

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

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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

YEAR	AMOUNT OF FORFEITURE (MYR)		
	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 approach 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).