

INTER-AGENCY WORKING GROUP ON INTELLIGENCE, INVESTIGATIVE MATTERS AND JOINT OPERATIONS

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I. INTRODUCTION

Corruption remains a challenging crime to investigate and prosecute. The crime has been a win-win situation in which the bribe giver and receiver both benefit from the crime. Corruption schemes have evolved over the years, and the *modi operandi* are becoming more difficult to detect, as they are concealed through multiple parties embedded through deep-rooted systems. Moreover, corruption activities have become more transnational, where obtaining and securing evidence across borders has constrained the ability of anti-corruption agencies to investigate. Therefore, anti-corruption agencies now have to mobilize all sorts of endeavours not only nationally but internationally. The need for international cooperation has been of paramount importance to national strategies in order to successfully fight the battle against corruption.

Over the years, the Anti-Corruption Bureau has been successful in combating cross-border corruption cases between Brunei Darussalam and Malaysia through close cooperation with the Malaysian Anti-Corruption Commission. Issues and challenges have been resolved through bilateral negotiations and close cooperation between both agencies. This was achieved through the formation of the Working Group (WG) in matters pertaining to operations, intelligence and investigations.

II. WORKING GROUP MECHANISM ON INTELLIGENCE, INVESTIGATIVE MATTERS AND JOINT OPERATIONS

In July 2002, Brunei Darussalam and Malaysia through their respective anti-corruption agencies – the Anti-Corruption Bureau Brunei Darussalam and the Anti-Corruption Agency Malaysia (now known as Malaysian Anti-Corruption Commission, or MACC) – bilaterally formed a Working Group Committee in Operational, Investigative and Intelligence Aspects to collaborate in the area of investigation, intelligence, law, prevention, inspection, consultancy and training. Through these bilateral discussions, both agencies recognized that they face common challenges and obstacles, particularly in the areas of enforcement and investigation. The Working Group Members are composed of officers directly involved in bilateral cooperation for investigation and intelligence operations assignments.

The WG has been used as a channel to facilitate requests for mutual assistance between both agencies in areas of intelligence, investigation and operation. Through this mechanism, the agencies were able to ease the investigation work process for corruption cases between the two countries, especially cross-border corruption. The WG also serves as a platform to

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discuss success and failures of each agency as well as for exchanging best practices on issues associated with investigation and intelligence work. Through the sharing of knowledge, both agencies were able to develop their policy strategies and to further enhance their workflows in investigation, intelligence and operation aspects.

A. Implementation Mechanism for Mutual Assistance in Operations, Investigation and Intelligence

As agreed by the two agencies, the Implementation Mechanism for Mutual Assistance in Operation, Investigation and Intelligence Operations Working Group includes the following:

- i. Roles of WG Investigation and Intelligence
 - Act as an intermediary for two agencies in receiving and coordinating requests for mutual assistance and providing feedback on mutual assistance
 - To organize discussion on mutual assistance when required
- ii. Scope and Types of Assistance
 - Intelligence: Exchanging of intelligence reports / information requested
 - Investigation: Recording statements of witnesses or suspects, collection and delivery of documents or case exhibits, seizure, freezing and forfeiture of assets, handing over of criminals, joint operations and other cooperation agreed upon by both agencies
- iii. Other Areas of Assistance

Training course and work attachment: There have been several training courses and work attachments organized through the Working Group mechanism. Among the training course provided by the MACC: Intelligence Based Investigation; Asset Recovery & Forfeiture and Team Based Investigation through the Malaysian Anti-Corruption Academy; work attachment at the Anti-Money-Laundering Investigation Branch of the MACC was also offered to learn and gain experience on the process and practical part of investigation.
- iv. Giving Oral Evidence in Magistrate Court

Through the joint operations conducted and assistance rendered in obtaining witness statements, several cases have been tried in the Court of Brunei Darussalam. MACC officers who were involved in the case have been called by the Court of Brunei Darussalam to give evidence in Court.
- v. Mechanism of Implementation on Mutual Assistance
 - Meetings are held upon mutual agreement of both agencies, at least once a year on a rotational basis prior to the Annual Bilateral Meeting, during which the presentation of statistics on cooperation assistance in investigation, intelligence, training, arrest and joint operations between the two agencies is included in the meeting's agenda. The "traffic light concept" has been adopted in the WG meeting to ensure that all requests between the two agencies have been fulfilled. It was mutually agreed that the colour green indicates the requests have been "completed", yellow indicates the request is still "in progress" and red indicates that the request "has not been initiated". Apart from holding the annual WG meeting, there have been ad hoc meetings held when necessary to discuss any issues related to joint operations in areas of investigation and intelligence as

well as meetings in relation to cooperation assistance between the two agencies made according to the current needs.

vi. Requests for Assistance

All requests shall be made via official letter. In any circumstances where action is required immediately, direct communication can be made between at least one Working Group member with the Working Group member of the requested agency, which will then be followed by an official letter. During the global Covid-19 pandemic, both agencies continue to render assistance online, and any queries can be communicated by video conferencing.

vii. Means of Communication between WG Members

The means of communication between WG members can be done through meeting in person, correspondence letters, telephone, facsimile, email and video conferencing. The means of communication depends on the level of confidentiality of mutual assistance provided.

viii. Secretariat

The Working Group Secretariat is composed of officers of the Anti-Corruption Bureau and the MACC. For the Anti-Corruption Bureau, officers from the Investigation Unit and Intelligence Unit are appointed to facilitate the requests, whereas for the Malaysian Anti-Corruption Commission, officers are appointed from the Foreign Mutual Investigation Assistance Section of the Investigation Department. The secretariat is responsible for recording all requests and ensuring that all requests have been fulfilled.

ix. Sports and Recreational Activities

To further enhance the friendship and cooperation among the two agencies, sports and recreational programmes were also included as part of the Working Group meeting agenda.

B. Success Stories and Challenges

- Ops RR (ACB, Brunei Darussalam 2018-2019)
Assistance was rendered by the MACC to locate the main witness and to obtain a written statement of a Malaysian national, a main potential witness to the case. The ACB, through the Attorney General Chambers of Brunei, had applied for Mutual Legal Assistance to secure the potential witness to attend trial via video conference. Through this cooperation, it eased the investigation process of the case which later contributed to the successful prosecution of the case.
- Ops Hilux (ACB, Brunei Darussalam 2015-2016)
Assistance was rendered by MACC Sarawak to locate and arrest a Malaysian contractor who had fled from Brunei. Intelligence information from the MACC had led to the arrest of the Malaysian subject, and a warrant of arrest (outside of Brunei's jurisdiction) was executed in Sarawak. This led to the successful trial of both the giver and receiver who had been sentenced to imprisonment under the Prevention of Corruption Act (Chapter 131) and the Penal Code (Chapter 22).

- Ops “Batu” (ACB, Brunei Darussalam 2014)
A joint operation was conducted involving the smuggling of gravel and sand from Sarawak, Malaysia, to Brunei by two Malaysian shipping companies. Initial information stated there was corruption involved. However, when the joint operation was conducted, it was revealed that they had shipped undeclared gravel to Brunei. The successful joint operation has contributed to the successful prosecution of the case. Initially the court ordered the forfeiture of the two vessels, but subsequently the High Court of Appeal ordered the release of the two vessels due to the appeal by the defendants that they have been already given hefty penalty fines.
- Ops Jarum (ACB, Brunei Darussalam 2008-2009)
An operation was conducted in respect of a corruption syndicate which involved an oil smuggling syndicate from Brunei to Miri, Sarawak, via the Sungai Tujoh Control Post. Undercover officers (UCO) of the Malaysian Anti-Corruption Commission officers and two Undercover Agents (UCA) were deployed among the smugglers. The outcome of the operation led to the arrest of 40 customs officers who had been involved in assisting the smuggling activity and receiving bribes from the smugglers. Although the operation resulted in successful prosecution of the case against four customs officers and ceased the smuggling activity between the borders, the case had also encountered challenges mainly derived from obtaining witness testimony. It was challenging to arrange for undercover officers and undercover agents (the smugglers) to attend the trial, and a further obstacle was due to their commitment to other trials for other customs officers who had been tried separately, and also due to the frequent adjournment of trials by defendants. For the fifteen (15) defendants who were charged initially, the Deputy Public Prosecutor had decided to enter *Nolle (nolle prosequi)* and discharged prosecutions against customs officers who were subject to disciplinary action.

C. The Way Forward for the Working Group Mechanism

Despite the close cooperation between the two agencies, there is still limitation on obtaining financial records and data through this WG mechanism. However, by combining efforts through the assistance of the Financial Action Task Force mechanism, this will be an upcoming venture of cooperation that both agencies will look into, such as discovery, seizure, freezing and forfeiture of assets.

III. CONCLUSION

Anti-corruption agencies now have to fully mobilize all efforts nationally and through international networks to ensure the successful battle against corruption. The WG mechanism shows the importance of having continuous bonding and cooperation among anti-corruption agencies. Such strong bonds and close cooperation between anti-corruption agencies have been contributing factors for the success in resolving cross-border corruption. Some of the success stories which resulted from close cooperation between the Anti-Corruption Bureau, Brunei Darussalam and the Malaysian Anti-Corruption Commission have been published in the special edition book titled *Special Report, 10 Years Working Group ACB-Brunei Darussalam – MACC, In Operational, Investigation and Intelligence Aspects*. This book would be beneficial reference or “showcase” of the commitments,

vision and mission by both agencies through their successful WG mechanism to deter the corrosive effects of corruption.

REFERENCES

1. Special Report, 10 Years Working Group ACB-Brunei Darussalam – MACC, In Operational, Investigation and Intelligence Aspects (2015).
2. PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abd Rahman (1st Defendant) and Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Awang Badaruddin (2nd Defendant) For Ops RR
3. PP vs Liew Say Koo, PP vs Khairur Rijal bin Haji Abu Salim for Ops Hilux
4. PP vs Ngu Shipping and Trading Sdn Bhd, PP vs Abasa Shipping and Trading Sdn Bhd for Ops ‘Batu’
5. PP vs Sanip bin Ura; PP v Ahmad bin Haji Sahari; PP v Muhammad Rafi bin Haji Rashid for Ops Jarum