

## NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

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### I. BACKGROUND

Integrity in public office is integral in ensuring the efficiency of the delivery of services in the Government. In addressing the civil service, His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam has emphasized that integrity is crucial to be practiced by civil servants. He had mentioned in his 2010 New Year Royal Decree that “...*Integrity should be the cornerstone of public services. Without it, any country can collapse, or at best lose its will (ability) to develop*”. Corruption will not be tolerated in any form, and stern actions will be taken against civil servants involved in any corrupt practices.

Integrity is unquestionably a priority and an important principle that contributes to the success in suppressing corruption. With a high standard of integrity in public office, the Government will maintain public trust and most importantly the trust of foreign investors. Brunei is constantly working to diversify its economy and reduce its dependency on oil and gas. Foreign Direct Investment is seen as one of the strategic ways for that purpose; hence, maintaining corruption free governance is vital in attracting foreign investors.

### II. NEW AND EMERGING FORMS OF CORRUPTION IN EACH PARTICIPATING COUNTRY

#### A. Mechanisms for the Detection of New and Emerging Forms of Corruption

- The ACB works on two fronts when it comes to detecting corruption activities: **reactive** and **proactive** detection.
- **Reactive** – Apart from receiving formal complaints via hotline or from those who lodge reports at the ACB office, the ACB also receive referral letters from other Government agencies informing of corrupt practices committed by third parties or members of those departments.
- **Proactive** – On the proactive side, the **ACB’s Special Intelligence Services Division (SPIN)** have been working actively with our formal/informal sources in order to track down corrupt activities. The ACB is also working closely with intelligence agencies, the Audit Department, FIU and other Law Enforcement Agencies, and this has been of great assistance in further strengthening our network in our effort to combat corruption.
- **Technological Capabilities** – Technological capabilities is one of the areas which the ACB has been tapping into. Under SPIN, two units have been tasked on developing technical capabilities, namely the **Operational Research Unit (OPUS)** and the **Digital Forensic and Technical Services Unit (DATA)**. Both units have a dedicated team to

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conduct research and development on developing tools for intelligence and surveillance purposes. The forensic team meanwhile has the capability to examine and retrieve valuable digital evidence that can be used for intelligence and investigation purposes.

## **B. Features and Trends of New and Emerging Forms of Corruption**

- One of the common trends which has been investigated by the ACB in recent years is the abuse of power by the people holding senior positions in the Government.
- The gratification received may not come in the form of cash and may not be transferred directly to the public officer. The gratification may be transferred using a proxy or to an immediate family member in the form of employment, assets, property development, shares and vehicles.
- In one of the cases that has been investigated by the ACB, a former surveyor-general of the Surveyor Department, namely Haji Mohammed Jamil bin Haji Ali, had received gratification in the form of six return plane tickets and bill payments for car servicing, mobile phone use and broadband Internet from one Puah Heng Yew of Selective Powertech Consulting (SPC).
- The gratification was received following the awarding of a \$9.5 million e-government project to create National Spatial Data Infrastructure for which SPC was selected as the primary contractor in 2007.
- Haji Mohammed Jamil was found guilty on four charges for corruptly accepting gratification with a total value of \$7,479.31. He was also found guilty of all 16 counts of offences under Section 165 of the Penal Code, which forbids public servants from obtaining “valuable things” from a person connected to his official function. He was sentenced to four years’ imprisonment.
- Meanwhile, co-accused Puah Heng Yew also received a four-year sentence after being found guilty of bribing the surveyor-general as an inducement or reward for varying tender specifications for a Government spatial mapping project and submitting SPC’s progress payment claims to the Ministry of Development between May 2007 and October 2008 in respect to the tender.
- Puah was also found guilty of all 16 charges of abetting Haji Mohammed Jamil in committing the offences under Section 165 of the Penal Code by giving the said “valuable things” to Haji Mohammed Jamil.

## **C. Principal Causes or Backgrounds of New and Emerging Forms of Corruption**

- a) **Greed and the lack of integrity.** In the above case, Haji Mohammed Jamil has taken advantage of his position being the project manager and abused his power.
- b) **Lack of supervision and monitoring from higher authority.** During the implementation, the project has encountered several problems such as delays in delivering hardware, disagreement between project members and the surveyor-general. The Ministry of Development was also unaware of the changes made by Haji Mohammed Jamil.

- c) **Lack of due diligence during tender process.** There was no prior checking on the contractor's portfolio and capabilities to take up a project of that size when the tender assessment was made. In the end, the project was deemed unsalvageable after the contractor failed to meet its one-year completion date even after being twice given extensions when it fell behind schedule.

#### **D. Prospects of the Future Evolution or Transformation of New and Emerging Forms of Corruption**

- Continued evolution beyond traditional cash transactions to receiving in-kind or through third party services via digital mediums.

### **III. BEST PRACTICES FOR TACKLING NEW AND EMERGING FORMS OF CORRUPTION**

#### **A. Challenges and Obstacles Posed to Investigation, Prosecution and Adjudication**

- In the new and emerging forms of corruption, the perpetrators have used electronic platforms to facilitate and cover their activities, such as social platforms for their mode of communication as well as the use of fintech such as cryptocurrency for transferring gratification.
- Apart from that, corruptors have been using a "hawala" type of transaction to transfer the proceeds of crime. Bribe money is paid by someone linked to the giver and received by a proxy on behalf of the public officer. It would be even harder to detect if the transaction is executed in a foreign country.
- Some project/equipment needs an expert to understand the technical complexity of the matters to be investigated. The investigation team may not have personnel that has the relevant expertise and may end up searching for outsiders who can perform the task.
- Some of the witnesses or the subjects may be residing in other countries. Firstly, locating the subjects or witnesses may take time and sometimes they could not be traced at all. Secondly, for the witnesses, under Mutual Legal Assistance arrangements, some cannot be compelled to give evidence to the requesting party and their availability is dependent on their willingness to cooperate with the investigators.

#### **B. Effective Methods for Investigation, Prosecution and Adjudication of New and Emerging Forms of Corruption, E.g. Detection of Criminals, Collection of Evidence**

- In the context of investigation, the most effective method of detecting new and emerging forms of corruption is by strengthening intelligence capabilities as well as the intelligence network. Conducting continuous research with regard to the development of the new trend will also help in identifying the possible modus operandi and at which process that corruption is likely going to happen.
- Traditional surveillance will no longer be effective to uncover corrupt activities. New approaches have to be made such as better penetration of electronic devices, media

platforms and electronic access such as company records, call logs from service providers and national registries.

- Another way to detect the activity of the people involved in corrupt activities is through bank accounts and digital records. This can help intelligence officers assess the spending pattern and whether or not the target is living beyond means.

### **C. Future Recommendations**

- Information-sharing sessions between agencies involved in international investigations on latest detection technologies, and making them available to other agencies, is very much required for investigations to close in on changing and modern modus operandi of syndicates.
- Financial institutions also need to proactively and very quickly report on suspicious transactions, as well as develop their own internal checks on any likely money-laundering activities.

## **IV. INTERAGENCY COOPERATION AND INTERNATIONAL COOPERATION**

### **A. Cooperation among Domestic Agencies (FIU, Security, Taxation, Customs Etc.)**

- In our effort to combat corruption, the ACB has over the years been working closely with various intelligence, law enforcement agencies as well as the Attorney General's Chambers. ACB is also a member of the Brunei National Anti-Money Laundering and Combating the Financing of Terrorism Committee (NAMLC) and is empowered as one of the investigative bodies under the Criminal Asset Recovery Order, 2012.

### **B. International Cooperation (Joint Investigation and Other Forms of Cooperation)**

- Over the years, the ACB has been working closely with its Malaysian counterpart, the Malaysian Anti-Corruption Commission (MACC), Singapore's Corrupt Practices Investigation Bureau (CPIB) and the Indonesian Corruption Eradication Commission (CEC) for matters pertaining to investigation such as locating persons of interest, repatriation and expatriation of subjects and proceeds of crime, recording of statements as well as conducting joint investigation.
- Our cooperation is also extended to training, capacity-building, and legal and operational coordination.