

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 whistleblower 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 whistleblower 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 K1, 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 11(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.