts under section 6(a) of the PCA for accepting the bribe of $350 and gratification in the form of sexual service from a fuel smuggler and also two counts under Section 165 of the Penal Code for obtaining cash and sexual services without valuable consideration. Sanip Ura requested a trial and in 2016, he was convicted of all 4 charges and was sentenced to 12 months custodial sentence for each count under section 6(a) of the PCA charge and 6 months custodial sentence for each count under Section 165 of the Penal Code. The sentences were ordered to be served concurrently; therefore the total sentence was 12 months.

Sanip Ura appealed against the conviction and sentence. On appeal, the Appellate Court held that the conviction and sentence were proper, thereby dismissing his appeal.

2. An Education Officer: Hj Juhari bin Hj Muda @ Usop v Public Prosecutor
(Criminal Motion No. 28 of 2016)

Hj Juhari bin Hj Muda ("Hj Juhari"), a Senior Education Officer was the Acting Head of the School Feeding Scheme and Hostel Section at the Ministry of Education. One of the tasks of the School Feeding Scheme and Hostel Section was to obtain tenders from independent vendors for contractual agreements to supply foods and drinks to schools within Brunei Darussalam. Hj Juhari was also the Chairperson of the Internal Meeting at the School Feeding Scheme and Hostel Section whose duty was to ensure all tender documents are in order before submission to the Ministry of Education Mini Tender Board.

At the time in question, the Ministry of Education had just released an advertisement inviting prospective tenderers to tender for the supply of foods and drinks to a particular school in Brunei Darussalam for a period of 3 years. One Pg Hj Damit was a businessman who was trading under several business names. He was interested in obtaining a tender contract for the supply of food and drink to the school in Brunei for 3 years.

Pg Hj Damit submitted a few tenders under several different business names at competitive prices. At that time, Pg Hj Damit had a staff working under him by the name of Nurul Huda who informed him that she knew a person who can obtain the contract for him. Nurul Huda approached her friend Bibi to inform her that a business was interested in securing the tender contract for the 3 years' supply of foods and drinks to the school. Nurul Huda informed Bibi that Pg Hj Damit was willing to pay for securing the contract. Pg Hj Damit did not want Hj Juhari to know that he was the tenderer.

Bibi then approached Hj Juhari and asked him to check on the status of the tender document that was submitted by Pg Hj Damit. Bibi informed Hj Juhari that the tenderer was her relative. In a subsequent WhatsApp conversation between Bibi and Hj Juhari, Bibi informed him that the tenderer was willing to pay 5k if the tender contract was granted. Hj Juhari then arranged for Bibi to meet up with him and showed Bibi how much profit the tenderer would gain if they were awarded the contract. He asked Bibi to ask the tenderer for a higher sum of $50,000.

In subsequent WhatsApp messages between Bibi and Hj Juhari, Bibi texted him stating the figure "25". Bibi said Hj Juhari then called her to demand for $40,000, which was to be made in two payment instalments. Hj Juhari informed Bibi that he had to pay people in the Internal meeting for them to agree to Pg Hj Damit's tender.

Nurul Huda, on behalf of Pg Hj Damit, then asked Bibi to renegotiate for a one-time payment of $35,000 only. Bibi sent a WhatsApp text to Hj Juhari stating "35". After stating this figure, Hj Juhari replied saying that he will check with the others. According to Bibi, Hj Juhari then called her the next day to inform her that he agreed with the proposed payment of $35,000. On the same day, Hj Juhari also sent a WhatsApp text to Bibi to ask her if she could meet him before his 5:30 pm meeting. According to Bibi, that was when she met with Hj Juhari to pay him the said sum of $35,000.

The matter was reported to the ACB, and Hj Juhari was charged with an offence of corruptly accepting bribe contrary to Section 6(a) of the PCA. Several witnesses were called to Court to testify that Hj Juhari recommended two companies, one of which was Pg Hj Damit's company, during the School Feeding Scheme and Hostel Section Internal Meeting. Witnesses also gave evidence that subsequently, in the Ad-Hoc Committee Meeting which was held for the purpose of deciding which company to award the 3-year supply of foods and drinks contract, the Director adopted the Internal Meeting's recommendation.

During the trial, the WhatsApp conversation between Bibi and Hj Juhari was extracted using the IT Forensic Oxygen UFED software. This was helpful in painting the bigger picture especially when Hj Juhari denied ever taking money from Bibi and claimed that he did not know what the figures "25" and "35" meant even though a few messages before this she had made reference to "5k".

Hj Juhari was convicted after trial and was sentenced to 2 years, custodial sentence and was also ordered to pay a penalty of $35,000 or to serve an additional "in default" sentence of 6 months. He appealed against his conviction and sentence, but the Appellate Court held that the conviction and sentence were proper.

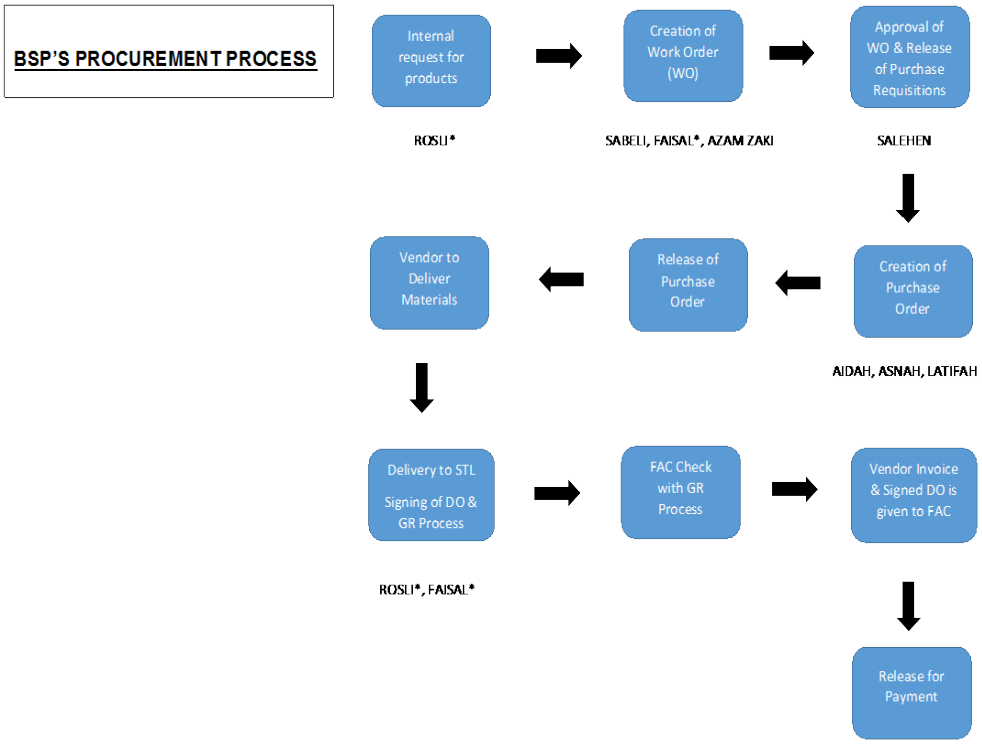
3. <u>Musfada Enterprise – BSP Corruption</u>

In 2009, Musfada Enterprise, a registered vendor of the Brunei Shell Petroleum Company Sdn Bhd (BSP) was discovered to be involved in corrupt practices with employees of BSP. Musfada Enterprise was the sole supplier of a fictitious 'Vitrone Degreaser', a detergent created by Musfada Enterprise. Investigation from the ACB revealed that Musfada Enterprise bought Falchem Degreaser, which was produced in Singapore through a "kitchenware supplier". Once Falchem Degreaser arrived in Brunei, Musfada Enterprise physically altered the name of Falchem Degreaser to Vitrone Degreaser and supplied it to BSP as an exclusive brand from 2007 to 2009. This Vitrone Degreaser was used for cleaning oil spills and dirt from the various oil tanks in BSP. The supplies of Vitrone Degreaser were based on quotation or ad hoc basis with no long-term contract.

Investigation by the ACB revealed that BSP had placed orders and paid for 5,835 drums of Vitrone Degreasers but only 383 were actually delivered to BSP. Each Drum cost BND $1,400, equivalent to USD $1,1015.54.

Musfada Enterprise was managed by a man named David Chong who had two men working under him, Thomas Ling and Steve Liew, who each played a pivotal role in defrauding BSP. In the fraudulent scheme that was run by David Chong, both Steve Liew and Thomas Ling were to pay commissions (bribes) to BSP employees who created or expedited the approval of work orders, purchase requisitions and purchase orders in the BSP Procurement process. Once the purchase orders were approved, Musfada Enterprise would send delivery orders to the relevant BSP employees. Such BSP employees would then sign the delivery orders to acknowledge the deliveries, notwithstanding the fact that there had been no deliveries or only partial deliveries made. For goods that were delivered the commission paid was usually 30% of the price for goods that were delivered, whereas for goods that were not delivered the commission paid was 50% of the price for the goods that were not delivered.

The BSP employees who merely created the Purchase Orders and were not aware of the delivery of the items were usually rewarded with a 3% commission based on the number of Purchase Orders created in a month. The commission was payable at the end of every month. The BSP employee who signed the Delivery Order would usually get $100 to $200 for each signed Delivery Order without inspection of the goods delivered. From the period of 2015 to date, Brunei Darussalam has prosecuted only 8 BSP employees out of a total of 31 employees, who each had a different role in the BSP Procurement process that had allowed Musfada Enterprise to defraud BSP into losing BND $7,354,200 equivalent to USD $5,332,352. The diagram below shows an overview of the work flow of the BSP's Procurement Process and the role that the eight employees played in the process.



The 8 employees were charged and sentenced as follows:

(i) Public v Prosecutor v Aidah binti Tengah (HCCT No. 5 of 2015)

Aidah binti Tengah ("Aidah Tengah") was charged with a total of 20 charges in respect of a total gratification of $200,200. She pleaded guilty mid-way through the trial to 15 charges in respect of gratification in the sum of $189,500 and was sentenced to 5 years' imprisonment. She was also ordered to pay Prosecution's costs and a penalty. On appeal (CA No. 18 of 2016) the sentence was reduced to 3 years because Aidah Tengah was held not to be fully involved in the whole fraudulent scheme — her exposure to the corruption was only limited to her part in the creation of the purchase orders. The sentence was also reduced because Aidah Tengah had rehabilitated herself.

(ii) Public Prosecutor v Latifah binti Junaidi (HCCT No. 18 of 2015)

Latifah binti Junaidi was charged with a total of 102 charges in respect of a total gratification of $51,407. She pleaded guilty at the first day of trial to 35 charges in respect of gratification in the sum of $36,073. She was sentenced to 3 years and 8 months' imprisonment and was also ordered to pay Prosecution's costs and a penalty. On appeal against the sentence (CA No. 4 of 2017), the Court of Appeal held that sentence imposed was proper.

(iii) Public Prosecutor v Asnah binti Sairan (Criminal Trial No. 907 of 2015)

Asnah binti Sairan was charged with a total of 16 charges in respect of a total gratification of $28,300. She requested a trial and was found guilty and sentenced to a custodial sentence of 4

years and 6 months. She has filed an appeal against both conviction and sentence, which is yet to be heard and determined by the Appellate Court.

(iv) Public Prosecutor v Sabeli bin Ismail (MCCT No. 909 of 2015)

Sabeli bin Ismail was charged with a total of 11 charges for corruptly accepting bribes totalling $51,850. He pleaded guilty at the first day of trial to 6 charges in respect of gratification in the sum of $30,250. He was sentenced to 4 years' imprisonment and was ordered to pay Prosecution's costs and a penalty. On appeal (HACM No. 38 of 2016), the sentence of 4 years' imprisonment was upheld. The Court held that Sabeli bin Ismail had played a pivotal role in the fraud against BSP.

(v) Public Prosecutor v Mohd Faisal bin Hj Ismail (MCCT No. 911 of 2015)

Mohd Faisal bin Hj Ismail was charged with 26 counts of corruptly accepting bribe totalling to the sum of $52,695. Following conviction after trial, a custodial sentence of 6 years was imposed and he was ordered to pay Prosecution's costs and a penalty. Mohd Faisal bin Hj Ismail elected not to appeal the conviction on sentence.

(vi) Public Prosecutor v Muhd Azam Zaki bin Md Zain (HCCT No. 6 of 2015)

Muhd Azam Zaki bin Md Zain was charged with 13 counts of corruptly accepting bribes totalling $110,100. Upon conviction on his own guilty plea to 5 counts in respect of gratification in the sum of $88,200, he was sentenced to 4 years' imprisonment. On appeal the Court held that the sentence imposed was proper as he was involved in the full part of the plan and had accepted considerable gratification.

(vii) Public Prosecutor v Rosli Simon (MCCT No. 910 of 2015)

Rosli Simon was charged with 11 counts of corruptly accepting bribes totalling $65,800. Following conviction after trial, the Court imposed a custodial sentence of 6 years and ordered Rosli Simon to pay Prosecution's costs and a penalty. He filed a criminal motion out of time (Criminal Motion No. 33 of 2017) to apply for leave to appeal against his sentence. On appeal it was held that the sentence imposed of 6 years' imprisonment was proper.

(viii) Public Prosecutor v Salehen Marsal (HCCT No. 7 of 2015)

Salehen Marsal was charged with 49 counts of corruptly accepting bribes totalling $200,872.13. He requested a trial and was convicted on all 49 counts. Salehen Marsal was imposed with a sentence of 6 years' imprisonment and was ordered to pay Prosecution's costs and a penalty. On appeal (CA No. 2 of 2017), the sentence of 6 years was upheld as Salehen was held to be aware of the full extent of the criminal scheme.

4. <u>Bribing Government Officers.</u>

In 2017, Nauaz Ali was a foreign national who was working in Brunei Darussalam. During an operational raid, he was found in possession of an expired Brunei National Registration Identification Card by the policeman on duty. Nauaz pleaded with the policeman to not take action against him and offered the said policeman $20. The policeman reported the matter and Nauaz was subsequently charged for an offence of bribing a policeman under Section 6(b) of the PCA. He pleaded guilty at first instance and was sentenced to a custodial sentence of 8 months.

Another foreign national, Pathmanathan Jegan Muhammad Saifullah bin Abdullah who was serving a custodial sentence for another offence, bribed a prison officer to allow him to use the officer's mobile phone with the promise to pay him 200 euros that will be wired to his account from his family in his home country. He was charged with the offence of bribing a prison officer under Section 6(b) of the PCA. Upon conviction on a guilty plea, he was sentenced to 12 months' imprisonment.

III. EFFECTIVE COUNTERMEASURES

Brunei Darussalam is not in isolation in its fight against corruption. In addition to formulating its own policies, Brunei Darussalam has also adopted best practices shared by its regional and international counterparts. Engagement in collaborative work with other foreign enforcement agencies has further enhanced Brunei Darussalam's capability in effectively combating corruption.

Brunei Darussalam has employed various countermeasures. In particular, Brunei Darussalam has embarked on a series of extensive anti-corruption awareness programmes for all levels of society. As custodian of the PCA, the ACB has been instrumental in promoting, at various levels of the Government and the private sector, and within the nation's multi-tiered education system, such programmes that instil concepts and principles of integrity, accountability, responsibility and trustworthiness. Public outreach programmes have also been conducted for the purposes of increasing anti-corruption awareness among the general public. The ACB has further devoted special attention to working with young people and children as part of a strategy to prevent corruption.

A. Effective Education and Awareness Programmes for Government and the Private Sector

Inter alia, the objectives of the education and awareness programmes for the Government and the private sector are as follows:

- to instill integrity and core values; and
- to promote awareness of the importance to fight any corrupt elements in their day-to-day dealings.

In executing its duties as the main agency entrusted and empowered to tackle corruption, the ACB has been holding dialogues and delivering talks to the following:

- To officers and staff of Government Ministries and Departments;
- To newly recruited Government officers and staff during Public Service Induction Courses;
- To newly appointed diplomatic missions of Brunei Darussalam abroad; and
- To officers and staff of statutory bodies, GLCs and private companies.

B. Effective Education and Awareness Programmes for Students at Primary, Secondary and Tertiary Levels

Brunei Darussalam has identified the children and youth as a class of individuals requiring a specialist, carefully tailored anti-corruption awareness approach. The objectives of such awareness programmes are:

- To inculcate good values at early childhood so as to serve as a basic platform for producing future responsible adults with core values such as integrity, accountability, responsibility and trustworthiness.

- To generate a more educated society with anti-corruption awareness in the longer term.

Schools provide a practical and conducive platform of opportunity to achieve these aims by education. As part of its wider and continuous outreach preventive effort to the young generation, in January 2006, the ACB launched the inclusion of Corruption Prevention Education (CPE) in the National Curriculum. This project is a landmark national programme to include anti-corruption and prevention education in public education curriculum. This programme was initiated by the ACB with the joint effort of the Curriculum Development Department, Ministry of Education. The CPE books and training materials were made in phases and have completed its modules from Year 1 in 2006 to Year 6 in 2012.

Anti-corruption lessons are taught to school students as part of their civic studies. Students continue to learn in greater depth the dangers of corruption and the importance of battling its elements from seeping through the veins of society as they progress to tertiary education. At the higher institutions, such anti-corruption lessons are embedded in the Malay Islamic Monarchy (Brunei Darussalam's national philosophy) tertiary course module.

The ACB also frequently delivers talks to students, teachers, lecturers and members of staff in Primary and Secondary Schools, as well as Universities. The ACB, in collaboration with the Centre for Promotion of Knowledge and Language Learning of the Sultan Sharif Ali Islamic University has also organized an oratory competition for higher institution students in Brunei Darussalam, with the theme "The Role of Higher Institution Students in Combating Corruption."

C. Effective Education and Awareness Programmes for the General Public

It is vital for members of the general public to be instilled with core values which are fundamental to the social and economic development of the nation. The ACB, in playing its role as the pivotal agency in eradicating corruption, has continuously delivered anti-corruption awareness talks to village heads and communities.

As a nation which practices Islamic principles in all aspects of life and governance, the harms associated with corruption are often highlighted in the religious context. To commemorate International Anti-Corruption Day, every year the Friday Prayer Sermon will touch upon the importance of fighting corruption in all segments of the society. The Sermon will be read out in all mosques throughout Brunei Darussalam. Islamic literatures addressing the ills of corruption

are also made available by the ACB in mosques throughout Brunei Darussalam. Religious talks on corruption as a vice are also often held by religious scholars.

The national television and radio channels also air anti-corruption tickers as effective and rapid means to promote anti-corruption awareness amongst members of the public.

D. Effective Preventive Measures

As a means of preventing corruption, Brunei Darussalam has set in place a number of check and balance mechanisms. Realizing that offences of corruption are difficult to detect and prove, as part of good governance, audits in both the Government sector the private sector are conducted from time to time.

Procurement of assets and services often entail tedious down-selection and award processes involving a number of individuals in positions of power and trust. As such, by having in place Procurement Tender Boards, corrupt elements can be minimalized or completely eliminated. Depending on the value of procurement, the down-selection and award processes may even have to undergo scrutiny through a multi-tiered Procurement Tender Board.

Brunei Darussalam has also made it a regulation for members of the public service to declare any such gifts received from third parties in their course of duties. Such practice is also widely adopted in the private sector as an effective means of ensuring their employees are not persuaded to act preferentially to the givers of such gifts.

E. Effective Measures for Prosecuting Corruption

The Criminal Justice Division of the Attorney General's Chambers has a specialized team of Prosecutors conducting the prosecution of corruption cases. By having a specialized team, dedicated to the analysis, assessment and prosecution of corruption cases, it is envisaged that more successful outcomes can be obtained in respect of corruption cases which are brought before the Courts of Brunei Darussalam.

To ensure that the Attorney General's Chambers provide high quality prosecution and legal advisory services, it is crucial to have continuous training for Prosecutors. Frequent participation of Prosecutors in regional corruption seminars and conferences has proven to be an effective measure in broadening the Prosecutors' knowledge and expertise. Such participations have also significantly enhanced cooperation between the local Prosecutors and Prosecutors from other jurisdictions. Therefore, the Attorney General's Chambers will continue to give such opportunities and exposures to its Prosecutors.

As part of promoting life-long learning experience, while at the same time focusing on capacity-building in respect of corruption-offence specialists, the Attorney General's Chambers have also continued to encourage its Prosecutors to enrol in master's degree programmes which offer corruption and money-laundering modules.

Another measure to ensure effective prosecution of corruption cases is by nurturing close ties and cooperation between the Prosecutors and the ACB. The Legal Clinic has been introduced early this year with the objective of providing an avenue for the Investigating Officers

to discuss their cases with the Prosecutors on a more frequent basis. Dialogues between the Prosecutors and the ACB are also held so as to enable both parties to discuss issues pertaining to the investigation and prosecution of corruption cases. It is also used as a platform to explain judgments of the Courts of Brunei Darussalam so that moving forward, both the ACB and the Prosecutors can learn and develop from the issues raised and remarked by the Courts.

The use of technology has also greatly assisted in the effective prosecution of corruption cases. IT Forensic technology has enabled the extraction of data and information pertaining to the corrupt activities. Advanced communication technology has also made it possible for the location tracking of corrupt individuals.

F. Effective Measures for Asset Recovery and International Cooperation

1. Asset Recovery and the International Framework

In Brunei Darussalam, the legislative framework that allows for asset recovery both within Brunei Darussalam and abroad is provided for in the Criminal Asset Recovery Order (2012) and the Mutual Assistance in Criminal Matters Order (2005). One of the most effective measures in international asset recovery is the existence of close networking between the Prosecutors and their international counterparts. The close network provides a platform for the expeditious processing of international requests through both formal and informal channels. It is realized that especially with the International Mutual Legal Assistance request, informal cooperation can speed up the process of a request for assistance.

Another effective measure for ensuring successful asset recovery is by way of providing adequate information to the foreign authorities when submitting requests for mutual legal assistance. In order to address this need to provide adequate information, there must be an effective mechanism that can facilitate the gathering of intelligence and collection of evidence. Benefitting from existing close international relations, Brunei Darussalam's enforcement agencies such as the ACB and the Royal Brunei Police Force are able to tap the resources and expertise of their international counterparts, which directly and indirectly contribute towards the gathering of reliable intelligence and collection of adequate evidence, sufficient to enable the requested foreign authorities to identify the types of assistance to render to Brunei Darussalam.

2. Successful Asset Recovery and International Cooperation

One example of Brunei Darussalam's successful asset recovery through international cooperation was the recovery of assets from David Chong's account in Singapore.

> MUSFADA ENTERPRISE (DAVID CHONG) – Newspaper Report
>
> The Attorney General's Chambers (AGC) has recovered over BND$600,000 from the bank accounts in Singapore of a key Brunei Shell Petroleum contractor, who was jailed for bribery in November 2013.
>
> The case marked the first time the Government of Brunei Darussalam has enforced an asset recovery order through the use of Mutual Legal Assistance, the AGC said in a press statement.

> The AGC said the recovery of the proceeds of the corruption case served as "a reminder that criminals who hide their money and assets overseas are not untouchable".
>
> The contractor, Malaysian national David Chong, who was the manager of Musfada Enterprise, was found guilty of multiple counts of bribing Shell employees in what was described by the High Court as a case involving "syndicated corruption on the large scale" between 2005 and 2009. The case was investigated by the Anti-Corruption Bureau.
>
> In addition to Chong's total jail term of six years and four months, the judge in the case, Judicial Commissioner John Gareth Lugar-Mawson, had made a Benefit Recovery Order under the Criminal Asset Recovery Order (CARO) in order to recover funds held in Chong's bank accounts in Singapore.
>
> The AGC and the Attorney General's Chambers of Singapore, both of which function as the Mutual Legal Assistance Secretariats of their respective nations, had carried out extensive cooperative work to enforce the Benefit Recovery Order.
>
> "The money is to be paid into the Criminal Assets Confiscation Fund, established under CARO which is managed by the Permanent Secretary of the Ministry of Finance," the AGC said.
>
> The AGC said the recovery of proceeds from the crime highlighted the importance of mutual legal assistance.

The successful enforcement of the Benefit Recovery Order, as demonstrated in the aforesaid criminal case, is also testament to the comprehensive and robust legal international cooperation framework that Brunei Darussalam possesses through laws such as the Mutual Assistance in Criminal Matters Order (MACMO) and the Criminal Asset Recovery Order, as well as the strong and long-standing working relationship between the Attorney General's Chambers of Brunei Darussalam and Singapore.

IV. CONCLUSION

As clearly illustrated from the aforesaid corruption cases, Brunei Darussalam adopts a 'zero tolerance' policy towards corruption. Irrespective of the amounts of bribes and gratifications offered or received, the Government of Brunei Darussalam sternly deals with such corrupt individuals by instituting prosecution against them before the Courts of Brunei Darussalam. The Courts of Brunei Darussalam have also demonstrated their firm stance against corruption and their resolve to deter others from committing corruption and corruption-related offences through the severe penalties imposed.

In his Titah in conjunction with the 2008 New Year Celebration, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam stressed as follows:

Do not assume ‘petty corruption’ does not matter, but keep in mind the risks. Small or big, little or lot, are all equally a disease, which can adversely affect the country. A country drowning in corruption is an unfortunate country.

BEST PRACTICES IN ANTI-CORRUPTION IN THE KINGDOM OF CAMBODIA: PREVENTION OF CORRUPTION IN HIGH SCHOOL EXAMS

Sothimon Nuon[*] *and Senarong Tan*[†]

I. ANTI-CORRUPTION UNIT

A. Background

The Royal Government of Cambodia first established the Unit Against Corrupt Practices on 27 October 1999, and later on the Unit was restructured and renamed the Anti-Corruption Unit on 22 August 2006 under the supervision of the Office of the Council of Ministers. On 17 April 2010, the first Anti-Corruption Law was promulgated and the Anti-Corruption Institution was established.

B. Anti-Corruption Institution

The Anti-Corruption Institution is composed of two bodies: the National Council Against Corruption and the Anti-Corruption Unit (ACU). The ACU is the operating body under which there are two general departments, each of which is composed of four departments. At present, the ACU is only located in the capital, Phnom Penh. By law, anti-corruption office branches may be established in the provinces.

**The National Council Against Corruption has the following main duties:*

- Set anti-corruption strategies and policies
- Provide opinions and recommendations for the ACU
- Monitor the work of the ACU
- Receive oral and written monthly work reports by the ACU
- Make reports on the anti-corruption work to the Prime Minister.

**The Anti-Corruption Unit has the following main duties:*

- To work independently and serve as the operating body against corruption
- The only competent authority to investigate all forms of corruption
- Create an action plan against corruption in line with the strategy and policy of the National Council Against Corruption
- Lead the work of prevention and fighting corruption
- Keep confidential all information sources related to corruption (in principle, it is better to lose a case than to break confidentiality)
- Take appropriate measures to protect individuals who provide information related to corruption.

[*] Deputy Director General, General Department Operations, Anti-Corruption Unit, Cambodia.
[†] Prosecutor, General Prosecution's Department, Attached to Court of Appeal, Cambodia.

C. Rights and Investigative Power of the ACU

- ACU officials are empowered as Judicial Police Officers
- Investigate all kinds of corruption and other offences involving facts related to the corruption being investigated.
- Investigate other offences as ordered by a court
- The President of the ACU or his representative is empowered to lead and coordinate the mission of corruption investigation in the name of the prosecution to the point of the arrest of suspects
- After the arrest, the prosecution plays the role as stipulated in the provisions of the Criminal Procedure Code
- Once the investigation is completed, the ACU shall refer all investigation work to the prosecution for further action in accordance with the provisions of the Criminal Procedure Code
- If there are sufficient corruption leads, the ACU is empowered to:

    - Check and observe bank accounts and other similar accounts
    - Check and order the provision or copying of authentic documents or individual documents, or all banking, financial and commercial-related documents
    - Monitor, oversee, eavesdrop, record sound, take photos, and engage in phone tapping
    - Check documents, including those stored in an electronic system
    - Conduct operations aimed at collecting flagrant evidence

The above measures will not be considered as violations of professional secrets. Bank secrecy is not sufficient justification for failing to provide evidence related to corruption offences under the provisions of the Anti-Corruption Law.

- The court shall quickly start the trial of corruption cases
- Request relevant authorities to suspend the work of individuals for whom sufficient evidence of corruption has been found
- Request the competent authority to extradite suspects who abscond abroad
- Request the Royal Government to order the General Prosecutor of the Appeals Court or the Prosecutor of a municipal or provincial court to freeze the assets of individuals who commit corruption offences.
- Detain suspects at any convenient place in addition to the ACU detention rooms or request the competent authority to take custody of the suspect.

D. Mechanism to Deal with Complaints

- The ACU has not set any form of making complaints. The public can lodge complaints in any form.
- The ACU accepts all kinds of complaints, anonymous or identified, related to corruption
- All complaints go through the complaint office
- Some particular complaints, urgent or special, may go directly to the ACU President
- All complaints received shall be submitted the next day at the Analysis Meeting (Breakfast Meeting) every morning.

- Complainants or representatives are invited on a voluntary basis to take part in the Analysis Meeting.

E. Asset and Liability Declaration Regime

- Members of the Senate, the National Assembly and the Royal Government
- Armed forces, police officers (rank of colonel), civil servants (rank of department director)
- Judges, prosecutors, notaries public, clerks and bailiffs
- All ACU staff and leaders

The declaration shall be made every two years, 30 days after taking office and 30 days before leaving office. In case the declaration cannot be made before leaving office due to dismissal, the declaration shall be made 30 days after the dismissal.

F. Disciplinary and Internal Control Board

- ACU staff may not dine out without giving notice or permission from the ACU President and Chairman of the Disciplinary and Internal Control Board (except family dining)
- No need to report in case of dining out between ACU staff but payment shall be equally shared or the higher ranking person must bear the payment.
- A gift worth more than 25 dollars shall not be accepted but, if received, must be reported to the President and the Chairman of the Board
- Gifts not accepted shall also be reported.

G. Internal Investigation Section

This section is under the supervision of the President of the ACU and is entrusted with the work of overseeing and monitoring the work and activities of all ACU staff to spot irregularities.

II. OBSERVATION OF HIGH SCHOOL GRADUATION EXAMS

A. Background

In Cambodia, general education ends at grade 12 where students must pass a strict exam before they start university. The ACU started to cooperate with the the Ministry of Education, Youth and Sports to observe high school exams since 2014. The exam takes place in all 25 provinces and the capital.

1. Work Procedures

The national high school exam for academic year 2018 took place from 20-21 August with a total number of 117,062 candidates. There are 196 exam centres including 4,718 rooms throughout the country. As the ACU office is only located in the capital, Phnom Penh, and has a small number of staff, volunteers are invited to take part in the observation along with the ACU staff. The ACU staff lead the observation work. The volunteers include university students, civil servants, monks, civil society organizations, foreigners etc. who need to perform the work in accordance with the law and regulations.

In principle, one exam room needs one volunteer to do the observation, and one exam centre needs one ACU official to take charge of the observation.

For this academic year 2018 there were 4,718 volunteers plus some reserve volunteers. 196 ACU staff members have been deployed to all 196 exam centres throughout the country plus two ACU leaders who are responsible for overseeing the observation work in each province.

2. Conditions and Benefits for Volunteers

All volunteers are responsible for their own expenses during the observation work, and they may not have any conflict of interest (no relatives sitting for exam at the exam centre they work for). Meanwhile, the volunteers must go through an orientation training course before their observation work starts. As benefits, volunteers are provided with appreciation certificates and a banquet after the observation work.

3. Rights, Privileges and Duties of Volunteers

Volunteers are entitled to use phones and recording instruments within the exam centre while other people, such as invigilators (exam supervisors), are not allowed to use them. Moreover, they can move freely in the exam centre and enter the exam room in case of flagrant corruption. Volunteers are to take notes and report irregularities to the competent agents, especially the ACU officials at the centre. Finally, they have to make an evaluation of the process of the exam.

B. Observation (During Exam, Paper Marking and Result Announcement)

1. During the Exam

The volunteers observe all kinds of irregularities occurring outside and inside the exam centre and inside the exam room, for example, cheating or circulating answers. If there is any irregularity, they shall report it to the right people for proper action. The observation of the exam room is to ensure there is no cheating.

2. Marking Process

During the marking process, volunteers are not invited to take part, as at this stage fewer people are needed to observe. The ACU officials take sole responsibility for the observation. We observe the exam paper coding, the sealing of exam papers and rooms. We also observe the opening of the sealed exam papers and rooms. For the observation of the performance of the marking of exams by teachers, one ACU official is needed to observe each teacher marking exams, standing side by side (verifying the answer keys and the marking). And to make everything more secure, CCTV is installed to monitor the marking process.

3. Computerizing of Marks

At this stage people are computerizing the candidates' marks. To make everything run smoothly, the ACU officials observe the computerized marking process in case there are any marking errors on the paper and or on the computer. At the end of each marking session, the ACU also observes the opening and closing of the sealed marking rooms.

4. Announcement of Results

Before the exam results are officially released by the Ministry of Education, Youth and Sport, the ACU officials engage in last minute cooperation by verifying the marks on the

computer with the marks on the result list of candidates to make sure the right marks are recorded for the right person.

III. AN ACTUAL CORRUPTION CASE

A. Factual Summary (2 June 2014)

This case is related to a government official who was working in the Ministry of Post and Telecommunication. In his position as a Secretary General, he was collecting one hundred thousand US dollars from the Ministry account. This amount of money was deposited by the Cambodia Advance Telecommunication Co. Ltd. (CADCOMMS), which is operating its business in Cambodia. The Ministry of Post and Telecommunication had requested the Anti-Corruption Unit to conduct an investigation into the disappearance of this amount of money. The Anti-Corruption Unit found that a large amount of money in a closed envelope was collected by the Secretary General, and the ACU also found more of his assets which he had not declared truthfully to the ACU. On 10 October 2014, he was found guilty and convicted by the Phnom Penh Municipal Court. He was sentenced to seven years' imprisonment and a fine of 200,000 US dollars. 500,000 US dollars were confiscated from his account.

B. Court Judgment

On 17 November 2014, this case file was appealed by the accused, and the Court of Appeals upheld the verdict of the lower court. In July 2016, the Supreme Court affirmed the decision of the Court of Appeals. Currently, he is serving his sentence in the Phnom Penh Correctional Center.

IV. CONCLUSION

Since our taking part in the observation of high school exams in 2014, one can see the improvement in the quality of the students, as they dedicate more time to their studies. This new trend has drawn support from parents and the society as a whole and from the students themselves. In the past, students took risks bringing along copies and other related documents, but now one can see only a very few among 1,000 try unsuccessfully to take risks. The reform not only encourages grade 12 students to work hard but also students at all levels including grade 1. The ACU does not only engage in the observation of grade 12 exams but also exams for judges, clerks, lawyers, civil servants, bidding, etc., which, as a result, has led to the same remarkable achievements obtained as for high school exams.

CORRUPTION PREVENTION AND ERADICATION STRATEGY WITH REPRESIVE AND PREVENTIVE EFFORTS

Fauzy Marasabessy[*]

I. INTRODUCTION

Indonesia is known as a country with various advantages: its natural resources, demographic size and strategic position on the world map. However, all the benefits are not directly proportional to the acceleration of development and increase of people's prosperity. From various possibilities as a driving factor, one of them is corruption. The problems faced by Indonesia related to corruption have been described by World Bank East Asia:

> Indonesia suffers from a very poor international reputation regarding corruption, ranking near the bottom alongside the most corrupt countries in the world. It is also perceived as doing worse over time in controlling corruption. Indonesians agree. They liken corruption to a "disease to combat, denouncing every known case." While these perceptions may be overly influenced by the new openness of a democratic Indonesia, corruption is high and imposes severe social and economic costs. It also contributes to citizens' loss of trust in governments. Greed eventually destabilized this careful construct, and the country has paid a heavy price in terms of a sharp accumulation of public debt, a damaged environment and above all, weak and corrupt institutions.[1]

However, it should be appreciated that eradicating corruption has become more progressive in the last decade since the fall of the Suharto regime. Following the reform era, corruption prevention and eradication (CPE) have become part of the main focus of the Indonesian government.

The determination to carry out CPE began with the establishment of new implementing agencies such as the Corruption Eradication Commission (KPK), the Financial Transactions Analysis and Report Center (PPATK), the Witness and Victim Protection Agency (LPSK) and a number of Anti Corruption Task Forces arround the country by Police Departements and the Attorney General Office. Government initiated and consolidated many policies, and simultaneously internalized community awareness.

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[1]World Bank East Asia Poverty Reduction and Economic Management Unit <http://siteresources.worldbank.org> accessed 17 Nov. 2018, Combating Corruption in Indonesia Enhancing Accountability for Development October 20, 2003, page 27.

The Attorney General Office as the Public Prosecution Service is the government institution that exercises the power of the state specifically in terms of prosecutorial power. As an institution with the authority in law enforcement and justice, the Attorney Service has a wider core of duties and powers, from investigation of special crimes up to execution of court sentences. These are added to the duties to maintain public order and stability, and supervision of religious and traditional beliefs which might be a threat to the state and the general public.[2]

With numerous duties applying to the legal field, the Attorney Service, as one of Indonesia's law enforcement institutions, is demanded to perform law enforcement roles that are free from corruption, collusion and nepotism, the upholding of the rule of law, the protection of the public interest, as well as the preservation of human rights. Referring to Legislation No. 16/2014, the Attorney General Office, as a government institution exercising the prosecutorial power of the state, must be independent in performing the functions, duties and powers, unbounded to any influence, either from the governing power or other parties (article 2 paragraph (2) Legislation No. 16/2004) in order to guarantee the professional service of the Attorneys. The order is directing the Attorney General duties and powers as stipulated in the article.[3]

> From year to year, the Public Prosecution Service is developing and reforming so as to adjust itself in line with new legislation and to the expectations of the public. Thus, in 2011 the Public Prosecution Service adopted a series of measures to ensure maximum and optimal performance of its duties. With the passing of 2011, the Public Prosecution Service needs to map out the various measures and efforts that were adopted or made so as to identify the level of achievement of the targets adopted at the start of the year. This is particularly true as regards the core business of the Public Prosecution Service, namely, the handling of cases involving crimes of corruption.
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> For the Public Prosecution Service, the effort to achieve targets that accord with the expectations of the public is a far from easy challenge, but one that must nevertheless be tackled. The Public Prosecution Service is all too aware that the process of dealing with cases is not as easy as some imagine. The frequency of various types of crimes and violations is continuously increasing, as is the complexity of crimes. There have also been reforms of our modus operandi, including as regards the proving of *mens rea* and *actus reus*. The issue of why the Public Prosecution Service as an institution regularly faces constraints in the prosecution of crimes shall be one of the principal, often-discussed topics on the work of the Public Prosecution Service.
>
> The challenges facing the Public Prosecution Service in the discharge of its duties are not only external in nature, but also internal. Based on an internal approach, the Public Prosecution Service is implementing reforms in all line units, both at the center and in the regions, including as regards the Service's personnel. Meanwhile, the external challenges, such as criticism, are regarded by

[2] Attorney General RI, *Annual Report 2017*
[3] Ibid.

> us as constructive and valuable input that is of great benefit to us in our efforts to reform the Public Prosecution Service. For that reason, the Public Prosecution Service is engaged in a continuous process of change through the optimization and honing of strategies for the handling of corruption cases so as to recover state funds and increase state revenue.[4]

According to article 30 of Law Number 16 of 2004 on the Public Prosecution Service, the duties and powers of the Public Prosecution Service in the criminal arena are as follows:

> a. To conduct prosecutions;
> b. To enforce judicial orders and decisions of final and conclusive effect;
> c. To conduct supervision of those serving conditional sentences, placed under supervision orders, or released on parole;
> d. To investigate certain types of suspected crimes as stipulated by law;
> e. To complete certain types of case files, and for such purposes to conduct additional investigations prior to the forwarding of such files to the court, which investigations are in practice carried out in condition with the investigators.[5]

Economic growth and national development as efforts to increase society's wealth, will improve as long as the law is enforced. Otherwise, law could be functionable and accommodate justice if economic growth and society's wealth are increasing. Good law enforcement in all aspects can give chance and opportunity to development stake holders to make innovation and creation without any fear.

Law should be responsible and anticipate changes in society. In the law enforcement context, responding to and anticipating problems is known as prevention and repressive action if done together. The conclusion about the connection between prevention and repressive action basically makes sense, because preventive tasks could not be effective without firm repressive action for any violations.

II. MAIN DISCUSSION

A. Corruption prevention and eradication (CPE) in Indonesia.

Prevention and eradication of corruption (CPE) as a national policy is a form of the government's commitment to run a clean and dignified country. For that reason, it is the determination of law enforcement officials to implement it. The determination to implement the CPE is a persistent and strong commitment to create a government that is clean and has integrity.

Effort in CPE by the Government of Indonesia as explained by UNDOC Indonesia below:

> Efforts in corruption prevention and eradication (CPE) actually began long ago during the era of the Soekarno administration (with the enactment of

[4] Public Prosecution Service of the Republic of Indonesia, 2011 Annual Report, page 2.
[5] Ibid. at VIII.

> Government Regulation in Lieu of Law 24/1960 on the Prosecution, Investigation, and Examination of the Crime of Corruption) up to the Soeharto administration (with the enactment of Law 3/1971 on Corruption Eradication). During the era of reform, the efforts in CPE grew more intensive after the government ratified the United Nations Convention Against Corruption 2003 by Law 7/2006. In addition, the government also issued a number of Presidential instructions as well as a mandate regarding CPE and established several agencies to implement and support the CPE efforts, such as the Corruption Eradication Commission, the Financial Transactions Analysis and Report Centre, and the Witness & Victim Protection Agency. Over the last four years, the Government has formulated a National Strategy for Corruption Prevention and Eradication (Nastra CPE) consisting of long-term objectives and medium term objectives. Nastra CPE provides direction and a source of reference for the various CPE efforts which is more comprehensive for all the stakeholders. Good reference is necessary in order to have a concrete impact on the improvement of welfare, sustainable development, and the consolidation of democracy. [6]

According to the National Strategy, CPE has both a long-term vision and medium-term vision. The vision for the long term (2012-2025) is: "to create an anti-corruption nation that is supported by a system of cultural values with integrity", whereas for the medium term (2012-2014) the vision is "to create a government that is free from corruption, and having the capacity to prevent and take action against corruption and a system of integrity as a cultural values". The long-term vision and medium-term vision shall both be realized in all domains, that is, within the government in a broad sense, the civil society, as well as the business world.

The vision is expressed in the following missions:

a. To build and establish a system, mechanism, capacity for preventing and taking action against corruption which is integrated on a national scale;
b. To reform the national laws and regulations that support CPE in a consistent, consolidated, and systematic manner;
c. To build and consolidate a system and mechanism for confiscating the assets gained by corruption through effective national and international cooperation;
d. To build and internalize an anti-corruption culture among the government structure and the society; and
e. To develop and publicize a system for reporting the performances in implementing Nastra CPE.[7]

The Vision and Mission are then formulated into six strategies as follows:

a. Prevention;

[6] Government of Indonesia – Presidential Decree No 55 Year 2012 Annex National Strategy on Corruption Prevention and Eradication 2012-2014 and 2012-2025, provided by UNODC Indonesia, page 3.
[7]

b. Law enforcement;
c. Harmonizing the Laws and Regulations;
d. International Cooperation and Asset Return Based on Court Verdict;
e. Anti-Corruption Education and Culture; and,
f. Mechanism of Reporting Corruption Eradication Actions.

The two previous strategies, prevention and law enforcement, are the main themes of this paper.

1. Prevention

Corruption is still massive and systematic. Its practice can occur everywhere, within government agencies, private agencies, and even in day-to-day life. In view of such conditions, it is only fitting that the prevention of corruption be given the position of priority as the first strategy. Through a prevention strategy, it is hoped that other steps will come forth as contributions for improvements in the future. This strategy is the answer to an approach which is more focused on repressive action. The paradigm for development of a repressive approach is that it provides a punitive effect on the perpetrator of the crime of corruption. Unfortunately, however, the repressive approach has apparently not yet been able to reduce corruptive behaviour and practice systematically and on a massive scale. The success of the prevention strategy is measured by the increase in corruption perception index value and the rate of starting businesses.[8]

2. Law Enforcement

There are still many corruption cases that have not yet been completely resolved, yet the interest and attention of the public has been drawn to such cases for a long time, and they expect to see a fair settlement. When law enforcement is inconsistent in its positive law, it will consequently affect the degree of trust of the community towards the law and its apparatus. When trust is weak, the public will be driven towards forming the opinion that the law can no longer be trusted as a means for settling conflicts. People will tend to settle their conflicts and problems in their own way which, unfortunately, is often in opposition with the law. Also, when there are other parties who take advantage of this inconsistency in law enforcement for their own interests, it aggravates the situation even more. The absence of trust in the community naturally creates a sense of dissatisfaction and the feeling that the legal institutions and their apparatus are unfair. And at any time when there are attempts to improve law enforcement in Indonesia, this condition will be an obstacle in itself. For this reason, the settlement of corruption cases that have attracted the attention of the public must, absolutely, be accelerated. The rate of success of this strategy is measured by the conviction rate in courts handling the cases of crime as a corruption.[9]

. . . .

[8] Ibid.
[9] Ibid.

The focus of priority activities related to improvement of law enforcement mechanisms in order to improve public trust towards the authorities and law enforcement agencies are:

a. Strengthening and improving the consistency of legal and administrative sanctions for the actors as well as law enforcement officers who deviate and abuse their authority or carry out corruption crime.

b. Strengthening of legal sanctions against abuse of authority, for instance by returning assets of corruption and paying for damages caused by the said abuse of authority.

c. Strengthening the coordination of handling of corruption cases among law enforcement agencies with the support of a comprehensive IT (e-law enforcement).

d. Anti-bribery and corruption regulations in the professional code of ethics for lawyers, public accountants, tax consultants etc.

e. Giving heavier sanctions for bribery performed by professionals having codes of ethics.

f. Revocation of license, return of profit, and compensation for entrepreneurs / individuals who bribe.

g. Application of reverse burden of proof on unexplained wealth.

h. Facilitate the process of obtaining bank information by law enforcement agencies in the framework of corruption eradication.

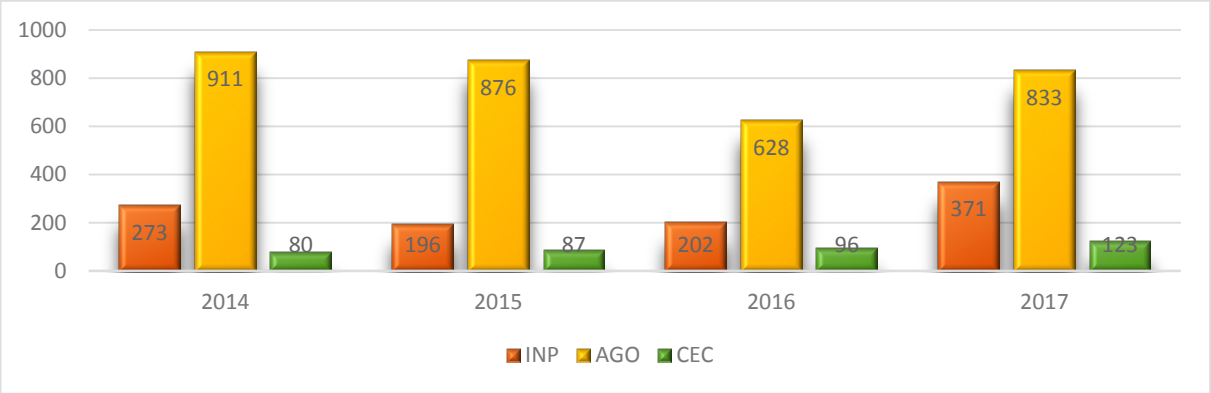
i. Limiting remissions granted to perpetrators of corruption.

j. Consistency of law enforcement in all regions.[10]

These efforts have begun to show results: The determination to eradicate corruption is widespread throughout Indonesia. This is evident from the increased amount of state funds/assets that have been saved each year as the result of prevention and the settlement of corruption cases brought to court. For comparison, the following chart shows the number of corruption cases handled by the Indonesian National Police, the Indonesian Prosecution Service and the Corruption Eradication Commission over the last four years:[11]

[10] Ibid.
[11] Based on CEC RI Repression Division data.

Number of Corruption Cases
Handled by Law Enforcement Agencies



B. Team of Aide, Governance Security and Central Development (TP4P) and Team of Aide, Governance Security and Regional Development (TP4D) as a prevention effort.

In the presidential speech during the general assembly of the House of Representatives and the Regional Representative Council on August 14, 2015, President Joko Widodo expressed national reconciliation as an effort to conclude the cases on severe violation against human rights in the past by means of establishing a Reconciliatory Committee for the cases of severe violation of human rights. The Team of Aide, Governance Security and Central Development (TP4P) and the Team of Aide, Governance Security and Regional Development (TP4D) serve as guardians and security forces for the government and development to accelerate national development. The decline in Indonesia's economic growth that reached 4.67% within the 2nd quarter of 2015 indicated weakening in the national economy.

As a response and to make concrete steps to eradicate corruption with prevention efforts, the Attorney General Office in performing the Attorney Service duties and powers on prevention, established the Team of Aide, Governance Security and Central Development (TP4P) in the Attorney General Office and the Team of Aide, Governance Security and Regional Development (TP4D) in the Provincial Attorney Services (KEJATI), and the District Attorney Services (KEJARI) throughout Indonesia with the objective to exhort acceleration in budget disbursement.[12]

To accelerate development in Indonesia, RI. Attorney General, H.M. Prasetyo always encourages the members of his group to upgrade the performance of TP4P and TP4D. Implementing an Attorney General order in the 2nd quarter of 2018, the number of TP4D activities increased from 294 to 607 activities; meanwhile, TP4P increased from 19 to 28 activities. In line with the activities, project value also experienced an increase. With TP4D assistance, IDR. 69,197 Billion succeeded and was secured from leakage and misuse, while TP4D IDR. 20,174 Billion. The Attorney General said that TP4 was a means to put law enforcement in line with state policies in implementing development.

[12] Attorney General RI, *Annual Report 2015* at 2-3.

C. The Special Task Force for Countermeasure Acts and Disposal of Corruption Cases (Satgassus P3TPK).

Performance of duties and functions in the special crime division is strongly related to the development agenda within the extent of the prevention and eradication of corruption as stated in the 2015-2019 Mid-Term National Development Planning (RPJMN) that is directed to synchronizing of regulations against corruption, intensification of international collaboration in asset seizure, protection for justice collaborators, improving the effectiveness of various strategies for the prevention and eradication of corruption in ministries, institutions, and local government by means of employing the national strategy for the prevention and eradication of corruption education on anti-corruption and supervision of public service. Aligned with the 2012-2025 Long-Term National Strategy for the Prevention and Eradication of Corruption and the 2012-2014 mid-term stated in Presidential Order No. 55/2012, the Attorney General Office has been implementing preventive and countermeasure activities to eradicate corruption. Preventive Measure in Eradication of Corruption Crime Cases throughout 2015, preventive measures to eradicate corruption within the Attorney General Office have been done through the coordination with all divisions (Special Crime, General Crime, Intelligence, Civil and State Administrative, Supervision, Development). Implementation of activities comprise:

- Ensuring transparency and accountability of The Attorney Service case disposal by usage of information technology based case disposal system;
- Strengthening of Network for Anti-Corruption, Collusion and Nepotism Community (Jaringan Masyarakat Anti KKN);
- Management of e-Procurement for goods and service and certification for Goods and Service Procurement Expert;
- Delivered Legal Information and Outreach, which one of the materials was Countermeasures Against Corruption and Preventive Actions;
- Conducted mapping for corruption high risk corporations to eradicate corruption crime cases;
- Conducted outreach to all The Attorney Service networking on prosecution acts against multiple layered crime cases of conjoined crimes of corruption and money laundering.

The concrete steps taken by the Attorney General Office in performing the Attorney Service duties and powers in law enforcement by the Special Task Force for Countermeasure Acts and Disposal of Corruption Cases (Satgassus P3TPK), as an effort to strengthen the presence of the state in eradication of corruption. Corruption is one of the many challenges that must be confronted. To rise against the challenge, the Attorney General Office has formed the Special Task Force for Countermeasure Acts and Disposal of Corruption Cases (Satgassus P3TPK) in the Attorney General Office to perform countermeasures for corruption cases.

The establishment of P3TPK has also become the triggering effort to eradicate corruption that occurs within all of the Attorney Service task forces throughout Indonesia. The achievement of the countermeasure acts in corruption cases that occurred within the Attorney Service taskforces throughout Indonesia is summarized as below:

Achievement of Corruption Prosecution
Period January – July 2017[13]

NO	ATTORNEY OFFICE	PROSECUTION By Cases Origin		RECOVERED STATE'S WEALTH(IDR)
		AG for Special Crimes Department	Police Departement	
1	2	3	4	5
1	AG.FOR SPECIAL CRIMES	44	16	192,711,823,105.00
2	N.A.D (ACEH)	18	9	6,629,105,846.00
3	NORTH SUMATERA	46	29	150,000,000.00
4	WEST SUMATERA	4	14	321,195,535.00
5	RIAU	23	23	27,958,827,795.32
6	JAMBI	22	16	1,286,558,522.00
7	SOUTH SUMATERA	27	5	2,051,763,174.00
8	BENGKULU	8	12	2,740,323,354.00
9	LAMPUNG	15	21	2,441,227,332.35
10	DKI JAKARTA	33	25	3,743,314,500.00
11	WEST JAVA	26	26	1,802,870,296.90
12	CENTRAL JAVA	22	28	7,203,653,558.47
13	D.I. YOGYAKARTA	17	4	851,593,200.00
14	EAST JAVA	82	57	87,366,341,726.00
15	BALI	9	5	6,414,647,572.00
16	NTB	8	12	647,555,475.07
17	NTT	22	14	1,977,253,942.00
18	WEST KALIMANTAN	16	5	6,094,063,940.42
19	CENTRAL KALIMANTAN	28	15	6,577,913,475.03
20	SOUTH KALIMANTAN	8	8	18,042,219,383.93
21	EAST KALIMANTAN	21	14	7,938,829,525.00
22	NORTH SULAWESI	9	12	4,289,133,561.00
23	CENTRAL SULAWESI	17	12	0.00
24	SOUTH EAST SULAWESI	39	10	2,190,859,700.00
25	SOUTH SULAWESI	59	49	53,059,383,608.00
26	MALUKU	16	6	670,080,000.00
27	PAPUA	55	29	2,298,308,122.00

[13] Based on Directorate of Prosecution, Junior Attorney of Special Crimes Office data.

28	BANTEN	9	6	3,601,581,473.20
29	BANGKA BELITUNG	10	4	2,717,056,923.00
30	GORONTALO	4	2	0.00
31	NORTH MALUKU	9	4	17,626,803,257.00
32	KEP. RIAU	6	4	3,056,904,166.00
AMOUNT		**732**	**496**	**474,461,192,068.69**

Countermeasures still have strategic value to regain public trust in institutional performance of the Attorney Service. From the aspect of implementation, the Attorney Service has attempted to carry out 'at cost system' in providing budget to operate the acts of countermeasures against corruption. The Attorney Service set the conditions of existence of qualitative improvement in the handling of corruption crime cases, from the phase of investigation, examination, prosecution and execution, so as to make the eradication of corruption not merely about the increased numbers of cases disposed but also about the observation of the quality of case management. Eradication of corruption is not only to enable penalization of the perpetrators but also to enable the recovery of loss to the state's wealth. Wealth and assets of the perpetrators will be confiscated for evidence to be deliberated in the charge for restitution. Reformative steps of bestowing full power to each Head of Provincial Attorney Service and Head of District Attorney Service as leaders at the regional level for controlling the handling of corruption case crimes were expected to enable smooth and faster handling of corruption crime cases devoid of the need to endure lengthy bureaucratic lines without abandoning local wisdom by putting conscience forward and delivering proper reports of the implementation to the superior level.

III. CONCLUSION

Law enforcement needs to be supported by an adequate regulatory framework to ensure that law enforcement can fulfill the public's need for justice and that suspected criminals of corruption are not fleeing, until corrupted state assets are safe. Supervision of the institutions, officials, and the elements of law enforcement related professions, also needs to be reinforced through public participation. Public participation, either as complainant or witness, is still not supported by legal protection that should be duly received. Complaint mechanisms for the community are not well established, as well as transparency of settlement of corruption cases. These factors increasingly worsen existing conditions. In view of such conditions, the corrective measures with strategies that can address these issues are urgently needed in order to optimize law enforcement. Therefore, in addition to the efforts in corruption prevention, it is reasonable that law enforcement be placed as the second pillar of the Nastra-CPE. Objective Completion of corruption cases consistently and in accordance to the applicable laws to restore public trust in just and transparent law enforcement.

This law enforcement process starts from the process of submitting a complaint, to pre-investigation, investigation, prosecution until execution of verdict. The success of this strategy is measured through the achievements of the Corruption Law Enforcement Index, which covers five sub-indicators as follows:

a) Percentage of the settlement of corruption complaints, accounted from the number of corruption complaints raised to the pre-investigation stage compared with the total number of complaints received by law enforcement officers;
b) Percentage of the settlement of corruption pre-investigations, accounted from the number of corruption pre-investigations raised to the investigation stage compared with the total number of corruption cases under pre-investigation;
c) Percentage of the settlement of investigations, accounted from the number of corruption investigations raised to the prosecution stage compared with the total number of corruption cases under investigation;
d) Conviction Rate, accounted from the number of guilty verdicts on corruption cases compared with handover of corruption case dossier to the court;
e) Percentage of the settlement of execution of verdicts, accounted from the number of verdicts in execution (body) compared with the total number of legally binding corruption case verdicts. In its implementation, this strategy requires good support and coordination from the concerned law enforcement agencies, including the Police, the Attorney's Office, the KPK and the Supreme Court.[14]

Aligned with the 2012-2025 Long-Term National Strategy for the Prevention and Eradication of Corruption and the 2012-2014 mid-term stated in Presidential Order No. 55/2012, the Attorney General Office has been implementing preventive and countermeasure activities to eradicate corruption. Preventive Measures in Eradication of Corruption Crime Cases throughout 2015, preventive measures to eradicate corruption within the Attorney General Office have been done through the coordination with all divisions (Special Crime, General Crime, Intelligence, Civil and State Administrative, Supervision, Development). Implementation of activities comprised:

- Ensuring transparency and accountability of the Attorney Service case disposal by usage of the information-technology-based case disposal system;
- Strengthening of the Network for Anti-Corruption, Collusion and Nepotism Community (Jaringan Masyarakat Anti KKN);
- Management of e-Procurement for goods and service and certification for Goods and Service Procurement Expert;
- Delivered Legal Information and Outreach, which one of the materials was Countermeasures Against Corruption and Preventive Actions;
- Conducted mapping for corruption at high-risk corporations to eradicate corruption crime cases;
- Conducted outreach to all the Attorney Service networking on prosecution acts against multiple layered crime cases of conjoined crimes of corruption and money laundering.

[14] Government of Indonesia – Presidential Decree No 55 Year 2012 Annex National Strategy on Corruption Prevention and Eradication 2012-2014 and 2012-2025, provided by UNODC Indonesia.

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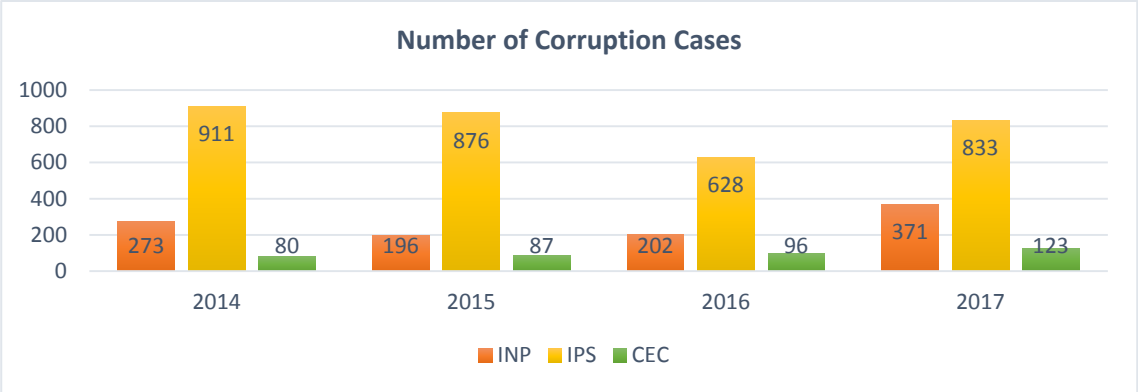
MISUSE OF LEGITIMATE BUSINESS TRANSACTIONS BETWEEN COUNTRIES AS THE LATEST CORRUPTION METHOD

Arin Karniasari[*]

I. INTRODUCTION

Corruption eradication has always been and will always be a commitment for the Indonesian government. The Indonesian National Police, the Indonesian Prosecution Service and the Corruption Eradication Commission, as the state institutions which are authorized to investigate corruption, are working together to eliminate corruption acts in Indonesia. As an illustration of their efforts, the following chart shows the number of corruption cases handled by the Indonesian National Police, the Indonesian Prosecution Service and the Corruption Eradication Commission over the last four years:[1]



Those corruption cases occurred in various administrative sectors which relate to goods and services procurement conspiracy, licensing conspiracy, bribery, extortion and budget manipulation[2] perpetrated by various professions such as members of parliament, ministers, governors, mayors/regents, high-level officials, judges, prosecutors, policemen, advocates, businessman and corporations,[3] which are categorized as "legal subjects" by the Law on Corruption Eradication.

However, despite the abundant cases handled by Indonesian law enforcement apparatus, it does not mean that the efforts to investigate and prosecute those cases were easy. The criminals have and will always try to develop their methods in committing corrupt acts, as mentioned by an adage which says that criminals are always one step ahead of law enforcement. The development of civilizations and Industrial Revolution 4.0, which was supported by the advancement of information technology, has created more complex, sophisticated, faster, globalized and undetected methods of crime. This has encouraged the

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[1] Based on CEC RI Repression Division data.
[2] Ibid.
[3] Ibid.

criminal to modify the method to steal the state's wealth and the ways they commit bribery. The old school methods are applied less.

Instead of receiving bribe money directly into their bank accounts or by hard cash, they disguise the bribe transaction as a legitimate business transaction which involves several bank accounts and which somehow seems unrelated to the perpetrators. These transactions are meant to deceive law enforcement so it looks as though those transactions were legal business transactions. To that effect, the bribe transactions remain undetected by *The Indonesian Financial Transaction Reports and Analysis Centre* (INTRAC).

The most interesting part of these bribe transactions is that they are committed through legitimate business transactions not only involving domestic companies but also overseas companies. Therefore, good cooperation among law enforcement in domestic and foreign jurisdictions is one of the keys to successfully tracking bribe money and revealing the case.

Regarding the latest corruption trends in Indonesia, this paper will discuss the misuse of legitimate business transactions as the latest corruption method in our recent cases.

II. MAIN DISCUSSION

A. The Authority of Indonesian Law Enforcement Apparatus in Handling Corruption Cases

Modus operandi of corrupt acts is becoming more sophisticated and difficult to detect nowadays. Thus, in order to reveal the case, the law enforcement agencies in Indonesia need to optimize the implementation of their authority as mentioned in Law number 8, year 1981 on Criminal Procedure, Law number 31, year 1999 on Corruption Eradication and Law number 30, year 2002 on the Corruption Eradication Commission, which provides special authority for investigators, prosecutors and judges as follows:

a. to submit requests for statements from banks regarding the financial condition of the suspect or defendant to the Governor of the Bank Indonesia, as the law enforcement authorities may request that banks freeze any accounts in the name of the suspect or defendant if said accounts contain the proceeds of crime;[4]

b. to add electronic evidence or any recorded data or information which can be seen, read or heard that is relevant as proof;[5]

c. The investigators and prosecutors of the CEC are authorized to tap communication lines and record conversations, request data on the wealth and tax details of a suspect or defendant from relevant institutions, temporarily suspend financial transactions, trade transactions and other forms of contracts, or to temporarily annul permits, licenses and concessions owned by suspects or defendants connected to corruption cases currently being investigated;[6]

[4] Article 29 Law number 31, year 1999 on the Eradication of Corruption, which subsequently changed and supplemented Law number 20, year 2001.
[5] Article 26A, *Ibid.*
[6] Article 12 Law number 30, year 2002 on the Corruption Eradication Commission.

d. request assistance from Interpol Indonesia or the law enforcement institutions of other nations to conduct searches, arrest and confiscations in foreign countries; also may request assistance from the police or other relevant institutions to conduct arrests, confinements, raids and confiscations in corruption cases currently under investigation.[7]

Furthermore, cooperation between law enforcement or other relevant institutions in domestic and foreign countries, whether conducted through formal or informal mechanisms, are needed to ease the effort to disclose the misuse of legitimate business transactions in receiving bribe money as the latest corruption method.

B. Misuse of Legitimate Business Transactions by Set Off Debt as the Latest Corruption Method

There were cases handled by the CEC which utilized legitimate business transactions by set off debt as the method for the perpetrators to handover the bribe money, *i.e.:*

1. The e-ID Case

Corruption in e-ID procurement occurred from 2010 – 2012. The e-ID project was intended to provide biometric IDs to all Indonesian citizens 17 years old and above. The e-ID corruption caused the state to lose approximately IDR 2.3 trillion of the project budget of around IDR 5.9 trillion. Based on the Audit Board of Indonesia's report, the state's loss was due to the mark-up pricing scheme which was more than 100% on software and hardware devices, card printing, and also on the Automatic Fingerprint Identification System (AFIS) device and its license.

The corruption started since the Indonesian Ministry of Home Affairs planned the e-ID project as a part of the State's Budget in 2010. There was a conspiracy between Irman and Sugiharto as high-level officials in the Ministry of Home Affairs with Andi Agustinus aka Andi Narogong (AA), Anang Sugiana Sugihardjo (ASS), Johannes Marliem (JM) and PT (entrepreneurs), Setya Novanto as the Head of the House of Representatives and other parliament members in order to arrange the e-ID project to be financed by the State's Budget instead of being financed using foreign grants. The aforementioned entrepreneurs also asked Setya Novanto and other parliament members to oversee and facilitate the e-ID project budget's discussion in the House of Representatives. For that reason, the entrepreneurs agreed to provide some money to Setya Novanto and other members of the parliament. To support the corrupt acts, the entrepreneurs and the Head of the House of Representatives manipulated the e-ID project procurement by creating a consortium (PNRI consortium) which was designed to win the procurement process.

Along with the PNRI consortium, the perpetrators also agreed to create another 2 (two) consortia, which were only intended to join the procurement process as a dummy bidders. These 2 (two) other consortia, namely the Murakabi and the Astragraphia consortia were never meant to win the procurement. They set up all the documents, prices and bids so that in the end they would only slightly lose to the PNRI consortium to camouflage the conspiracy.

Furthermore, in order to gain money for the bribe, the perpetrators (the government officials, *i.e.* the procurement committee, the entrepreneurs and Setya Novanto) had arranged

[7] Ibid.

the procurement committee to come up with their own estimated price instead of being based on the market price. Accordingly, the marked-up price was IDR 18.000/ID card.

Thus, the company tasked to provide the bribe, which amounted to 5% of the e-ID's project budget or approximately IDR 70 billion – IDR 100 billion to Setya Novanto, was PT QS, which is owned by ASS, who supplied the biometrics products that were provided by JM (US citizen).

After the PNRI consortium won the e-ID project auction in 2011, Setya Novanto asked for the money that had been promised. Therefore, they agreed to channel the money using the following methods. First, Biomorf Lone Indonesia, a company owned by JM, sent an invoice to PT QS. This was a legitimate business transaction, since products were actually bought and sold between those companies, but of course as mentioned before, the price was already marked up. After PT QS paid JM according to the invoice, JM then separated the money, *i.e.* for the payment of the actual cost of the goods, for his own profit and for the bribe money. For the promised bribe money to Setya Novanto, JM then allocated USD 7.3 million and transferred the money to Biomorf Mauritius.

Furthermore, in order for Setya Novanto to be able to have the said bribe money without being detected, such as by INTRAC (Indonesia FIU), JM delivered the USD 7.3 million bribe money to Setya Novanto by using assistance provided by a money changer. Thus, the money was delivered by concealing it in the process as follows:

a. USD 3.8 million was transferred from Biomorf Mauritius' bank account to the defendant's (hereinafter "MOM") bank account in Singapore. In order to send the money to Indonesia, MOM, through the assistance of JH (person who works for the money changer in Indonesia), set off debt by settling the payments of bills of Indonesian companies to their business partner in Singapore, in which the billed amounts matched the amount of money that was transferred by Biomorf Mauritius to MOM. Afterward, the money that JH acquired from Indonesian companies, which formerly was intended to pay those bills, was given to Setya Novanto through an intermediary.

b. USD 3.5 million was given by JM to Setya Novanto through IHP (Setya Novanto's relatives). The money delivery process began when IHP asked for IB's and JH's (person who works for the money changer in Indonesia) assistance to receive bank notes in the amount of USD 3.5 million from JM without any transaction record between him and JM. At that moment, IHP offered profit to IB and JH in the amount of IDR100 for every US dollar. Subsequently, JH accumulated the money which had been given by Indonesian companies that formerly ordered her to pay their debt to their business partner in Singapore and Hong Kong. After the amount of the money reached USD 3.5 million, JH gave the money and the bank account of the Indonesian companies' business partner in Singapore and Hong Kong to IB; then IB forward the money and the bank accounts to IHP. After that, IHP handed over the money to Setya Novanto and sent the bank account numbers to JM. Afterwards, JM transferred the money to those companies in Singapore and Hong Kong based on the bank accounts which had previously been provided by IHP.

For committing his corrupt acts, Setya Novanto was found guilty according to article 3 of the Law on Corruption Eradication by the Indonesian Court for Corruption Crimes in the

Central Jakarta District Court, verdict number: 130/Pid.Sus-TPK/2017/PN.JKT.PST date 24 April 2018, which sentenced him to 15 years of imprisonment, to pay a fine IDR 500 million or substituted to three months of additional imprisonment, and also ordered him to pay compensation of USD 7.3 million and revoked his right to be elected for 5 years, as additional penalties.

2. The Other Case

After successfully revealing the e-ID methods of corruption, the CEC found another case which utilized a legitimate business transaction scheme, by setting off debt which also was committed using the assistance of a money changer in Indonesia (the names of the perpetrators will be concealed because the case is still in the trial phase). The case occurred in 2016. It was started when B (entrepreneur) asked A (a parliament member) to allocate additional funds from the state's budget on a certain project. B promised to give money to A which amounted to 7% of the project fund, if A succeed to raise the said project's budget. Afterward, to conceal the money delivery process, A asked C (his staff) to seek bank accounts in a foreign country that could receive money from B in US currency. Through the assistance of D (an entrepreneur who has a business relationship with companies in China and Singapore), C obtained two bank accounts of companies in China and two bank accounts of companies in Singapore. Afterwards C notified A regarding those bank accounts. A then informed B of the bank accounts, and B transferred his money from Singapore to:

(1) RRR Company in China, USD 200,000;

(2) SSS Company in China, USD 100,000;

(3) TTT Company in Singapore, USD 110,000;

(4) UUU Company in Singapore, USD 501,480.

Once A was convinced that B had already transferred the money to those companies in China and Singapore, A ordered C to receive the bribe money from D in the amount of USD 911,480.

C. Settlement of the Case and Countermeasures to Prevent Similar Corrupt Acts

1. Techniques to Reveal the Method of Corruption

As mentioned before, the misuse of legitimate business transactions by set off debt to camouflage the bribe transactions in the e-ID case were completed through the assistance of a money changer. We were able to reveal the scheme by following the money trails of the e-ID project, both in Indonesia and overseas. At the beginning, we were only notified by INTRAC that the money flows from PT QS to Biomorf Indonesia had been channeled to Biomorf Minneapolis and Biomorf Mauritius. The situation indicated that Indonesia should request legal cooperation from the United States and Mauritius in order to further seek information regarding the flows of the money. Realizing that formal mutual legal assistance cooperation with foreign jurisdictions would take a long time, and since Indonesia and the USA did not have a bilateral MLA treaty in place, we then engaged in *informal* cooperation with the Federal Bureau of Investigation (FBI) and the Financial Intelligence Unit (FIU) of Mauritius. As a result of good cooperation between fellow law enforcement, the FBI informed us of the evidence of JM's connection to the e-ID case, which was reflected on audio recordings of his discussions concerning the e-ID project with high-level officials of the Ministry of Home Affairs of the Republic of Indonesia, entrepreneurs and Setya Novanto.

The FIU of Mauritius also informed us regarding Biomorf's transactions to companies in Singapore and Hong Kong. In addition, we collaborated with the Corrupt Practices Investigation Bureau (CPIB) Singapore to obtain more evidence regarding the relation between the companies in Singapore with Biomorf Mauritius. With the support of the CPIB, we acquired evidence that the companies which received money from Biomorf actually had no business relationship with Biomorf Mauritius. Nevertheless, those companies did have a business relationship with Indonesian companies. Furthermore, we investigated those Indonesian transactions and discovered that those companies were in debt to their business partners in Singapore and Hong Kong (the aforementioned companies), in which they requested JH (the money changer) to transfer their money to Singapore and Hong Kong as the debt payment. With that information, we were able to find and link those transactions to the bribery process, which used legitimate business transactions by set off debt that was managed by the money changer. At a glance the transactions looked like a normal business transaction and unrelated to the crime. The set off debt scheme in the e-ID case was employed to camouflage the bribe transaction. In this case, the money changer played a significant role to hide the money flows. The most important lesson learned from this case is that when other similar methods appear on a different case, we were already able to identify directly the likely strategy of investigation and prosecution that should be applied in revealing the case.

2. Countermeasures

From our best practices, we learned that cooperation among law enforcement agencies in handling and completing criminal investigation and prosecution is very important, particularly for cases which involve foreign jurisdictions. Although the Indonesian government has stipulated Law number 1, year 2006 on Mutual Legal Assistances in Criminal Matters, which regulates the mechanism to obtain overseas evidence through a formal mechanism, more often, *informal* cooperation is preferred and more suitable as an alternative measure to accelerate the process. The e-ID case, in which we cooperated with the FBI, the FIU of Mauritius and CPIB Singapore was one good example of fruitful *informal* cooperation. Accordingly, we shall intensify the cooperation between law enforcement agencies in order to ease the effort of gathering evidence for similar cases in the future.

The misuse of legitimate business transactions performed and assisted by the money changer not only occurs in corruption and money laundering, but also in other areas of crime such as the funding of terrorism. To avoid the misuse of legitimate business transactions through money-changer assistance in the future, Bank Indonesia has issued Regulation number 19/10/PBI/2017 on *Application of Anti-Money-Laundering and Prevention of Terrorism Funding for Payment System Service Providers Other Than Banks and Non-Bank Foreign Exchange Business Activities Organizers.* The regulation compelled money changers to apply the *Anti-money-laundering and Prevention of Terrorism Funding* policy, perform customer due diligence and enhanced due diligence to high risk customers. Money changers in Indonesia are also required to report suspicious transactions to INTRAC and report on the implementation of the *Anti-money-laundering and Prevention of Terrorism Funding* policy to Bank Indonesia. There are sanctions that could be imposed on money changers or other non-bank foreign exchange if they violate the Regulation.

Moreover, law enforcement agencies will also need to enhance their ability to recognize the corruption perpetrators' methods of receiving bribe money, to ensure their consistency in following money trails and to develop good cooperation with law enforcement agencies in

foreign countries.

III. CONCLUSION

1. The misuse of legitimate business transactions as a method of corruption were employed to disguise the bribe transactions in order to avoid being detected by law enforcement. Thus, the perpetrators made the bribe transactions as complicated as possible, in which the money changer played a significant role to conceal the bribe transactions through set off debt. The criminal acts involve overseas companies which have business relationships with Indonesian companies, so that the transactions appear as legal transactions. Law enforcement agencies shall always bear in mind that in order to reveal the method of corruption, they shall adhere to the principle of following the money and establish and maintain good cooperation with other law enforcement agencies, either domestic or abroad.

2. In order to restrain and supervise the non-bank foreign exchange business activities, Bank Indonesia issued Regulation number 19/10/PBI/2017 on Application of *Anti-Money-Laundering and Prevention of Terrorism Funding for Payment System Service Providers Other Than Banks and Non-Bank Foreign Exchange Business Activities Organizers*. This Regulation required money changers to implement the *Anti-money-laundering* and Prevention of Terrorism Funding policy, with the expectation that there will be no more misuse of legitimate business transactions by set off debt performed through money changers' assistance as a crime method in the future.

THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

Vilavong Phomkong[*] *and Thepphathai Phanka*[†]

I. INTRODUCTION

Laos is one of the members of the United Nations Convention Against Corruption (UNCAC) and one of the members of the South East Asian Parties Against Corruption (SEA-PAC). Corruption is an insidious plague that has a wide range of corrosive effects on socio-economic development, distorts markets and erodes the quality of life. It undermines democracy and the rule of law. This evil phenomenon is found in every country. The Government of Lao PDR actively has been trying to prevent and combat corruption, promote good governance and to ensure transparency in state governance in order to provide basic services for equality and justice, such as creating and improving of principles, regulations, laws and various legislation related to the United Nations Convention Against Corruption. In order to prevent the loss of state property, to prevent fraud committed against the state, and to prevent harm to society and legitimate rights and interests of the citizens, Lao PDR is fighting corruption by prosecuting offenders and protecting the innocent. The aim is to make state agencies transparent, strong and able to be inspected at all times, contributing to political stability, economic growth and stability, maintain social peace, order and justice to reduce the likelihood of corruption. Thus, the Government of Lao PDR has been undertaking efforts to promote bilateral and multilateral international cooperation to exchange knowledge and technical information by training programmes, seminars and workshops on anti-corruption development.

Therefore, to share information and exchange knowledge on the topic of the seminar, this paper will address two of the latest trends in corruption and effective measures to prosecute criminals: fraudulent cases involving financial transactions and abuse by employees.

II. PRINCIPLES OF CONDUCTING CORRUPTION CASES

For the implementation of corruption proceedings, the State Inspectorate and Anti-Corruption Authority (SIAA) has undertaken a holistic approach to investigate corruption through its roles and duties as defined by the law. Corruption cases in Lao PDR are based on two laws: the Penal Law and the Anti-Corruption Law. First of all, we would like to introduce the process of corruption proceedings in the Lao PDR.

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A. Corruption Inspections

1. The Reason for the Inspection

- When reliable evidence of corruption is found;
- Notification, report, proposal, complaint of corruption;
- When an official or his or her family members possess unexplained wealth.

2. Inspection Procedure

- Investigate notices, reports, proposals, complaints and data collection if deemed necessary;
- Prepare and formulate a realistic inspection plan by coordinating with other sectors and relevant localities;
- Examine documents and entitlements of individuals or organizations involved, such as financial supervision, accounting, receipts, expenses, or loans;
- Invitations to organizational representatives or related parties to explain or clarify;
- Conclusion, evaluate and report the results of the inspection.

3. Inspection Schedules

- The Central Anti-Corruption Authority, in principle, may not conduct its inspection for more than 90 days, but if the inspection is not completed, it may continue for a 30-day period, in case there are difficulties related to other sectors that can be extended, but not longer than 180 days;
- For the Anti-Corruption Agency of Ministries-Agencies, the province / municipality may not exceed 60 days from the date of inspection; in case of difficulty, they can continue for 30 days;
- For the anti-corruption agency of districts, municipalities may not exceed 30 days from the date of inspection, in the case of difficulties in remote areas can be extended for 15 days;

4. Resolution of the Inspection

- For a violation of less than five million kip, the agency is required to warn or discipline them as required by law in Articles 56 and 57;
- Investigation is conducted and concluded, and then the case is submitted to the head of the Prosecutor's Office for consideration of a court order if it is a criminal offence pursuant to articles 58 to 61.

5. Compliance with the Anti-Corruption Body

Organizations that have received the Anti-Corruption Proposals under Article 31 must comply within the prescribed timeframe; if they fail to comply with the proposal, the Anti-Corruption Unit has the right to propose the relevant matters, as the case may be. Non-compliance with the proposal is considered a violation of the law.

III. INVESTIGATION OF CORRUPTION CASES

Investigations of corruption cases must be used to investigate methods and prevention measures as defined in the Penal Code.

1. Four Phases

The institutional system of the criminal justice system is the same as the State Inspection and Anti-Corruption Authority, which is divided into four phases:

- Central level: The State Inspectorate and Anti-Corruption Authority is responsible, with the Department of Investigation of Corruption as the Secretariat;
- Ministry-Agency Level: The Department of Inspection is responsible, with the Corruption Division as the Secretariat;
- The provincial, municipal level: the state inspection and anti-corruption agencies of provinces are responsible, with the anti-corruption and corruption investigation sector as the Secretariat;
- District, Municipal and City Level: The State Audit and Anti-Corruption Agency of the District is responsible, with the anti-corruption and corruption investigation unit as the Secretariat.

2. Duties and Rights of Investigation Agencies Handling Corruption Cases

- Receive and keep a record of any offence;
- Report promptly to the Chief Prosecutor on the offence;
- Issue an order to open an investigation, submit a statement of the order and report it to the prosecutor immediately;
- Conduct investigations into employees with corrupt behaviour that are based on his / her management rights;
- Use restricted legal measures, including the release of detained suspects and written reports to the Chief Prosecutor;
- Appeal the orders of the Chief Justice Officer to the Chief Prosecutor;
- Coordinate with other relevant agencies;
- Conclude the investigation and formulate the case with the Chief Prosecutor.

3. Duties and Scope of Investigation Officials

The corrupt officials are staff of the State Inspectorate and Anti-Corruption Authority with the following duties and scope:

- Receiving and recording notices, proposals, reports, or complaints about corruption;
- Proposing a state inspection and anti-corruption agency to issue a request, order, order release of suspicious suspects, suspicious orders or criminal allegations (for ministries and agencies are requested by government agencies, municipalities, and provinces for provincial inspection);
- Inform the accused of rights and the obligation to conduct the investigation;
- Obtain statements from suspects, plaintiffs, offenders, victims, witnesses and other persons involved;
- Check and verify and collect evidence on corruption of authority;
- Maintain the centre of corruption;
- Finding, capturing, detaining, releasing a detainee and detecting a person, making accusations of suspects and detainees;

- Coordinate with relevant agencies, inspect vehicles, arrests by the Chief of the Public Prosecutor's Office or the People's Court;
- Summarize and report on the results of the investigation; Investigate the State Audit and Anti-Corruption Unit.

4. Standards of the Investigating Officials in Corruption Cases

To be honest, legal, ethical, knowledgeable, capable, professional, experienced in investigation, and to be able to maintain confidentiality.

5. Investigation Procedure

Causes of Investigation: As a result of the inspection, there is a complete set of criminal offences as defined in the criminal law.

6. Investigation Procedures in Corruption Cases

- Ordering the opening of investigations;
- Ordering not to open investigations;
- Investigation proceedings.

IV. THE CONSIDERATIONS OF THE PUBLIC PROSECUTOR WHEN DETERMINING WHETHER TO PROSECUTE THE OFFENDER IN COURT

The rights and duties of public prosecutors are to conduct monitoring, inspection of law enforcement activities of the Investigation Agency and to prosecute the offenders in court. The head of the prosecution agency must study the received case from the investigating body or the prosecutor for not more than 15 days from the date of the litigation and must issue one of the following orders:

- If the investigation case is not yet complete, the head of the public prosecution agency must return the case documents to the investigation body along with the additional investigative issues;
- If there is a reason to suspend the investigation as determined by the law, Article 146;
- If there is a clear cause of the case, as provided in the law, Article 148;
- If there is any indication that the measures used by the investigating officer have not been consistent with the circumstances of the case.

V. CASE PROCEEDINGS IN COURT

If there is sufficient evidence, the prosecution body shall make a summary of the investigation results, complete the case file and then prosecute the case in court within three working days from the date of the order. When accepting a criminal case for consideration, the court will only accept the criminal record for further consideration with the order of the head of prosecutor.

- The court will accept a copy of a criminal case for consideration only when there has been an order from the head public prosecutor to prosecute the offenders in court;

- The timetable for the consideration of the verdict of the first instance court is not more than thirty days;
- Court measures: The Court has the right to use investigative methods and prevention measures as required by law.

VI. CONDUCTING CORRUPTION CASES

A. General Conditions

After receiving firm information and evidence that an act constituting corruption has been committed, the State must examine the case, including data collection on the situation of corruption in a deposit institution. The head of the agency has appointed a committee to encourage and monitor the business operations of deposit institutions. Through the tracking of financial transactions, transactions that were not disclosed can be identified, such as in the case of a closed customer's loan account, which resulted in a total loss of 26,879,786,000 kip. To resolve the issue, the head of the agency reports to the President of the State Inspectorate and Anti-Corruption Authority (SIAA) for guidelines and asks the head of the decision-making body to appoint an investigating team to open an investigation into corrupt officials and other relevant persons.

B. Investigation Proceedings

From the information and evidence of the commission to encourage and monitor the business operations of the deposit institution, the Investigation Team has made its plans to carry out the duties, with the preparation of the information and the names of the offenders to investigate the case. Subsequently, there were 12 investigations of staff and related persons, of which 10 staff were alleged to have engaged in corruption in accordance with the Anti-Corruption Law, Article 11: Acts that Constitute Corruption and, Article 58: Penal Measures and Criminal Law, Article 174: Corruption and Two Crimes there are alleged that Corruption in Criminal Law, Article 17: Joint Offence and Article 174: Corruption. The accused said that they had paid the institution's money of 1,018,318,000 kip, 475,820,340 kip, interest 199,908,607 kip, totalling 675,728,947 kip, with a loan of 17 institutions with 500,000,000 kip in the form of a new loan opened with a new loan account.

C. Content

During the investigation of two corruption cases, the accused said that they had deposited money with the deposit institution by used customers loan closed lender account to open a new loan account.

- Accused 1: He withdrew the institution's money in the amount of 1,018,318,000 kip;

- Accused 2: She withdrew the institution's money in the amount of 1,173,985,000 kip;

- Accused 3: He borrowed a total of 18,200,000 kip, 36 times additional withdrawals totalling 498,600,000 kip;

- Accused 4: She borrowed money from Institute 2 accounts with her names 1 account 5,000,000 kip. The withdrawal itself was 49 times in cash 146,191,000 kip and issued the

name of her husband 01 balance 30,000,000 Kip has withdrawn without approval 29 times in 252,110,127 kip total 433,301,127 kip. Additionally, she withdrew her customers' loan and closed the loan account to open a new loan account of her 4 accounts were 90,000,000 kip;

- Accused 5: She borrowed money from Institutions of 6 accounts with 142,964,500 kip, which 1 of the borrowing accounts of the borrowed customers that finished paid, but she used account that to be condition for lent themselves to loan;

- Accused 6: She has loaned with the institute of 7 accounts is 170,352,000 Kip, but only one account has correct by law in the amount of 5,000,000 Kip but she has withdrawn several times in cash 90,200,000 Kip. Additionally, she has written a cash withdrawal and Sign instead of customers closed lender account for relatives or clan that about 70 to 80 accounts. The amount of cash written with the minimum cash withdrawal is 20,000,000 Kip, up to 35,000,000 kip.

- Accused 7: He has borrowed with the Institute 3 accounts amount of 10,000,000 Kip and withdrew the cash at the bank where he was responsible and requested lender account by his name was closed account amount 80,000,000 kip;

- Accused 8: She has consulted the institution's loans to their friends who have been working in the institution, and they have taken up 22,500,000 kip without making a loan agreement;

- Accused 9: She has borrowed money from Institution 04 accounts. The account has a valid loan agreement of 2 accounts, Account 1, Amount of Approved 15,000,000 Kip, withdrawn 22 times in cash of 104,300,000 Kip, Account 2 Approved Amount 20,000,000 Kip, withdrawn 5 times in 90,200,000 Kip in total 229,500,000 Kip And the other 2 accounts are closed accounts, they have opened a new loan account of 25,000,000 kip, withdrawn 01 times cash 22,500,000 Kip and the second accounts amount approved 25,000,000 Kip, 01 times more money was withdrawn 22,500,000, total case 95,000,000 Kip;

- Accused 10: Concerned with 2 projects: Institutional Programme Management and Office construction. To improve the excellent service system so that it has a relationship with a software company valued at US $ 200,000 and the company would pay for commission fee 330,000,000 kip. Then the company added value from US $ 200,000 to US $ 300,000 to get over US $ 100,000 in commission share. The office construction project valued at 4,190,000,000 kip, the construction company has raised 10% of the construction cost of 419,000,000 kip for commission fee;

- Accused 11: He has told the officer that he had borrowed money from the Savings Institute 52 The checking account amounted to 1.629.000.000 kip. Each loan was borrowed without a loan agreement, but the withdrawal was written on every cash withdrawal. About Auctions construction office building institutional money value of 4,190,000,000 Kip to accept the agreement preliminary not bid if the company its

winning bid to offer money to the committee responsible for the 10% of the total value of the project is 419,000,000 kip and pay 3 For the period 1 had written cash to extract financial institutions 2 leaves of 100,000,000 kip period 2 Paid after inspection tasks to complete construction contracts 50% is paid 1,674,000,000 Kip given 93,300,000 Kip 3rd instalment after inspection tasks to complete construction contracts 100% money 1,256,700,000 kip donates 125,700,000 Kip;

- Accused 12: Provided the Agent: Before signing the Installment Agreement and the Deposit Institution Programme, the Representative of the Institute contacted and presented to them that if the programme was installed, how much the bank's banking system would be installed, they replied that US $ 200,000 would pay 330,000,000 kip. One week later, a representative of the Institute came to offer them a raise from US $ 200,000 to US $ 300,000 to get more than US $ 100,000, they agreed upon the institution's proposal and signed a contract. In addition to the previous investigations, the Investigative Investigations Unit conducted a search of the site, its offices and its identities, and issued a warranty order and order under the Orders and Orders and have verified the documents of his / her property.

D. Observation-Evaluation

Through investigations, evidence, statements made by the accused and related persons, their actions are criminal offences under the Criminal Code of Penal Code Article 174 and the Anti-Corruption Act Article 11 and Article 58 of which the offences of the alleged offenders are:

1. Abuse of Power

Abuse of position, power and duty to take State property, collective property or individual property and jointly violating an agreement between State officials and the contracting company and other concerned persons to create conditions to win the bid or concession for a certain State activity for personal benefit and causing damage to the interests of the State and society or rights and interests of citizens. According to the Anti-Corruption article 16 and the Penal Code, Article 174 expresses the actual behaviour of:

- Abuse of position, power and duty to withdraw money according to the list of liability accounts under his/her responsibility.

- Take the deposited a closed-end customer account, re-open a cash account, write cash withdrawal, sign up to receive cash from an account holder, and withdraw cash.

- Get cash from customers who pay the cost and interest on the loan.

2. Swindling of State Property

The companies engaging in trickery, deceit or fraud by any means to cause a person in charge of any State property to hand over to himself, such as creating contracts for installment and a deposit management service programme with a firm that agreed to offer a $ 200,000 installation fee of US $ 300,000 by an unknown depositary institution to get more than $ 100,000 in cash.

Together, the parties have been engaging in trickery, deceit or fraud by any means to clear bank deposits with a lucrative or non-collateralized loan scheme, with the approval of the loan holder and the closing of a lender's loan account for a cash rebate.

3. Giving Bribes

Proposed bribes to 10% of the value of construction of a depository office of 419 million kip; has provided deliberate assistance in joint fraud, violating the Anti-Corruption Act, Article 13 and the revised Criminal Code, Article 17, and Article 174 of the Code of Conduct. The cost of installing a deposit at a deposit institution from US $ 200,000 is US $ 300,000, which they provide for deliberate assistance and should be accorded legal responsibility.

E. Proposal

Through research of data, evidence, documents of the case thoroughly, comprehensive, objectively, with transparency, and correctly according to its scope of rights and duties and the procedures as stipulated in the laws, including being highly accountable for the conduct of its responsibilities under the laws and subject to inspection by the National Assembly. So, when we state that the evidence is strong enough and confirms that the accused are to be charged with criminal allegations of corruption as defined in the law against corruption Article 11 and 58 and the Criminal Law Article 174, the head of the investigation of corruption sends the case to the chief prosecutor for legal proceedings.

F. Summary of Investigation Result

After the inspection and investigation, if there appears to be solid information and evidence, the investigating agency makes a summary of the inspection and investigation result, completes the file of the corruption case and then sends it to the public prosecutor to consider bringing a prosecution of the case in court.

THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

Premraj a/l Isaac Dawson Martin Victor[*]

I. STATISTICS AND LATEST CORRUPTION TRENDS

Since 2015 there has been a huge volume of Investigation Papers (IP) opened by the Malaysian Anti-Corruption Commission (MACC), based on reports lodged against wrongdoings, pertaining to corruption and money laundering incidences. Below are the numbers of IPs opened based on the category of offences in the MACC 2009 Act since 2015:

CATEGORIES OF OFFENCES	2015	2016	2017	2018 * (till Sept)
RECEIVING GRATIFICATION (s. 16/17 MACC Act 2009)	400	331	311	206
GIVING GRATIFICATION (s. 17 (b) MACC Act 2009)	156	140	168	68
FALSE CLAIM (s. 18 MACC Act 2009)	241	367	202	246
ABUSE OF POWER (s. 23 MACC Act 2009)	67	89	81	98
MONEY LAUNDERING (AMLATFPUAA 2001)	39	26	51	52
OTHER OFFENCES (PENAL CODE)	79	32	50	58
TOTAL (Investigation Papers)	**982**	**985**	**863**	**728**

Looking into the above-stated information regarding money-laundering activities, recent trends show the number of IPs opened has increased almost 100 percent in 2018, as compared to 2016. This fact proves that the MACC is seriously combating money-laundering activities, which entails the enforcement of seizure, freezing and forfeiture of illegally obtained assets.

MACC is also combating illicit enrichment committed by white-collar offenders through money laundering activities. Attached herewith are statistics, showing drastic enforcement of forfeiture as a result of seizure. The tables below show both the amount of seizure during investigation (Table 1) as well as amount of forfeiture (Table 2) in the four years prior to

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May 2018. These figures raise an alarm to the public that the government is serious in fighting against the predicate offence of money laundering and corruption offences.

Table 1- Seizure

YEAR	AMOUNT OF SEIZURE (MYR)		
	MACCA 2009 (A)	AMLATFPUAA 2001 (B)	TOTAL (A+B)
2015	12,938,824	9,331,769	**22,270,593**
2016	121,778,504	85,877,708	**207,656,212**
2017	60,021,799	293,038,548	**353,060,347**
2018 (till mid Oct)	2,362,537	16,084,625	**18,447,162**
TOTAL	**197,101,664**	**404,332,650**	**601,434,314**

Table 2- Forfeiture

	AMOUNT OF FORFEITURE (MYR)		
YEAR	MACCA 2009/ CPC (C)	AMLATFPUAA 2001 (D)	TOTAL (C+D)
2015	1,436,135	2,500,900	**3,937,035**
2016	4,947,124	3,000	**4,950,124**
2017	28,026,190	20,529,275	**48,555,465**
2018 (till mid Oct)	1,344,693	15,526,904	**16,871,597**
TOTAL	**35,754,142**	**38,560,079**	**74,314,221**

Even though the amount of forfeiture is much less than the amount of seizure, it still positively shows that the volume of forfeiture has increased year by year. If we were to analyse the trend of arrest, the arrested offenders have been recorded as follows:

ARREST STATISTICS					
CATEGORIES OF OFFENDERS		**2015**	**2016**	**2017**	**2018 (till Sept)**
Public Sector	Top Management	9	7	13	2
	Senior Management	82	119	101	111
	Supporting Staff	307	341	295	210
Government Linked Companies		n/a	22	21	21
Private Sector		127	210	168	133
Public		316	238	272	200
Others		0	2	9	10
TOTAL		**841**	**939**	**879**	**687**

Data of arrest as shown above alarms us that the allegation regarding involvement of the public sector is quite high, as compared to the other categories of offenders. Having said that, the allegations against public sector offenders may be the result of the fact that their positions are vulnerable to corruption, misappropriation and abuse of power.

II. CHARACTERISTICS AND TYPOLOGIES

Basically, there are four most common *modus operandi* committed by the offenders, namely:

A. Misuse of Public Funds

(OPS MISDEC)

The accused was an Executive Director of the Skills Development & Entrepreneurship Centre together with his son, who was also working in the same centre, as a Director in the Administration and Finance Division. The accused and his son committed criminal breach of trust by issuing several payments through numerous cheques from the Skills Development & Entrepreneurship Centre to their own company, named MRP LTD, amounting to RM4.5 million. The main objective of the centre is to provide facilities in technical and management training programmes in order to upgrade the competencies in skills and technology where the financial budget is from the federal government. The funds were only to be used for the organization's intended purpose. Both accused had misused the advantage of being directors in the centre.

B. Involvement of a Huge Amount of Cash

(OPS WATER)

The accused in this case was a Deputy Director of a state government department. During investigation, a huge amount of cash worth MYR1.5 million was found and seized from his own dwelling house. Besides that, several mixed foreign currencies were also found amounting to MYR1,978,760.48 inside the house. Additional cash in the amount of MYR12,500.00 was found inside his office. Surprisingly, MYR4.4 million in cash was found

inside safe deposit boxes, from various banks, registered under his name.

C. Involvement of Lawyers and Dummy Documents

(OPS SKYLINE)

The accused was a Junior Minister in a southern state who had power regarding approval of housing development. He and the co-accused, a businessman, had approached housing developers, who had applied for a release. In this case, state government has imposed certain conditions on housing developers, where they are required to allocate 40% of the units to be sold to Bumiputra (a Malaysian of indigenous Malay origin) at a discounted price (15% off from normal purchase price). For a certain period, if the units are unsold, the developers may apply for a release, so that the unsold units could be sold to non-Bumiputra at a normal price. In approving the application, the developer would be charged to pay a certain amount to a 'state housing fund' up to 7.5% of the purchase price. Here, the accused, had reduced the amount to be paid by the developers to 3% only and another 3% as a kickback to the accused.

In this case, the co-accused had engaged a lawyer to prepare a standard agreement between him and the developers. It is said in the agreement that the 'kickback amount' was payable from the developers as a consultancy fee, which those developers denied.

(OPS BALDI)

The accused was a CEO in a government-linked company (GLC). He had committed criminal breach of trust by way of issuing several company's cheques to a few contractors who had been awarded projects with the GLC. The total amount involved was worth MYR2.5 million. The *modus operandi* was similar among the contractors, where he instructed them to falsify invoices so that payment could be made to them. After that, those contractors had to withdraw the same amount and give it to the accused in cash. In issuing those related cheques, he had wrongly instructed the General Manager of Finance of the GLC, to sign the cheques, 'supposedly to pay GLC's clients, which the clients denied.

D. Involvement of Proxies

(OPS SKYLINE)

As mentioned earlier about the case, the payments made by the developers were deposited into the lawyer's client account. Immediately after that, the lawyer will transfer the money to another company's account which belongs to the Junior Minister. However, the company was registered and run by another person (proxy to the minister). Evidence shows that some properties were purchased thereafter by the company yet were being used by the Junior Minister.

III. EFFECTIVE COUNTERMEASURES

A. Effective Countermeasures for Preventing Corruption

1. Corruption-Free Pledge / *Ikrar Bebas Rasuah* (IBR)

The corruption-free pledge is a pledge of commitment to participate in combating corruption and abuse of power. IBR is an initiative that has been implemented by the MACC for the purpose of emphasizing and enhancing the commitment to avoid and liberate any corrupt conduct. It has been implemented in various ministries and government agencies (including government-linked companies), as well as in the private and corporate sectors.

2. Integrity Units

The establishment of Integrity Units in government agencies is in accordance with Service Circular No. 6 Year 2013 effective on 1st January 2013. The objective of Integrity Units is to integrate all integrity matters under a specific unit in more planned and focused manner. The main function of Integrity Units is to deal with integrity matters in the organization with the responsibility to carry out six (6) core functions stated in the circular as follows:

a) Governance	b) Integrity Enhancement
c) Detection and Verification	d) Complaint Management
e) Compliance	f) Disciplinary

B. Effective Countermeasures for Investigating, Prosecuting and Adjudicating Corruption

1. Intelligence-Based Investigation (IBI)

MACC has adopted the Intelligence-Based Investigations (IBI) approach with the aim of being more effective in the criminal justice system, where the information is gathered and placed in a systematic manner. This approached has been adopted and successfully implemented since 2008. Hence, MACC has to have full cooperation and assistance from other relevant government agencies in order to gather the relevant evidence.

2. Managing Team-Based Investigation (MTI)

The MACC Investigation Department plays a vital role in the mission to combat corruption and to implement one of MACC's core functions, namely investigation. Case investigations are carried out in group via the Management Team-Based Investigation (MTI) method to expedite the investigation process as well as produce a more transparent and quality Investigation Paper.

3. Special Corruption Courts

Since a few years back, Malaysia has implemented Special Corruption Courts in every state of the country. Every corruption case is registered and centralized in one special court, equipped with knowledgeable and experienced judges, in order to expedite the case. A special training programme is being promoted, annually by the Chief Registrar's Office in order to enhance and improve the legal understanding among judges.

Meanwhile, in MACC, few dedicated Deputy Public Prosecutors are stationed in each MACC state office in order to have easy access between the Investigation Officer and Deputy Public Prosecutors. Investigation teams easily get legal advice from the prosecution side, from time to time, in order to conclude investigations. This is also known as one of the criteria of MTI.

4. Anti-Money-Laundering Charge

Most of the cases in MACC are being simultaneously investigated for predicate offences and anti-money-laundering offences. Hence, the decision to prosecute will also be made together. If there is a case, the Deputy Public Prosecutor's Office will issue consent to prosecute for both offences, and they will be tried jointly. One of the most significant aims is to ensure that the illegal proceeds from corrupt practices could be eventually forfeited. Therefore, it would be as a deterrent effect to the public at large, not to commit the same in the future.

5. Forfeiture of Property

In MACC, there is a special unit handling cases for forfeiture of property. This unit has been established for the purpose of forfeiting assets seized and frozen during investigation. Basically, this unit will only handle assets which are not directly related to crimes for which the offender is prosecuted. The investigation team in this special unit will gather all relevant information and analyse them before pursuing civil forfeiture proceedings. The Investigation Team on the other hand will consider criminal forfeiture which is directly linked to the court charges.

There are some occasions in which it is difficult to charge the accused with a crime in connection with the seized and frozen assets. Currently, white-collar criminals are creative by engaging proxies in connection with the proceeds of bribes or misappropriation of properties. They will use others' names in acquiring or registering illicitly obtained properties. Besides that, they will keep cash notes in certain hidden areas. There are cases where investigation teams have found money inside tires the booth of a car, an unused residence, and in unsuspected areas in the accused's dwelling house such as the ceiling, under the bed, stuffed inside unused luggage bags and others. For instance, in the case of Ishak Ismail, who worked as Senior Assistant Engineer at the State Public Works Department, Ismail had been found with MYR1.1 million (USD265,000) in cash inside his own bedroom. The accused was only working as support staff of a department, and he only earned around MYR5,000.00 (USD1250) a month.

6. Sentencing

In preventing corruption offences from happening further, the Deputy Public Prosecutor's Office had tried their level of best in praying for severe sentences at the end of each case. Should the sentence be manifestly inadequate, the Office files appeals before a higher court.

The MACC Act 2009 provides sentences under section 24, as follows:

> (1) Any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to—
>
> (a) imprisonment for a term not exceeding twenty years; and
>
> (b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.
>
> (2) Any person who commits an offence under section 18 shall on conviction be liable to—
>
> (a) imprisonment for a term not exceeding twenty years; and
>
> (b) a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

For example, in the case of Datuk Khalid Bin Omar (the accused), who was a Director at the State Public Works Department, Datuk Khalid Bin Omar had been charged for corruptly receiving gratification (13 charges) from several contractors who had been awarded certain projects with the department. Besides that, the accused had corruptly received certain valuable things from those contractors. In addition, he was also charged with offences of money laundering (15 charges). At the end of the case, he was convicted and sentenced to 15 months for each corruption case and 15 months for each anti-money laundering case. He was also ordered to pay a fine worth MYR36 million.

In another case, Dr. Shahanum bin Uthman (the accused), who worked as Head of Project and Service Department in a private company, had committed bribery by receiving gratification from a copper shabby collector. The collector had a job collecting copper shabby from the company. The gratification was as inducement to the accused in order to give a discount price for the collected copper shabby. He was convicted on 14 charges and sentenced to imprisonment for cumulatively 29 years and a fine MYR5.4 million. In the meantime, Session Court Judge also ordered the forfeiture of several assets, such as a BMW car and a few sets of jewelry, to the Government of Malaysia.

C. Effective Asset Recovery

By virtue of section 31 of the MACC Act 2009, the law provides power to:

(a) enter any premises and search for, seize and take possession of, any book, document, record, account or data, or other article;

(b) inspect, make copies of, or take extracts from, any book, document, record, account or data;

(c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any article found on such person;

(d) break open, examine, and search any article, container or receptacle; or

(e) stop, search, and seize any conveyance.

In addition, the Act provides further powers to seize movable property (under section 33 of the Act) and to seize immovable property (under section 38 of the Act).

Moreover, the Act also provides the power of forfeiture of property either upon prosecution for an offence (under section 40 of the Act) or where there is no prosecution for any offence (under section 41 of the Act).

Furthermore, the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFPUAA 2001) also provides similar power of freezing, seizing and forfeiting properties under Part VI of AMLATFPUAA 2001.

In the case of "OPS SKYLINE", both of the accused were slapped with 33 charges under MACC Act 2009 involving gratification amount of MYR34 million, 13 AMLATFPUAA 2001 charges involving MYR17.05 million.

Several luxurious cars and motorcycles, bungalows and lands were seized during the investigation. Those properties are still under proceeding of forfeiture of property under section 41 of the MACC 2009 Act before the High Court.

In another example in the case of 'OPS WATER', the investigation was about allegations of corruption and misappropriation of funds involving individuals in a state government department. During the investigation, 28 individuals were arrested including its Director as well as two ex-Deputy Directors, and 23 engineers. The seizure of cash as well as other properties were done in 30 separate locations involving certain districts in the state. The MACC had taken almost a month to conduct its analysis on 8,000 payment vouchers which were extracted from different files consisting of tones of documents. Throughout the investigation, the MACC had seized and frozen assets worth MYR 114.5 million including cash, bank accounts, shares as well as movable and immovable property.

In the case of Ishak Ismail, who worked as a Senior Assistant Engineer at the State Public Works Department, Ismail has been arrested due to allegations of corrupt practices. During investigation, the MACC officers had found and seized MYR1.1 million in cash in his own bedroom. The accused was only working as support staff at the department who earned around MYR5,000.00 a month. Later, the High Court Judge agreed that the seized amount was illicitly obtained by the accused and ordered the assets to be forfeited.

D. Effective International Cooperation

Based on strategic cooperation and bilateral understanding, the MACC had acquired some fruitful information from counterpart enforcement agencies. For example, in the case of OPS WATER, the MACC had frozen certain assets of the accused in various foreign financial institutions which were equivalent to MYR62.3 million. In addition, the MACC had also gained information that the accused had properties outside Malaysia worth more than MYR9.7 million, consisting of two condominium units, two terrace houses, two studio apartments, an apartment unit, a car parking lot, and a storage lot. For the time being, MACC has initiated an action to proceed with legal action through Mutual Legal Assistance (MLA).

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE AUTHORITIES

Kap Tluang[*]

I. INTRODUCTION

Freedom from corruption is the *sine qua non* for building a clean government and for good governance, and it is also connected with foreign investments and the image of our country. Corruption erodes justice and the rule of law, hampering the sustainable development of a nation. It undermines democratic institutions. It also results in the loss of State property. Widespread corruption in a country could result in poverty. Corruption usually links with other forms of crime, particularly organized crime involving money laundering and vast quantities of assets. Corruption cases involve not only government officials but also private individuals and corporations. Nowadays, corruption spreads out beyond the borders of a country. As no country in the world is free from corruption, all countries need to cooperate and coordinate in combating corruption.

II. ANTI-CORRUPTION LAW

Myanmar signed the United Nations Convention against Corruption (UNCAC) in 2005 and ratified the convention in 2012. In accordance with the UNCAC convention, the Pyidaungsu Hluttaw enacted the Anti-Corruption Law on 7 August 2013. It was signed by the President on 17 September 2013, and the law came into force on 17 September 2013. It has 11 Chapters and 73 sections. This law has been amended four times up to now for the requirements of our country. The Anti-Corruption Rules were also issued in 2015.

The objectives of this law are: (a) to carry out anti-corruption as a national responsibility; (b) to be of benefit to clean government and good governance; (c) to enhance dignity and accountability in public governance; (d) to protect state-owned property, rights and interests of the community and citizens due to corruption; (e) to take action effectively against persons who commit corruption; (f) to create more transparency in the rule of law and governance sector, and to develop the economy and domestic and foreign investments.

Under this law, the offences are stipulated as cognizable offences. The members of the Commission, Preliminary Scrutiny Board, Investigation Board, and inspectors have the powers and exemptions of police officers in performing their functions and duties under this law. In implementing the provisions of this law, the members of the Commission, Preliminary Scrutiny Board, Investigation Board, working group, inspectors, staff of the Office of the Commission, and any person serving on behalf of the Commission, Preliminary Scrutiny Board, or

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Investigation Board who performed their duties in good faith shall not be subject to civil action or criminal action or any other offence. Notwithstanding any other existing law in respect of corruption or enrichment by corruption, action shall only be taken under this law.

III. LAWS RELATING TO PREVENTING AND COMBATING CORRUPTION

Corruption is present in every field, in any form and manner. Therefore, Myanmar has enacted various laws regarding corruption as follows:

(a) The Penal Code
(b) The Narcotic Drugs and Psychotropic Substances Law, 1993
(c) The Mutual Legal Assistance Law, 2004
(d) The Anti-Money Laundering Law, 2014
(e) The Anti-Trafficking in Persons Law, 2004
(f) The Extradition Law, 2017

IV. ROLE OF THE ANTI-CORRUPTION COMMISSION

In accordance with the Anti-Corruption Law, 2013, the President formed the Anti-Corruption Commission with 12 members including the Chairman and Secretary, with the approval of the Pyidaundsu Hluttaw on 23 November 2017, and the investigation officers from the Bureau of Special Investigation (BSI) were attached to the Commission to investigate corruption offences. The Chairman of the Commission is stipulated as a Union Minister, and the Secretary and members of the Commission are stipulated as Deputy Union Ministers.

The main functions and duties of the Commission are: (a) forming the Preliminary Scrutiny Board and the Investigation Board; (b) investigating corruption in respect of complaints to the Preliminary Scrutiny Board and the Investigation Board; (c) submitting the report of corruption to the President, the Speaker of the Pyidaungsu Hluttaw, Pyithu Hluttaw or Amyotha Hluttaw; (d) accepting complaints and rejecting complaints if found that they are false, and taking action against false complainants; (e) assigning the Investigation Board and Inspectors to enter, inspect and search any place or building, and seizing evidence in respect of corruption; (f) cooperating with international organizations, regional organizations and foreign countries in combating corruption.

The main powers of the Commission are: (a) directing to seize any currency and property derived from enrichment by corruption, or corruption as exhibits; (b) issuing orders prohibiting the alteration, transfer, concealment, disguise, conversion, or transformation of currency and property during the investigation period; (c) when it is found that currency or property of any competent authority has been obtained by enrichment by corruption according to the submission of the Preliminary Scrutiny Board, issuing confiscation orders of the currency or property; (d) designating any notorious news of corruption as information. (“Notorious news” means the news credibly believed by the Commission that any person is possibly involved in corruption.)

The Commission forms Preliminary Scrutiny Boards with the appropriate persons on a case-by-case basis for the purpose of scrutinizing corruption cases to determine whether there is

credible evidence that the currency or property was obtained by enrichment by corruption, either according to the report of investigation or other information.

According to the report of findings submitted by the Preliminary Scrutiny Board, the said currencies and properties are:

(a) obtained by corruption if clearly proved, in which case the Commission shall order the confiscation of the said currency and property;

(b) obtained by legal means if clearly proved by the competent authority, in which case the Commission shall return the currency and property to the suspect.

The Commission forms Investigation Boards led by any member of the Commission with appropriate citizens. When receiving information from the President or relevant Hluttaw Speaker, complaints from aggrieved persons, or notorious news reports regarding corruption, the Commission instructs the Investigation Board to investigate the matter. The Investigation Board shall submit the report of investigation to the Chairman of the Commission.

V. DISCRETION OF LAW ENFORCEMENT BODIES

The Union Attorney General's Office (UAGO), Anti-Corruption Commission (ACC), Bureau of Special Investigation (BSI) and other relevant law enforcement bodies exercise a wide range of discretion in carrying out their duties. The ACC seeks legal advice from the UAGO with regard to the prosecution of corruption cases and then files the cases in the competent court for trial. And when the case is brought to the court, the law officers appear on behalf of the State as public prosecutors and file necessary appeals or revisions with the higher court if the judgment or order of the court is not in conformity with the law.

VI. STATISTICS AND INFORMATION

The Anti-Corruption Commission received 6,703 complaints from 24 November 2017 to 30 September 2018. Among them, there were 34 corruption offences. There were 1,216 complaints related to executive issues, 1,119 related to land administration issues, 1,005 related to judiciary issues, 2,845 related to departments and personal affairs issues, 11 revoked complaints, and 473 general complaints.

VII. PROSECUTION

According to the report of investigation by the Investigation Board or other credible information, the Commission shall:

(a) instruct the Head of the Investigation Board or Inspector General to sue any competent authority that commits corruption in the High Court of the Region or State;

(b) instruct the Head of the Investigation Board or Inspector General to sue any other person, except the competent authority, who commits corruption in the relevant Court.

In prosecuting any offence under this law, the Investigation Board or inspector shall obtain:

(a) prior sanction issued by the Commission with the approval of the Union Government if the accused is a person who has a political post;

(b) prior sanction in accordance with the existing law if the accused is a Hluttaw representative;

(c) prior sanction issued by the Commission if the accused is not a person who has a political post or a Hluttaw representative.

VIII. OFFENCES AND PUNISHMENTS

Any person who possesses a political post and commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 15 years and shall also be liable to fine. Any other competent authority, except a person who possesses a political post, who commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 10 years and shall also be liable to fine. Any other person, except a person who possesses a political post or a competent authority, who commits corruption shall, on conviction, be punished with imprisonment for a term not exceeding 7 years and shall also be liable to fine. Whoever instigates, attempts to commit, conspires to commit, manages or abets any offence under this law shall be punished with the prescribed penalty for such offence.

IX. PREVENTIVE MEASURES AGAINST CORRUPTION IN MYANMAR

In order to prevent corruption, administrative actions are also effective in addition to the judicial measures against corruption. The Fundamental Rules and Supplementary Rules prescribe that a government servant shall not accept directly or indirectly, on his or her own or on behalf of any person, nor permit any member of his or her family to accept any gift, gratuity or reward. The anti-corruption plan has been designed by the government, and arrangements have been made by the respective departments and organizations. Monthly meetings have been held in every office of the departments and organizations to keep warning government servants regarding the anti-corruption plan of the government. A public servant who has been accused of a criminal offence including corruption may be removed, suspended or reassigned depending on the nature and seriousness of the outcome of the criminal investigation or prosecution. (88 judicial officials and 50 employees from the Immigration and Population Department have been punished under the Civil Service Law.)

The Union Government has established a four-year (2018-2021) strategic plan for anti-corruption reforms and initiatives to reduce the erosion of State funds and bring bribery and corruption under control. The government’s plans are now in place to implement the strategic plan for anti-corruption and bribery. Regarding the private sector, the Myanmar Investment Commission issued the Anti-Corruption Code of Ethics for companies and corporate bodies on 3 August 2018. According to Transparency International's Corruption Perception Index (CPI), Myanmar was ranked 147th in 2015. In 2017, Myanmar was ranked 136th.

X. INTERNATIONAL COOPERATION

Myanmar is a member of the Asia-Pacific Group on Anti-Money Laundering and the Interagency Network on Asset Recovery in Asia and the Pacific. Cash up to 10,000 US Dollars can be brought into Myanmar, and beyond that it needs to be declared at a customs checkpoint. Myanmar has signed an MoU on Cooperation for Preventing and Combating Corruption with South East Asia Parties against Corruption (SEA-PAC) and the ASEAN Mutual Legal Assistance in Criminal Matters Treaty (AMLAT).

In the Pate-Chin-Myaung Police Station, Narcotic Case FIR No. 2/2012, the Northern Mandalay Drug Enforcement Force arrested Aung Ko Latt with 171,000 methamphetamine tablets and took action against him and the owner of the drugs, Mar Du Lar, who lived in Kyal Gong, China under the Narcotic Drugs and Psychotropic Substances Law. According to Myanmar's request to Thailand for arresting and extraditing Shwe Nu, Thailand arrested and extradited him to Myanmar.

XI. CORRUPTION CASES

A. Criminal Miscellaneous Case No. 7/2015 of the Bago Division High Court

The offender U Shwe, who was a Deputy District Judge from Taungoo District Court, was discovered to have accepted a bribe from a client through a bank. The Investigation Board examined the bank records and determined that it was true. He was prosecuted under section 56 of the Anti-Corruption Law and section 512 of the Criminal Procedure Code because he absconded. The Bago Region High Court took action against him with a proclamation and attachment of property in the Criminal Miscellaneous Case No. 7/2015.

B. Criminal Case No. 161/2017 of Zabuthiri Township Court (U Soe Thant vs. Khin Maung Nyo, Section 57 of the Anti-Corruption Law)

The Commission found that the accused Khin Maung Nyo, who is a police second lieutenant, took a bribe in the amount of 690,000 kyats from U Thet Htun Aung for his officer in charge of the police station and used his post for corruption. Then, U Soe Thant prosecuted Khin Maung Nyo in court on behalf of the Commission. The court took action against him under section 57 of the Anti-Corruption Law. In that case, some witnesses gave statements before the commencement of the trial. According to the statements of witnesses in court, the judge decided that Khin Maung Nyo committed corruption and sentenced him to two years' imprisonment.

C. Criminal Case No. 5/2018 of the Yangon Region High Court (U Moe Naing vs. Chit Ko Ko) and Criminal Case No. 6/2018 of the Yangon Region High Court (U Moe Naing vs. Thit Thit Khin and five other persons)

These cases arose from the same corrupt acts. They are unique cases because there were no complaints. These cases occurred based on notorious news reports in journals and the media. On 3 August 2018, the Anti-Corruption Commission issued an announcement regarding the Yangon Eastern District Court criminal case no. 34/2018 under the Criminal Law, section 302 with complainant U Thant Zin Oo and three accused including Than Tun Aung at Tha Gyi on the manslaughter of actor Aung Ye Htway. The announcement said the Yangon Eastern District

Court had permitted the case to be withdrawn on 25 July 2018, causing news to spread in journals and the media of the possible involvement of corruption in the case being withdrawn. The Anti-Corruption Commission held a meeting on 2 August 2018 to discuss the matter where all Commission members came to a unanimous decision to consider the case as notorious and to inform the Commission and confirm the case as a notorious case. The Commission formed the Investigation Board to investigate the case. On 13 September, the Anti-Corruption Commission opened the First Information Report on the Yangon Region Advocate General, Deputy District Judge from the Yangon Eastern District Court, Yangon Region Law Officer, Yangon Eastern District Law Officer, Yangon Eastern District Deputy Law Officer and Police Lieutenant of Thuwunna Police Station at Thuwuna Police Station. The Anti-Corruption Commission said they took bribes from U Khin Maung Lay, father of the suspect Than Htut Aung, in return for having the case dismissed against the three suspects of killing Aung Ye Htwe, a comedian popular on Facebook, on New Year's Eve last year. On 25 September, the prosecutor filed against Chit Ko Ko under section 56 of the Anti-Corruption Law at the Yangon Region High Court, and Thit Thit Khin and five other persons under section 55/56 of the Anti- Corruption Law at the Yangon Region High Court.

XII. CHALLENGES AND SOLUTIONS

Although the Government has taken measures to combat and prevent corruption, corruption exists everywhere. One of the reasons is the country is poor and salaries are low. Thus, corruption is widespread among public servants, and corruption has spread as a part of Myanmar's culture in the society. Corruption can be eradicated only when the integrity of people is raised. It cannot be done solely by the Anti-Corruption Commission or a single responsible organization. All people need to cooperate and coordinate in combating corruption. Cooperation and education are playing key parts in fighting corruption.

XIII. CONCLUSION

Myanmar is making its best effort to combat corruption and is implementing various forms of preventive measures against corruption, not only by criminal justice measures but also administrative measures. The Commission is making many systematic modes, such as giving educative lessons, improving morality and taking preventive measures across the country. Moreover, Myanmar is always combating corruption in accordance with the objectives set forth not only in domestic law but also in international instruments which Myanmar has ratified. Thus, Myanmar is one of the countries actively engaging in the fight against corruption.

COMBATING CORRUPTION THROUGH EFFECTIVE CRIMINAL JUSTICE PRACTICES

Mr. Aung Khant[*]

I. INTRODUCTION

Myanmar became an independent sovereign state on 4 January 1948, and systematic corruption has occurred since that time. There were frequent losses of state properties due to bribery, corruption and economic malpractice in Myanmar. To prevent such losses the public property protection police, or P4, consisting of 30 members was formed on 23 December 1947. In 1951, the Bureau of Special Investigation was founded under the Special Investigation Administrative Board and Bureau of Special Investigation Act, 1951 with its strength of 315 members. The Bureau investigates corruption according to the Suppression of Corruption Act, 1948. The new Anti-Corruption Law was enacted on 7 August 2013 according to international standards and norms. The Anti-Corruption Commission was formed on 25 February 2014, and investigation officers from the Bureau of Special Investigation were transferred and have being seconded to that commission to investigate corruption offences.

II LEGAL SYSTEM OF MYANMAR

Myanmar practices dualism with regard to obligations of international conventions and cannot directly apply international law as Myanmar domestic law. The State Peace and Development Council made efforts to adopt a multi-party democratic system and market-oriented economic system with a significant programme of reforms instituted in late 1988. Multi-party democracy elections were held in 2015 and convening of parliaments with elected representatives followed in 2016. The new government announced that it would create clean government, good governance and make political, economic and social reforms.

Under the Anti-Corruption Law, Section 3(b), gratification includes the currencies, properties, presents, service fees, entertainment and other illegal benefits accepted or given without consideration or appropriate cost for the purpose of corruption. Bribery of public officials is made a criminal offence under the Penal Code Section 161-165, but the Anti-Corruption Law has superseded the Penal Code because of its more specialized nature. The Penal Code applies subsidiarity for offences not covered by the Anti-Corruption Law. The definition of corruption in section 3(a) includes both active and passive bribery. Sections 55, 56 and 57 impose penalties that vary with the position of the offender (imprisonment of up to 15 years for persons in political positions and fines).

Myanmar has not made illicit enrichment a criminal offence, but enrichment by corruption under Section 3(c) is a ground for confiscation. Myanmar will consider making bribery in the private sector a criminal offence.

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III. FINANCIAL INTELLIGENCE UNIT

The Financial Intelligence Unit was established in January 2004 under the Central Control Board on Money Laundering according to the Control of Money Laundering Rules. In 2014, the Control of Money Laundering Law was repealed, and a new Anti-Money Laundering Law was enacted in order to be in line with international standards and norms including the recommendations of the Financial Action Task Force (FATF). According to this new law, the Anti-Money Laundering Central Board (AMLCB) formed the Financial Intelligence Unit on 28 August 2014 as the central agency to receive, request and analyse reports and disseminate financial intelligence. The AMLCB assigned the Anti Financial Crime Division to perform the FIU's function in 2016. Legal action was taken in all of the cases according to the Criminal Procedure Code, Evidence Law and Penal Code.

The FIU issues reporting forms, provides financial intelligence, compiles, maintains and disseminates information, cooperates and exchanges information with other domestic organizations, provides awareness, training assistance to government departments, requests information from reporting organizations, cooperates with domestic and foreign organizations and enters into agreements with counterparties. The Financial Intelligence Unit has the right to manage independently the funds received according to financial year in accordance with the existing financial rules and regulations. The FIU shall establish an electronic reporting system and a computerized system in order to perform its tasks.

All designated reporting organizations including banks and financial institutions have to report on suspicious transactions and any transaction above 10,000 US Dollars to the FIU. The FIU, law enforcement agencies, banking and supervisory authorities need to coordinate and cooperate nationally and internationally.

Statistical data on the Anti-Money Laundering Law are as follows:

Year	**Cases**				**Remarks**
	Investigations	**Open / Files**	**Prosecutions**	**Convictions**	
2014 to 2017	27	10	7	-	5 cases closed, 12 cases under investigation

Section 5(j) of the Control of Money Laundering Law defines the list of predicate offences consistently with the FATF's recommendations that cover a wide range of serious offences including bribery and corruption. Moreover, criminal liability of legal persons is established in Sections 43-49 of this law. Statistical data on confiscations under the Anti-Money Laundering Law are as follows:

Under Freeze	**Under Court Trial**	**Confiscation**
USD 31.34 millions	11.94 million	USD 0.6 million

IV. DISCRETION OF THE LAW ENFORCEMENT BODIES

The Attorney General's Office (AGO), the Anti-Corruption Commission (ACC), the Bureau of Special Investigation (BSI) and other relevant law enforcement bodies exercise a wide range of discretion in carrying out their duties. Myanmar follows a system of discretionary prosecution. The ACC seeks legal advice from the AGO with regard to the prosecution of corruption cases and then files the cases in court for trial. According to Schedule II of the Code of Criminal Procedure, if the offence is punishable by death, transportation or imprisonment for 3 years and upwards, but less than 7 years, it is not bailable. There are only very limited possibilities for early release or parole. Under Rule 177 of the Civil Service Personnel Rules, a public servant who has been accused of a criminal offence (including corruption) may be removed, suspended or reassigned depending on the nature and seriousness of the investigation. A public official can be subject to disciplinary procedures regardless of the outcome of a criminal investigation or prosecution. The Union Judiciary Law states that the reintegration of offenders into society is one of the primary principles of the administration of justice in Myanmar. Under Section 13 of the Anti-Corruption Law, the members of the commission shall submit asset declarations to the president of the Union upon assignment of duty. Under the Anti-Corruption Law Section 51-54 and Anti-Money Laundering Law Section 52, it is possible to identify, trace, freeze, seize and confiscate all proceeds derived from an offence or their monetary equivalent.

A. Criminal Miscellaneous Case No 7/2015 of Bago Division High Court

The offender U Shwe, who was a Deputy District Judge from Taungoo District Court, was discovered to have taken a bribe from a client through a bank. The investigation body examined the bank records and found out it was true. He was prosecuted under Section 56 of the Anti-Corruption Law and Section 512 of the Criminal Procedure Code. The Bago Region High Court took action against the offender by proclamation and attachment of property in Criminal Miscellaneous Case no. 7/2015.

Myanmar does not have a formal witness protection programme, but the powers of the Commission include providing necessary protection to persons providing evidence of corruption offences (section 17(I) of the Anti-Corruption Law). Such measures include keeping the identity of persons providing information or assistance confidential (Anti-Corruption Rule 62).

Procedures are available to use video technology and remote testimony to facilitate the testimony of witnesses and experts. There are no agreements presently in place between Myanmar and other States for the relocation of witnesses. Victims can be considered to be witnesses on a case-by-case basis subject to relevant protection measures and procedures. Section 493 of the Criminal Procedure Code allows the victim to instruct a "pleader" to act in court on his behalf. There is no legislation in Myanmar to address the protection of whistle-blowers in the private sector.

Pursuant to the Anti-Corruption Law, Myanmar established the Anti-Corruption Commission as the primary, but not exclusive, body for the investigation of Convention offences. In addition, this investigative capacity is supplemented by other specialized law enforcement agencies and oversight institutions, including the Bureau of Special Investigation and the Myanmar Police Force. The Criminal Procedure Code, section 337

permits the judge to conditionally pardon an offender who fully cooperates and provides a form of immunity from further prosecution or punishment. Cooperating offenders are considered witnesses under Myanmar Law and subject to applicable protection measures. Although Myanmar cannot extradite its nationals, Myanmar, as a general rule, prosecutes nationals in cases where there is no extradition.

V. INTERNATIONAL CORRUPTION

The Anti-Corruption Law, Rule 59 speaks about coordination with other relevant stakeholders. The Union Civil Service Board cooperates with the UNDP to promote transparency and accountability in the civil service, build the capacity of civil servants and to promote a merit-based civil service system. The Public Finance Management Act is currently being developed with assistance from the World Bank. Relevant laws for the private sector—the Company Act, the Consumer Protection Law, the Competition Law, the Investment Law, the Arbitration Law, the Privatization Law and the Chambers of Commerce Law—are currently being developed in Myanmar.

The FIU has signed MOUs for information exchanges with 13 different countries. Myanmar is also a member of the Asia-Pacific Group on Anti-Money Laundering (APG) and the Asset Recovery Inter-Agency Network for Asia Pacific (ARIN-AP). The Mutual Legal Assistance Law 2004 is for recovery of property through international cooperation in confiscation. The Mutual Legal Assistance Law contains Form A and Form B for countries to file with the Competent Authority and request assistance, and national authorities will provide assistance. According to the MLA Law Section 10, Myanmar needs to have a bilateral agreement with a country to act on a confiscation order. If there is no bilateral agreement, the request shall be submitted to the Central Authority via diplomatic channels. The seized or confiscated property shall be administered by the bilateral agreement, and if there is no bilateral agreement, it shall be vested in Myanmar under Section 26 of the MLA Law. The Competent Authority on MLA has power to issue orders to freeze, seize and confiscate. The Anti-Corruption Commission has power to confiscate assets concerning the corruption case. Concerning special cooperation, information is provided timely to requesting countries. In the course of an investigation, information is shared with requesting countries or with countries to ask them to obtain information for the on-going investigation.

Regarding the extradition system of Myanmar, it is necessary to amend the system as Myanmar enacted the Burma Extradition Act in 1904, but it is no longer used or in line with current practice. With the cooperation of the UNODC, the Law Drafting Committee drafted the bill including 7 chapters, 42 sections, 1 schedule and 2 forms. The extradition law enacted as Pyidaungsu Hluttaw Law No. 16, 2017 after submitting to Pyidaungsu Hluttaw and Amyothar Hluttaw on 21 July 2017. Both national and foreign citizens who commit any offence which could be sentenced to two years' imprisonment and above could be extradited. The corruption offences and money laundering offences are listed as extraditable and could not be refused as political-nature offences.

A. Mayangone Township Police Station Narcotics Case FIR No.2/2005

According to the information exchange between the Central Committee for Drug Abuse Control (CCDAC) and the China National Narcotic Control Committee (NNCC), drugs ("Ice") weighing 102.05 kilos were seized from Shak Chan (a) Archan's house in Mayangone Township on 24 May 2005. The Mayangone Township Police took action against him under Section 15/19(a)/20(a)/21 of the Narcotic Drugs and Psychotropic

Substances Law (1993). According to Myanmar's request to China for arresting and extraditing Kyan Shak Hwar (male), China arrested and extradited him to Myanmar on 1 July 2005.

B. The Pate-Chin-Myaung Police Station, Narcotic Case FIR No. 2/2012

On 1 August 2012, the Northern Mandalay Drug Enforcement Force arrested Aung Ko Latt (male) with 171,000 Methamphetamine tablets found in his car at Wet Won village, Pyin Oo Lwin Township. The Pate-Chin-Myaung Police took action against Aung Ko Latt and the owner of the drugs, Mar Du Lar, who lived in Kyal Gong, China, under Section 15/19(a)/20(a)/21 of the Narcotic Drugs and Psychotropic Substances Law (1993). According to Myanmar's request to Thailand for arresting and extraditing Shwe Nu (male), Thailand arrested and extradited him to Myanmar on 26 June 2013.

C. Mutual Assistance in Criminal Matters Law (2004)

Myanmar signed the Treaty on Mutual Legal Assistance in Criminal Matters with India on 27 July 2010 for cooperation and mutual assistance in criminal matters. Myanmar also signed a Memorandum of Understanding on Cooperation for Preventing and Combating Corruption with the South East Asia Parties against Corruption (SEA-PAC) members on 14 November 2013 and the ASEAN Mutual Legal Assistance in Criminal Matters Treaty (AMLAT) on 17 January 2006.

D. Providing Mutual Legal Assistance to China

The Chinese government made a request to send an accused, Sai Aung Myat, who was in police custody in Kyaing Tong Township under Section 15 and Section 19(a) of the Narcotic and Psychotropic Substances Law as a main witness in a murder case, drug trafficking, kidnapping and robbery of a Chinese government-owned ship. At the first Session (1/ 2002) of the Central Authority formed under the Mutual Assistance in Criminal Matters Law, the Authority decided to send Sai Aung Myat temporarily to testify at the Chinese Court under the MOU on 28 August 2012. Sai Aung Myat testified at the Kumming Court, and the offenders, Sai Naw Khan and two others who committed murder, drug trafficking, kidnapping and ship robbery, were sentenced to death on 6 September 2012. China transferred Sai Aung Myat back to Myanmar.

E. Case Study 1

Someone has complained to the Anti-Corruption Commission that a high-ranking official has taken a bribe from a company and gave it to his son. The investigators from the Commission searched his son’s house and interviewed his son. After that, the official resigned and the commission made a press release and announced that the official was innocent. According to the Anti-Corruption Law Section 20(d), the preliminary scrutiny and investigation shall be kept secret.

F. Case Study 2

A businessman from Yangon gave funds to a terrorist group in Rakhine State. He did not give the money himself, but two persons transferred the money from the bank and later they absconded to another country. The person who accepted the money from Rakhine State also absconded to another country.

The Rakhine State’s police arrested the two persons from the terrorist group, and they gave statements that the businessman had given them the funds to attack police stations and to pay for medical treatment at the hospital. The businessman was also arrested and

prosecuted. There was no strong evidence that the businessman transferred the money, so the judge acquitted him. The businessman gave the money, but he was released.

The challenges are that the Supreme Court of the Union will issue a writ of certiorari, but the judge cannot solve the problem because the evidence is not strong. The businessmen also have good relationships with higher authorities who will apply pressure.

COUNTERING CORRUPTION IN THE PHILIPPINES: PROTOTYPES AND REINFORCING MEASURES

Melchor Arthur H. Carandang[*] *and Jennifer A. Balboa-Cahig*[†]

I. CORRUPTION AND ITS HIGH-LEVEL PERPETRATORS[1]

In the Philippines, the issue of corruption in the public sphere has been a constant concern even though earlier and more recent leaderships have won their seats under the battle cry of putting an end to corruption.[2] The country has gained international attention for the case of former President Ferdinand Marcos, who ruled the Philippines for more than two decades from 1965 to 1986, inclusive of the martial law period starting in 1972,[3] during which period the Marcos family and cronies were accused to have looted around US$5-10 billion[4] in an atmosphere of authoritarian rule, crony capitalism, economic spoliation, and human rights violations.[5]

Aside from former President Marcos, another former president who served from 1998 to 2001 suffered the same downfall, with the *jueteng* (a local numbers game) payoff scandal and the corporate stock price manipulation incidents, which eventually led to his impeachment – the first Philippine President to have been impeached by the House of Representatives. He was charged before the Philippine anti-graft court known as *Sandiganbayan* for (i) receiving gifts and kickbacks from illegal gambling; (ii) converting and misusing a portion of tobacco excise tax share allocated for one province; (iii) compelling the country's public and private pension fund institutions[6] to purchase more than 680 million shares of stock in one corporation and deriving sales commission therefrom; and (iv) accumulating unexplained wealth under a fictitious account name[7] in one major bank, with an involved aggregate sum of almost PhP[8] 4.1 billion or around $95 million.

His successor who served from 2001 to 2010, was also indicted before the *Sandiganbayan*. The Office of the Ombudsman conducted the preliminary investigation and prosecution of the latter cases, which included one for plunder for allegedly amassing millions of pesos by diverting

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[1] Succeeding entries are portions of the Office of the Ombudsman's presentation during the 5th Anti-Corruption Compliance Asia Pacific Summit 2017 held in Hong Kong.

[2] Ramon Magsasay, Diosdado Macapagal, Ferdinand Marcos, Gloria Macapagal Arroyo became president on the anti-corruption issue as found in the *Anatomy of Corruption,* Gerardo P. Sicat, The Philippine Star, October 30, 2013.

[3] Proclamation No. 1081 (Philippines 1972) Proclaiming a State of Martial Law in the Philippines.

[4] Ignasio Malizani Jimu, 'Asset Recovery and the Civil Society in Perspective: Nigeria, Peru, the Philippines and Kazakhstan Cases Considered' in Gretta Fenner Zinkernagel, Charles Monteith and Pedro Gomes Pereira (eds), *Emerging Trends in Asset Recovery* (Peter Lang AG 2013) 322.

[5] *Vide* Belinda A Aquino, *Politics of Plunder: the Philippines under Marcos* (2nd ed, University of the Philippines 1999) 29-82.

[6] Government Service Insurance System (GSIS) and Social Security System (SSS).

[7] "Jose Velarde" in the erstwhile Equitable PCI Bank.

[8] PhP stands for Philippine Peso.

funds sourced from a government agency's[9] confidential intelligence fund, and another one for graft and corruption for entering into a manifestly and grossly disadvantageous contract with a telecommunications firm for personal gain. She, however, scored victories in the ensuing proceedings when the litigation saga reached the Supreme Court.

Just recently, another former president is facing complaints arising from (i) the use and re-allocation of government savings worth billions of pesos and (ii) the botched police operations in southern Philippines that claimed the lives of a number of government forces. The Office of the Ombudsman filed the criminal cases against him for corrupt practices and for his participation in one police general's usurpation of authority.

Another recent corruption investigation is the pork barrel scam involving kickbacks and bribes given to Philippine politicians and government officials. From 2004 to 2012, a private businesswoman, who engaged in securing government contracts and is considered the central figure in the said scam, is accused of paying tens of millions of dollars in bribes in exchange for over $200 million in funding for bogus development assistance. There have been more or less 40 legislators from either the Senate or the House of Representatives, who are now facing criminal indictment before the *Sandiganbayan*.

As can be deduced, just like in the earlier and more recent times, corruption still proliferates, and it has become a trend that these are even perpetrated by the top-level bureaucrats. According to a report on corruption cases received by *Sandiganbayan*, an anti-graft court which has jurisdiction over high-ranking officials, around 10,094 cases of malversation and 7,968 cases of graft have been filed against public officials, making up for about 53.59% of the 33,772 corruption cases received from 1979 to November 2016.[10] Going after these high-ranking government officials who have violated the time-honoured principle that "public office is a public trust"[11] is vigorously pursued as it is considered to send a message of deterrence for potential corrupt activities, reassuring the public that no one is beyond the reach of law, not even those in the highest places. It is ironic that those in the highest and most strategic positions to create positive changes do not beget the highest ethical standards of public service.

In a hard-hitting twist of fate, however, it has seem to also become a trend, that amidst corruption allegations among these officials, they have sought and secured a return to power with one former president becoming the incumbent local chief executive[12] and is currently bidding for re-election,[13] while another former president has secured a seat in the House of Representatives and has been newly installed as its Speaker – the leader of the House and the fourth most powerful position in the land.[14] Immediate family members of former President Ferdinand Marcos, meanwhile, have also returned to the political limelight, with his wife elected to the House of Representatives, son and namesake previously elected to the Senate, and daughter holding a gubernatorial position in their home province.

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[9] Philippine Charity Sweepstakes Office or PCSO.
[10] "Tracking Sandiganbayan: Who's who in PH's biggest corruption cases?," Lian Buan, Rappler, Inc. January 22, 2017, updated February 2, 2017.
[11] Section 1, 1987 Philippine Constitution
[12] "Erap wins mayoralty race," Rosalinda L. Orosa, The Philippine Star, May 14, 2013.
[13] "Manila Mayor Erap Estrada seeks reelection, files COC," Daphne Galvez, Inquirer, October 17, 2018.
[14] "Gloria Macapagal-Arroyo's rise, fall and return to power,"

Whether these reflect a forgiving nation, or a mistrust in the evidence of accusations, or a system that overplays benefit of the doubt and distance to persecution, is subject to the varying perspectives of different quarters. For now, what is essential and necessary is to ensure that laws, institutions and systems should work to continuously ferret out the truth and accord justice amidst foreseen and unforeseen twists and turns.

II. PROTOTYPES OF CORRUPTION CASES

In the Philippines, the thriving types of corruption cases are not far from those which have been identified in the United Nations Convention against Corruption (UNCAC) such as bribery, kickbacks, abuse of function, influence peddling, and illicit enrichment. It looks, however, at corruption in both lenses of 'corruption in action' and 'corruption in *inaction*,' such that commission of an unlawful act is not the sole determinant of corruption but neglect of duty and failure to act on sworn servitude to the people is also constitutive of a corrupt action. Misbehaviour by a public official, while it may not involve a taking of government fund or public property, is also considered a violation of the code of conduct as it connotes a negligence of duty for personal gain.[15] Specifically, some of the more notable typologies and their accompanying corruption cases in the Philippine context are as follows:

A. Non-Compliance with the Government Procurement Reform Act

The National Bureau of Investigation (NBI) recently requested the Office of the Ombudsman to conduct a preliminary investigation on the procurement of PhP 3.5 billion or $64 million[16] worth of the anti-dengue vaccine, Dengvaxia, for failure of the concerned government officials[17] to comply with the Government Procurement Reform Act as they proceeded with the purchase without the required Certificates of Product Registration and only receiving a certificate of exemption. The process likewise failed to follow the required protocols in the introduction of a new vaccine particularly on the aspect of the proposal for a budget for said vaccine. It was reported that at the said amount, the vaccine was administered to 830,000 children, with the Public Attorney's Office (PAO) reporting over 200 deaths attributable to the vaccine.[18] The Department of Justice (DOJ) mentioned that it is likely to consolidate the complaint filed by private individuals and groups with the earlier charges filed by the NBI before the Office of the Ombudsman.[19]

To put into context, the Procurement Act is not only there to standardize and harmonize the policies relating to government procurement. It is established to create a system of transparency in the procurement process, ensuring that goods and services availed from or delivered by vendors satisfy both the financial and non-financial cost and benefit. The irregular procurement

[15] "Anatomy of corruption," Gerardo P. Sicat, The Philippine Star, October 13, 2013.
[16] 1 USD is equivalent to 54.25 Philippine Peso based on September 2018 exchange rate bulletin of Bangko Sentral ng Pilipinas (central bank of the Philippines)
[17] Refers to a former President, two former Cabinet officials, and several former and incumbent officials of the Department of Health (DOH).
[18] "DOJ likely to merge Dengvaxia raps vs. Aquino, others," Christopher Lloyd Calinauan, The Philippine News Agency, July 17, 2018. See also "Timeline: The Dengvaxia controversy," CNN Philippines, Updated February 26, 2018.
[19] "DOJ to consolidate PAO, experts' Dengvaxia findings," Lara Tan, CNN Philippines, February 5, 2018.

activities go beyond the physical taking of government funds but extend to introducing significant dangers in a nation's health, safety, environment, security, business, and other services and governance issues.

B. Technical Malversation

Still in relation to the aforementioned case on circumventing procurement process, on 13 July 2018, the NBI also claims that the concerned officials are also liable for technical malversation considering that the government funds intended for the 2015 Miscellaneous Personnel Benefit Fund of the Executive Department (the said amount of PhP 3.5 billion) was utilized for the procurement of Dengvaxia vaccine under the Department of Health's school-based immunization programme. It has been claimed that notwithstanding the declaration by the Chief Executive of the source of fund as savings, the concerned government officials remain liable because the intended purpose failed since there were no existing programmes, activities or projects for the procurement of medicines and immunization for dengue.

C. Political Dynasty

A related prototype is corruption as triggered by political dynasties. A case in point is the desire of one political clan in Maguindanao to stay in power and eliminate opposition, which led to the occurrence of the infamous Maguindanao massacre that cost the lives of 58 candidates, supporters and journalists on 23 November 2009. As of November last year, a total of 166 witnesses from the prosecution and 107 from the defence have been heard, 15 sets of formal offers of evidence in connection with the bail applications of 70 of the accused has also been resolved by the court by which the Department of Justice is eyeing several convictions by 2019.[20]

D. Ghost Project

Another popular corruption case is the Ghost Projects. This is a trend in the infamous pork barrel scam, or the Priority Development Assistance Fund (PDAF) scam. A former Congressman was charged with two counts of graft and one count each of malversation and of malversation through falsification in the *Sandiganbayan* for allegedly misusing P4.85 million in pork barrel funds on ghost projects in 2008. The Ombudsman prosecutors accused the former Congressman of endorsing an unaccredited and unqualified non-government organization, which was selected without public bidding, for purposes of undertaking the livelihood projects funded by his PDAF allocations. Based on the documents, the funds were to be used for the purchase of hand tractors, water pumps and grafted fruit seedlings. However, investigations revealed that the mayors of the concerned municipalities never received the farm implements.

E. Income and Asset Misdeclaration

The Philippine legal infrastructure provides a strong anchor for enjoining public officials to comply with the income and asset disclosure. Formally called the Statement of Assets, Liabilities and Net Worth, or SALN, in the Philippine, it has been considered a very powerful tool to detect potential misuse of public office for self-enrichment and to allow disclosure of one's business interests and financial connection. In one particular high-profile case, the SALN has been instrumental in the removal from office of the former Philippine Chief Justice in 2012, making him the first to be impeached and convicted, with his trial becoming the "first of its kind to be

[20] "DOJ eyes Maguindanao massacre convictions in 2019," Edu Punay, Inquirer, June 22, 2018.

concluded in the Philippines."[21] He was found guilty of failing to disclose and accurately declare in his SALN his bank deposits and properties.[22] In another case, SALN has also been the focus of the more recent ouster of a female head magistrate of the high court this year.

F. Red Tape

Red Tape, on the other hand, aside from causing great inefficiency in the delivery of public service, is a major source of graft and corruption. Two female individuals, for example, offered their services as fixers for the processing of drivers' licenses at the Land Transportation Office Regional Office V and represented that the applicant for the driver's license need not undergo the written examination or the actual driving test conducted by the Land Transportation Office and other requirements of the agency in exchange for the entrapment money. They have been apprehended and a case against them has been docketed.

G. Influencing a Subordinate to Defy Order and Protocol

The Philippines has also encountered cases of influencing a subordinate to defy order and protocol. A former high-ranking official allowed his trusted subordinate, who was then under preventive suspension, to give instructions, receive reports and recommendations, and approve the actions of the other men during an operation intended for the arrest of a wanted terrorist. This led to the massacre of 44 Special Action Force commandos in Mamasapano, Maguindanao in 2015.

H. Bribery

Two Bureau of Immigration personnel were accused of receiving PhP 50 million in bribe money from a certain businessman in exchange for the release of 1,316 foreign employees of the Fontana Leisure Parks and Casino in Clark, Pampanga who were overstaying aliens in the country and who committed violation of Philippine immigration laws.

I. Connivance of Government Officials with Drug Lords

In a more recent case, during the first quarter of 2017, the panel of prosecutors from the Department of Justice issued a 52-page Resolution on the consolidated criminal complaints filed by the Volunteers Against Crime and Corruption, the NBI, former NBI deputy directors and high-profile inmate and self-confessed drug trader, recommending the filing of charges against a former government official in connection with her alleged involvement in the proliferation of illegal drugs at the New Bilibid Prison.

Given all the foregoing, it can be surmised that there is a growing trend of corruption activities and allegations being perpetrated by those in the higher chamber of the bureaucracy. It may not come as much of a surprise since it indeed takes a good amount of power at your hands to be able to manipulate and orchestrate a web of convoluted corrupt activities. If it can be done in the lower ranks, and there is a good chance that this can be very well concealed and orchestrated by higher-ups, where the involved amount should not go unrecognized.

Therefore, if the allegations of corruption committed by the rank-and-files do not go unnoticed, the amount of prudence and vigilance in averting corruption at the low levels should even be multiplied when it comes to implicating high-level corruption. It is a serious task to

[21] "Corona found guilty, removed from office," Rappler, May 29, 2012, Updated July 2, 2012.
[22] Ibid.

handle that can be addressed by criminal justice authorities which, due to the sophistication of the documented recent cases, goes beyond the traditional justice pillars and extends to a multitude of actors like-mindedly serious about anti-corruption work.

This is true for the Philippines. More and more opportunities have paved way for better coordination among criminal justice authorities and even those in the civil society. Far from being a model, the Philippine experience may provide some gainful insights and helpful lessons in fighting impunity, with the matter of public integrity having insinuated its way into the national discourse, and found its proper place at the top of the Philippine national agenda.

III. COUNTERMEASURES TO CORRUPTION

The realization of justice, within or beyond national borders, requires rule of law and respect for institutions, among others. Rule of law calls for adherence to well-defined legislations and allows for an impartial and non-arbitrary ruling that will facilitate fair and efficient accordance of justice and exaction of accountability. Countering corruption means countering an environment that promotes might as right and repeatedly oppresses societies, particularly its vulnerable groups, through effective prevention strategies and programmes developed through broad-based partnerships. In more ways than one, it is along this line that institutions combatting corruption as a precursor to justice have been created. Independent constitutional commissions and bodies have been created in order to enforce accountability of public officers.

Particularly acting on these are the Civil Service Commission, Commission on Elections, Commission on Audit, Office of the Ombudsman, and the country's anti-corruption court, the *Sandiganbayan.* Equally vital are the Office of the President, Congress, and Supreme Court, as well as the institutions charged with execution of laws such as the Department of Justice, Department of Foreign Affairs, Anti-Money Laundering Council, and Philippine National Police, among others.

Ratifying the United Nations Convention against Corruption (UNCAC) at the country level in 2006, the Philippines subscribes to its provision. In keeping with the Convention, the anti-corruption measure of the country is aligned with it, as it is also aligned with anti-corruption sections of the Philippine Development Plan.

A. Preventive Measures

The best way to counter corruption is to empower and strengthen the bodies that advance anti-corruption measures. By means of related reforms introduced and instituted by these organizations, the Philippines has a better chance of advancing integrity initiatives in the public sector.

1. Inter-Agency Partnerships

In order to better coordinate the anti-corruption efforts among the institutions, it was taken upon themselves to be bounded and set up the Inter-Agency Anti-Graft Coordinating Council (IAAGCC) to formulate and develop concerted techniques and strategies in the prevention, detection, investigation and prosecution of graft cases.[23] This mechanism created better

[23] Administrative Order No. 79, Series of 1999.

operational-level coordination and has led to bilateral institutional partnerships later on. As a case in point, the Office of the Ombudsman has signed a Memorandum of Understanding with the Department of Justice as the former shares with the latter the criminal prosecution of cases against low-ranking public officials. In view of this concurrent jurisdiction, the agreement simplified the procedures and created a more efficient and effective investigation and prosecution of cases, including an enhanced monitoring mechanism.

Likewise, the Complaint Referral System has been established by the Office of the Ombudsman with the Civil Service Commission and the Philippine National Police. Both have promoted speedy disposition of administrative cases, thereby affirming accountability and improving public trust. There is also a partnership between the Ombudsman and the Commission on Audit on joint investigations.

2. Legislative Agenda

Among the efforts of the Philippine Legislature to bolster the anti-corruption initiatives are the enactment of laws which:

> (1) strengthen the anti-money laundering law; (2) strengthen the functional and structural organization of the Sandiganbayan, the Philippines's anti-graft court; and (3) increase the prescriptive period for violations of the Anti-Graft and Corrupt Practices Act. Among the matters considered by our present administration as priority measures for legislation are the: (1) relaxation of the Law on Secrecy of Bank Deposits; (2) streamlining of processes and procedures in government; (3) creation of the People's Broadcasting Corporation; (4) enactment of the Whistleblower Protection Law; and (5) strengthening of the Witness Protection Programme.[24]

A major game-changer is the passage of the Republic Act No. 11032 or an Act Promoting Ease of Doing Business and Efficient Delivery of Government Services.

3. Enhanced Transparency

Presidential Proclamation No. 2, series of 2016 has been issued in order to operationalize in the executive branch the people's constitutional right to information and the State policies to full public disclosure and transparency in the public service and provided the guidelines for the implementation of the observance of the people's right to information. In terms of frontline government transactions, Citizen Charters are mandated to be posted in conspicuous places in order to provide information on obtaining a particular service, including its duration, fees and the procedure. This will prevent bribery in exchange for services, allow the public to report on malicious and inefficient transactions in accordance with the standard transaction rules which are now readily made available to the public. Because services are also timed and measured based on what is indicated in the Citizen's Charter, frontliners are also envisioned to be more encouraged to abide by the rule, being open to close client scrutiny.

[24] Philippine Country Statement, 7th Session Conference of State Parties (COSP) to the United Nations Convention against Corruption (UNCAC), Vienna, Austria, November 2017.

4. Integrity Programmes

On the matter of national corruption prevention initiatives, the Office of the President and the Office of the Ombudsman have been working together to implement the Integrity Management Programme, or the IMP, which is the Philippine Government's flagship corruption prevention programme implemented with the Office of the President and assesses the systems and processes of key government agencies in terms of their risks and vulnerabilities to corruption, and subsequently recommends corrective and preventive measures to the heads of agencies. The Integrity, Transparency and Accountability in Public Service (ITAPS) Programme also answers the need for customized training modules for government officials and employees, thereby reinforcing a culture of good governance. The Judiciary has likewise instituted case decongestion reforms and programmes. This includes the Justice on Wheels, which is a mobile court that goes to areas that are in need of adequate and inexpensive access to justice.[25]

5. Sectoral Approach

To look into red tape in local government transactions, the Office of the Ombudsman has adopted a Blue Certification Programme and Red Tape Assessment designed to revalidate the anti-red tape standards prescribed for the Business Permits and Licensing Offices, which are presumed to be most exposed to corrupt temptations. The Office of the Ombudsman has also looked into corruption in the area of Environment and Investment. It has organized its Environmental Ombudsman which is primarily tasked to ensure the proper implementation and enforcement of environmental laws. It has since handled complaints against, investigated and suspended public officers and employees for violations of environmental laws. The Investment Ombudsman, on the other hand, acts on investor-related grievances and speedy resolution of investors' complaints.

6. Digitization of Systems

In the midst of high incidence of non-filing and inappropriate asset declarations, a prototype Electronic Statement of Asset, Liabilities and Net Worth or the eSALN has been launched in May 2016 – a collaboration among the Civil Service Commission, Office of the Ombudsman and the Office of the President. It is a system which transitions the manual-based asset declaration to an electronic platform. It is envisioned to address perennial issues such as late, incomplete, improper, non-filing, non-declaration/misdeclaration of assets and liabilities, or non-disclosure of financial interests.

Along the thread of digitization of system for efficiency in government service, the Department of Information and Communications Technology (DICT) in the Philippines has launched a cloud-based eBPLS software for Local Government Units (LGUs), which enables them to process application for new and renewal of business permits electronically. The National Competitiveness Council's Project Repeal: Philippine Red Tape Challenge was launched in March 2016 and is a government-wide regulatory reform initiative to repeal outdated rules and reduce the cost of doing business.

7. Merit Based Incentive Programme

In 2012, the Philippine government started implementing a merit-based incentive programme through the grant of performance-based bonus to government employees who have

[25] Philippine Country Statement, 7th Session Conference of State Parties (COSP) to the United Nations Convention against Corruption (UNCAC), Vienna, Austria, November 2017.

rendered exemplary performance. The programme has been continuously implemented with the aim to improve the delivery of goods and services to all Filipinos and to institute a culture of fairness and excellence in the bureaucracy.

8. Anti-Corruption Hotline

2016 marked the beginning of operation of the 8888 Citizen's Complaint Hotline which the public may use to report poor public service and other improper conduct of government officials and employees. The Office of the President Public Assistance Center may also receive complaints against erring government officials and employees. The Office of the Ombudsman likewise maintains two hotlines that the requesters or complainants may contact, namely, the Public Assistance Bureau, hotline which is open during office hours and the Field Investigation Office's 24-hour hotline.

B. Criminalization and Law Enforcement

In the first cycle review of the UNCAC, it has been identified that one of the challenges is the coordination among authorities to pursue bribery and embezzlement cases. This is addressed by the previously cited Inter-Agency Anti-Graft Coordinating Council which adopted major plans such as the roll-out of a Revised Guidelines on Cooperation; publication of an Integrated Anti-Graft Investigation and Prosecution Manual; and development of an Integrated Case Management System for Graft and Corruption Cases.[26]

A bill is also pending in Congress that seeks to constitute the Commission on Audit (COA), Office of the Ombudsman, and Committee on Oversight of Congress into a tripartite body to be known as the Legislative Audit Council to perform identified tasks enabling government to effectively run after corrupt officials and private individuals and make them to account for embezzlement of public funds.[27] In terms of the challenges identified in the law enforcement cooperation, in particular to ensure that public officials and authorities cooperate sufficiently in criminal investigations and prosecutions, a bill is pending which "seeks to support the efforts of the Government to rid itself of corruption by setting up a system of rewards and protection for informants and their families."[28]

C. International Cooperation and Asset Recovery

As for international cooperation and asset recovery, the primary mechanism that has been used for some of the documented successful recovery of assets hidden offshore is the Mutual Legal Assistance Treaty or the MLAT. The Philippines does not have a domestic law on mutual legal assistance but this does not prohibit it to request or grant legal assistance to a foreign country. Provisions of existing bilateral and regional MLATs provide for this.

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[26] Follow-up to the Conclusions and Observations Emerging from the UNCAC Review Process

[27] House Bill No. 426, An Act Constituting the Commission on Audit (COA), Office of the Ombudsman, and Committee on Oversight of Congress into a Tripartite Body to be known as the Legislative Audit Concil to Perform Identified Tasks Enabling Government to Effective Run after Corrupt Officials and Private Individuals and Made Them to Account for Embezzlement of Public Funds

[28] House Bill No. 145, An Act Providing Protection and Benefits to Persons who Disclose Conduct Constituting Graft and Corruption and to Witnesses for the Prosecution, thereof, providing penalties for Violations Hereof, and for Other Purposes

As a reference, the Philippines has existing MLATs with Australia, China, Hong Kong, South Korea, Spain, Switzerland, the United Kingdom and the United States. And as we know, thanks to the initiative of Malaysia, that as early as 2002, it had pushed for the creation of a multi-lateral mutual legal assistance deal on criminal matters for the ASEAN Region which has been adopted by 8 of the members in 2004, including the Philippines, with the rest joining in 2006.[29]

In the discussion on the Philippines' experience in successful asset recovery, especially when the focus is on the materiality of international cooperation, the Marcos case[30] finds its rightful place despite not being a fairly recent case. It is a classic example of recovering assets offshore and has been cited in several case studies done by local and foreign experts and institutions. It is an 18-year saga that successfully ended in 2004, repatriating to the Philippine Government a significant amount of money previously held in Swiss bank accounts.[31]

As for a more recent experience on asset recovery efforts, the United States and the Philippines have collaborated on these cases. Again, the MLAT proved to be a powerful instrument of international cooperation employed in the successes made. Specifically, the case of a former Major General who was a former comptroller of the Armed Forces of the Philippines. In 2003, his sons were arrested by US Customs authorities upon their entry in California for failure to declare USD 100,000 which was concealed in their jackets, shoes and bags.[32] This triggered the investigations into the transactions entered into by the general.

After case build up, the Office of the Ombudsman filed criminal cases of perjury, money laundering and plunder against him. He was eventually convicted of perjury by the Sandiganbayan, an anti-graft court. He and his family were also accused of amassing P303.27 million in ill-gotten wealth while the Major General was in active service. He, however, bargained to plead guilty to the lesser offences of Indirect Bribery and Facilitating Money Laundering for the other two criminal cases.[33] The plea bargaining is still the subject of review by the Supreme Court.[34]

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[29] Only 8 ASEAN Countries, including the Philippines signed the Treaty in 2004 after series of meetings in Sabah and Kuala Lumpur; Thailand and Myanmar to join two years later, in 2006. Found in "The many times Mutual Legal Assistance Treaty aided PHL", an article by Mark Merueñas of GMA News Online available at http://www.gmanetwork.com/news/news/specialreports/479246/the-many-times-the-mutual-legal-assistance-treaty-aided-phl/story/

[30] Succeeding discussions are significantly informed by: Office of the Ombudsman's report on International Cooperation on Asset Recovery during the Asia Pacific Economic Cooperation (APEC) Network on Anti-Corruption Authorities and Law Enforcement Agencies (ACT-NET) Meeting in 2017; "Digest of Asset Recovery Cases," the United Nations Office on Drugs and Crime (UNODC), New York, 2015; "Perspective on Civil Forfeiture" written by Jeffrey Simser, Legal Director, Civil Remedies for Illicit Activities Office, Ministry of the Attorney General (MAG), Toronto, Ontario, Canada (during the writing) available at http://siteresources.worldbank.org/INTTHAILAND/Resources/333200-1089943634036/475256-1201245199159/2008Mar-asset_recovery-civil-forfeiture.pdf

[31] "Fact Sheet on Stolen Asset Recovery" developed by the Stolen Asset Recovery Initiative (StAR) by the World Bank and UNODC.

[32] US v. $201,166.08 in US Currency and [ ] $44,354.86 in US currency [ ] in name of ICJ Access Worldwide, Case No. 1:12-cv-9388 (SDNY), Verified Claim filed December 26, 2012

[33] "US turns over $1.38M proceeds of Garcia's forfeited assets," Office of the Ombudsman, 3 June 2015.

[34] Ibid.

As the former general's corruption cases were ongoing in the Philippines, the US filed criminal and civil actions against him and his family and their US-based assets. Philippine and US investigators worked closely in order to determine the laundering of this substantial portion of his criminal proceeds through the United States.[35] Investigators from the US Department of Homeland Security traced the criminal proceeds to two Citibank accounts and a Trump Tower condominium, both in New York. It was US Attorney's Office for the Southern District of New York which initiated the civil forfeiture proceedings and after a judgment of default, the proceeds totaling to USD 1,384,940.28 were eventually turned over to the Philippines in June 3, 2015.[36] It serves as the second tranche of the proceeds of the forfeited assets of the former Major General as the first tranche was made in 2012 in the amount of USD 100,000 representing the cash seized from his sons at the San Francisco International Airport in December 2003, as earlier mentioned.[37]

With all the other ongoing efforts on asset recovery, the bigger agenda is to retrieve the stolen assets and proceeds of the crime and to commit to an understanding that justice does not end in prosecuting or incarcerating national thieves, especially big-time offenders. Concealing corruption proceeds should not be tolerated by taking money laundering activities sitting down. It has to be recovered, it has to be brought back to the rightful coffers.

IV. SUMMING UP

Overall, there is an understanding that addressing corruption is a gargantuan task for it has the ability to permeate different sectors, to manifest in different form, to grow sophisticated, and to get complicated in the web of conniving individuals be they from the high- or the low-ranks, or be they from the public or the private sectors.

The lessons from the Philippines may not be of a great model because corruption is far from being weeded out of its soil. Over the years, however, the country is able to display its consistent effort to fight corruption using the legislative measures and prevention programmes that go hand-in-hand with aggressive investigation and prosecution of public offenders, and the continuous promotion of integrity work. It has secured venues to seek redress. The country has also welcomed technical assistance from international communities and dove into making anti-corruption drive a multi-sectoral discourse. It has numerous laws that prevent corruption and buttress public service ethos. It might not have fully complied with all the provision in the UNCAC checklist, but the country has addressed the key points to begin a good anti-corruption drive.

While the Philippines has long been scourge of corruption and found to still be short of ridding it, its saving grace from the quagmire of corruption is its firm stance against the greatest corruption bottleneck, which is *not* its complexity, but the sheer display of tolerance for such activities.

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[35] Press release entitled "U.S. Helps Philippines Recover 'Ill-Gotten Gains'," United States Embassy in the Philippines available at https://ph.usembassy.gov/u-s-helps-philippines-recover-ill-gotten-gains/.
[36] Ibid.
[37] See footnote 34.

THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

Lam Seow Kin[*]

I. INTRODUCTION

Corruption is an age-old crime, perhaps among the oldest known to humankind. It is a manifestation of greed and exploitation of power by corrupt individuals or entities. The nature of the crime remains unchanged, but its methods have likely evolved alongside advancements in the technological, economic and the legal environment that we operate under. Therefore, it is timely that the latest regional trends and countermeasures are reviewed. The Corrupt Practices Investigations Bureau ("CPIB") is the agency in Singapore dedicated to the fight against corruption. We are pleased to have the opportunity to share our experiences and insights and contribute to the collective effort of like-minded countries and agencies in the endeavour to combat corruption.

II. CORRUPTION SITUATION IN SINGAPORE

The present level of corruption in Singapore is low and under control. Corrupt occurrences are usually incidental and opportunistic, and not institutional or endemic. Majority of the corruption cases reported and consequently investigated are from the private sector. On the other hand, public sector cases are typically petty corruption committed by low or mid-level public officials. Statistically, private sector cases form a range of between 85% to 92% of yearly corruption cases from 2014 to 2017. Among the private sector cases, construction and building maintenance, wholesale and retail, and the logistics industry are areas of concern as we continue to see cases relating to these industries.

A. Countermeasures through Effective Law Enforcement

1. Enforcement under the Prevention of Corruption Act

As corruption stems from greed, one of CPIB's strategies to rip corruption at its core is to disgorge the criminal gains of the corrupt through the conduct of rigorous asset recovery efforts and strict enforcement of associated money laundering offences. The aim is to render corruption a high risk and low reward activity. In Singapore, investigators in CPIB are empowered under the Prevention of Corruption Act ("PCA") to arrest, search and seize properties related to the commission of corruption offences.

In particular, Section 13 of the PCA contains an in-built mechanism to recover and disgorge criminal proceeds from corrupt receivers. Anyone who is convicted of corruptly receiving any gratification in contravention of the Act shall be assessed and ordered by the court to pay a

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penalty equal to the amount of gratification received. The imposition of a penalty under this Act is not a discretionary judicial measure but a mandatory one that has to be imposed, in addition to any other punishments such as fines or imprisonment term that the court may mete out.

Between the period from 2015 to 2017, seizures made pursuant to investigations and subsequently ordered by the Court to be forfeited to the State amounted to S$3.2 million. Correspondingly and coincidentally, a total penalty of S$3.2 million has been imposed by the Courts against corrupt receivers in the same period.

The following case illustrates CPIB's concerted effort in disgorging illicit benefits. In 2017, a former executive of an oil major was charged with receiving bribes amounting to S$5.7 million from a businessman, in return for advancing the former's business interest with the oil major[1]. The accused person was also charged with associated money laundering activities relating to the use of the criminal proceeds. Through investigations, the accused person was established to have utilized his criminal proceeds to partially finance the purchase of 3 landed properties and 2 condominium apartments in Singapore. Accordingly, caveats were placed on these assets to prevented dissipation, with the view of eventually forfeiting the criminal benefits to the State. The trial against the accused person is ongoing.

2. Enforcement under the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act

The pursuit of depriving criminals of their benefits of criminal conduct is also aided by the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act ("CDSA"). The CDSA is the primary legislation in Singapore that criminalizes the laundering of criminal benefits and provides for the investigation and confiscation of such benefits. Specifically, it provides an extended reach beyond assets directly traceable to a criminal offence.

Under the CDSA, the court may make a restraint order or charging order on property owned or linked to a person, as long as the court is satisfied that there is a reasonable cause to believe that benefits have been derived from his or her criminal conduct. In the eventuality that the person is convicted of a serious offence such as corruption as specified in the CDSA's schedule, a confiscation order may be applied against him or her for the benefits that he or she had derived from the criminal conduct. Any property or any interest therein (including income accruing from such property or interest) held by that person that is disproportionate to his or her known sources of income, if it cannot be explained satisfactorily to the court, is presumed to have been derived criminally until proven otherwise.

In the case of a match fixer[2] convicted in 2014 for attempting to fix a football match, CPIB had conducted financial investigations against the accused person as he was suspected to be in possession of assets disproportionate to his known sources of income, which include luxury vehicles and real estate property. A concealed income analysis was performed against the

[1] See Straits Time article https://www.straitstimes.com/singapore/courts-crime/ex-bp-exec-charged-in-57m-bribery-case

[2] See Straits Times article https://www.straitstimes.com/singapore/courts-crime/businessman-match-fixer-eric-ding-si-yang-led-the-high-life

accused and he was found to have accumulated illegitimate income over the years. An application to confiscate the realizable assets of the accused under the CDSA has been made to the Court and trial proceedings are underway.

B. Countermeasures through Public-Private Sector Partnership

Apart from rigorous enforcement efforts, CPIB also adopts a dual-pronged approach of public outreach and education to address private sector corruption. CPIB has been exploring collaborative opportunities with professional bodies and industry stakeholders to reach out to the private and business sectors. We engage the private sector through various platforms, such as forum and prevention talks. In these talks, we share with companies and businesses cases of interests, update them on the developments in the international arena and also caution them on the pitfalls and risks involved in non-adherence to our domestic anti-corruption and related laws.

1. Launch of the Singapore Standard (SS) ISO 37001 on Anti-Bribery Management Systems

In April 2017, CPIB and SPRING Singapore[3] co-launched the Singapore Standard (SS) ISO 37001 on Anti-Bribery Management Systems[4], aimed at helping companies strengthen their anti-bribery systems and processes. The SS ISO 37001 is a voluntary standard designed to help companies establish, implement, maintain and improve their anti-bribery compliance programmes. It specifies requirements for top management leadership and commitment, anti-bribery policies and procedures, risk assessments, reporting, monitoring and investigation procedures, among several other requirements.

2. Development of PACT: "A Practical Anti-Corruption Guide for Businesses in Singapore"

Recognizing that not all companies have the financial resources to adopt the SS ISO 370001, CPIB also developed an easy to comprehend 4-step guidebook titled PACT: "A Practical Anti-Corruption Guide for Businesses in Singapore" [5] to assist business owners to implement an anti-corruption system within their companies. The PACT guidebook comes with business sector case studies from different industries and provides free samples of Anti-Corruption Policy, Code of Conduct, Declaration Forms and Risk Assessment Checklist for businesses. PACT's four-step framework is as follows;

(i) Pledge - Companies are encouraged to implement their own anti-corruption policy and to create a code of conduct that employees can refer to in order to safeguard themselves from falling foul of the law;

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[3] SPRING Singapore is formerly an agency under the Ministry of Trade and Industry responsible for helping Singapore enterprises grow and building trust in Singapore products and services. As the enterprise development agency, SPRING works with partners to help enterprises in financing, capability and management development, technology and innovation, and access to markets. As the national standards and accreditation body, SPRING develops and promotes an internationally recognized standards and quality assurance infrastructure.

[4] The (SS) ISO 37001 was Singapore's adaptation of ISO 37001 Anti-Bribery Management Systems that was launched on 15 October 2016. CPIB had led the working group from Singapore in the negotiation of the ISO 37001.

[5] Refer to: https://www.cpib.gov.sg/sites/cpibv2/files/PACT%20A%20Practical%20Anti-Corruption%20Guide%20For%20Businesses%20in%20Singapore.pdf

(ii) Assess - Companies are encouraged to identify areas of high corruption risks and to conduct periodical risk assessments focusing on vulnerable job functions and processes;

(iii) Control & Communicate - Companies are encouraged to keep accurate records and clear operating procedures, a robust reporting or whistle-blowing systems and audit checks that are carried out periodically. Companies should communicate the anti-corruption policy, code of conduct, internal control and reporting system to all its employees, business partners and other stakeholders, if any;

(iv) Track – Companies are encouraged to review their anti-corruption systems in a timely manner following company re-organization, expansion in operations, new legal/national/international anti-bribery standards, and shifts in the business operating environment.

3. Anti-Corruption Partnership Network for the Private Sector

CPIB has also established an *Anti-Corruption Partnership Network* with member companies from the private sector. 25 companies have accepted CPIB's invitation and attended the inaugural event on 11 September 2018. The Network is an initiative by the CPIB to promote ownership on the prevention of corruption in the private sector. It is a platform through which awareness and materials on anti-corruption can be shared, and conversations can be held with like-minded representatives from the member companies to drive the anti-corruption cause. The desired outcome is for companies to adopt anti-corruption measures and inculcate a culture of integrity and business ethics within their companies.

III. INTERNATIONAL TRENDS OBSERVED FROM SINGAPORE'S PERSPECTIVE

In our modern era of increasing connectivity, criminal activities as well as corruption can easily transcend the boundaries of individual jurisdictions. Law enforcement agencies have to look beyond their own shores and participate in collaborative efforts with foreign counterparts to further investigations and bring corrupt offenders to justice. This is evident in our investigations as CPIB also pursues money laundering investigations pursuant to foreign corruption predicate offences. Frequently, assistance is required from foreign authorities to prove a money laundering offence; that the monies transacted within Singapore are related to corrupt activities investigated by that foreign authority. On our part, active cooperation with foreign authorities ensure that corrupt proceeds, if any, are identified early and the assets linked to foreign corruption or other foreign serious crimes can be seized in exercise of our domestic investigative powers, without the need for court orders. This ability to act quickly to seize criminal assets prevents the dissipation of criminal proceeds and provides for possible repatriation of funds subsequently to the requesting states, where applicable.

Over the years, we have observed a steady increase in money laundering investigations arising from foreign predicate corruption offences. In fact, more than a third of money laundering investigations undertaken by CPIB relate to foreign predicate corruption offences. Furthermore, about 70% of assets recovered by CPIB are linked to foreign predicate corruption cases.

A. Countermeasures through Active Cooperation

The following case studies illustrate the active cooperation undertaken by CPIB and its counterparts.

In 2016, there were adverse news that senior public officials of a foreign country were investigated for corruption and that criminal assets linked to them flowed to a few countries, including Singapore. Given the reasonable suspicion that assets in Singapore might be criminal proceeds, CPIB convened money laundering investigations into the assets of the senior public officials in Singapore. Domestic investigations quickly identified several bank accounts of the senior public officials and their family members amounting to more that SGD 20 million and they were seized to prevent dissipation while investigations were ongoing. Caveats were also placed on two other properties. With assistance from the foreign authority, CPIB officers also flew to this country to record statements from one of the senior public official and his wife. Meanwhile, CPIB is defending the seizure of the assets made pursuant to our domestic investigations before our court, with the assistance of inputs obtained from the foreign authority. The case is still under investigation and the funds remain frozen at this point.

In another case in 2016, CPIB received information that a local bank account was featured in a foreign adverse news and there were suspicious bank transactions in the bank account. CPIB then, through our Financial Intelligence Unit, immediately alerted the foreign authority and sought their confirmation on whether the bank account was featured in their corruption investigation. The foreign authority was also informed of the urgency of the matter as the beneficial owner was making plans to move the funds out of Singapore. Within a day, the foreign authority responded and produced court affidavits to exhibit that the bank account in question was related to a foreign offence. With the information, CPIB immediately launched a money laundering investigation and seized close to US$16 million in the account. Almost a year later, the foreign authority followed up with a formal mutual legal assistance request to Singapore to restrain the bank account. Had CPIB not acted to seize the assets earlier, the funds in the bank account would have been dissipated by the time the MLA request reached Singapore.

These case studies underscore the need for close cooperation among the international community for effective investigation and ultimately recovery of assets.

IV. EMERGING TRENDS

On the technological front, the advent of cryptocurrencies is a familiar theme in international law enforcement fora. The novelty of the blockchain technology backing the operation of such alternative “currencies” have compelled law enforcement agencies to relook their investigation capabilities when dealing with such emerging technologies. As a financial hub, Singapore has seen the growth in number of cryptocurrency exchanges and initial coin offerings which are indicative that the adoption of virtual currencies is gaining traction. CPIB has not investigated any case involving the use of cryptocurrencies but remains vigilant and mindful of its potential use in corrupt transactions. To keep abreast of such technologies, our Computer Forensics Branch and Investigations Training Unit have jointly developed investigative procedures to guide officers when dealing with the seizure and management of cryptocurrencies. CPIB officers

are also trained in the use of open source information to track and trace the origins of cryptocurrency transactions.

V. CONCLUSION

In our experience, corruption cannot be combated effectively in isolation by the sole efforts of individual jurisdictions or its criminal justice system. Domestically, anti-corruption efforts have to be complemented by public-private partnerships where companies instil anti-corruption programmes with strong internal controls. At the international level, law enforcement agencies have to foster and deepen cooperation to ensure expedient and fruitful resolution to corruption cases.

THE STRAITS TIMES

Ex-BP exec charged in $5.7m bribery case

Clarence Chang Peng Hong, a former executive of BP Singapore, is accused of obtaining about US$4 million (S$5.7 million) in bribes from a businessman. The 51-year-old allegedly used corrupt proceeds to make partial payments for several properties to the tune of $3.97 million. Chang, who was charged in court yesterday, had his bail of $200,000 extended until April 6. ST PHOTO: WONG KWAI CHOW

PUBLISHED MAR 10, 2017, 5:00 AM SGT

Former regional director allegedly took bribes to advance interests of businessman's firm

Elena Chong Court Correspondent (mailto:elena@sph.com.sg)

A former executive of BP Singapore was hauled to court yesterday to face charges of obtaining about US$4 million (S$5.7 million) in bribes from businessman Koh Seng Lee.

Clarence Chang Peng Hong, BP's former eastern regional director for marine fuels, allegedly took the bribes to advance the business interests of Mr Koh's company with BP.

Chang, who faces 47 charges, allegedly corruptly obtained bribes amounting to US$3.95 million from Mr Koh, executive director of Pacific Prime Trading (PPT), via Chang's HSBC bank account in Hong Kong.

A total of 19 payments ranging from US$100,000 to US$350,000 were made to his bank account between July 2006 and September 2008.

Chang, 51, is said to have also corruptly agreed to accept a bribe of $500,000 from Mr Koh some time before September 2009 to advance the business interests of PPT with BP.

'ACTIVITIES OF CONCERN'

We became aware of some activities of concern in 2010 which we reported to the authorities. These charges have been filed by the Singapore authorities, we cannot comment on them.

A BP SPOKESMAN, who says Chang's employment with BP ended in July 2010.

”

Besides allegations that he had received bribes, Chang was accused of moving the corrupt proceeds through his various bank accounts and, separately, using some of the proceeds to partially pay for properties.

On 16 occasions between January 2007 and March 2010, while he was at BP, Chang allegedly transferred a total of $4.7 million, which were benefits of corrupt proceeds, from his HSBC account in Hong Kong to a POSB bank account and two other HSBC Singapore accounts. The amounts ranged from $76,568 to $725,500.

He also faces 10 charges of allegedly using the corrupt proceeds to make partial payments for several properties to the tune of $3.97 million. The properties comprise three houses in Da Silva Lane in Hougang, Jalan Limau Purut in Tanah Merah and Ettrick Terrace in Siglap, and two condominium units in Pasir Ris Grove.

He is also accused of using $111,000, which formed part of his benefits of criminal conduct, to acquire share capital in MindChamps Preschool @ City Square on Sept 16, 2009.

Chang's lawyer Alfonso Ang told the court that he had just been briefed. The case was adjourned to April 6, and Chang's $200,000 bail has been extended until then.

A BP spokesman said in an e-mail that Chang's employment with BP ended in July 2010.

"We became aware of some activitiesof concern in 2010 which we reported to the authorities. These charges have been filed by the Singapore authorities, we cannot comment on them," she said.

The Corrupt Practices Investigation Bureau said in a statement that Singapore adopts a zero-tolerance approach towards corruption. The bureau said it takes a serious view of any corrupt practices and will not hesitate to take action against any party involved in such acts.

The maximum punishment for corruption is a $100,000 fine and five years' jail on each charge.

If convicted of offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chang could be fined up to $500,000 and/or jailed for up to seven years on each charge.

THE STRAITS TIMES

Businessman match-fixer Eric Ding Si Yang 'led the high life'

Ding's luxury buys included an Aston Martin V8 Vantage for $551,500, and a house in East Coast for $1.1 million. ST PHOTO: ONG WEE JIN

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Prosecutors seek jail, heavy fine ahead of sentencing

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An Aston Martin V8 Vantage for $551,500, a Porsche 911 for $281,400 and a terraced house in East Coast for $1.1 million - all paid for in cash.

These were the luxury purchases which prosecutors cited yesterday to show the "trappings of wealth" of local businessman Eric Ding Si Yang, 32, that arose from his match-fixing activities.

Earlier this month, he was found guilty of three counts of corruption for providing three Lebanese football officials with prostitutes as bribes for fixing future matches.

Prosecutors pressed for a stiff sentence of four to six years behind bars, and a fine of between $120,000 and $300,000 to be imposed.

Deputy public prosecutor Alan Loh said a heavy punishment was warranted because Singapore's feted reputation as one of the least corrupt countries in the world had been "tarnished" by international reports of match-fixing cartels operating out of the country.

He called match-fixing an "insidious undermining of the basic precepts of fair play" that causes great harm to society as it creates a "high-yield method for criminal organisations to launder money".

"The dangers of allowing match-fixing to proliferate uninhibited are thus far more sinister than would appear at first blush," he said, urging the court to make a "powerful and unambiguous statement" that match-fixing has no place in Singapore.

Mr Loh also cited court evidence that Ding has had ties with Dan Tan Seet Eng, named by Interpol as "the leader of the world's most notorious match-fixing syndicate", who is now under detention.

In mitigation, defence counsel Thong Chee Kun called the prosecutors' sentencing recommendations "draconian". He argued for a huge fine or, if the court deems it warranted, a short custodial sentence.

Mr Thong said it is "trite law" that each case should be decided on its own facts.

"It cannot be right to make Mr Ding pay for the actions of every match-fixer in Singapore," he argued. "The fact that Mr Ding had made certain purchases does not mean Mr Ding has used ill-gotten gains to finance his lifestyle." The defence also argued that no harm was caused because no match was fixed, and that the value of the bribes was low - though the prosecution argued this should bear little weight in "syndicated crime".

Ding is expected to be sentenced on Thursday.

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THE LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES

Stephanie Chew[*]

The focus of this paper is developments in sentencing for corruption offences in Singapore, with a particular focus on private sector corruption. In the course of this discussion, we will highlight seminal cases that have set out the crucial sentencing principles, discuss recent developments in case law interpreting relevant deeming provisions of the Prevention of Corruption Act (the primary legislation in Singapore dealing with corruption offences) that impact sentencing, and finally, future potential developments.

The paper is structured as follows:

a. Sentencing principles in private sector corruption;

b. Recent developments in case law interpreting provisions of the Prevention of Corruption Act regarding inchoate offences; *and*

c. Potential future developments including that of a sentencing framework for corruption offences.

I. INTRODUCTION: SENTENCING IN PRIVATE SECTOR CORRUPTION

The effective deterrence of corruption requires a multi-pronged approach. Stiff imprisonment terms are usually meted out for offenders in public sector corruption, given the obvious harm and public interest in deterring such offences, which tend to undermine the integrity of Singapore's public administration.

However, this does not mean that private sector corruption offences are *ipso facto* less serious than corruption in the public sector. Corruption in the private sector imposes hidden costs to the economy and undermines the sanctity of contract and its role as a facilitative institution in a society governed by the rule of law.

Recent developments in sentencing practice have centred on private sector corruption, as these form the vast majority of cases prosecuted. Further, there had previously existed a prevailing misconception that private corruption typically attracts fines (and not imprisonment), which has been corrected through High Court precedents expounding upon the relevant principles (as discussed in Part II). Our focus has therefore now turned to developing a broader sentencing framework that can be applied to both public and private sector corruption, which

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takes into account how the harm of the offences and culpability of the offender should be calibrated against the full range of statutorily prescribed punishment (as discussed in Part IV).

II. SENTENCING PRINCIPLES IN CASE LAW – PRIVATE SECTOR CORRUPTION

Public Prosecutor v Ang Seng Thor [2011] 4 SLR 217 is a seminal decision concerning the principles to be applied in sentencing in private sector corruption. In that case, Ang Seng Thor ("Ang"), a Singapore citizen, was the CEO and joint-Managing Director of a company called AEM-Evertech Holdings Ltd, which was listed on the Singapore Stock Exchange. He was prosecuted on two counts of corruptly giving gratification, one of which involved him giving a bribe of S$50,000 in Malacca to a director of a Malaysian company in order to secure a deal for AEM.[6] The other charge against Ang was for corruptly giving S$97,158 in cash in Singapore to an agent of another company as kickbacks for each purchase order raised by this company to AEM.

Ang pleaded guilty to both charges. At first instance, he was sentenced by the District Judge to the maximum fine of $100,000 for each charge (i.e. a total sentence of a $200,000 fine). The Prosecution appealed against this sentence on the basis that it was manifestly inadequate, and submitted that a custodial sentence should be imposed on Ang in addition to a fine and disqualification from acting as a director.

The Prosecution's appeal was allowed. On appeal, Ang's sentence was enhanced to six weeks' imprisonment and S$25,000 fine per charge, with both imprisonment terms to run consecutively. The total sentence was therefore 12 weeks' imprisonment and a fine of S$50,000.

Significantly, on appeal, V K Rajah JA commented that the District Judge erred in finding a distinction between public sector corruption and private sector corruption which justified different sentencing benchmarks or starting points.

He further held that while there is certainly a public interest in preventing a loss of confidence in Singapore's public administration which warrants a custodial sentence for public sector corruption, this does not automatically mean that such public interest was not present in private sector corruption. More importantly, triggering the public interest is *not* the only way that a custodial sentence may be imposed for private sector corruption. The custodial threshold may be crossed in other circumstances, depending on the applicable policy considerations and the gravity of the offence as measured by the mischief of likely consequence of the corruption. Furthermore, factors such as the size of the bribes, the number of people drawn into the web of corruption and whether such conduct was endemic are all relevant factors in determining whether a custodial sentence is justified. It is important to dispel the misconception that private sector offenders would not be punished to the same extent as public sector offenders – This would undermine the anti-corruption regime in Singapore. This is especially when one

[6] NB: Though the bribe was handed over in Malaysia, Ang was prosecuted in Singapore pursuant to Section 37 of the Prevention of Corruption Act, which makes Singapore citizens liable for corruption offences committed outside of Singapore and to be dealt with in respect of that offence *as if it has been committed within Singapore*.

considers the limited deterrent value of the maximum fine against private sector offenders like Ang (who was of means).

The principles espoused in *Ang Seng Thor* were reaffirmed by Chief Justice Sundaresh Menon in *Public Prosecutor v Syed Mostafa Romel* [2015] 3 SLR 1166, i.e. that "t*here is no presumption in favour of a non-custodial sentence where private sector corruption is concerned*", and the specific nature of corruption was of paramount importance in determining the appropriate sentence to be imposed. Menon CJ found it timely to reiterate the *Ang Seng Thor* principles as they had not been consistently followed subsequent to that case. Moreover, Menon CJ remarked that the increased outsourcing of public services and the corresponding rise of the ability of private actors to influence the public interest required more accountability for public monies spent. Accordingly, where the private sector corruption involved a) a significant amount of gratification b) gratification which had been received over a lengthy period of time or c) compromised of one's duty or a serious betrayal of trust, the starting point was likely to be a custodial sentence.

In this case, Romel was in charge of inspecting vessels seeking to enter an oil terminal by issuing inspection reports. If the defects identified were high-risk, the vessel would have to rectify the defects before being permitted to enter the terminal. Romel corruptly solicited and received a total of US$7,200 over three occasions from two captains of marine tankers in exchange for favourable inspection reports. Romel pleaded guilty and was sentenced to an aggregate of two months' imprisonment. On appeal, his sentence was enhanced to six months' imprisonment.

The *Romel* case is a landmark decision concerning the sentencing principles for private sector corruption cases in Singapore, and has been instrumental in forging the way forward for developing clearer guidelines for the prosecution of corruption offences in general, as will be considered in section IV below.

III. SENTENCING PRINCIPLES – INCHOATE OFFENCES

Recently, the Singapore High Court interpreted Sections 29, 30 and 31 of the Prevention of Corruption Act in *Public Prosecutor v Lau Cheng Kai*. The relevant sections read:

Abetment of Offences

29. Whoever abets, within the meaning of the Penal Code

(a) the commission of an offence under this Act; or

(b) the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act, *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

Attempts

30. Whoever attempts to commit an offence punishable under this Act *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

Conspiracy

31. Whoever is a party to a criminal conspiracy, within the meaning of the Penal Code [Cap. 224], to commit an offence under this Act *shall be deemed to have committed the offence* and shall be liable on conviction to be punished with the punishment provided for that offence.

[Emphasis in provisions added]

Lau Cheng Kai involved three staff and an associate of Global Marine Transportation Pte Ltd ("GMT") and a suspected buyback on the vessel Demeter Leader. The Prosecution had proceeded to trial on a charge of criminal conspiracy under s5(b)(i) read with section 31 Prevention of Corruption Act, for a conspiracy to bribe chief engineers and surveyors for buyback. The evidence showed that at least USD30,000 had been set aside for the payment of such bribes, although there was no evidence that any part of the money had in fact been paid. The accused was convicted, and he appealed against conviction and sentence. The Prosecution cross-appealed on sentence.

The High Court dismissed the accused's appeals and allowed the Prosecution's cross-appeal. The High Court interpreted the above-named provisions and held that their effect is to deem inchoate offences as completed for the purpose of sentencing. In other words, the accused persons must be punished on the basis that the criminal conspiracy as planned was successfully carried out, even though the bribes (or any part thereof) had not been paid/proven to be paid. Accordingly, no mitigating weight or sentencing discount could be accorded on the basis that the corruption offence was factually not committed.

The High Court found that such an interpretation accorded with Parliament's intent to "*reduce the opportunities for corruption, to make its detection easier and to deter and punish severely those who are susceptible to it and engage in it shamelessly*." The deeming provision(s) provide the Prosecution with an expanded arsenal with which to effectively target persons involved in acts of corruption.

The High Court's judgment is a welcome clarification of the law which emphasizes the severity of corruption and judicial commitment to giving full effect to Parliament's approbation of corruption offences.

IV. POTENTIAL FUTURE DEVELOPMENTS – SENTENCING FRAMEWORK FOR CORRUPTION OFFENCES AND AMENDMENTS OF THE PREVENTION OF CORRUPTION ACT

Finally, we briefly consider potential future developments related to our efforts to develop a general sentencing framework for corruption offences.

The Singapore High Court has affirmed the principle that it is incumbent on a sentencing court to calibrate punishment against the full range of prescribed punishment (*Public Prosecutor v Hue An Li*). Since then, the Singapore High Court has issued several guideline judgments on sentencing for different types of criminal offences, adopting a variety of approaches – for example, an indicative sentence, a sentencing benchmark, a sentencing matrix or sentence bands. In late 2018, Chief Justice Sundaresh Menon issued a guideline judgment with the first sentencing framework for a financial crime (albeit not corruption- related), for cheating at play under Section 172A of the Casino Control Act.

In line with these judicial pronouncements, around this time, the Prosecution had also proposed a sentencing framework for corruption offences and had utilized it in three test cases. The State Courts have accepted the Prosecution's proposed sentencing framework in two of these cases but rejected it in the third. All three cases will be going on appeal before the High Court.

The approval of a sentencing framework for corruption offences by the High Court will be of great utility in the fight against corruption. Further, the benefits of adopting a sentencing framework include improving parity and consistency of sentencing, and ensuring that the full range of punishment (as prescribed by Parliament in statute) is utilized appropriately.

We are of the view that our efforts to develop a sentencing framework should be accompanied by increases in the maximum punishment for such offences. Such would signal a clear legislative intent to robustly deter corruption. Furthermore, it is necessary for the maximum fines to be sufficiently stiff so as to adequately deter corporations.

These developments, taken collectively, will be useful tools in our efforts to deter, prosecute and adequately punish corruption.

V. CONCLUSION

Singapore has made significant developments over the past decades in the fight against corruption – However, we are conscious of the need to continually strive to effectively combat corruption and preserve our society's zero-tolerance stance towards it. Sentencing principles and practice are important aspects of the fight against corruption, and we will continue to work to develop the law in this regard.

THE LATEST ANTI-CORRUPTION LAW IN THAILAND

Tharanee Konchanat Davison [*]

I. THE NEW ORGANIC ACT ON COUNTER CORRUPTION, B.E.2561 (2018)

The new Organic Act on Counter Corruption, B.E.2561 (2018) came to force on 22 July 2018. It replaces the past Organic Act on Counter Corruption which had been in place for 19 years. There are some interesting changes to the new Organic Act on Counter Corruption that will be addressed as follows:

A. The Definition of "State Official" in Section 4

In the 1999 Organic Act, "State Official" is probably the most important term, as these officials are the main target group who this organic act originally aimed to apply to. In the 1999 Organic Act, "State Official" means a person holding a political position, Government officials or local officials assuming a position or having permanent salaries, officials or persons performing duties in a State enterprise or a State agency, local administrators and members of local assemblies who are not persons holding a political position, officials under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and any person or group of persons exercising or entrusted to exercise the State's administrative power in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a State enterprise or other State undertaking.

In the latest act, the word "Public Officer"[1] is added to separate them from State Officials; also, the definition of State Official has been slightly, but importantly, changed. The new definition of State Official[2] excludes a person holding a political position; however, a person holding a political position falls under the definition of Public Officer instead. The definition of Public Officer in the 2018 Act is wider than the definition of State Official in the 1992 Act, as it covers those who fall under the definition of State Official in the 1992 act and also adds the phrase "other official prescribed by laws" to its definition. This means people who hold some

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[1] Public Officer means state officials, a person holding a political position, judges of the constitutional court, a person holding a position in an independent organization, and the National Anti-Corruption Committee.

[2] State official means government officials or local officials assuming a position or having permanent salaries, officials or persons performing duties in a State enterprise or a State agency, local administrators and members of a local assembly, other officials prescribed by laws, officials under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a State enterprise or other State undertaking, but it does not include a person holding a political position, judges of the constitutional court, a person holding a position in an independent organization, or the National Anti-Corruption Committee.

positions, such as abbots (chief monks) that have never been considered as State Officials,[3] will be included in the latest act as Public Officers, and this act will be applied to them as well.

B. Extensive Power of the National Anti-Corruption Commission

In Thailand, there are several organizations that are eligible to proceed with investigations regarding corruption cases. The main investigation units are the Office of the National Anti-Corruption Commission (NACC), the Office of the Public Sector Anti-Corruption Commission (PACC) and the Royal Thai Police. Each organization has its own investigators, and they are independent from each other. Under the Organic Act on Counter Corruption, B.E.2542 (1999), the investigation power of the Office of the National Anti-Corruption Commission (NACC) and the Office of the Public Sector Anti-Corruption Commission (PACC) was clearly separated under section 19 (4) as the NACC is liable to conduct investigation where the alleged are people holding political status, state officials holding at least chief executive positions or civil servants holding at least division director positions. For those who hold lower positions than stated in section 19(4), the case would be investigated by the PACC or inquiry official (Thai Royal Police) where the injured person has lodged a complaint to the inquiry official.

Nevertheless, according to section 62 of the Organic Act on Counter Corruption, B.E.2561 (2018), even though the accused are people holding lower positions than that of a chief executive, the PACC is no longer empowered to automatically proceed with investigation. Instead, the case shall be passed to the National Anti-Corruption Commission for consideration. Where the National Anti-Corruption Commission considers that the case does not involve serious offences, it will be referred to the PACC for further investigation.

Furthermore, according to section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999) [4], where the injured person has lodged a complaint to the inquiry official (the police) against a State Official who committed an offence of corruption, the inquiry official shall refer the matter to the NACC within thirty days from the date of the complaint. In the case that the accused is not holding an important position under section 84, such as chief executive, judge, prosecutor, or the National Anti-Corruption Commission, the case shall be referred back to the inquiry official for proceedings in accordance with the Criminal Procedure Code. The Organic Act on Counter Corruption, B.E.2561 (2018) applies a similar method under section 61, but there is one very interesting change that is added to the latest organic law.

Section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999) does not apply to cases where the accused is not considered a State Official. But, under section 61 of The Organic Act on Counter Corruption, B.E.2561 (2018), even if the accused is not considered a government officer or State Official under section 4—but if he is the principal, instigator or aider and abettor

[3] Thai Supreme court decision no.7540/2554.

[4] In a case where an injured person has lodged a complaint, or a denunciation is made, to the inquiry official requesting an action against a State Official who is not a person described under section 66 in consequence of the commission of the act under section 88, the inquiry official shall refer the matter to the N.C.C. Commission within thirty days from the date of the complaint or the denunciation, for the purpose of proceeding with it in accordance with relevant provisions of law. In this connection, if the N.C.C. Commission, having considered the matter, is of the opinion that it is not a case under section 88, the N.C.C. Commission shall refer it back to the inquiry official for proceeding with it in accordance with the Criminal Procedure Code.

or is giving, offering or agreeing to give the property or any other benefit to a State Official—the case shall first be referred to the NACC for consideration. Then, the NACC will return the case to the inquiry official where considered appropriate. Therefore, if the inquiry official receives a complaint accusing a person of bribing a State Official, in the past the case would not fall under section 89 of the Organic Act on Counter Corruption, B.E.2542 (1999). The inquiry official was not required to refer the matter to the NACC within thirty days from the date of the complaint; instead the inquiry official was able to proceed with the investigation process immediately. However, section 30 of the new organic act extends the NACC's power to cover those who are giving, offering or agreeing to give the property or any other benefit to a State Official. According to section 61, for all corruption complaints received by an inquiry official, the inquiry official is only allowed to proceed with a preliminary investigation and then must refer the matter to the NACC within thirty days from the date of the complaint. If the NACC considers the matter to be a non-crucial matter, the NACC shall refer it back to the inquiry official to complete the investigation process.

In the aforementioned case, when an inquiry official receives a complaint accusing a person of bribing a State Official, under the new organic act, the inquiry official shall refer the matter to the NACC first, and the inquiry official will be able to proceed with further investigation only after the NACC refers it back to him. This new rule may result in delay of the investigation process, as under the new organic law almost all corruption cases must be referred to the NACC to review before the next process can be done.

C. Arrest and Detention Process

Before the new Organic Act on Counter Corruption, B.E.2561 (2018) came into force, the general arrest and detention process in Thailand's Criminal Code was also applied to corruption cases. It is prescribed in section 87 that the official or private citizen conducting the arrest shall without hesitation bring the arrestee to the local office of inquiry immediately and the inquiry official is allowed to detain the arrestee for only 48 hours where it is necessary to have an inquiry after that the arrestee shall be brought before the court. However, it is prescribed in section 61 of the new Organic Act that the official or private citizen conducting the arrest shall bring the arrestee along with an arrest note to the office of inquiry or to the NACC office within 48 hours after the arrestee is delivered to the inquiry official's office. This provision provides arrest and detention power to the NACC, as in the past this power belonged solely to the inquiry official. This provision may cause some difficulty if the arrestee is arrested outside of Bangkok because the official or private citizen conducting the arrest is required to deliver the arrestee to the NACC office in Bangkok within 48 hours. After the arrestee is delivered to the NACC, the NACC is empowered to grant provisional release with or without bail. During the provisional release application consideration period, the NACC is required to provide an arrestee detention area; however, there is no promising plan for the construction of an NACC detention centre. The current temporary solution is that the NACC will approve most provisional release applications, but this does not ease the transportation difficulty faced by inquiry officials.

D. Corruption Case Proceeding Period

The Organic Act on Counter Corruption, B.E.2542 (1999) does not contain provisions requiring investigators or public prosecutors to proceed with the case in a certain period of time, but a proceeding-period provision is included in the new organic act.

It is stated in section 93 of the Organic Act on Counter Corruption, B.E.2561 (2018) that where the public prosecutor receives the report and documents from the NACC and is of the opinion that the report, documents and opinion are complete to prosecute, the prosecutor shall submit the matter to the court having competent jurisdiction to try the case within 180 days. However, where the prosecutor considers that the report and documents are not complete as to justify the institution of legal proceedings, the public prosecutor shall notify the NACC to conduct further investigation within 90 days. In case of further investigation, the NACC and Prosecutor-General shall appoint a working committee consisting of representatives not exceeding five people of each side, and the NACC shall complete its investigation within 90 days from the committee appointment date. Failing to comply with the specified period will result in administrative sanction. The specific proceeding period provision in the new act may expedite the investigation and prosecution process in simple cases. However, most corruption cases are extremely complicated and require extensive periods to gather witness statements and evidence by investigators, and the public prosecutor also requires more time to review all evidence. This provision may put huge pressure on investigators and public prosecutors to submit the case before the deadline without thorough revision which may affect the quality of the case and may result in the increase of case dismissal.

II. CASE STUDY: TEMPLE CORRUPTION SCHEME

A. Facts

The National Office of Buddhism, also known as the Office of National Buddhism (ONaB), is an agency of the central government of Thailand. It is responsible for state administration of Buddhism. The government will grant annual funding to ONaB every year in order that ONaB will allocate those funds to support temples and Buddhist activities. There are several types of funding budgets depending on the purpose of allocating funds to temples all over Thailand, such as the temple development budget, the temple restoration budget, and the Buddhism propagation budget. Each budget has its own criteria applied to temples to be eligible to receive those funds, and each temple is required to submit a project plan along with evidence showing the temple is entitled to the budget request. In 2017, it emerged that many ONaB officers are alleged to have worked with abbots and senior monks of more than 100 temples around Thailand to embezzle more than 270 million baht of the aforementioned funding. The following is an example of a case that occurred at a temple in Lumpang province, in northern Thailand.

The abbot of temple X was contacted by Mr. A., an ONaB officer who has good relationships with many abbots in Thailand. Mr. A informed the abbot that ONaB has Buddhism propagation budget funding which could be allocated to temple X with the condition that, after the funds are transferred, the abbot must return half of the funds back to Mr. A. The abbot agreed to do so, so he submitted a minimal project plan requesting funding for the construction of a meditation centre. In order to be eligible to receive grants from the meditation centre construction fund, the temple must be registered as a provincial meditation centre; however, temple X had never registered as a provincial meditation centre. In a couple of days after the funding application submission date, temple X's funding application was approved by the director of ONaB, who has been working at ONaB since 1987. The director of ONaB was supposed to know the criteria for the meditation centre construction fund, but he wrongfully

approved funding to temple X. The 2,000,000 baht (60,000 USD) fund was transferred to temple X's bank account the next day. The abbot had withdrawn all funds within 2 days and gave 1,000,000 baht (30,000 USD) in cash back to another senior monk at one of the Buddhist events in Lumpoon in northern Thailand so that he could fly back with the cash and return it to Mr. A.

B. How to Proceed with the Case under the Organic Act on Counter Corruption, B.E.2561 (2018)

Mr. Pongporn Pramsaneh, the latest ONaB director, made a denunciation to the Thai Royal Police, Crime Suppression Division in connection with the temple funds embezzlement scandal. As the accused are State Officials, including the abbot, the investigation procedure shall follow the provisions in the Organic Act on Counter Corruption, B.E.2561 (2018). Once the inquiry official received the denunciation, he was to gather reasonable evidence showing wrongdoing by the accused and then submit the cases to the NACC. As there are a series of cases, some of the cases are returned to the inquiry official, but some are investigated by NACC officers. Where the investigation process is complete, the case report shall be submitted to a public prosecutor. The public prosecutor has 180 days from the submission date to review each case before filing the case in court or 90 days if the report is incomplete and requires a working committee of the NACC to be appointed to make further investigation. In case of further investigation, NACC officers have 90 days to gather all evidence required by the public prosecutor and to submit it to the working committee to make a final decision.

C. Problems and the Way Forward

According to the fact that the aforementioned temple funds embezzlement cases happened across Thailand, the investigation units expect more than 100 cases need to be opened and investigated thoroughly. The main problem is the lack of manpower of investigators in each anti-corruption organization, from investigators to public prosecutors. Also, where the case is investigated by the NACC, public prosecutors, and even the investigators themselves, have a very tight deadline under the new organic law as mentioned above. The complexity and difficulty of the extradition process is another problem that delays the judicial process, as several accused, most are senior monks and an ex-ONaB executive level officer, fled Thailand. Although Thailand has extradition treaties with many countries, the extradition period may take a very long time as it needs to go through several administrative processes.

The above-mentioned problems may not be solved in a short period of time. However, we can see attempts of the government to address corruption in Thailand, as several new anti-corruption laws are being drafted, more than 600 new NACC investigators are being appointed and criminal courts specialized in corruption and misconduct cases have recently opened in nine regions throughout Thailand. These are part of the promising measures aiming to decrease the corruption rate in Thailand, and Thailand has very high hopes to eliminate corruption and bring those who are corrupt to justice.

SUPREME PEOPLE'S PROCURACY OF VIET NAM: SKILLS FOR PROSECUTION, SUPERVISING INVESTIGATIONS AND ADJUDICATION OF EMBEZZLEMENT CASES

Nguyen Dang Thang[*] *and Nguyen Duc Bang*[†]

I. FUNDAMENTAL ELEMENTS OF PROPERTY EMBEZZLEMENT

A. Definition and Specific Elements of Embezzling Property

1. Definition

Article 353 of the Criminal Code 2015 provides that:

> *1. Any person who abuses his/her position or power to embezzle property under his/her management assessed at from VND 2,000,000 to under VND 100,000,000 or under VND 2,000,000 in any of the following cases shall face a penalty of 02 - 07 years' imprisonment:*
> *a) The offender was disciplined for the same offence;*
> *b) The offender has a previous conviction for any of the offences specified in Section 1 of this Chapter which has not been expunged.*
>
> *2. This offence committed in any of the following cases shall carry a penalty of 07 - 15 years' imprisonment:*
> *a) The offence is committed by an organized group;*
> *b) The offence involves deceitful or dangerous methods;*
> *c) The offence has been committed more than once;*
> *d) The property appropriated is assessed at from VND 100,000,000 to under VND 500,000,000;*
> *đ) The money or property embezzled was meant for poverty reduction, provision of benefits for wartime contributors, contribution to reserve funds, provision of emergency aid for people in areas suffering from a natural disaster or epidemic or extremely disadvantaged areas;*
> *e) The offence results in property damage of from VND 1,000,000,000 to under VND 3,000,000,000;*
> *g) The offence has a negative impact on life of officials, public employees, and workers of an agency or organization.*
>
> *3. This offence committed in any of the following cases shall carry a penalty of 15 - 20 years' imprisonment:*

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a) The property embezzled is assessed at from VND 500,000,000 to under VND 1,000,000,000;
b) The offence results in property damage of from VND 3,000,000,000 to under VND 5,000,000,000;
c) The offence has a negative impact on social security, order, or safety;
d) The offence results in bankruptcy or shutdown of another enterprise or organization.

4. This offence committed in any of the following cases shall carry a penalty of 20 years' imprisonment, life imprisonment, or death:
a) The property embezzled is assessed at ≥ VND 1,000,000,000;
b) The offence results in property damage of ≥ VND 5,000,000,000.

5. The offender might also be prohibited from holding certain positions or doing certain jobs for 01 - 05 years, liable to a fine of from VND 30,000,000 to VND 100,000,000 or have part or all of his/her property confiscated.

6. Office-holders in enterprises and organizations other than state organizations who take bribes shall be dealt with in accordance with this Article.

2. Specific Elements of Embezzlement

* ***Object of crime*****:** embezzlement directly infringes upon two social relations which are the legitimate activities of an agency, organization ***or enterprise***; and ownership relation (rights).

* ***Objective of crime:*** Abusing a position and power; and embezzling property from VND 2,000,000 or under VND 2,000,000 but the offender is disciplined for the same offence or previous conviction for any corruption-related crimes which have not been expunged.

* ***Subject of crime:*** There are two conditions: the offender must have power and position and must be responsible for property management.

* ***Subjectivity of the crime:*** the offender commits a crime with a directly intentional mistake.

B. Matters Must be Proven to Establish the Crime of Property Embezzlement

1. Whether embezzling property happened; when and where it happened; what are its modalities, cunning and development; and when it was revealed.

2. Who are the offenders; whether accomplices were involved; how did the offender abuse his/her power, position, official duties and missions for the commission of crime; and the penal liability capacity of each offender.

3. Specific circumstances aggravating and extenuating the penal liability of each offender; the personal character of the offender.

4. The nature and extent of damage to society caused by the act of embezzlement; the agency, enterprise or organization damaged; property value damaged and other consequences; and recoverable property.

C. Evidence to Prove Property Embezzlement

- All coming and outgoing vouchers, documents, accounts, financial reports, agreements and contracts, and invoices.

- The statements or testimony of denunciators, of witnesses and persons involved.

- The statements of suspects and persons who committed property embezzlement.

- Material evidence of criminal embezzlement.

- Assessed conclusion and appraised conclusion issued by professional offices.

II. SKILLS FOR EXECUTING PROSECUTION AND SUPERVISING INVESTIGATIONS

A. Skills for Prosecution and Supervising Compliance with Law on Receiving and Dealing with Crime Information and Denouncement, and Filing Criminal Charges

Prosecutors and their assistants must be in compliance with principles, procedures, orders and powers of the People's Procuracy on receiving and dealing with crime information and denouncement, and filing criminal charges provided by:

- The Inter-ministerial Circular 06/2013/TTLT-BCA-BQP-BTC-BNN&PTNT-VKSNDTC, dated 2 August 2013;

- The Direction 06/CT-VKSTC, dated 6 December 2013, of the Prosecutor General of the Supreme People's Procuracy;

- Articles 3, 12 and 13 of the Law on Organization of the People's Procuracy 2014 and Articles 159 and 160 of the Criminal Procedure Code 2015;

- Provisional regulation on executing prosecution and supervising compliance with law on receiving and dealing with crime information and denouncement, and request of criminal institution issued by Decision 169/QĐ-VKSTC, dated 2 May 2018, of the Prosecutor General of Supreme People's Procuracy.

The following concrete steps should also be fully executed:

Firstly, requesting the investigation body to collect evidence, documents on operation and organization and financial management regulations of the relevant enterprise or agency; decision paper on granting power and position, official duties and missions of the suspects, offenders and persons involved in order to determine the scope of power and position, to define violation acts which have been directed and decided and their damages when financial regulation and economic management are violated. In such cases, prosecutors have to request the investigation body and investigators to request the preparation of professional assessments and appraisals to clarify the damages caused by the crime.

Secondly, for enterprises, it must be clear that legal documents of the enterprise have to be collected, and information establishing the illegal acts of the suspect has to be collected as well. Furthermore, regulations, financial statutes, decision papers on granting power, position, official duties and missions must be studied carefully in order to determine mistakes of each suspect involved, including the Chairman, Chief Executive Officer, Chief Accountant and Cashier, based on the provisions of the Accounting Law 2014.

Thirdly, fully supervising the legal foundations of documents and evidence collected by investigation body, such as how such documents and evidence have been collected; whether financial documents have been certified or not; and the process of taking statements and testimonies must be in compliance with law as well; and whether financial data has been collected or seized.

Fourthly, if necessary, they should request the investigation body to provide further documents and evidence in terms of legal foundation and limited time. If documents and evidence fully meet the requirements to charge the accused, then prosecutors have to take charge of the investigation and prosecution of the crime according to the law.

B. Skills for Executing Prosecution and Supervising Compliance with the Law within the Investigation Process

1. Legal Foundation

Articles 14 and 15 of the Law on Organization of the People's Procuracy 2014 and Article 161 of the Criminal Procedure Code 2015 require prosecutors to supervise strict compliance with the law on arrest and its ratification, especially in urgent circumstances, when issuing detention orders, legal foundations for institution of criminal proceedings by filing criminal charges. In addition, prosecutors also have to pay close attention to the regulations of the Direction 15-CT/TW when dealing with criminal cases in which an offender holds an important position in a governmental agency.

2. Important Matters to Clarify during the Investigation Process to Correctly Prove Property Embezzlement

Firstly, prosecutors must collect and verify documents and evidence in order to prove property embezzlement. This includes making inquiries to verify the consequences of the crime. If necessary, the prosecutor has to request assessment and financial appraisal of the harm caused by the crime.

Secondly, prosecutors must determine who committed the embezzlement, how the embezzlement was conducted, and whether any accomplices were involved in the offence.

Thirdly, prosecutors must issue instructions to the investigators in order to clarify what evidence needs to be collected.

3. Documents and Evidence Collected within the Search Process

- Documents and evidence to verify the responsibility of offenders in connection with property management, including decisions on assignment and position; regulations on operation and organization of agencies, organizations and enterprises.

- Vouchers, documents, and account books involving property embezzlement signed by the offender, which are valuable records for proving necessary facts related to the embezzled property.

- Documents representing the sharing of embezzled property with accomplices.

- Instruments and means used to execute the embezzlement.

- Type of property embezzled.

- Type of instrument and means for hiding the embezzled property.

C. Preparation and Interrogation of the Offender

- Studying principles, policies, regulations, and directives on economic and financial management and property management.

- Studying the personal character of the suspect, including the offender's attitude and psychological state.

- Studying and investigating offenders' other social relations.

- Studying the criminal case, the evidence and the documents related to criminal acts.

- Setting time and location for interrogation and issuing summonses.

1. Contents of Interrogation

- The position, assignment and responsibility for property management.

- Location, time, means, occurrence and consequences of the act of property embezzlement.

- The role, position, mission and participating level of each offender and other persons involved; and the relationship between offenders and persons involved.

- Property sharing, quantity, location of concealed property and the sale of property.

- Other criminal acts of offenders and persons involved.

- Weaknesses and shortcomings in economic management and property preservation at the scene of the crime.

D. Taking Testimony of Witnesses

Preparation activities include:

- Studying the criminal case and the personal character of each witness.

- Studying the reactions of agencies, organizations and enterprises to the embezzlement in order to understand the witness's testimony and attitude.

- Studying the relationships between offenders and witnesses.

- Setting the location, time, summons method and official taking of testimony.

1. The Main Contents of Witness Testimony

- Embezzled property of each offender and person involved; the consideration and evaluation of witnesses to the embezzlement.

- Other suspicious relationships of offenders.

- The spending, shopping, concealment of property of the offender; and destruction of documents and evidence by the offender.

- The bribery, domination or threatening of witnesses by offenders and persons involved.

- Vouchers, documents, invoices, property revealed by the witness.

- Weaknesses and shortcomings of personnel management at the embezzling site.

E. Other Procedural Activities such as Confrontation, Identification, Experimental Investigation, and Appraisal

Prosecutors should study the investigative conclusion and compare documents and evidence in the case with investigative requests issued in order to address unanswered questions which require further inquiry (if any). Prosecutors should also take part in, and coordinate with, investigators in the process of making the investigative report by examining and arranging documents, evidence and orders in the criminal case (if necessary).

F. Making the Indictment

Together with guidelines on making the indictment provided in the regulation on executing prosecution, supervising institution of criminal proceedings, investigation and prosecution (issued by Decision 03/QD-VKSTC dated 29 December 2017 of the Prosecutor General of the Supreme People's Procuracy), prosecutors should pay close attention to the following important matters:

+ Presenting legal foundations to determine the ownership of enterprises or agencies where property embezzlement has occurred; the position, power and role of offenders and persons involved in financial management and economic management at such enterprises and agencies.

+ Summarizing evidence to prove means and artifices of executing the property embezzlement scheme; considering and presenting documents and evidence to prove the criminal conduct and the offender's awareness of the criminal conduct under his or her his management;

+ Analysing and presenting clearly *"the streamline of money"* through financial management and economic management in which the offender has executed fraudulent acts to appropriate State property based on the legal provisions of financial law, accounting law and economic management law;

+ Collecting assessments and professional appraisals, which play significant roles in proving the offender's appropriation of property, to present at indictment.

III. SKILLS FOR EXECUTING PROSECUTION AND SUPERVISING ADJUDICATION OF FIRST INSTANCE TRIALS

A. Skills for Studying Embezzlement Cases

Prosecutors should carefully review the following:

+ Documents and evidence to determine the state laws and regulations that control actions on finance and economics of enterprises, agencies and organizations having violations.

+ Documents to determine position and power to make decisions, set direction and manage economic and financial policies and practices of enterprises, agencies and organizations having violations.

+ Documents and evidence to prove illegal acts of financial and economic management by persons holding power and position in order to appropriate State property.

+ Material evidence to prove means and artifices of offenders; describing the occurrence of financial activities and economic operations which clearly demonstrate the offender's awareness of the appropriation of State property by means of decision, direction, examination, assignment, etc.

+ Summaries of economic and financial contracts of enterprises, agencies and organizations that are artifices by persons holding power and position to appropriate the embezzled property; account books and financial data showing illegal acts on financial principles and economic management to appropriate state money.

+ Assessments and appraisals by legal assessors; reports on determining and verifying financial and economic operations.

+ The statements of offenders and persons involved in the case.

Prosecutors should also carefully review the draft indictment in order to avoid mistakes, such as unclear arguments, legal foundations, financial data, provisions and articles, criminal records, sections and subsections that apply to the case, and other contents determining the plaintiff, seizing and keeping money, exhibits, and accounts for executing judgment, for prosecution and adjudication. Moreover, they should actively cooperate with the chairman of the trial to exchange information about the case in order to ensure that the prosecution is in full compliance with the law and to protect the offender's rights.

B. Skills for Preparing Interrogation Reports and Arguments at Trial

The following evidence and documents should be carefully prepared:

+ Summaries of important documents and evidence to prove that the embezzled property has been included in the indictment; then it is important to clarify the crime process and to fully interrogate the suspect with the following questions:

  - Position, role and power of the offender and his or her activities.

  - Determination and conclusion on how the enterprise's property has been appropriated.

  - Summarizing and reckoning the number of documents and evidence in the case in order to classify evidence, including inculpatory and exculpatory evidence, so the prosecutor can easily interrogate the suspect.

Note that in addition to statements and testimony, the prosecutor should use concrete material evidence to analyse, argue and draw conclusions of criminal activity based on specific characteristics of the embezzled property.

+ For embezzlement cases including assessment and appraisal reports, prosecutors should actively request assessors to explain what legal foundations have been executed to determine violations, consequences, property appropriated and whether such consequences have been caused by a person who holds position, power or mission in financial or economic management.

1. <u>Preparing Arguments</u>

In addition to the above suggestions, one of the most difficult and complex situations which prosecutors must expect is remaining composed during trial because defence lawyers will be

trying to protect their clients and prove their innocence, or at least cast doubt on their guilt. Prosecutors should pay attention to the following matters:

Firstly, analysing documents and evidence to make clear the object and objective of the crime in connection with the offender's position, power and mission characteristics, compliance with financial management and economic management of the offenders at their enterprise, agency or organization;

Secondly, clearly proving the consequences of the crime, which include the appropriation of state property, the relationship between the cause and effect of the illegal acts and the motive to appropriate property at the offender's direction and by the offender's decision;

Thirdly, clearly proving that economic and financial operations have been executed with the subjective awareness of the offenders by intentional acts and fraudulent schemes caused by non-compliance with economic management principles, financial management principles and private motivation which existed before the offender decided to commit the crime for his or her own personal gain. This can be done by:

- Making reports and suggestions on the level of penalty.

- Making draft arguments: in property embezzlement cases, the focus of the argument is the use of material evidence presented in the indictment in order to analyse fully the crime's motivation, the goal of the appropriation of property through means, artifices and orders executed by the offenders.

- Preparing for possible situations and other circumstance which could happen at trial in order to provide suitable solutions.

C. Skills for Prosecution and Adjudication at Trial

- Supervising criminal procedure based on provisions and regulations of the Criminal Procedure Code 2015.

- Preparing mentally to present the indictment.

- Preparing to deal with the jury, defence lawyers, offenders and other persons participating in the trial.

- *Interrogation method:* questions must be short and clear; they should not be long or complicated, and especially leading questions should not be asked. The questions should be designed to reveal clear explanations of the embezzling acts, artifices and consequences of the crime.

- *Skills for argument at trial:* In practice, when dealing with prosecution and adjudication of embezzlement cases, new information is provided in the process of interrogation and argument at trial. Therefore, prosecutors have to concentrate on taking notes on

documents and evidence which have passed cross-exam in order to rectify false or misleading characterizations and to cite to key evidence later.

If the jury is having difficulty reaching a decision, then the prosecutor should actively request the jury to suspend the trial for evidential review.

- *Skills for presenting arguments:* For embezzlement cases, arguments presented must be highly convincing so that members of the general public can understand the nature of the criminal conduct. Therefore, based on previous preparation, the prosecutor should focus on proper ways for proving, arguing and concluding which must be based on evidence, documents, and assessments.

- *Skills for rebuttal and other responses:* rebuttal arguments and other responses to questions posed by an offender or defence counsel must be based on evidence and documents of criminal cases, legal regulations, and provisions of law, so prosecutors should attentively listen to the accused, lawyers and persons participating in the criminal trial; prosecutors must quickly take note of controversial remarks, such as statements or opinions, in order to add them to the prosecution's written responses or rebuttals.

D. Necessary Matters Done after Trial

- Examine the trial record.

- Summarize the faults and mistakes or violations (if any)

- Review the judgment.

- Consider filing petitions to correct faults or mistakes, or, if necessary, appeal.

- Arrange and store documents and evidence according to the law.

TWELFTH REGIONAL SEMINAR ON GOOD GOVERNANCE

PARTICIPANTS, VISITNG EXPERTS & ORGANIZERS LIST

A. International Participants

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Mr. NGUYEN Duc Bang	Senior Prosecutor, Deputy Chief of Division Department of Exercising Public Prosecution Power and Supervision over Investigation of Corruption Cases Supreme People's Procuracy of Vietnam Vietnam

B. Visiting Experts

Name	Title and Organization
Mr. Mohamad Zamri Bin Zainul Abidin	Director, Anti-Money Laundering and Forfeiture Of Property (AMLFOP) Division Malaysian Anti-Corruption Commission Malaysia
Dr. Claire Armelle Leger	Anti-Corruption Analyst Anti-Corruption Division Directorate for Financial and Enterprise Affairs Organization for Economic Co-operation Development France

C. Organizers and Observers: Vietnam

Name	Title and Organization
Dr. Tran Cong Phan	Deputy Prosecutor General SPP
Ms. Vu Thi Hai Yen	Deputy Director Department of International Cooperation and Mutual Legal Assistance in Criminal Matters, SPP
Ms. Hoang Thi Thuy Hoa	Chief of Division Department of International Cooperation and Mutual Legal Assistance in Criminal Matters, SPP
Mr. Do Nguyet Que	Secretary of Deputy Prosecutor General SPP
Ms. Nguyen Cam Tu	Prosecutor Assistant Department of International Cooperation and Mutual Legal Assistance in Criminal Matters, SPP
Mr. Nguyen Duc Hanh	Deputy Head Master Hanoi Procuratorate University, SPP
Mr. Phan Truong Son	Chief Prosecutor People's Procuracy of Da Nang City, SPP

D. Organizers: UNAFEI

Name	Title and Organization
Mr. Takeshi SETO	Director UNAFEI
Ms. Kayo ISHIHARA	Deputy Director UNAFEI
Mr. Ryo FUTAGOISHI	Professor UNAFEI
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Mr. Thomas L. SCHMID	Linguistic Adviser UNAFEI
Ms. Arisa NAGAHAMA	Officer UNAFEI
Ms. Yayoi TSUJII	Officer UNAFEI
Ms. Mariko KAMADA	Officer UNAFEI

Twelfth Regional Seminar on Good Governance for Southeast Asian Countries

"The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities"

SCHEDULE

27-29 November 2018
FURAMA Resort DANANG

Hosts:
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI),
Supreme People's Procuracy Office of the Socialist Republic of Viet Nam (SPP)

Monday, 26 November
PM Registration

Tuesday, 27 November
09.00-10.00: Opening Ceremony – at the Gallery Rooms 1+2
Opening Address by Mr. Takeshi SETO, Director, UNAFEI
Opening Address by Dr. Tran Cong Phan, Deputy Prosecutor General, SPP
Special Address by Mr. Shinichi ASAZUMA, Deputy Chief of Mission, Embassy of Japan in Viet Nam

Group Photo session

10.00-10.40: Coffee / Tea Break
10.40-11.00: Keynote Address by Mr. Takeshi SETO, Director, UNAFEI
11.00-12.00: Special Presentation by Dr. Claire Armelle Leger, Anti-Corruption Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, Organization for Economic Co-operation Development
12.00-13.30: Lunch – at the Hotel Restaurant "Café Indochine"
13.30-14.30: Special Presentation by Mr. Mohamad Zamri Bin Zainul Abidin, Director, Anti-Money Laundering and Forfeiture of Property (AMLFOP) Division, Malaysian Anti-Corruption Commission
14.30-15.10: Country Presentation (Brunei)
15.10-15.30: Coffee / Tea Break
15.30-16.10: Country Presentation (Cambodia)
16.10-16.50: Country Presentation (Indonesia)

18.00- Welcome Reception hosted by SPP – at the Gallery Rooms 3+4

Wednesday, 28 November

09.00-09.40: Country Presentation (Japan)
09.40-10.20: Country Presentation (Laos)
10.20-10.40: Coffee / Tea Break
10.40-11.20: Country Presentation (Malaysia)
11.20-12.00: Country Presentation (Myanmar)
12.00-13.30: Lunch – at "Café Indochine"
13.30-14.10: Country Presentation (Philippines)
14.10-14.50: Country Presentation (Singapore)
14.50-15.10: Coffee / Tea Break
15.10-15.50: Country Presentation (Thailand)
15.50-16:30: Country Presentation (Viet Nam)

Thursday, 29 November

09.00-10.30: Chair's Summary & Discussion
10.30-11.00: Coffee / Tea Break
11.00-12.00: Closing Ceremony
Closing Address by Ms. Vu Thi Hai Yen, Deputy Director, Department of International Cooperation and Mutual Legal Assistance in Criminal Matters, SPP
Closing Address by Mr. Takeshi SETO, Director, UNAFEI
Presentation of Certificate
12.00-13.30: Lunch – at "Café Indochine"
PM Side Event

18:00- Farewell Reception hosted by UNAFEI – at the Gallery Rooms 3+4

End of the Seminar

APPENDIX

PRESENTATION SLIDES

- *Dr. Claire Armelle Leger, Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*

- *Mr. Mohamad Zamri bin Zainul Abidin, Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities—Malaysian Perspective*

SUPPLEMENTAL REPORTS

- *Ms. Nguyen Cam Tu, LLM, Prosecutor Assistant, SPP and Mr. Nguyen Hai Bang, LLM, Examiner, High People's Court in Ha Noi: Corruption Crimes in Viet Nam and the Roles of the Supreme People's Procuracy of Viet Nam in Dealing with Requests for Mutual Legal Assistance in Criminal Matters Relating to Corruption Cases*

- *Dr. Nguyen Duc Hanh, Hanoi University for Prosecutors: Corruption in the Banking Sector: Experiences, Challenges, Trends, Solutions and Recommendations*

MUTUAL LEGAL ASSISTANCE IN ASIA AND THE PACIFIC:

EXPERIENCES IN 31 JURISDICTIONS

Claire Leger

Anti-Corruption Analyst

OECD Anti-Corruption Division

27 November 2018, Da Nang, Viet Nam

The views expressed in this presentation do not necessarily represent those of the OECD Member countries or States Parties to the OECD Anti-Bribery Convention.

OECD
BETTER POLICIES FOR BETTER LIVES

Outline

1. Introduction
2. Common Challenges to Effective MLA in Corruption Cases
3. Best Practices for MLA in Corruption Cases
4. Practical Tools for Facilitating Effective MLA
5. Conclusion and Recommendations

1. Introduction

- OECD Anticorruption Initiative for Asia-Pacific
- ADB-OECD (2017), Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions
- 2010–2015 time period
- Focuses on the practical challenges jurisdictions in the Asia-Pacific region face in relation to requests for MLA, particularly in corruption cases

"Corruption", UNCAC:

(i) bribery of national or foreign public officials (arts. 15 & 16),

(ii) embezzlement/misappropriation of property by a public official (art. 17),

(iii) trading in influence (art. 18),

(iv) abuse of functions (art. 19),

(v) illicit enrichment (art. 20),

(vi) private sector bribery (art. 21), and

(vii) private sector embezzlement (art. 22).

2. Common Challenges to Effective MLA in Corruption Cases

A. Lack of an effective legal basis for cooperation

B. Differences in legal and procedural frameworks

C. Language barriers

D. Delay, no response at all, or insufficient response

E. Resource issues

F. "Traditional" grounds for refusing MLA

A. Lack of an effective legal basis for cooperation

- An obstacle for 5 members of the Initiative in relation to both outgoing and incoming requests for MLA (Japan; Malaysia; Nepal; Sri Lanka; Vietnam)
- Multilateral treaties
- Bilateral treaties
- Domestic law
- Reciprocity

B. Differences in legal and procedural frameworks

- Challenge in obtaining MLA for 9 members: Australia; Bhutan; Cook Islands; Indonesia; Korea; Macao, China; Singapore; Sri Lanka; Vietnam.
- In preparing outgoing requests for Macao and China.
- Legal misunderstandings can arise in a variety of areas:
  - *The legal basis for providing MLA.*
  - *The grounds upon which MLA can or must be refused.*
  - *Legal requirements for obtaining certain types of assistance.*
  - *Procedural requirements for obtaining assistance.*
  - *The approaches of common law versus civil law jurisdictions.*

C. Language barriers

- 10 of the 17 members: Australia; India; Indonesia; Japan; Korea; Macao, China; Malaysia; Singapore; Sri Lanka; Vietnam.
- Most members of the Initiative draft outgoing MLA requests in English (Table 2)

Jurisdiction	Language used in preparing outgoing MLA requests
Australia	English
Bangladesh	English
Bhutan	English
Cook Islands	English
Fiji	English
Hong Kong, China	English
India	English
Indonesia	English
Japan	Japanese
Korea	Korean
Macao, China	Chinese or Portuguese
Malaysia	English
Nepal	Nepalese
Philippines	English
Singapore	English
Sri Lanka	English
Thailand	Thai
Vietnam	Vietnamese

D. Delay, no response at all, or insufficient response

- 10 of the 17 members: Australia; Bhutan; Cook Islands; Hong Kong, China; India; Indonesia; Japan; Korea; Sri Lanka; Vietnam.
- Delay can be a function of any number of factors—a lack of resources in the responding state, a lack of cooperation among the responding jurisdiction's agencies, the nature or amount of evidence sought, or the procedural steps required before the request can be carried out (Table 3).
- No response
- Incomplete or insufficient responses

Timeframe for responses to MLA requests in six members of the Asia-Pacific Initiative

	Australia	Bangladesh	India	Indonesia	Japan	Korea	Macao, China
Total requests submitted	20	36	117	38	24	75	11
Requests executed	16	30	22	38	21	51	9
Requests still pending	4	6	77	0	3	18	1
Requests rejected	0	0	3	0	0	1	1
Requests withdrawn	0	0	15	0	0	4	0
Usual time to receive assistance	14 months	12 months	1–22 months	6–12 months	1–13.3 months	7–8 months	6–48 months

E. Resource issues

- 7 of the 17 Initiative members
- Requests for MLA have increased in recent years without a commensurate increase in resources (Hong Kong, China, and Australia)
- Resource and technological needs (Australia)
- Building the infrastructure to support MLA (Nepal)
- Personnel: number and capacity (training of staff) (Australia; Bangladesh; Bhutan; Cook Islands; Sri Lanka; Vietnam)

F. “Traditional” grounds for refusing MLA

1. Evidentiary and informational issues
2. Dual criminality
3. Other grounds for refusal

3. Best Practices for MLA in Corruption Cases

A. Building networks and relationships
B. Preparing a strong request for assistance
C. Consultations in relation to MLA requests
D. Transmission and prioritisation
E. Monitoring requests

A. Building networks and relationships

- Relation over time
- Trust
- Regular bilateral meetings
- Law enforcement official meetings

B. Preparing a strong request for assistance

To be successful, a request for MLA must be accompanied by supporting information that provides executing authorities with (i) an adequate legal basis to undertake the requested action and (ii) necessary facts and other details for doing so.

1. Training for individuals preparing requests
2. Guidance for preparation of requests

C. Consultations in relation to MLA requests

- Article 48 of UNCAC
- Law enforcement officials have important roles to play at each stage of the process:
  - pre-request stage
  - preliminary exchanges of information to support more formal MLA requests where possible in accordance with legal framework
  - alert their counterparts abroad that a request is underway
  - consultations with the other jurisdiction following the submission of a request if it is not clear

D. Transmission and prioritisation

- Several government bodies may be involved in requesting or executing a request: central authorities, judicial authorities, investigators, prosecutors, and counterparts abroad.
- Clear procedures are essential to ensuring that requests are appropriately transmitted and prioritized.
- Role of central (and other receiving authorities) and law enforcement authorities in reviewing and prioritising incoming requests.

E. Monitoring requests

- Modern technology permits the use of electronic platforms for managing incoming and outgoing MLA requests.

- In some jurisdictions, case management occurs primarily via in-person contacts.

4. Practical Tools for Facilitating Effective MLA

Where possible in accordance with the law:

A. Direct law enforcement cooperation

B. Spontaneous exchanges of information

C. Using international networks to facilitate assistance

A. Direct law enforcement cooperation

Formal MLA request and obtaining a response can be a time-consuming, bureaucratic process.

- Informal cooperation mechanisms regarding non-coercive MLA can lead to valuable intelligence to further an investigation.
- Examples, where possible in accordance with the law:
  - Legal advice about the process and procedures for obtaining MLA
  - Preliminary information about a case
  - Company records
  - General information about persons or companies
  - Preservation of documents
  - Information needed to facilitate a witness interview

- Information about the ownership of property
- Exchanges of information between FIU
- Exchanges of investigative findings
- Identification or seizure of bank accounts
- Assistance locating a witness or suspect through intelligence means
- Assistance with cross-border police investigations or operations
- Interviews with witnesses conducted on a voluntary basis
- Information about the travel plans of an accused person
- Recording of a witness statement

- Law enforcement agencies that engage in such direct cooperation:
  - Investigative units of anti-corruption authorities
  - FIU (See table 4)
  - Police forces
  - Tax authorities
  - Prosecution authorities

Singapore's FIU, the Suspicious Transaction Reporting Office (STRO), regularly refers information it discovers to its foreign counterparts. This is driven by a desire to determine whether money laundering offences have been committed in Singapore; however, in some cases this may also lead to investigations abroad. From 2011 to 2015, STRO provided information spontaneously in relation to FATF-designated categories of offences, as follows:

	2011	2012	2013	2014	2015
Instances where information supported on-going investigations by foreign law enforcement agencies	5	12	20	16	16
Instances where information was useful for intelligence	5	9	30	14	7
Other instances	-	1	5	21	20
Total	10	22	55	51	43

In summary, of the 181 instances where Singapore's FIU sent information spontaneously during this period, 38% of the instances resulted in support to on-going foreign investigations and 36% were useful for intelligence purposes.

- Members of the initiative do not regularly use direct law enforcement cooperation.
- Direct cooperation to obtain admissible evidence is not allowed under the law in some jurisdictions (Australia).
- In other jurisdictions, information obtained through direct law enforcement cooperation is not admissible in court absent a formal request (5 members).

B. Spontaneous exchanges of information

- A growing number of jurisdictions are beginning to recognise the importance of sharing information that might be useful to another jurisdiction in an investigation or prosecution, even absent a formal request.
- However, this can only be done within a jurisdiction's legal framework.
- UNCAC, article 46

- Law enforcement authorities are critical to such spontaneous exchanges of information
- In some jurisdictions the central authority does not normally exchange spontaneous information with another jurisdiction or is expressely prohibited from spontaneously providing information to another jurisdiction.
- Some Initiative members have never received or provided spontaneous information about a corruption offence.

C. Using international networks to facilitate assistance

1. Periodic meetings with other jurisdictions
2. Involvement in international or regional networks and organisations
3. Liaison officers stationed abroad

Rule of law issues

- Informal and spontaneous MLA must only be provided in accordance with a jurisdiction's legal framework:
  - Preserve continuity (chain) of evidence
  - Due process guarantees

5. Conclusion & Recommendations

1. Recommendations at the individual law enforcement level
2. Recommendations at the agency and national level
3. Recommendations at the international level

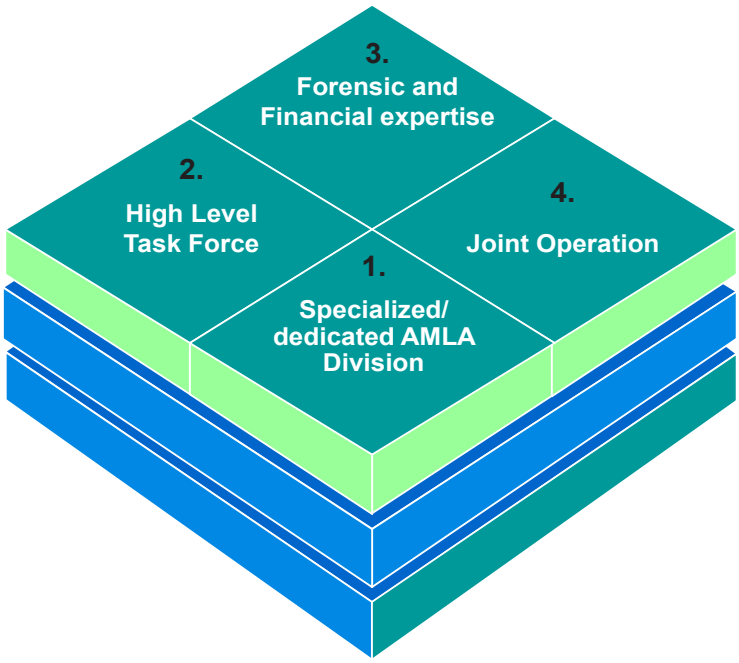
claire.leger@oecd.org

For more information:
www.oecd.org/bribery

INVESTIGATION

- PROSECUTION
- ASSET RECOVERY
- CORPORATE LIABILITIES

LATEST REGIONAL TRENDS IN CORRUPTION AND EFFECTIVE COUNTERMEASURES BY CRIMINAL JUSTICE AUTHORITIES - MALAYSIAN PERSPECTIVES



OPS B2

OPS B2

- ✓Financial Information (CTR/STR/ITIS/Banking information)
- ✓Informer & Whistleblower
- ✓Intelligence Based Investigation (IBI)
- ✓Parallel Investigation
- ✓Witness Protection

WHISTLEBLOWER INFORMATION

Target: Jeffry Wong 0192699943 / 0126999283
Address : No.10, Bukit Prima 2A, Cheras (The Peak)
Modus Operandi:
1. Container in/out PKFZ dan using K8 Forms (RMC Forms)
2. 30 people attended as a cover up gang

List of vehicles used by this 'target' & his group:-
RK3838 Merz Sport
WSU3838 BMW 5 Series
WTL3838 White Toyota Camry
WRN24 Toyota Estima
WLX 2283 Black Honda Civic
JDK 5698 Proton Saga
JDJ 9976 Proton Saga
WEG 5106
WJN 8908

PKFZ Warehouse - E12, A18

Target group lorries :-
JLR7865 10 tonne
BLH1985 10 tonne
JMR 4105 10 tonne
JWQ 8383 1 tonne
WFV 7376
9378 3 tonne

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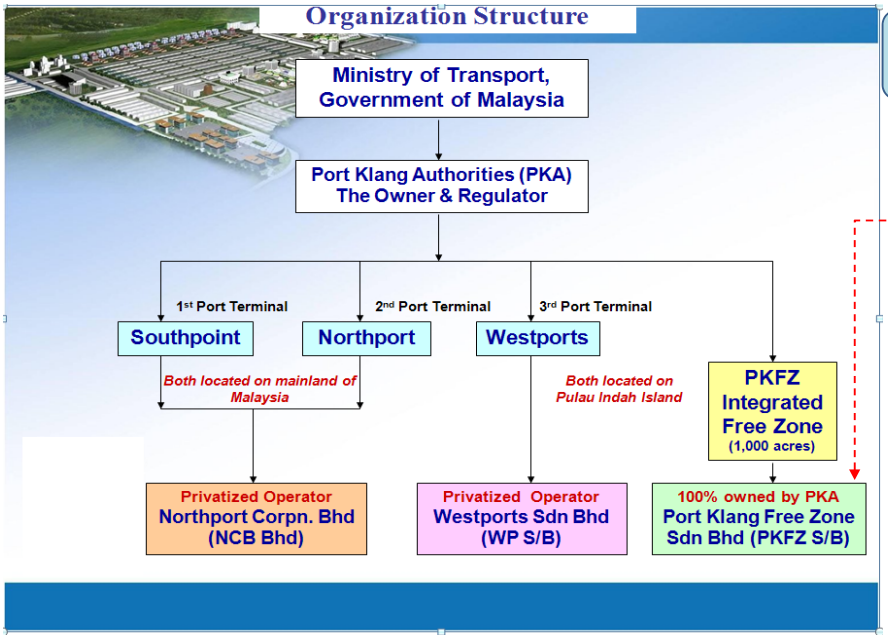
MALAYSIAN ANTI-CORRUPTION COMMISSION

Free Zones Operations & Licensing



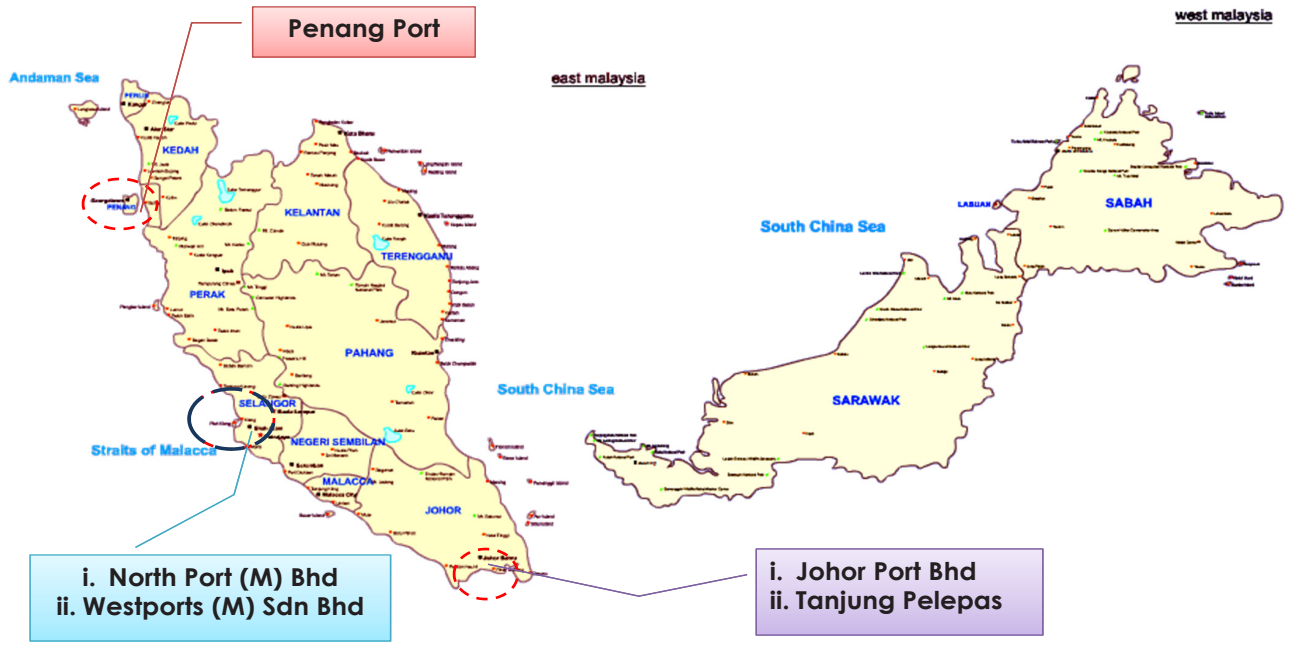
- **Free Zone Authority appointed by the Minister. Federal Govt. Agency, State Agency or private company as Free Zone Authority.**
- **To maintain, operate and administer Free Zone**

Brief info on Free Zones

- under Section 2 of the Customs Act 1967, Excise Act 1976, Sales Tax Act 1972 and Service Act 1975:

"a free zone shall be deemed to be a place outside Malaysia (other than Section 31)"

Major Ports in Malaysia



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TOP 10 DATA OF PKFZ (CIGARETTES & LIQUOR)

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LIQUOR + CIGARETTE – TOP 10

COMPANY	2011									
	ZB (I)		ZB (E)		K1		K2		K8	
	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT
Star Up Trading	271	RM18,307,937	33	RM6,806,589	0	0	0	0	62	RM4,617,484
Visual Logistics Sdn Bhd	380	RM111,287,613	295	RM29,336,570	0	0	0	0	229	RM10,569,730
Eurogulf International Sdn Bhd	15	RM1,851,588	3	RM198,128.70	0	0	0	0	179	RM7,765,073,613
Grand Sunrich Trading	2	RM208,362	0	0	0	0	0	0	0	0
Daania Pantas Trading & Logistics	0	0	10	RM885,637	0	0	0	0	0	0
Modern Freight Express	0	0	0	0	0	0	0	0	0	0
Insan Global Resources	1	RM431,477	5	RM708,652	0	0	0	0	0	0
Attractive Harbour Sdn Bhd	1	RM244,677	1	RM293,428	0	0	0	0	0	0
Fairway Bonus Sdn Bhd	220	RM10,658,703	47	RM4,295,907	35	RM538,439	0	0	17	RM537,235
YS Success Trading	103	RM15,566,836	0	0	0	0	0	0	0	0

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

LIQUOR + CIGARETTE – TOP 10

COMPANY	2012									
	ZB (I)		ZB (E)		K1		K2		K8	
	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT
Star Up Trading	327	RM335,817,396	81	RM16,949,900	0	0	0	0	0	0
Visual Logistics Sdn Bhd	488	RM173,824,457	253	RM22,324,956	0	0	0	0	81	RM302,538
Eurogulf International Sdn Bhd	57	RM9,231,459	17	RM3,585,146	0	0	0	0	88	RM499,046,294
Grand Sunrich Trading	118	RM17,521,627	29	RM9,044,737	0	0	0	0	0	0
Daania Pantas Trading & Logistics	15	RM1,486,838	0	0	0	0	0	0	0	0
Modern Freight Express	0	0	0	0	0	0	0	0	0	0
Insan Global Resources	4	RM484,036	4	RM467,179	0	0	0	0	0	0
Attractive Harbour Sdn Bhd	6	RM481,811	0	0	0	0	0	0	0	0
Fairway Bonus Sdn Bhd	156	RM18,671,010	37	RM3,687,392	67	RM903,324	0	0	164	RM2,090,840
YS Success Trading	100	RM17,425,422	0	0	0	0	0	0	0	0

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LIQUOR + CIGARETTE – TOP 10

COMPANY	2013									
	ZB (I)		ZB (E)		K1		K2		K8	
	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT
Star Up Trading	469	RM44,902,323	71	RM17,782,833	0	0	0	0	0	0
Visual Logistics Sdn Bhd	591	RM210,978,523	371	RM26,727,346	0	0	0	0	101	RM595,920
Eurogulf International Sdn Bhd	100	RM22,555,922	33	RM9,475,567	0	0	0	0	0	0
Grand Sunrich Trading	268	RM54,264,809	58	RM40,281,740	0	0	0	0	0	0
Daania Pantas Trading & Logistics	0	0	1	RM216,293	0	0	0	0	0	0
Modern Freight Express	8	RM1,226,570	7	RM1,069,723	0	0	0	0	0	0
Insan Global Resources	5	RM537,681	5	RM716,214	0	0	0	0	0	0
Attractive Harbour Sdn Bhd	1	RM152,673	0	0	0	0	0	0	0	0
Fairway Bonus Sdn Bhd	150	RM24,405,438	33	RM3,148,906	249	RM1,943,288	0	0	389	RM3,870,682
YS Success Trading	116	RM19,820,385	0	0	0	0	0	0	54	RM558,072

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MALAYSIAN ANTI-CORRUPTION COMMISSION

LIQUOR + CIGARETTE – TOP 10

COMPANY	2014									
	ZB (I)		ZB (E)		K1		K2		K8	
	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT	QTY	AMOUNT
Star Up Trading	89	RM2,865,298	12	RM3,923,777	0	0	0	0	0	0
Visual Logistics Sdn Bhd	132	RM36,395,040	124	RM24,938,092	0	0	0	0	0	0
Eurogulf International Sdn Bhd	22	RM5,760,063	12	RM3,632,186	0	0	0	0	14	RM22,590
Grand Sunrich Trading	60	RM14,511,409	15	RM16,621,466	0	0	0	0	0	0
Daania Pantas Trading & Logistics	0	0	0	0	0	0	0	0	0	0
Modern Freight Express	0	0	0	0	0	0	0	0	0	0
Insan Global Resources	0	0	0	0	0	0	0	0	0	0
Attractive Harbour Sdn Bhd	0	0	0	0	0	0	0	0	0	0
Fairway Bonus Sdn Bhd	40	RM2,281,829	16	RM1,551,684	0	0	0	0	4	RM202,150
YS Success Trading	20	RM3,686,109	0	0	0	0	0	0	0	0

TOTAL GOV. LOSSES RM2b

SMUGGLING
MODUS OPERANDI

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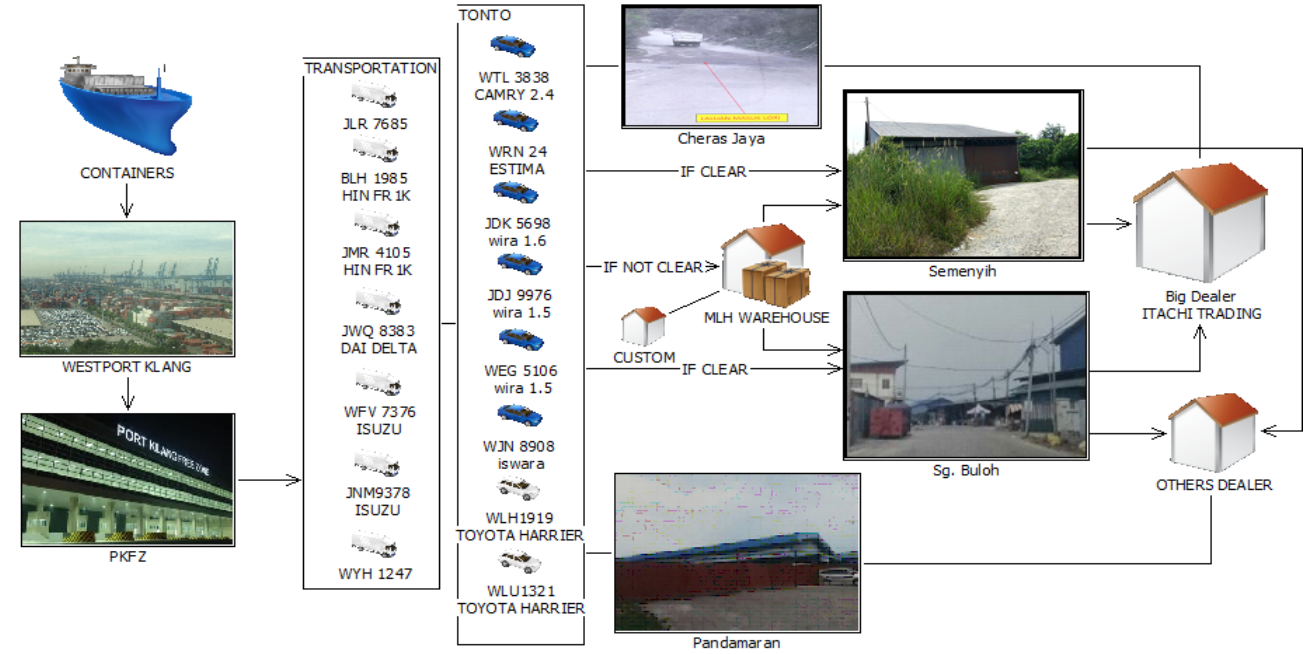
MALAYSIAN ANTI-CORRUPTION COMMISSION

MODUS OPERANDI 'STAR UP TRADING'



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PKFZ LOCATION

E11-E12
Star Up Trading

A18
Star Up Trading

B17
Daania Pantas

E23-E27
F23-F28
Visual Logistics

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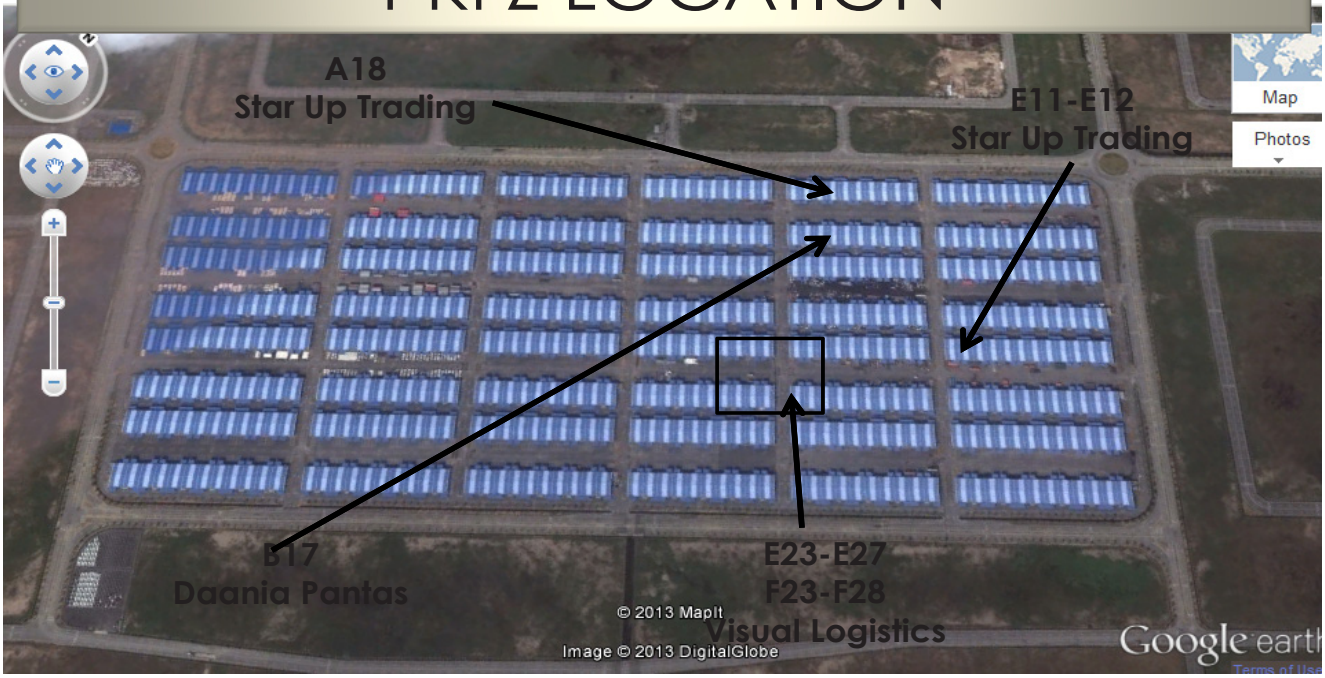
MALAYSIAN ANTI-CORRUPTION COMMISSION

PKFZ LOCATION



PKFZ LOCATION

ALAMAT : E11-E12, PKFZ

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MALAYSIAN ANTI-CORRUPTION COMMISSION

PKFZ LOCATION

MLH WAREHOUSE

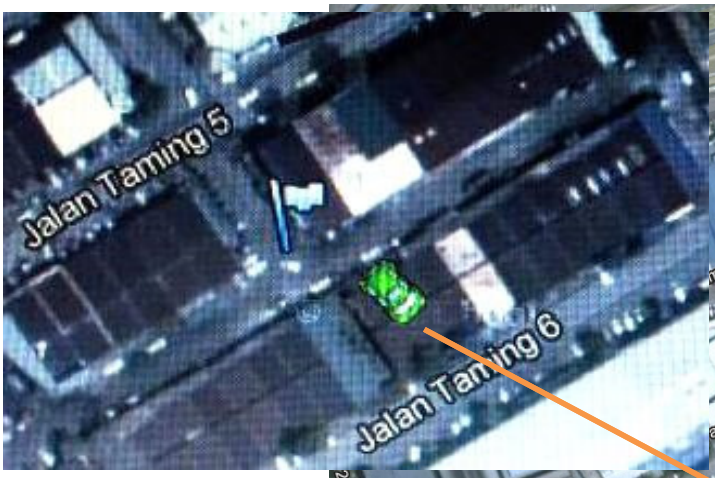
WAREHOUSE LOCATION AT SEMENYIH

WAREHOUSE LOCATION AT TAMAN TAMING JAYA

LORRIES SAFE STORE

ALAMAT : KAWASAN TAMAN CHERAS JAYA, 43300 BALAKONG, SELANGOR

TARGET NEW WAREHOUSE



JALAN TAMING 6,
TAMAN TAMING JAYA,
CHERAS, SELANGOR

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MALAYSIAN ANTI-CORRUPTION COMMISSION

TARGET NEW WAREHOUSE

BELAKANG
SIN KEE RESTAURANT,
JALAN SEMENYIH,
KAJANG

OPS B2 ACHIEVEMENT

Arrested Personnels: **34 Royal Custom Senior Officers including 1 State Director and 10 public citizens**

Charges : **32 Royal Custom Senior Officers & 1 public citizen**
Corruptions Value : **MYR1,098,401.00**

No. of Charges : **212 Charges**

Freezed & Seized :

- **Bank Acc. : MYR18,132,337.00**
- **Cah Money : MYR2,172,388.00**
- **4 Cars (BMW, Merz, Wolkvagen, Honda)**
- **4 Lorries (2 for 10 tonne and 2 for 5 tonne)**

Confiscation :

- **Bank Acc. : MYR600,000.00 (as at 17.2.2015)**
- **1 Honda Civic (as at 17.2.2015)**
- **1 lorry 5 tonne (as at 17.2.2015)**

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MALAYSIAN ANTI-CORRUPTION COMMISSION

OPS BORION

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Musa at the Kuala Lumpur Sessions Court on Monday. — Picture by Firdaus Latiff

Musa to know whether he is rightful CM today

KUALA LUMPUR — It is a crucial day today for Tan Sri Musa Aman as the Kota Kinabalu High Court is expected to rule on whether he is the rightful chief minister of Sabah.

Musa had filed a suit against the Yang di-Pertua Negeri Tun Juhar Mahiruddin and Datuk Seri Mohd Shafie Apdal after he was forced to step down following a power struggle in the wake of the May 9 general election.

The former Sabah Barisan Nasional chairman was sworn in on May 10 as chief minister after the now-defunct state coalition gained a razor-thin majority in the state assembly.

But after six assemblymen defected and gave their support to Mohd Shafie, who is the Parti Warisan Sabah president, Juhar appointed Mohd Shafie as the chief minister on May 12.

Juhar had instructed Musa to resign but he had refused.

It is unclear if Musa will be present in Kota Kinabalu today to hear the High Court's decision after he claimed trial to 35 counts of corruption in the Kuala Lumpur Sessions Court on Monday.

His lawyer, Amer Hamzah Arshad, however said the charges would have no impact on his suit.

Amer Hamzah told reporters on Monday that Musa had not been convicted of any criminal wrongdoing and "is therefore qualified to be declared as the chief minister" in the court hearing.

"Tan Sri Musa's arrest will not affect his eligibility to act as Sabah's chief minister since he has not been convicted of any criminal charges. Notwithstanding this, Tan Sri Musa is innocent and will vigorously defend against any and all charges put against him," he said.

Musa, 67, appeared to be a shadow of his former self when he arrived at the Sessions Court to hear the charges against him.

Sporting a white beard, Musa, who was arrested by the Malaysian Anti-Corruption Commission earlier that morning, had to walk with the aid of a cane.

The Sungai Sibuga assemblyman told reporters later there was no case against him, insisting that he had already been cleared of the allegations that surfaced more than a decade ago.

"It was about 10 to 14 years ago, why now coming again? And it was also cleared by the minister in-charge at that time in Parliament, Datuk Nazri," he said, referring to Datuk Seri Nazri Aziz, who was then the de facto law minister.

"There's no case against me but now suddenly I have to face this case. I don't know whether this is politically motivated," he said.

Musa was charged with receiving about US$63.29 million (RM264 million) in bribes to award timber concessions in Sabah. He was released on bail of RM2 million in two sureties, which he must also settle today with a second instalment.

The charges were framed under Subsection 11(a) of the Anti-Corruption Act 1997, which carries a jail sentence of not less than 14 days and not more than 20 years and a fine of not less than five times or RM10,000, whichever is the higher for each of the charges, upon conviction.

Musa, who was the Sabah chief minister from 2003 until BN's collapse in the May 9 general election, was accused of receiving the bribes through several international bank accounts in Hong Kong and Singapore between 2004 and 2018.

As part of the condition for bail, Sessions Judge Rozina Ayob had also required one of Musa's bailors to be a resident here, besides instructing him to surrender his civil and diplomatic passports to the court until the trial is over.

The prosecution led by Datuk Seri Gopal Sri Ram had initially sought bail of RM5 million. Case mention has been set for Dec 13.

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SUMMARY

- **35 charges under 11(a) Anti-Corruption Act 1997**

- **Amounting to USD63.3 million between 2004 till 2008**

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MALAYSIAN ANTI-CORRUPTION COMMISSION

SAMPLE OF THE CHARGED

That you on June 21, 2006, at UBS AG Bank, Central, in Hong Kong Special Administrative Region of the People's Republic of China, as an agent of the Sabah State Government, the Sabah Chief Minister and Chairman of the Yayasan Sabah Trustees Board, Your self-made money is US $ 16,148,547.00 from Chia Tien Foh through UBS AG account no. 231117 in the name of Richard Christopher Barnes, as an inducement for you to act in relation to your principal affairs ie, granting a timber concession contract to Sabapioneer Sdn. Bhd., & Tamabina Sdn. Bhd. and therefore you have committed an offense under subsection 11 (a) of the Prevention of Corruption Act 1997 [Act 575] and punishable under section 16 of the same Act.

Prosecution has strong case against Musa – Sri Ram

KUALA LUMPUR: The prosecution has a strong case against former Chief Minister of Sabah Tan Sri Musa Aman who is facing 35 charges of corruption involving timber concessions in Sabah totalling AS$63, 293,924 (RM263,460,962.313) despite the investigation had previously been closed.

Retired Federal Court judge who was appointed as Senior Deputy Public Prosecutor to lead the prosecution team Datuk Seri Gopal Sri Ram said the case had been investigated by the Malaysian Anti-Corruption Commission (previously known as Anti-Corruption Agency) for some time.

"But for the strangest reason, the case had been ordered to be closed. I cannot comprehend why it was ordered to be closed, but now the case is open," he told Sessions Court judge Rozina Ayob.

Rozina also asked the prosecution to expedite the delivery of documents to the defence under Section 51A of Criminal Procedure Code as it involved many foreign witnesses to which Sri Ram replied that the prosecution would only call two or three witnesses from overseas.

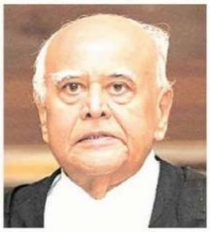
Rozina: Are you ready to proceed this case?

Sri Ram: Yes, we (the prosecution) are ready.

Earlier, Sri Ram proposed that Musa be released on bail at RM5 million with two sureties and all his passports to be surrendered to court, while lawyer Amer Hamzah Arshad who acted for Musa asked the amount to be reduced to RM1 million.

Amer Hamzah said his client had given full co-operation to the MACC and had personally contacted the MACC for investigation after he came back from London for medical treatment on Aug 23 this year.

"In fact, he made the first move to contact the MACC and willingly went to the MACC office for investigation. He is still innocent until proven guilty," he said adding that the MACC had on Friday served a notice to Musa to give his statement at the MACC headquarters in Putrajaya and he had no knowledge that he would be arrested and subsequently charged yesterday.



Sri Ram

Rozina then asked Sri Ram to confirm the matter and Sri Ram replied: "Yes, he cooperated."

Amer Hamzah said the amount of RM1 million was sufficient considering the fact that the accused had fully cooperated with the MACC and said his family members were also present in court to pay the bail.

Rozina also asked whether Musa had any relatives staying in the peninsula, to which Amer Hamzah replied that Musa's nephew, who is residing in Shah Alam, was in the court to bail his uncle.

Rozina: Are you willing to be the bailor? asked the judge to Musa's nephew.

Nephew: Yes, I am.

Rozina granted Musa bail of RM2 million with two sureties and also ordered him to surrender his two passports to court pending disposal of his case.

Amer Hamzah then requested for the bail to be paid in instalments with RM500,000 to be paid today and the balance to be settled by Wednesday.

Rozina agreed but ordered Musa to stay here (in Kuala Lumpur) and barred him from flying back to Kota Kinabalu pending settlement of his bail on Wednesday.

Amer Hamzah then stood up and informed the court that his client had to attend his case at the Kota Kinabalu High Court this Wednesday. - Bernama

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Prosecution has strong case against Sabah ex-CM, says lead prosecutor

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Earlier, Sri Ram proposed that Musa be released on bail at RM5 million with two sureties and all his passports to be surrendered to court, while lawyer Amer Hamzah Arshad who acted for Musa asked the amount to be reduced to RM1 million.

Amer Hamzah said his client had given full co-operation to the MACC and had personally contacted the MACC for investigation after he came back from London for medical treatment on Aug 23 this year.

"In fact, he made the first move to contact the MACC and willingly went to the MACC office for investigation. He is still innocent until proven guilty," he said, adding that the MACC had on Friday served a notice to Musa to give his statement at the MACC headquarters in Putrajaya and he had no knowledge that he would be arrested and subsequently charged today.

Rozina then asked Sri Ram to confirm the matter and Sri Ram replied: "Yes, he cooperated."

Amer Hamzah said the amount of RM1 million was sufficient considering the fact that the accused had fully cooperated with the MACC and said his family members were also present in court to pay the bail.

Rozina also asked whether Musa had any relative staying in the peninsula, to which Amer Hamzah replied that Musa's nephew, who is residing in Shah Alam, was in the court to bail his uncle.

Rozina: 'Are you willing to be the bailor?'

Musa's nephew: 'Yes, I am.'

Rozina granted Musa bail of RM2 million with two sureties and also ordered him to surrender his two passports to court pending disposal of his case. Amer Hamzah then requested for the bail to be paid in instalments, with RM500,000 paid yesterday and the balance to be settled by tomorrow.

Rozina agreed but ordered Musa to stay here (in Kuala Lumpur) and barred him from flying back to Kota Kinabalu pending settlement of his bail on Wednesday.

Amer Hamzah then stood up and informed the court that his client had to attend his case at the Kota Kinabalu High Court tomorrow which was fixed for a decision in relation to his originating summons against Sabah Chief Minister Datuk Seri Shafie Apdal. "Then maybe I should withdraw the bail," she said jokingly. — Bernama

BAHAGIAN AMLFOP
SPRM
RAHSIA

OPS BORION I-IV

- ✓Financial Information (CTR/STR/ITIS/Banking information)
- ✓Informer & Whistleblower
- ✓Intelligence Based Investigation (IBI)
- ✓Parallel Investigation

RAHSIA

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

STR SON IN LAW OF THE SUSPECT

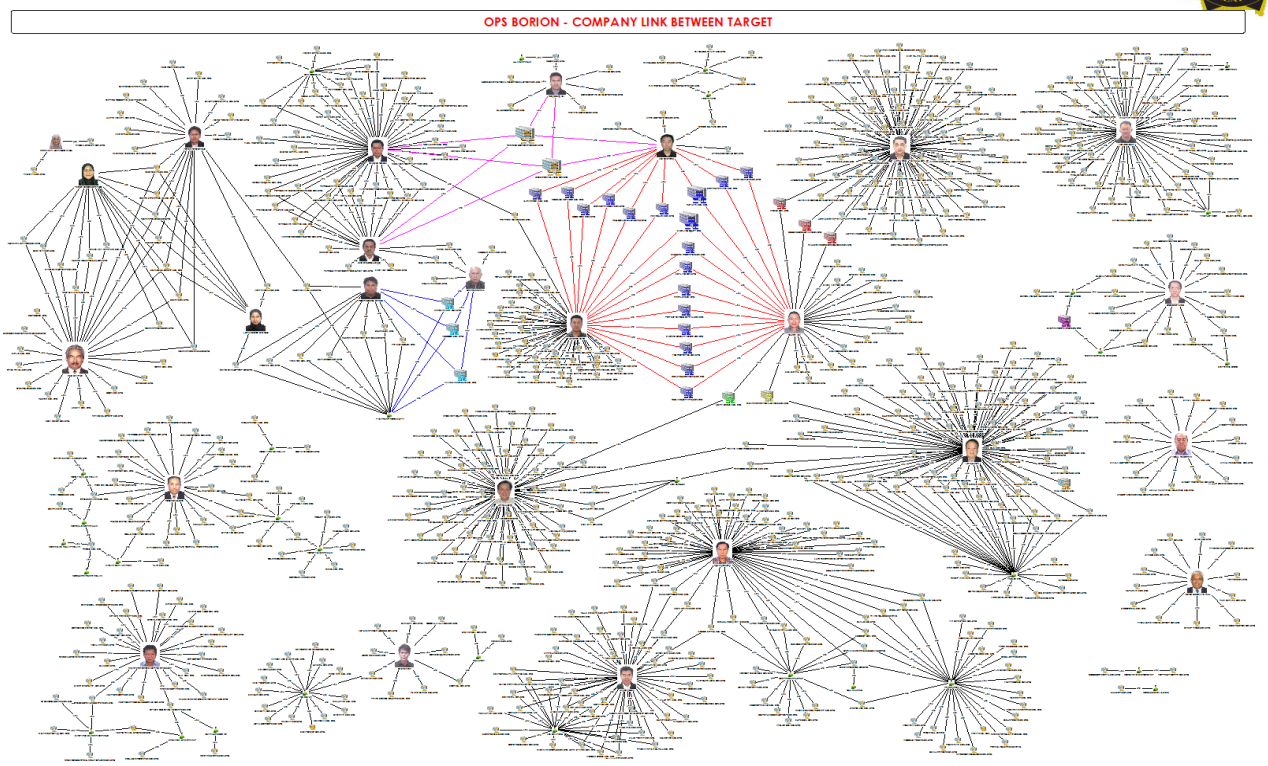
XX Banking

Activity inconsistent with customer profile

MR. A IS THE DIRECTOR OF XXX SDN BHD. HE IS ALSO THE MEMBER OF SABAH STATE LEGISLATIVE ASSEMBLY FOR MEMBAKUT FOR 4 TERMS. CUSTOMER HAS A CURRENT ACCOUNT 12345678 (OPENED ON 20 OCTOBER 2011) AND SEVERAL FIXED DEPOSIT ACCOUNTS. HE ALSO HAS A PERSONAL FINANCING OF RM 133K WITH US. ACCOUNT ACTIVITY IN CURRENT ACCOUNT 987654321 TABLE 1 BASED ON CUSTOMER'S DECLARATION, BESIDES RECEIVING SALARY FROM XXX SDN BHD, HE IS ALSO RECEIVING ALLOWANCE AS THE CHAIRMAN OF RELIGIOUS BODY AND AS THE MEMBER OF SABAH STATE LEGISLATIVE ASSEMBLY FOR MEMBAKUT. THE IBG INWARD CREDITS ARE FROM RB AND **THE LOCAL CHEQUE DEPOSIT OF RM 100K ON 31 MAY 2018 IS FROM UNITED MALAYS NATIONAL ORGANIZATION (UMNO) FOR HIS 4TH RE-ELECTION SINCE YEAR 2004 IN THE RECENT GENERAL ELECTION. THE FUNDS ARE USED TO PURCHASE UNIT TRUST AND FIXED DEPOSIT PLACEMENT.** GENERALLY, THE ACCOUNT IS USED FOR PERSONAL FINANCING INSTALMENT OF RM 2,979.00 MONTHLY. TYPE OF OFFENCE: MONEY LAUNDERING GROUND FOR SUSPICION

1. THE ACTUAL SOURCE OF FUNDS FOR THE LOCAL CHEQUE DEPOSIT FROM UMNO IS UNKNOWN.
2. IT IS PECULIAR THAT THE FUNDS FROM A POLITICAL PARTY WERE USED FOR PERSONAL UNIT TRUST PURCHASE AND FIXED DEPOSIT PLACEMENT.

PROXY CASE



MAIN PROXY GROUP
CTR/STR/ITIS

NO.	NAME	STR	No	CTR Amount (RM)	Pay ment	ITIS Amount (RM)	Receipt	ITIS Amount (RM)
1	PROXY 1	-	25	2,158,163.85	-	-	-	-
2	PROXY 2	5	**152**	**66,335,303.89**	3	386,573.00	1	10,148.00
3	PROXY 3	-	**41**	**37,059,452.98**	-	-	7	1,865,700.00
4	PROXY 4	1	28	3,711,176.52	-	-	-	-
5	PROXY 5	-	33	8,041,873.40	-	-	-	-

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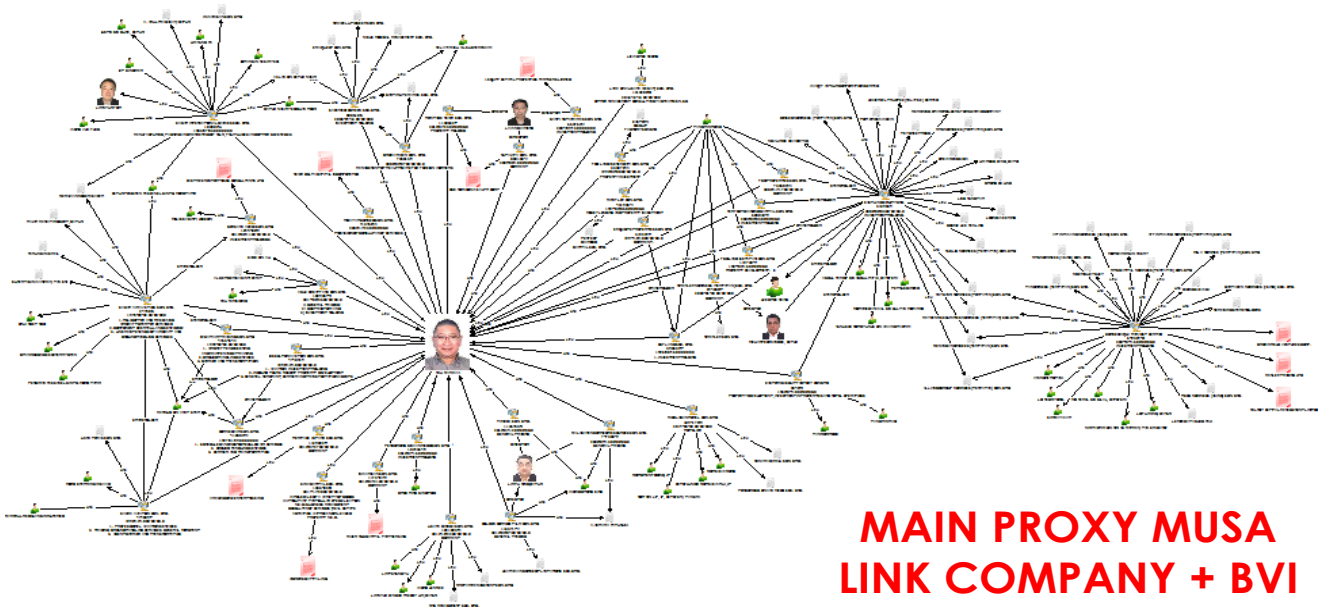
SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

MAIN PROXY COMPANY GROUP
CTR/STR/ITIS

Company Name	STR	CTR		ITIS			
		No	Amount (RM)	Payment	Amount (RM)	Receipt	Amount (RM)
COMPANY PROXY A	2	**188**	**37,088,707.24**	**98**	**64,308,614.13**	**7**	**158,497,379.41**
COMPANY PROXY B	-	3	200,701.70	-	-	-	-
COMPANY PROXY C	-	8	693,441.97	-	-	-	-
COMPANY PROXY D	1	**35**	**36,629,715.38**	-	-	**12**	**5,612,513.85**
COMPANY PROXY E	-	8	**4,650,200.00**	-	-	-	-
COMPANY PROXY F	-	23	**2,442,574.38**	-	-	-	-
COMPANY PROXY G	-	27	**3,131,865.00**	-	-	-	-
COMPANY PROXY H	-	36	**7,256,514.79**	-	-	1	19,430.25
COMPANY PROXY I	-	20	**3,485,599.44**	**463**	**130,014,665.25**	**261**	**131,753,405.14**
COMPANY PROXY J	-	39	**5,296,041.62**	-	-	-	-
COMPANY PROXY K	-	1	245,000.00	-	-	-	-



MAIN PROXY MUSA LINK COMPANY + BVI COMPANY

1Malaysia Development Berhad

(1MDB)

Scandals

Introduction

- The investigation of 1MDB started on **5th July 2015,** this investigation lead by former Malaysian AG with the collaborations between Malaysian Anti-Corruption Commission (MACC), Royal Malaysia Police (RMP) and Central Bank of Malaysia as a members and a joined taskforce. Main focus for this investigations are the **RM2.6 billion** credited into Dato' Sri Najib Razak (DSN), former PM personal account and the 1MDB investment itself.

- Technically the investigations does not gone well, received challenges due to the former PM was still an active PM on that time. However, MACC has completed this investigations and preparing to submission to AGC.

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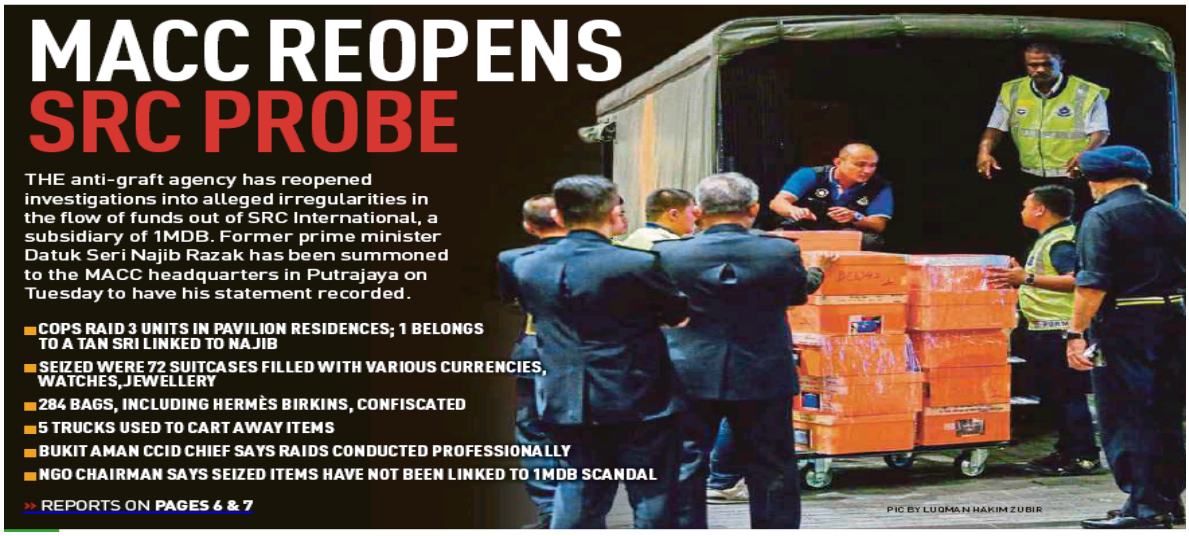
SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

- After The 14th General Election, on 21 May 2018, upon changing to the new government, the 1MDB Investigation Taskforce has been reactivated under instructions of new Prime Minister of Malaysia YAB Tun Dr. Mahathir bin Mohamad.



NEW SET UP FOR THE NEW TASKFORCE

malaysiakini

NEWS

PMO announces new 1MDB task force, ex-AG Gani is back

Published: 21 May 2018, 1:41 pm | Modified: 21 May 2018, 2:23 pm

3.5K SHARES

graphic by syariman | malaysiakini.com

A+ A-

EDITOR'S PICK

Prime Minister Dr Mahathir Mohamad has formed a special task force to investigate the 1MDB scandal as well as to prosecute wrongdoers and retrieve related assets.

In a statement this afternoon, the Prime Minister's Office (PMO) said the task force would be jointly headed by former attorney-general Abdul Gani Patail, former MACC head Abu Kassim Mohamed, current MACC head Mohd Shukri Abdull and former police Special Branch head Abdul Hamid Bador.

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Related Reports

1MDBTASKFORCE

Najib, stop lying to public that 1MDB scandal is 'slander' -

Shukri clocks-in at MACC, says 'tough' for him to return

INTERNATIONAL COLLABORATION & TASKFORCE

1. MALAYSIA
2. UNITED STATES
3. SWITZERLAND
4. HOLLAND
5. REPUBLIC CZECH
6. SINGAPORE
7. INDONESIA

SERIES INTERNATIONAL TASKFORCE MEETINGS ON 17.7.2018 & 18 – 20.9.2018 IN MALAYSIA

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

SERIES OF VISITS & INTERNATIONAL COLLABORATION & TASKFORCE

1. SERIES OF MEETING WITH SINGAPORE AUTHORITIES & AGC
2. VISIT TO INDONESIA (JAKARTA) – 29 TO 30 JULY 2018
3. VISIT TO USA (WASHINGTON & NY) – 29 JULY TO 3 AUG 2018
4. VISIT TO SWITZERLAND, AMSTERDAM & REP. CZECH – 16 TO 25 NOVEMBER 2018

Title	Detail
Case	**SRC International**
Suspect	**Former Prime Minister, Datuk Seri Najib Razak**
Date	**4 July 2018**
Charge	Was charged with three counts of Criminal Breach Of Trust Section 409 under Penal Code, and one count of Power Abuse in misappropriating RM42 million in funds from SRC International, Section 23 under Malaysian Anti-Corruption Commission Act 2009. He was alleged to have received the monies, which were purportedly proceeds of illegal activities, at an AmIslamic Bank branch at Jalan Raja Chulan here between December 26, 2014, and February 10, 2015.
Date	**8 August 2018**
Charge	3 charges under Section 4 (1) (b) of the Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities Act.

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

August 8, 2018, Former Prime Minister Najib Razak was charged with three more money laundering offences over the transfer of RM42 million from SRC International into his bank account.

Title	Detail
Case	**1MDB Phase 1 : Good Star/RBS US$1.03 billion**
Suspect	**Former Prime Minister, Datuk Seri Najib Razak**
Charge	Investigation under Section 409, Penal Code (Criminal Breach of Trust) by Royal Malaysia Police (RMP)
	1. **May 18, 2018** The Royal Malaysia Police have seized an undisclosed amount of money and some jewellery from the Najib-linked luxurious condo in Pavilion Residences in Bukit Bintang. 2. The Royal Malaysia Police on **August 25, 2018**, issued Warrant of Arrest against Jho Low and his father (Tan Sri Larry Low Hock Peng) and also charged both of them with 8 charges under Section 4(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001.

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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Equanimity Luxury Yacht

THE 300ft superyacht Equanimity built for US$250 million with money from the 2012 1MDB bond issues and a 2014 Deutsche Bank loan to 1MDB.

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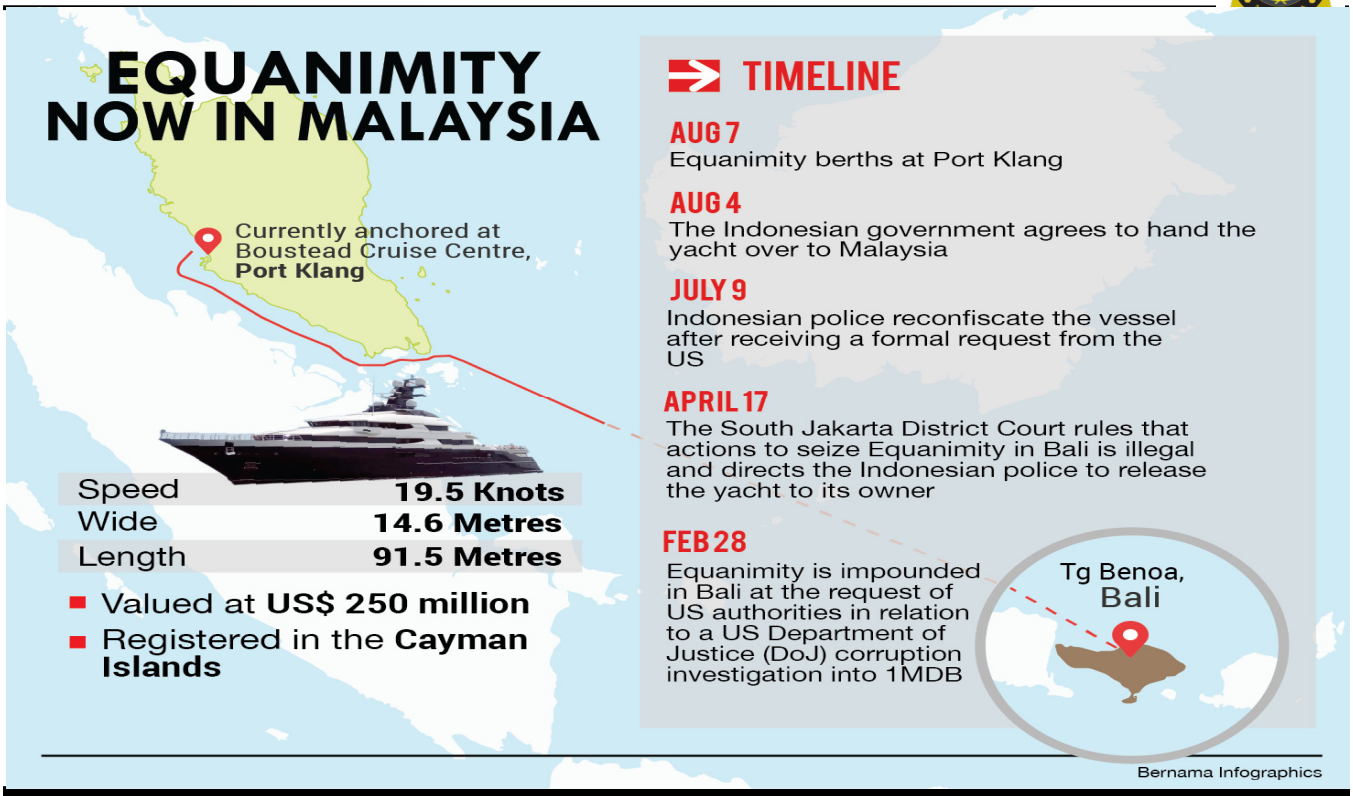
SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION



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SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

EIGHT MONEY-LAUNDERING CHARGES AGAINST JHO LOW

1) **DEC 26, 2013** - **Received US$62.299 million** from the account of DLA Piper US LLP into his account at BSI Bank Ltd in Singapore

2) **FEB 4, 2014** - **Receiving US$56.449 million** from the account of his father in BSI Singapore into his BSI account

3) **JUNE 3, 2014** - **Receiving monies amounting to US$142 million** from the account of Alpha Synergy Ltd in BSI Lugano Switzerland into his BSI Singapore account

4) **JAN 7, 2014** - **Transferring €19.9 million** from his account in BSI Singapore into the account of World View Ltd, Cayman Islands, in Caledonian Bank Ltd

5) **FEB 5, 2014** - **Transferring €1 million** from his account in BSI Singapore into the account of World View Ltd, Cayman Islands, in Caledonian Bank Ltd

6) **FEB 18, 2014** - **Transferring €17.5 million** from his account in BSI Singapore into the account of World View Ltd, Cayman Islands, in Caledonian Bank Ltd

7) **APRIL 2, 2014** - **Transferring €2.7 million** from his account in BSI Singapore into the account of World View Ltd, Cayman Islands, in Caledonian Bank Ltd

8) **JUNE 3, 2014** - **Transferring US$140.636 million** from his account in BSI Singapore into the account of World View Ltd, Cayman Islands, in Caledonian Bank Ltd

Title	Detail
Case	**1MDB Phase 3 : TANORE RM2.6 billion**
Suspect	**Former Prime Minister, Datuk Seri Najib Razak**
Charge	4 Charge under Section 23 and Section 24, Malaysian Anti Corruption Act 2009 by Malaysian Anti Corruption Commission (MACC) and 21 charge under Section (4) (1) AMLATFA 2001 by Royal Malaysian Police (RMP)
Date	20 September 2018
Charge	1. **First Charge, That he abused his position as Prime Minister and Finance Minister by receiving RM90 million from 1MDB, that he received RM2.081 billion in his personal bank account and that he abused his position as Prime Minister and Finance Minister on June 23, 2014 to receive more than RM49 million.** 2. **In the second charge under Section 24(1) of the MACC Act, he is accused of having abused his positions to secure RM90.9 million between Oct 31, 2012 and Nov 20, 2012.** 3. **The third charge pertains to the RM2.6 billion deposited into his personal bank account. Najib is accused of having received RM2.081 billion - as the amount was valued at the time - between March 23, 2013 and April 10, 2013.** 4. **The fourth charge against Najib concerns the alleged abusing of his position to acquire gratification amounting to RM49.9 million, by instructing the 1MDB board of directors to approve the taking of a US$975 million loan from Deustch Bank for an initial public offering (IPO) for 1MDB Energy Bhd.**

RAHSIA

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

21 charges under Section (4) (1) AMLATFA 2001 by Royal Malaysia Police

1. That he received RM155 million from a Tanore Finance Corporation account in Falcon Bank, Singapore on March 22, 2013;
2. That he received another RM155 million from Tanore Finance Corporation on March 22, 2013;
3. That he received a third transfer of RM155million from Tanore Finance Corporation on March 22, 2013;
4. That he received RM188 million from Tanore Finance Corporation on March 26, 2013;
5. That he received RM231 million from Tanore Finance Corporation on March 28, 2013;
6. That he received RM138 million from Tanore Finance Corporation on March 28, 2013;
7. That he received RM152 million from Tanore Finance Corporation on April 8, 2013;
8. That he received RM304 million from Tanore Finance Corporation on April 9, 2013;
9. That he received RM602 million from Tanore Finance Corporationon April 10, 2013
10. That he engaged in money laundering by transferring RM652 million from his Ambank account to Tanore Finance Corporationon Aug 2, 2013
11. That he engaged in money laundering by paying RM20 million to Umno on Aug 2, 2013;
12. That he engaged in money laundering by paying RM100,000 to Umno's Batu Kawan division on Aug 7, 2013;
13. That he engaged in money laundering by paying RM246,000 to Lim Soon Peng on Aug 7, 2013;
14. That he engaged in money laundering by paying RM2 million to ORB Solutions Sdn Bhd on Aug 12, 2013;
15. That he engaged in money laundering by paying RM303,000 to Semarak Consortium Sdn Bhd on Aug 14, 2013;
16. That he engaged in money laundering by transferring RM326.8 million to Tanore Finance Corporation on Aug 15, 2013;
17. That he engaged in money laundering by transferring RM327.3 million to Tanore Finance Corporation on Aug 15, 2013;
18. That he engaged in money laundering by transferring RM181.8 million to Tanore Finance Corporation on Aug 22, 2013
19. That he engaged in money laundering by transferring RM545.8 million to Tanore Finance Corporation on Aug 23, 2013
20. That he engaged in money laundering by transferring RM150 million to Tanore Finance Corporation on Aug 27, 2013
21. That he engaged in money laundering by transferring RM12.4 million to another Ambank account belonging to him on Aug 30, 2013.

September 20, 2018, Former Prime Minister Najib Razak was charged with 4 Charges under Section 23 and Section 24 Malaysian Anti Corruption Act 2009 by Malaysian Anti Corruption Commission (MACC) and 21 charges under Section (4) (1) AMLATFA 2001 by Royal Malaysian Police (RMP)

RAHSIA

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Title	Detail
Case	Receive 2 cheques from former Prime Minister, Najib Razak amounting to RM9.5 million
Suspect	**Tan Sri Shafee Abdullah, lawyer of former Prime Minister Datuk Seri Najib Razak**
Charge	Four charges of receiving money from the proceeds of illegal activities under Section 4 (1) (b) of the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLA) 2001 by Malaysian Anti Corruption Commission (MACC) .
Date	**13 September 2018**
Charge	1. First charge, Shafee was accused of receiving unlawful proceeds in the form of an AmIslamic cheque of RM4.3 million into his bank account on 13 September 2013; 2. Second charge, Shafee was accused of receiving another cheque of the same nature and from the same sender on February 17 2014, this time amounting to RM5.2 million. 3. Third charge of not declaring his earnings accurately for the financial year that ended on Dec 31 2013, in which he did not include the RM4.3 million in his tax filings. 4. Fourth charge, Shafee is accused of not declaring his earnings accurately by omitting the RM5.2 million in his 2014 tax filing.

13 September 2018 Tan Sri Shafee Abdullah, Lawyer to The Former Prime Minister Datuk Seri Najib Razak was charged with Four charges of receiving money from the proceeds of illegal activities under Section 4 (1) (b) of the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLA) 2001.

RAHSIA

SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Title	Detail
Case	Money Laundering amounting to about RM 7.0 million
Suspect	**Datin Seri Rosmah Mansor, wife of former Prime Minister Datuk Seri Najib Tun Razak**
Charge	17 charges of money laundering, under Section 4 (1) (b) of the Anti-Money Laundering and Anti-Terrorism Financing Act (AMLA) 2001 by Malaysian Anti Corruption Commission (MACC).
Date	**4 October 2018**

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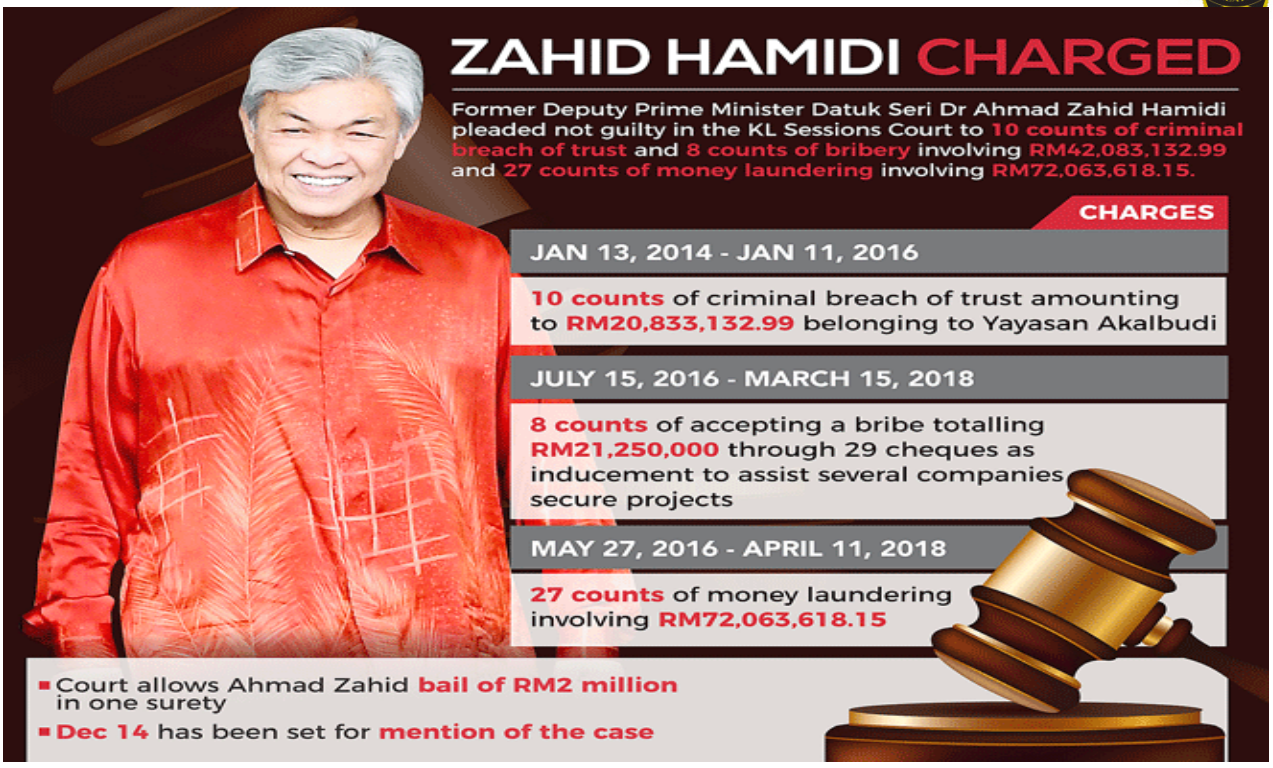
SURUHANJAYA PENCEGAHAN RASUAH MALAYSIA
MALAYSIAN ANTI-CORRUPTION COMMISSION

Title	Detail
Case	Money-laundering involving RM72million and criminal breach of trust and accepting bribes involving RM42million.
Suspect	**Datuk Seri Dr. Ahmad Zahid Hamidi, Current UMNO President**
Charge	45 charges of money-laundering involving RM72million and criminal breach of trust and accepting bribes involving RM42million by Malaysian Anti Corruption Commission (MACC) .
Date	**20 October 2018**



SEIZED AMOUNT

NO	DETAILS	AMOUNT
1	AMOUNT SEIZED IN MALAYSIA	286,064,813.35 191 (accounts)
2	AMOUNT RETURNED FROM SINGAPORE	SGD15 MILLION
3	RETURNED ASSET (EQUANIMITY)	USD250 MILLION
4	VOLUNTARILY RETURNED	MYR30 MILLION

THANK YOU

CORRUPTION CRIMES IN VIET NAM AND THE ROLES OF THE SUPREME PEOPLE'S PROCURACY OF VIET NAM IN DEALING WITH REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS RELATING TO CORRUPTION CASES

Nguyen Cam Tu[*] *and Nguyen Hai Bang*[†]

I. THE NECESSITY OF MUTUAL LEGAL ASSISTANCE FOR DEALING WITH CORRUPTION CASES IN VIET NAM

In recent years, corruption crimes have become a national problem and directly threatened the financial security of the nation, casting doubt on the prestige and reliability of Viet Nam among the international community. According to the statistics reported by the Ministry of Public Security of Viet Nam, corruption crimes mainly occurred in the fields of economics, politics, the judiciary, education and training, healthcare, personnel management, etc. In 2015, 265 corruption cases were detected and handled. Many extremely serious corruption cases have been prosecuted and adjudicated, such as: the case of Huynh Thi Huyen Nhu and her workers at VietinBank who appropriated property by fraud, causing damage of 4 trillion VND (about 174 billion USD); the corruption case of Construction Bank's former President Pham Cong Danh causing the damage of 18 trillion VND (about 783 billion USD); the corruption case of Ocean Bank's former President Ha Van Tham causing damage of 27 trillion VND (about 1,174 billion USD), etc. The majority of large-scale corruption cases are foreign related ones, for instance: the corrupt property is foreign currency, offenders have interactions with foreign partners, offenders save their proceeds of corruption at foreign banks or use proceeds of corruption in business or interactions abroad or in buying real estate in foreign countries. Corruption offenders often ask their relatives or friends to help them register the proceeds of crimes in these persons' names and move the proceeds of crime to foreign countries for dispersal and erasing traces of crime. After committing corruption crimes, offenders do their utmost to flee for shelter in neighbouring countries via border paths or flee to countries which do not have bilateral treaties on extradition with Viet Nam in order to avoid being extradited back to Viet Nam and being prosecuted for their criminal liability. Others even flee to countries which do not impose the death penalty or do not execute death penalty judgments so that they will not be sentenced to the death penalty if they are extradited back to Viet Nam.

It is predicted that corruption crimes in Viet Nam will trend towards transnational organized crime with collusion between domestic offenders and their foreign accomplices. There will be an increase in the number of Vietnamese corruption fugitives to foreign countries. They conspire to obtain a huge number of properties by corruption domestically and disperse these proceeds of corruption to foreign countries. Once their criminal acts are detected by investigation agencies,

[*] LLM, Prosecutor Assistant, Supreme People's Procuracy of Viet Nam.
[†] LLM, Examiner, High People's Court in Ha Noi, Viet Nam.

they will intermediately escape to foreign countries to avoid being caught. Some offenders even send their children to study abroad to make preparations in advance. With huge proceeds of corruption at their disposal, corruption offenders lead enjoyable lives in foreign countries, which are indeed their ideal shelters. This situation requires criminal justice authorities of each country to further strengthen cooperation aiming at taking tougher measures on fighting against corruption crimes, defeating completely the conspiracy of corruption offenders to flee abroad for shelter. Hence, mutual legal assistance in criminal matters is considered as one of the most important channels for international cooperation in the criminal justice field, especially for supporting each country in dealing with foreign-related criminal cases including foreign-related corruption cases. It is mutual legal assistance in criminal matters that helps domestic investigation agencies and prosecution services collect relevant information, materials and necessary evidence in foreign countries for proving offences and deciding on whether or not to prosecute the accused. In fact, many cases have been suspended or even dismissed by the courts because of the lack of executed requests for mutual legal assistance from foreign countries. Thus, promotion of mutual legal assistance in criminal matters among criminal justice authorities of every country for fighting against corruption crimes in the context of globalization and international integration is completely indispensable.

II. THE ROLES OF THE SUPREME PEOPLE'S PROCURACY OF VIET NAM IN DEALING WITH REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS RELATING TO CORRUPTION CASES

Pursuant to Paragraph 2, Article 493, Criminal Procedure Code 2015 of Viet Nam, the Supreme People's Procuracy is the Central Authority of the Socialist Republic of Viet Nam for mutual legal assistance in criminal matters and other types of international cooperation in criminal proceedings in accordance with law. As the Central Authority of Viet Nam for mutual legal assistance in criminal matters, the Supreme People's Procuracy has the power, on behalf of the Socialist Republic of Viet Nam, to undertake the negotiation and conclusion of Treaties on Mutual Legal Assistance in Criminal Matters between Viet Nam and other countries, as well as to make decisions on receiving and dealing with requests for mutual legal assistance between Viet Nam and foreign countries, which covers: 1. Service of papers, dossiers and documents related to criminal legal assistance; 2. Summoning of witnesses and experts; 3. Collection and supply of evidence; 4. Penal liability examination; 5. Escorting prisoners for providing evidence; 6. Transfer of offenders for prosecuting criminal liability; 7. Information sharing; 8. Other requests for criminal legal assistance.

Under the Law on Organization of the People's Procuracies of Viet Nam, the Supreme People's Procuracy has the functions of executing public prosecution power and supervision over mutual legal assistance in criminal matters. Specifically, the Supreme People's Procuracy is empowered to make final decisions on requesting the competent agencies of foreign countries to summon witnesses and experts, to collect and provide relevant evidence, and to prosecute offenders who are appearing in the requested nation for his or her criminal liability. In addition, the Supreme People's Procuracy also has the power of deciding to transfer requests for mutual legal assistance in criminal matters made by Central Authorities of requesting nations to competent investigation agencies of Viet Nam for initiating criminal proceedings and investigation. The Supreme People's Procuracy supervises the execution of requests for mutual

legal assistance by competent investigation agencies, procuracies and courts. Once violations are detected, the Supreme People's Procuracy asks them to make sure that the information, materials and evidence collected legally via the mutual legal assistance channel will be promptly sent to the Central Authority of the requesting nations.

Before making decisions on sending the requests for mutual legal assistance to the Central Authority of the requesting nations, the Supreme People's Procuracy plays a core role in examining the dossiers of request for mutual legal assistance made by investigation agencies in Viet Nam to make sure that the requests are made in accordance with both the Law on Mutual Legal Assistance of Viet Nam and the bilateral or multilateral treaties on Mutual Legal Assistance to which Viet Nam and the requested nation are parties; the requests have to be translated into the languages that are stipulated in the treaties or are acceptable by the requested nation. One of the most important points that needs to be overseen by the Supreme People's Procuracy is the offences mentioned in the requests for mutual legal assistance have to comply with the dual criminality principle in order to avoid refusal to execute by the requested nations. Fortunately, corruption is viewed as a crime under UNCAC and the penal codes of almost all of countries worldwide. This means the requests for mutual legal assistance relating to corruption cases will meet the requirement of dual criminality and will be handled if they are made in the correct format.

In recent years, as the Central Authority of Viet Nam for mutual legal assistance in criminal matters, the Supreme People's Procuracy has made a positive contribution to the process of dealing with foreign-related corruption cases in Viet Nam. Notably, in the case relating to the Ha Noi urban railway project in 2015, six senior officials of Viet Nam Railway Corporation were accused of extorting a JTC contractor to give a bribe for creating favourable conditions for the implementation of the urban railway project in Ha Noi. In the beginning stage of the investigation of this case, a group of prosecutors from Tokyo visited the Supreme People's Procuracy and cooperated closely with the Department of International Cooperation and Mutual Legal Assistance in Criminal Matters. The two sides kept in regular contact during the process of dealing with the case, especially in the process of summoning and interviewing witnesses and relevant persons both in Japan and in Viet Nam to clarify the criminal acts of the defendants. Eventually, all six defendants were sentenced to imprisonment for the offence of abusing their positions and powers while undertaking official missions, which is one of the offences stipulated in the group of corruption and position-related crimes under the Penal Code of Viet Nam. The most severe penalty, 13 years of imprisonment, was imposed on the ringleader, Pham Hai Bang, former Deputy Manager of the railway project PMU under Viet Nam Railway Corporation for his receipt of the bribe.

In another case, Giang Kim Dat, former Head of the Business Division of Vinashin Corporation, a State-Owned Corporation, and his accomplices embezzled more than 260 billion VND (about 11.3 million USD) and then fled to Cambodia. The Supreme People's Procuracy requested Cambodia to assist in searching for, arresting and transferring Giang Kim Dat back to Viet Nam. Meanwhile, the Supreme People's Procuracy also requested the Singaporean side to assist in providing information and recovering the proceeds of crime. In 2017, the High Court in Ha Noi sentenced Giang Kim Dat to the death penalty for committing the offence of embezzlement.

Viet Nam has witnessed the trend toward transnational corruption crimes. Thus, mutual legal assistance in criminal matters is one of the most important steps in the process of investigation, prosecution and adjudication of foreign-related corruption cases. The evidence collected via mutual legal assistance channels is acknowledged as a legitimate source of evidence in accordance with the Criminal Procedure Code 2015. In foreign-related criminal cases, including corruption cases, the cases may be suspended if the results of executing requests for mutual legal assistance from foreign competent agencies have not been provided within the time limit of investigation as stipulated clearly in Criminal Procedure Code. Therefore, the Supreme People's Procuracy, as the Central Authority of Viet Nam for mutual legal assistance in criminal matters, has to play a positive role in dealing with foreign-related corruption cases, to bring corruption offenders to justice, and to contribute to the sustainable development of the nation.

CORRUPTION IN THE BANKING SECTOR: EXPERIENCES, CHALLENGES, TRENDS, SOLUTIONS AND RECOMMENDATIONS

Dr. Nguyen Duc Hanh[*]

I. DEFINITION OF CORRUPTION AND CORRUPTION CRIMINALS ACCORDING TO THE CRIMINAL PROCEDURE CODE

Corruption is a behaviour harmful to society, taking place not only within the territory of a single country but also around the globe. The concept of "corruption" has been fundamentally agreed upon between Viet Nam and the international community. Black's Law Dictionary defines corruption as "*Illegality; a vicious and fraudulent intention to evade the prohibitions of the law. The act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others*".

According to the international concept, the term "*corruption*" introduced by the World Bank in 1997 is understood as: "*the abuse of public office for private gain*". According to the Vietnamese Encyclopedia, corruption is defined as: "*the act of an office-holder who abuses his/her position or power to harass, embezzle, take bribes or intentionally violate the policy for private gain, which causes damage to property of the State, community and individuals*".

According to Article 1, Clause 1 of the Anti-Corruption Law 2005, corruption means "*acts committed by persons with positions and/or powers of abusing such positions and/or powers for private* gain".

There is no definition of "corruption criminal" in the Penal Code 2015, amended in 2017. However, there are 7 articles about corruption criminals in Section 1, Chapter XXIII of this law (the names of these 7 articles are still the same as in Section A, Chapter XXI of the Penal Code 1999). They are: Article 353 (Embezzlement), Article 354 (Taking bribes), Article 355 (Abuse of power or position for appropriation of property), Article 356 (Abuse of power or position in performance of official duties), Article 357 (Acting beyond authority in performance of official duties), Article 358 (Abuse of power or position to influence another person for personal gain) and Article 359 (Commission of fraud in performance of duties). The Penal Code also defines "*abuse of power*" as "*acts of infringement upon rightful activities of an agency or organization committed by an office-holder in performance of his/her official duties*" and "*office-holder*" as "*person who is given certain duties and power through appointment, election, contract conclusion, or another method. An office-holder might or might not receive salaries*."

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Some crimes regulated in the Penal Code are corruption crimes by nature because they contain two factors:

- Firstly, the crime is committed by an office-holder by abusing his/her position or power. (If the person taking action is not an office-holder, he/she cannot commit this type of crime).

- Secondly, the crime is committed for private gain.

Therefore, the acts which contain these two factors, such as: abusing power or position to illegally use property for private gain, failure to perform their duties for private gain…, meet the requirement for corruption according to the international concept and under the Anti-Corruption Law 2005. However, they are not included in Section A, Chapter XXI of the Penal Code 1999 or Section 1, Chapter XXIII of the Penal Code 2015, which results in an inconsistency between the Penal Code, the Anti-Corruption Law 2005 and the international concept. This is a shortcoming that needs to be addressed soon.

II. METHODS FOR COMMITTING CORRUPTION IN THE BANKING FIELD IN RECENT YEARS

In recent years, with an enormous effort in fighting corruption, Vietnamese law enforcement agencies have detected, instituted, investigated, prosecuted and adjudicated many large-scale and exceptionally serious corruption and economic cases. Methods of criminals are getting more and more sophisticated. The offenders are sometimes working in the banking sector. Some cases are transnational and use advanced technologies in committing offences.

A. Common Methods in Corruption Cases Committed in the Banking Sector

The offenders who are working in the banking sector might abuse their positions and powers to create false dossiers, papers, savings books and/or fake gold for mortgages and then appropriate assets. They also might forge signatures of customers for embezzlement or deposit the money into their personal accounts instead of customers' accounts and then transfer to another bank to withdraw. Other methods are: using false accounting entries, not depositing loans collected, making fake loans or increasing the amount of money in contracts to withdraw later; not assessing or intentionally assessing mortgaged property inaccurately to gain a part of the total loan amount; using people who are not working in the banking sector ("backyard") to carry out acts of corruption, declaring on the money deposited paper and depositing in savings books an amount of money different from the amount declared by the customer, and so on.

The offenders might abuse their bank's reputation to commit fraud through professional methods, such as: raising capital, changing, erasing and raising the value of money several times in the certificates of deposit of issuing banks, then mortgage them in the bank they are working; making payment vouchers, payment receipts, receipts, and then forging the signature of the account holder on checks and payment receipts to transfer through the deposit and loan accounts of customers to withdraw money.

The offenders might lack responsibility, appear credulous, bureaucratic or have weak capacity, which causes serious consequences. They might appropriate assets through the implementation of policies, financial and monetary regimes, and packages for stimulation, support and rescue of enterprises. Other methods are: abusing positions or powers to directly or through intermediaries influence others for personal gain; abusing position or power or acting beyond authority in performance of official duties to claim bribes; using the professional knowledge and skills for appropriation of assets; cooperating with customers to appropriate bank assets. These types of acts are sophisticated and difficult to detect.

Some remarkable corruption cases carried out by those working in the banking sector which have been investigated, prosecuted and adjudicated are:

1. Case 1

Pham Cong Danh together with 45 accomplices "intentionally violate[d] the State's regulations on economic management and cause[d] serious consequences" and "violat[ed] regulations on lending in operation of credit institutions", which occurred at Viet Nam Construction Joint Stock Bank (VNCB). In this case, Pham Cong Danh, who abused his position as chairman of the Board of Directors of Viet Nam Construction Joint Stock Bank (VNCB), and his accomplices lost more than 9,000 billion VND (409.000.000 USD) through the following acts:

- Danh instructed his subordinates to sign sham contracts with two companies to transfer more than 644 billion (equivalent to $29,272,000) to individual accounts and then withdraw the money to pay off loans for 6 companies under Thien Thanh Group where Thanh served as the Chairman of the Board of Directors. The money claimed as a customer service fund was, in fact, transferred to Thanh.

- Danh instructed his subordinates to draw up false documents for the purchase of construction material and repayment plans for 12 corporate legal entities under Thien Thanh Group to take out loans from VNCB. Using a number of real estate properties in Ho Chi Minh City and Danang as collateral, raising their values to make loans worth 5 trillion VND (US $227,000,000) from VNCB. These assets were also used to borrow money from BIDV, Sacombank and TPBank with the total amount of 2,095 billion VND (US $95,227,000).

- Danh authorized three companies to purchase bonds worth of 903 billion VND (US $41 million) from Thien Thanh Company headed by Danh himself through false documents of personal consumption, debt repayment and customer care. The fund was then transferred to Danh and now unrecoverable.

- Through loan contracts between Tran Ngoc Bich and VNCB, Danh withdrew 5.19 trillion VND (US$235.9 million) from the bank without any document or signature of the account holder. This money was transferred to Danh’s account, and then withdrawn by Danh to repay the debt to Bich's father.

- After misappropriating the money, Danh gave the money, about US$948 billion ($44,272,000), to Hua Thi Phan to buy back the shares of the Trustbank.

- Danh instructed the Board of Directors, the Board of Management of VNCB and his subordinates in Thien Thanh Group and VNCB to prepare the fraudulent loan applications and withdraw a large amount of money which then was deposited into 3 banks including Sacombank, TPBank, BIDV to pledge, guarantee and pay off loans made by Danh's companies.

2. Case 2

The second case involved Hua Thi Phan, the founder of TrustBank, and 27 other accomplices who were accused of "breaching regulations on loan provision in the operations of credit institutions", "abusing trust to appropriate property" and "deliberately acting against the State's regulations on economic management, causing serious consequences". They caused damages of more than 6,300 billion VND (US$286,363,000) to TrustBank through various fraudulent schemes. For example, after buying a house at No. 5 Pham Ngoc Thach in Ho Chi Minh City, Phan instructed his subordinates to continue to resell and rebuy it (4 times) to raise its value eightfold, then demanded the Board of Directors of Trustbank to purchase the house at the price of 1.256 billion VND (US$57 million) and forged documents to appropriate 1,105 billion VND (US$50,200,000).

3. Case 3

Ha Van Tham, the former chairman of OceanBank, along with 46 associates, has been prosecuted for various crimes such as "embezzlement of property", "deliberately acting against the State's regulations on economic management, causing serious consequences". In particular, Ha Van Tham abused his position as Chairman of OceanBank Commercial Joint Stock Bank to commit the following acts. He falsified 45 contracts with 20 partners to appropriate money for personal use and caused a loss of 118 billion VND to OceanBank (US $3.36 million). He also established BSC without any business activity to serve as a legal entity to sign service contracts with OceanBank customers and collect fees. Moreover, he signed a loan contract of 500 billion VND (US $227 million) despite knowing the profiles of the customers are ineligible, resulting in a huge loss of capital and serious damage to OceanBank and its shareholders.

B. Corruption Offences Committed by Persons Outside the Banking Sector

- Performing fraudulent acts such as falsifying project dossiers, forging contracts, faking mortgage, shares, bonds, business plans or loan schemes.

- Inflating the value of the collateral or using properties without legal papers or under dispute as collateral; making bogus projects, forging certificates of land use rights or using certificates of land use rights, houses and valuable papers of other people as collateral to obtain loans and then appropriating the money; performing deceptive acts such as financial investments through the network, capital mobilization in the disguise of multi-level business or global financial investment groups. For example, a criminal disguised himself as a representative of an international financial institution, having large credit overseas looking for a partner with a low interest rate and long loan tenor, should

the victim go along with the plan, they would be required to sign a deposit of between 5% and 10% of the reciprocal capital, then use the fake signature of the escrow to withdraw the appropriated money.

- Forging documents and papers to appropriate the bank's assets; for instance, the offender signs forged contracts, legitimizes the financial investment for his organization by transferring money to an intermediary account under his name; Forging project documentation, contracts, certificates of land use rights or house ownership to use as collateral and appropriate money.

- Breaking into the banking network, stealing passwords, creating fake money transfer orders in order to appropriate assets; Offering bribes to persons holding high positions and great powers who facilitate the appropriation of property. Since the operation of the banking system is strictly regulated, especially when it comes to loans, it is difficult to misappropriate assets without the assistance of an accomplice working in the banking system.

- Laundering money via the banking system using money and property acquired through crime to purchase real estate properties or stocks; transforming “dirty money” into "clean money" by moving money to their accounts to participate in public transactions.

- Taking advantage of loopholes in managing foreign exchange business; Production, stockpiling, transportation and circulating counterfeit money, cheques and bonds; swindling through payment or exchange of travelers’ cheques. [10]

- Among corruption cases committed by persons outside the banking sector but assisted by a bank employee which have been investigated, prosecuted and tried in the past years, the most prominent one is the case against Ninh Van Quynh (in the case of Ha Van Tham) who abused his position as a deposit agent of Petrovietnam (PVN) at the bank to receive 20 billion VND (US $900,000 USD) as "customer care funds” from Oceanbank through Nguyen Xuan Son, former deputy director general of PVN.

C. Some Tricks Used by Corruption Offenders in the Field of Banking with High Tech Systems

- Robbery of ATM cards (card number), PIN numbers, personal profiles (full name, address, phone number, email) in order to withdraw cash without using the card.

- Establishment of ghost a company to rob a database; money will be transferred to another account instead of the company’s account.

[10] Nguyen Quang Hien, *Identification of crimes in the banking sector and recommendations for prevention*, Journal of Legislative Studies, 15/6/2015.

- Production and usage of fake AMT cards to withdraw cash; to buy goods, hotels and services. Using theft card to buy online products.

- To steal data of cardholders, correct information, falsify signatures to transfer money into virtual accounts (which are opened under counterfeit documents). After being transferred to such accounts, money will be withdrawn promptly, and those accounts will never be used again.

- To use the bank's Swift network to perform false transaction.

- Illegally access websites, using fake e-mail to obtain personal information, distribute spam, and create counterfeit websites.

III. SOME EXPERIENCES WHILE DEALING WITH CORRUPTION CASES IN THE FIELD OF BANKING

- Investigating agencies always emphasize the responsibility of individuals and groups being in charge of resolving cases; clearly assign tasks to right, capable and enthusiastic officials; intensify cooperation between the investigation agency and the People's procuracy and related judicial assistance agencies.

- Investigators, prosecutors, and judges in charge of corruption cases always take the initiative in grasping the nature of cases, the process of settlement in order to have hypotheses, orientations and to request scientific investigation, search breakthrough point.

- In the prosecution stage, besides detection of crimes, we should pay attention to list property and freeze accounts in order to recover assets. For example, in the case of Hua Thi Phan, 158 properties of the accused Phan and her accessories and 27 properties of related individuals are listed and 26 accounts and securities are blocked. The total value reaches over VND 10,000 billion, and VND 15,000 billion must be recovered.

- Regardless of the corruption case, criminals are high-positioned, powerful, knowledgeable persons with complex relations and they always hide their illegal activities. Investigating agencies and officers should handle such cases carefully and resolutely fight against such criminals and constantly pay attention to expand the case.

IV. SOME CHALLENGES FACED BY VIET NAM IN DEALING WITH CORRUPTION CASES IN THE BANKING SECTOR

- Corruption can occur in any sector, so this type of crime involves a variety of legal documents, such as documents on finance, banking, land, capital construction, budget, etc. Due to the insufficiency of intensive skill training for officials of investigating agencies, the collection, strengthening, preservation, evaluation and use of evidence encountered many difficulties. Sometimes there are contract opinions and views when taking these actions.

- Corruption cases often involve the assessment and valuation of assets and need support of competent state management agencies and specialized agencies. However, these activities have not yet been paid much attention by government agencies. This fact leads to the lack of a sufficient number of assessors with legal functions and a lack of qualifications of assessors, specialists and assessment facilities.

Legal documents such as the Law on Judicial Expertise, the Decree on Valuation of Assets in Criminal Procedure are still incomplete and inadequate. The cost of expertise is often high. The remuneration system for the assessors is not appropriate for the effort they spend to perform their duties.

-Corruption is often associated with money laundering and other transnational crimes, which requires mutual legal assistance and international cooperation in investigation. However, Viet Nam has only signed a limited number of bilateral agreements on mutual legal assistance with other countries. The process of getting results of mutual legal assistance is extended depending on the requested countries. Moreover, the Vietnamese and foreign investigation task forces have not coordinated closely and widely.

- The fact that proceeds of crime are often moved abroad or dispersed and hidden by corruption offenders causes difficulties in detection, seizing, freezing and recovering them.

V. NEW CORRUPTION TRENDS IN VIET NAM, RECOMMENDATIONS AND SOLUTIONS

A. Evaluation of the Trends of Corruption Crime in Viet Nam

- The concept and regulation of corruption acts in Viet Nam are not only focused on the public sector but also more broadly on the private sector in accordance with UNCAC. Reviewing the big corruption cases, we find that there has been the connection between the corruption in public sector and the corruption in private sector; therefore, it is predicted that in the coming time in the context of the development of a market economy and the attraction of foreign investment in Viet Nam, especially the policy of ensuring fairness between businesses run by different kinds of economic elements or different kinds of entrepreneurs, there will be a drastic increase in the number of corruption cases of a more serious degree and on a larger scale.

- Corruption in the fields of banking, land, construction projects, and economic development investment projects will arise from the development and improvement of infrastructure and expansion of cities.

- In the era of 4.0 technology revolutions, corruption offenders make full use of the accomplishments of modern science and technology to commit fraud, hiding criminal acts, dispersing proceeds of crime, colluding with foreign accomplices or going abroad to commit crime against domestic organizations and persons in order to avoid detection and arrest by functional agencies, to easily move proceeds of crime to foreign countries to hide their crimes and prevent the recovery of proceeds of crime.

B. Recommendations and Solutions

- Improving the effectiveness of operations to prevention and fight against corruption performed by the Central Steering Committee for Prevention and Fight against Corruption, Central Commission of Internal Affairs, Examination Committee at all levels, political institutions, the Viet Nam Fatherland Front and its member organizations. The prevention of, and fight against, corruption should be viewed as the task of the whole political system and the people.

- The Criminal Procedure Code 2015 of Viet Nam defines electronic data as a source of evidence; hence banks and criminal investigation agencies should make use of information technology and audio-video recording means to prove crimes.

- Continue improving legal regulations on the prevention of, and fight against, money laundering and regulations on credit organizations to hinder offenders' circumvention of the law by the exploitation of loopholes.

- In the coming time, judicial agencies should take tougher measures to fight against corruption both in the public sector and in the private sector. It should be noted that private sector may be either the offenders or both the victims and offenders at the same time.

- Perfecting the legal framework on the prevention of, and fight against, corruption including the regulations of the Law on Prevention and Fight against Corruption to make them suitable with regulations of Penal Code and other relevant international laws.

- Improving business environment to make it transparent and fair between different types of economic elements or different types of entrepreneurs within one economic element in order to prevent collusion, group benefit, and protectionism between management agencies and entrepreneurs.

- Promoting administrative reform, improving the effect of official missions to prevent and combat corruption. Gradually stopping the mechanism of "beg and give" in State management and administration implemented by state agencies, with the starting point as personnel.

- Bringing into play the roles of the private sector in the prevention and fight against corruption, strengthening the combination between prevention of, and fight against, corruption in public and private sectors. It is necessary to require that the declaration of assets be implemented by managers and officers in the public sector as well as those in the private sector.

- Building up cooperation among criminal investigation agencies and other relevant agencies, institutions managing information data relating to citizens aiming at promptly providing criminal investigation agencies with necessary information to investigate corruption cases.

PHOTOGRAPHS

・ *Commemorative Photograph*

・ *Opening Address by Director Seto Takeshi, UNAFEI*

・ *Opening Address by Dr. Tran Cong Phan, SPP*

・*Special Presentation by Dr. Claire Armelle Leger, Organization for Economic Co-operation and Development*

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