

EFFECTIVE FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY TO COUNTER NEW AND EMERGING CORRUPTION THREATS

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I. INTRODUCTION

Corruption has emerged as a crime which requires careful investigation. Crimes of this nature can be very complex and cause difficulties and problems in investigation. In this technologically advanced era, it is common for the offender to make use of other professionals or developed means to cover their trails and assist them in conducting their illegal operations in other jurisdictions. The loopholes in the system may also be of an advantage to them in the smooth running of their operations. Current methods of investigation with the support of existing legal systems may not be sufficient in carrying out enforcement of corrupt activities, taking into account the emergence of new technology and modern era advances.

Brunei Darussalam recognizes the significant threats of money-laundering and is committed to ensuring money-laundering is controlled and prevented. There are several agencies who work together in monitoring efforts to combat money-laundering and corruption activities in Brunei Darussalam.

Primary responsibility for the investigation for money-laundering offences rests with the Royal Brunei Police Force (RBPF), which has the ability to administer and enforce a range of laws including the Mutual Assistance in Criminal Matters Order (MACMO), the Anti-Terrorism Order (ATO), Criminal Asset Recovery Order (CARO), the Prevention of Corruption Act (PCA), the Internal Security Act (ISA) and Criminal Procedure Code (CPC). However, there are other enforcement agencies such as the Anti-Corruption Bureau, the Custom and Excise Department who are also empowered to investigate offences related to money-laundering offences. These enforcement agencies will liaise and work closely with the Financial Intelligence Unit (FIU) at the Brunei Darussalam Monetary Authority (BDMA).

Brunei Darussalam's international commitments to tackling corruptions and money-laundering are also evident when Brunei Darussalam signed the United Nations Convention against Corruption (UNCAC) on 11 December 2003 and ratified it on 2 December 2008. The instrument of ratification was deposited with the UN Secretary-General on 9 December 2008. The Convention entered into force on 1 January 2009. Brunei Darussalam also became party to the United Nation's

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convention Against Transnational Organize Crime. Regionally, Brunei Darussalam is also party to the:

- ASEAN Treaty on Mutual Assistance in Criminal Matters
- Member of the Commonwealth Harare Scheme
- Listed in the UNODC CNA Directory, Commonwealth Network of Contact Persons and Focal Point for MLAT ASEAN
- Member of ARIN-AP (Asia Pacific Asset Recovery Inter-Agency Network)

II. FINANCIAL INVESTIGATION AND ANTI-MONEY-LAUNDERING MEASURES FOR CONFISCATION AND ASSET RECOVERY

Under the Brunei MACMO, the objects of this order are to facilitate the provision and obtaining by Brunei Darussalam of international assistance in criminal matters, including –

- (a) the obtaining of evidence, documents, articles or other things;
- (b) the making of arrangements for persons, including detained persons, to give evidence or assist an investigation;
- (c) the confiscation of property in respect of an offence;
- (d) the service of documents;
- (e) the identification and location of persons;
- (f) the execution of requests for search and seizure;
- (g) the provision of originals or certified copies of relevant documents and records, including Government, bank, financial, corporate or business records; and
- (h) any other type of assistance that is not contrary to the laws of Brunei Darussalam.

This Order applies to any foreign country, subject to –

- (a) any mutual assistance treaty between that country and Brunei Darussalam; and
- (b) any multilateral mutual assistance treaty being a treaty to which that country and Brunei Darussalam are parties.

Such assistance may be provided on an ad hoc basis even in the absence of any formal agreement or treaty. However, in such circumstances, there must be assurance given by the requesting country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters.

Brunei Darussalam's CARO came to effect on 16 June 2012. Part V of the Order deals with foreign requests for recovery of criminal proceeds which contains provisions on:

- a. Foreign Requests for Brunei Restraining Orders,
- b. Requests for the Enforcement of Foreign Restraining,
- c. Confiscation and Benefit Recovery Orders,
- d. Foreign Requests for Location of Proceeds of Crime,
- e. Powers of Investigation for a Foreign Serious Offence,
- f. Sharing of Confiscated Property and Asset Sharing Agreements.

The Central Authority is the Attorney General and all requests are to be made to and by the Attorney General only. Brunei CARO enables the Attorney General of Brunei Darussalam as the Central Authority to render assistance in the registration of foreign restraining, confiscation or benefit recovery orders, allowing foreign countries to seek local assistance in investigations and locating proceeds of crime, the entering into asset sharing agreements as well as agreements to coordinate confiscation and seizure of property.

The Mutual Legal Assistance Secretariat of the Attorney General's Chambers is responsible for handling and processing all formal requests for assistance in accordance with the provisions of the MACMO; CARO and any applicable Mutual Legal Assistance Treaty; and other relevant domestic laws.

III. CASE LAW

A. Formal Request Via MLA

The case of *Public Prosecutor v David Chong* is Brunei's first successful request for recovery of criminal proceeds via MLA. Assistance was rendered by the Government of Singapore. The case was first investigated in 2009 and was prosecuted and convicted in November 2013. Mutual Legal Assistance request was transmitted in May 2014. The completion of the Mutual Legal Assistance Request was in August 2014. The investigations concerned the Defendant's company providing corrupt bribes/gratification to employees who were in charge of procurement in Brunei Darussalam's largest oil company, Brunei Shell Petroleum ("BSP"), whose primary business is the exploration and production of crude oil and natural gas from onshore and offshore fields. It is owned in equal shares by the Government of Brunei Darussalam and the Asiatic Petroleum Company Limited.

Investigations revealed that to increase sales, Musfada provided bribes and corrupt gratification to various personnel of BSP. The gratifications were paid to incentivise the relevant buyers in the SCM Department to expedite the creation of POs for Musfada and to ensure that they would not source for cheaper products from other vendors. Each receiver of the bribe would receive a three per cent commission of the purchase order that they approved.

Chong gave a total of BND \$101,843 in bribes to Brunei Shell Petroleum employees in return for them securing over \$3.2 million in contracts for his company, Musfada Enterprise, between 2007 and 2009.

This criminal scheme to pay gratification to BSP employees went on for a very long time and substantially increased Musfada's revenue from the sales of Musfada Products to BSP. While investigations were underway, in late September 2009, the Defendant fled to Malaysia. On or about 14 October 2009, the ACB sought the assistance of Interpol to locate the Defendant.

Investigations also revealed that the Defendant had a number of bank accounts in Singapore which were believed to be accounts to which corrupt proceeds were transferred. In the interim, Brunei ACB contacted Singapore's Commercial Affairs Department for assistance to freeze the funds in those accounts. As Brunei Darussalam's laws at that point of time were not adequate in

order to apply for a restraint order, Singapore CAD assisted by opening a domestic investigation on the Defendant and froze the accounts on that basis. In or around July 2011, the Malayan Anti-Corruption Commission, located Mr. Chong in Kuching, Sarawak, Malaysia.

On or about 8 September 2011, the SPRM Kuching arrested Mr. Chong in Kuching, and officers of the SPRM Kuching and the ACB brought him back to Brunei on or about 9 September 2011. On 27 November 2013, the High Court of Brunei convicted Mr. Chong in Criminal Trial No. 25 of 2012 and, on 28 November 2013, sentenced him to a total of six years and four months' imprisonment for 34 charges under the Prevention of Corruption Act, four charges of cheating, and two charges of fraudulently destroying documents.

After Chong was sentenced in 2013, the Court made a benefit recovery order under CARO in respect of funds in Chong's bank accounts in Singapore, ordering the defendant to pay to the State the sums of SGD \$219,838.10 and USD \$326,174.55 (BND \$250,903.50) within nine months of the order.

Over BND\$800,000 from Defendant's Singapore bank accounts were finally repatriated to Brunei Darussalam in November 2014 and placed in our Criminal Assets Confiscation Fund.

B. Conviction Under CARO

In the case of *PP v Pg Husin bin Pg Sulaiman*, Brunei Darussalam had its first money-laundering conviction, where the defendant faced 17 counts of cheating contrary to section 420 of the Penal Code and 20 counts of money-laundering contrary to section 3(1)(b) of the Criminal Asset Recovery Order. Another 38 outstanding money-laundering offences were admitted by the defendant and with the consent of the prosecution taken into consideration in passing sentence pursuant to section 13A of the Criminal Procedure Code. He pleaded guilty to the charges before him. On appeal he was sentenced to five years' imprisonment.

C. Financial Investigation

In the case of *Public Prosecutor v Minister of Development (D1) and D2*. Both Defendants were facing 11 charges in total: 3 under section 6 of the Prevention of Corruption Act and 8 charges under the Penal Code. D1 was charged for accepting the gratification and D2 was charged for giving the gratification. D1 at the time of the offences was in charge of the government development projects, while D2 was a businessman whose company is in land development (Contractor). The allegations were that sometime between 1993 and 1997 D1 had performed certain acts in relation to his principal affairs in which D1 received inducement and rewards from D2 in the form of substantial amounts over several years which resulted D2's company gaining major grant for government projects. During investigations by the Anti-Corruption Bureau, it was revealed that between 1992 and 2001:

- ◆ D2's company built a house on D1's land and paid monthly rent of BND\$5K to D1. No evidence showed that D1 had paid for the building of the said house;
- ◆ D1 bought land, then D2's company developed it and built 24 houses on the said land to which D1 received 8 of the developed houses. Even though the land was under D1's name,

the purchase and development of the land were made and arranged financially by D2. D2 was also the guarantor for the land loans amounting to more than BND\$3 million;

- ◆ D1 bought a shophouse in 1993 under his daughter's name worth \$930,000 from D2 but paid nothing until 1999. However, rentals from the shophouse had been paid into D1's daughter's account since 1996 totaling \$250,000.

At the end of the trial both D1 and D2 were convicted. D2, who absconded during the trial, was tried *in absentia*. D1 was also ordered to pay more than BND\$3.5M as part of the prosecution cost. D1 was also ordered to pay more than BND\$4M, which is the amount of the gratification required as restitution under section 17 of the PCA.

D. Informal Assistance

Formal processes such as Mutual Legal Assistance do not replace the informal relationships made between law enforcement agencies and their counterparts, which can often be speedier and involve less bureaucracy. The assurance to continuously network with counterparts from foreign countries to ensure such ties are always maintained with the view of putting a stop to elements of transnational crime permeating the borders of Brunei Darussalam is essential. Brunei's AGC practices an "open door policy" with law enforcement agencies where international cooperation is concerned and that the Mutual Legal Assistance and Extradition Secretariat stands ready and willing to assist and facilitate such requests.

Effective communication between law enforcement officers and officers of the Mutual Legal Assistance and Extradition Secretariat under the Attorney General's Chambers, Brunei Darussalam is crucial if Brunei Darussalam is to successfully tackle cases involving transnational crime. As such, law enforcement agencies need to designate relevant focal points to coordinate with the MLA and Extradition Secretariat to produce successful results to criminal cases with the use of international cooperation tools.

IV. CONCLUSION

We are currently active in implementing and enforcing the current laws in order to have effective financial investigation and anti-money-laundering measures for confiscation and asset recovery to counter new and emerging corruption threats. We have to ensure that we have solid evidence and established links between the asset and the crime to obtain a confiscation order via the court. Constant training and sharing of good practices will help pave the way to achieve and combat the emerging crime threats such as this in Brunei Darussalam.