

INTEGRITY AND INDEPENDENCE OF JUDGES, PROSECUTORS, AND LAW ENFORCEMENT OFFICIALS

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I. BACKGROUND

In Malaysia, integrity and independence of law enforcement officials are upheld through various established organizations with the sole aim of contributing towards creating a positive perception towards law enforcement agencies and the Government, in addition to facilitating the efforts in gaining public support and cooperation in combating corruption, abuse of power and malpractice.

The Malaysian Anti-Corruption Commission (MACC), an independent anti-corruption commission, is monitored by its own “Check and Balance Mechanism” with an aim towards convincing the public of the MACC’s independence, transparency and professionalism.

The Enforcement Agency Integrity Commission (EAIC) was formed in 2011 where the other 21 Federal Enforcement Agencies come under the supervision of the Commission. The establishment of the Commission is in line with the Government's aim to inculcate and enhance integrity among enforcement officers and law enforcement agencies, thus strengthening public confidence in them.

II. THE MALAYSIAN ANTI-CORRUPTION COMMISSION (MACC)

In early 1959, Malaysia's (then Malaya) efforts to combat corruption were carried out by two entities, focusing on investigations and prevention. Investigations on corruption cases were tasked to the Special Crimes Unit of the Criminal Investigation Department of the Royal Malaysian Police, while an Anti-Corruption Agency was set-up in the Prime Minister's Department to manage the aspect of prevention. Matters related to prosecution were under the purview of the Attorney General's Chambers.

In view of the fact that anti-corruption activities were then carried out by three different agencies, the Government decided to consolidate the task of investigation, prevention and prosecution under one umbrella by setting-up the Anti-Corruption Agency (ACA) in 1967 in accordance with the Anti-Corruption Act 1967.

In 2008, the Parliament and the Government unanimously approved the formation of an independent anti-corruption commission to be known as the Malaysian Anti-Corruption Commission (MACC) and replaced the Anti-Corruption Act with the Malaysian Anti-Corruption Commission Act 2009. The MACC Act 2009 came into effect on 1 January 2009, which led to the official establishment of the MACC as an independent, transparent

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and professional body to manage the nation's anti-corruption efforts effectively and efficiently.

The MACC aims to be a professional anti-corruption commission in enforcing the law and educating the public against corruption in moving towards greater prevention and ultimately to eradicate corruption in Malaysia through the following principles which are *Independent, Transparent and Professional*.

The Code of Ethics and Conduct of the MACC combines moral values with the uniformed deeds and actions to guide MACC officers to perform their duties and responsibilities with the objectives of strengthening the level of integrity of MACC officers in the execution of their duties and responsibilities and clarifying permissible and non-permissible actions by MACC officers in accordance with the enforced policies, guidelines and the law.

Integrity is a core element in the Code of Ethics and Conduct of the MACC. The core values of integrity that are held by the MACC in shaping the "MACC Values" are: Trustworthy, Firm, Fair, Independent, Transparent and Professional. In addition, positive values such as Discipline, Cooperation, Loyalty and Commitment also form the "MACC Values" which are to be consistently upheld by all MACC officers in executing their duties and responsibilities.

III. CHECK & BALANCE MECHANISM

In moving towards convincing the public of the MACC's independence, transparency and professionalism, a Check and Balance Mechanism was created through the formation of five external and independent oversight bodies to monitor the functions of the Commission closely and constantly.

The Check and Balance Mechanism comprises the Anti-Corruption Advisory Board (ACAB), the Special Committee on Corruption (SCC) and the Complaints Committee (CC), which are made through the provision of the law, while the Operations Review Panel (ORP) and the Consultation and Corruption Prevention Panel (CCPP) are established through administrative order.

These five entities are responsible for ensuring that MACC performs its duties in an independent, transparent and professional manner. The mechanism assists in fulfilling the public's expectations towards the Commission's independence, efficiency, effectiveness, transparency and accountability in executing its designated legal obligations. The check and balance mechanism will contribute towards creating a positive perception of the MACC and the Government, in addition to facilitating the efforts in gaining public support and cooperation in combating corruption, abuse of power and malpractice.

Members of these bodies represent the general public and are composed of senior ex-government officials, politicians (government and opposition), professionals from the business and corporate sector, academicians, lawyers and well-respected individuals.

A. Anti-Corruption Advisory Board (ACAB)

The Anti-Corruption Advisory Board (ACAB) is set up by the provision of law under section 13 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694). The members of the ACAB are appointed by the King of Malaysia among individuals who have rendered distinguished public service or have achieved distinction in their professions. The Chief Commissioner of MACC shall be appointed as an *ex officio* member of the ACAB as provisioned under section 13(2) (b) of the said Act.

The functions of the ACAB are provided as follows:

- i. To advise the Commission on any aspect of the corruption problem in Malaysia;
- ii. To advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;
- iii. To receive, scrutinize and endorse proposals from the Commission towards the efficient and effective running of the Commission;
- iv. To scrutinize and endorse resource needs of the Commission to ensure its effectiveness;
- v. To scrutinize the annual report of the Commission before its submission to the Special Committee on Corruption; and
- vi. To submit its comments to the Special Committee on Corruption as to the exercise by the Commission of its functions under this Act.

B. Special Committee on Corruption (SCC)

The Committee is set up by the provision of law under section 14 of the Malaysian Anti-Corruption Act 2009 (Act 694). The members of the SCC are appointed by the King of Malaysia, who shall be drawn from both the members of the Senate and the House of Representatives. The said section had also stated that none of them shall be a member of the administration.

The functions of the SCC are provided as follows:

- i. To advise the Prime Minister on any aspect of the problem of corruption in Malaysia;
- ii. To examine the annual report of the Commission;
- iii. To examine the comments of the Anti-Corruption Advisory Board as to the exercise by the Commission of its functions under this Act; and
- iv. To seek clarifications and explanations on the annual report of the Commission and the comments of the Anti-Corruption Advisory Board.

C. Complaints Committee (CC)

This committee was formed by law through section 15 of the Malaysian Anti-Corruption Commission Act 2009 (Act 694) and appointments are made by a Minister.

The functions of the CC are provided as follows:

- i. To examine complaints and action or outcome of investigation on complaints as well as give opinions on the results of investigation;
- ii. To examine the types of offences committed by MACC Officers and to suggest measures to enhance the efficiency and capability of officers in carrying out their duties (through trainings and other methods);

- iii. To receive and acknowledge disciplinary results and suggest preventive measures; and
- iv. To review work procedures and recommend improvements on work procedures and logistic needs.

D. Operations Review Panel (ORP)

The ORP is appointed administratively by the Prime Minister among experts who represent relevant professions and who can represent the quality of integrity and independence of the Commission. The ORP shall act as the check and balance mechanism for ongoing cases and on reasons regarding actions upon cases to be prosecuted or no charges are preferred. The ORP may also present its views to the MACC on cases if further clarifications are needed.

The functions of the ORP are provided as follows:

- i. To receive and seek clarification regarding statistics of Investigation Papers opened by the Commission;
- ii. To receive and scrutinize reports from the Commission regarding Investigation Papers exceeding 12 months of investigation;
- iii. To receive reports from the Commission regarding all cases where suspects arrested are released on bail bond by the Commission exceeding six months;
- iv. To receive reports on closure of Investigation Papers and to advise on improving investigations due to weaknesses plus reviewing whether further investigation is required; and
- v. To scrutinize, examine and endorse proposals to enhance the Commission's investigation operations to the Anti-Corruption Advisory Board.

E. Consultation and Corruption Prevention Panel (CCPP)

The CCPP is appointed administratively by the Prime Minister among individuals who represent various civil society organizations and other organizations such as academician, the business community, religious figures, media experts and social activists that can assist the MACC towards its objective of inculcating hatred against corruption among the society at large.

The functions of CCPP are provided as follows:

- i. To advise the Commission on enhancing the effectiveness of inspection and consulting activities upon the practices, systems and work procedures of both the public and private sectors which may be conducive to the occurrence of corruption;
- ii. To advise the Commission on enhancing the effectiveness of public education activities towards increasing the awareness on corruption and support on anti-corruption efforts;
- iii. To advise the Commission on enhancing the effectiveness of anti-corruption activities through the mechanism of strengthening integrity in both the public and private sector;
- iv. To advise the Commission on some of the best practices in the fields related to the implementation of consultation and anti-corruption activities;
- v. To assist the Commission as the key communicator in garnering support from the public, the media and the sectors identified towards the prevention efforts by the Commission; and

- vi. To submit its comments on the Commission's undertaking of its function on consultation and anti-corruption under the MACC Act 2009 to the Anti-Corruption Advisory Board.

IV. INTERNAL CONTROL

Internally, the Excellence and Professionalism Division is responsible for the regular monitoring of the officers of the Commission by ensuring appropriate actions are taken against those being involved in activities which could bring about a negative perception towards the Commission. This Division also serves in guiding the officers of the Commission to perform their duties and responsibilities with the highest level of integrity.

The functions of the Excellence and Professionalism Division are provided as follows:

- i) **Integrity Enhancement**
 - a. Ensure the acculturation, institutionalization, and implementation of integrity in MACC officers through the development of human capital with integrity and strengthening a culture of integrity and moral values.
 - b. Provide counselling services to identified MACC officers and for referred cases.
- ii) **Complaint Management**
 - a. Receive and act on all complaints or information on misconduct or disciplinary violations not of a criminal nature.
 - b. Serve as secretariat to the MACC Complaints Committee (CC) and prepare the CC Annual Report.
- iii) **Detection and Verification**
 - a. Detecting and verifying complaints or information on misconduct and disciplinary violations not criminal in nature involving MACC staff. In cases where there is a basis behind the disciplinary violation or misconduct, the matter shall be referred to the Disciplinary Secretariat for appropriate action under the Regulations Public Officers (Conduct and Discipline) 1993 or other administrative actions.
 - b. In cases where there is a basis for a criminal offence, information will be referred to the Information Evaluation Committee (IEC), Records Management and Information Division for further action.
- iv) **Disciplinary Secretariat**
 - a. Manage disciplinary proceeding papers for the consideration of the relevant Disciplinary Authority.
 - b. Act as Secretariat to the relevant Disciplinary Board Meeting and prepare minutes of meetings as well as inform and act on meeting decisions.
- v) **Compliance**
 - a. Conduct compliance inspectorate through inspection and enforcement on compliance with the law, policies, regulations, chief commissioner's

- standing orders (PTKP), code of ethics and standard operating procedures in force on all MACC staff.
- b. Report and provide feedback on any weaknesses, violations of the code of conduct and non-compliance with policies, regulations and SOP to the relevant MACC Divisions or State for corrective action, improvement or appropriate action.
 - c. Provide reports to the Disciplinary Secretariat in cases of disciplinary violation or misconduct by officers for appropriate action.
 - d. Conduct studies, assessments and update the effectiveness of and compliance with existing policies, regulations, PTKP and SOP.
 - e. Conduct assessment on the understanding and compliance with policies, regulations and SOP stipulated.

vi) Governance

- a. Ensure the effective implementation of organizational governance involving integrity issues to curb corruption and disciplinary violations.
- b. Receive reports and act as secretariat for the Anti-Corruption Committee meeting and the reporting for MACC Organizational Anti-Corruption Plan (OACP).
- c. Examine weaknesses and improvements to regulations, systems and procedures to shut any opportunities for corruption and disciplinary violations for MACC staff.

V. ENFORCEMENT AGENCY INTEGRITY COMMISSION (EAIC)

The EAIC is a Federal Statutory Body established by an Act of Parliament under Section 3 of the Enforcement Agency Integrity Commission Act 2009, which was enforced on 1 April 2011. Under subsection 1 (4) of the Act, there are 21 Federal Enforcement Agencies listed under the supervision of the Commission. Some notable agencies among those listed are the Royal Malaysia Police, Royal Customs Department of Malaysia, Immigration Department of Malaysia and the Road Transport Department.

This Act replaces the Independent Police Complaints and Misconduct Commission Bill 2005. The establishment of the Commission is in line with the Government's aim to inculcate and enhance integrity among enforcement officers and law enforcement agencies, thus strengthening public confidence in them.

Since the Act came into force, the Commission has begun to carry out functions as provided in section 4 of the Act. The main function of this Commission is to receive complaints of misconduct from the public against enforcement officers or law enforcement agencies in general and investigate and hold a hearing on the complaints received. This way the enforcement activities are constantly monitored and in the event of misconduct, appropriate actions will be recommended.

Generally, there are nine statutory functions carried out by the Operations Division of the Commission, which are:

1. To receive, investigate and hold hearings on complaints of misconduct of law enforcement agencies;

2. Establish mechanisms for detecting, investigating and preventing misconduct in enforcement agencies;
3. Protecting the public from the misconduct of enforcement agencies;
4. Monitoring the operation and procedures of enforcement agencies;
5. Promoting awareness and education integrity;
6. Formulating legislative and administrative measures recommended to the Government;
7. Reviewing the procedures and propose recommendations for improvements of enforcement agency;
8. Holding tours of enforcement agencies' premises to ensure law and SOP are complied with and making recommendations for improvements; and
9. Doing all things expedient or necessary for the implementation of the Commission's functions.

VI. CONCLUSION

The MACC is committed to achieving its vision of creating a corrupt-free Malaysian society based on high spiritual and moral values, as well as shaping the Commission into a world class anti-corruption agency. The efforts of the Commission are further supported by the Government of Malaysia, which is also committed to addressing issues of governance, integrity and anti-corruption.

The government's fight against corruption is evident through the formation of the Special Cabinet Committee on Anti-Corruption and the National Centre for Governance, Integrity and Anti-Corruption (GIACC). GIACC had developed the National Anti-Corruption Plan (NACP) 2019-2023 with the aim of making Malaysia a corrupt-free nation by 2023.