

NEW AND EMERGING FORMS OF CORRUPTION AND THE EFFECTIVE COUNTERMEASURES

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I. INTRODUCTION AND EMERGING CORRUPTION

New threats of crime including corruption are evolving rapidly at the same pace of the new technology. This crime is progressing intensively, and the modus operandi have also changed. Therefore, as law enforcement in anti-corruption, we need to buff up on our methods and investigation skill to overcome such threats.

Corruption happens everywhere and involves multiple levels of society. From politicians misusing public funds to government officials involved in bribes in exchange for services, corruption can happen anytime, anywhere and behind closed doors. Furthermore, the rewards can be in different kinds of assets, not only in cash or properties but in bonds, shares and even in bitcoins. The same scenario is happening in the private sector where people at all levels are also involved in soliciting, accepting of bribes and misuse of power. The higher the position, the bigger the cash cows flooding in and the higher the value of the bribe taken!

The cost of corruption exceeds its monetary value in that it infringes your rights and the rule of law. Corruption has devastating socio-economic impacts for a country and certainly has a big political impact. Corruption is one of the causes for the people being denied the expected service delivery access, uneven distribution of wealth and leakages of the nation's resources and government funds.

Sharing the experience of MACC in investigation of the 1MDB case, the investigator detected that the money was transferred to numerous accounts in various countries before it ended up in the suspect's account in Malaysia. This is a classical case where the crime-scheme was very well organized using forged documents and shadow companies. The shadow company was purposely formed using the same name as the genuine company. The suspect holds multiple strategic posts in Government, and the government-linked company misuses its power and position to collude with well-known businessman to syphon the money out of Malaysia. The money trail showed that the money ended up in the suspect's bank account, and the company now struggles with a very high debt. With good collaboration and cooperation from the countries, MACC managed to complete the investigation and the suspect was charged in Court. The suspect was found guilty and sentenced to 12 years' imprisonment and a fine of MYR210 million.

Corruption is an inherited crime. It has happened for ages and has caused the fall of civilizations. Before such collapse, the crime only involves "petty corruption" and does not involve cross-border links, syndicated crime or multiple transactions through bank institutions. Based on my experience, the current ways of crime are well-organized and difficult to investigate. Enforcement agencies will face a very tough task to penetrate such schemes. The current scenario of the corruption case involved syndicated/organized crime, cross-border

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transactions, proxy/shadow companies and hid behind political funds, inexperienced judges, weak political will, weakness of law and weakness of investigation techniques.

II. EFFECTIVE COUNTERMEASURES

A. Enforcement Technique/Model

The objective of an investigation is to collect the evidence and ensure it is admissible in courts. It is important for the enforcement agencies to have an efficient technique/model of investigation. Weak techniques or strategies of investigation may result in failure, and the suspect will avoid conviction. To meet the investigation's objectives, the Malaysian Anti-Corruption Commission (MACC) implemented *Intelligence Based Investigation (IBI)* and *Managing Team Based Investigation* as techniques in investigation.

IBI was used in the pre-operation stage to collect all the relevant information like general information of the suspect or witness, companies' details, list of assets ownership and modus operandi (MO). This information will be useful to the investigation team. While MTI¹ is used in the operation and post-operation stage. Its focus is on management of the case, which involves the planning and monitoring of the investigation process, determining the action to be taken and identifying the witnesses and evidence. MTI ensures the positive outcome of the investigation and shortens the investigation period through tight monitoring and optimization of manpower.

In addition, MACC also emphasizes asset tracing to identify the proceeds owned illegally, such as by means of corruption or as a result from any other crime. All the illegal proceeds will be forfeited. The tracing of assets is done during the pre-operation stage using multiple sources like banking institutions, land offices, local authorities and other relevant authorities.

B. Law Reform

Strict laws are required to combat corruption and increase integrity among society. The corruption law in Malaysia has undergone a process of change and amendment. The culmination of these changes was the 2009 passage by the House of Representatives and Senate of the Malaysian Anti-Corruption Act 2009 (MACC Act 2009). This act enhanced the Anti-Corruption Act 1997 (ACA 1997), which led to the establishment of MACC, formation of the independent panel as a check and balance mechanism and amendments to some less-clear parts of the previous act.

In 2018, MACC Act 2009 again underwent changes when section 17A (corporate liability) and section 41A (admissibility of documentary evidence) were added. The aim of section 17A is to foster the growth of a business environment that is free of corruption and to encourage all commercial organizations to take reasonable and proportionate measures to ensure their business does not participate in corrupt activities for their advantage or benefit. Meanwhile, Section 41A provides that any document obtained by the Malaysian Anti-Corruption Commission shall be admissible in evidence in any proceedings under the principal Act, notwithstanding anything to the contrary in any other written law. This provision appears wide enough to include illegally obtained documents and privileged documents.

The issue of witness intimidation has been brought up by many countries many years ago. Witness-protection assistance is important to help protect the witness from any threats which

¹ See MACC's Guidelines on MTI.

might be made by persons whom the witness might testify against. Threat or intimidation to the witness can take place in many ways. Therefore, the protection assistance should be able to overcome each and every threat so as to effectively shield the witness from intimidation. The introduction of the Witness Protection Act in Malaysia could be regarded as one approach adopted by the government to overcome the above problem. The Witness Protection Act 2009 took effect on 15 April 2010. This ensured that witnesses could properly testify, without being fearful of the accused or any party. Hence, the law aims to avoid cases in which prosecution fails when no witness is daring enough to come forward because he or she feels threatened.

Furthermore, in 2010, the Whistleblower Act 2010 was enforced in Malaysia. This act is to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sectors, to protect persons making those disclosures from detrimental action, to provide for the matters disclosed to be investigated and dealt with and to provide for other matters connected therewith. The effectiveness of this act, has boosted the confidence level of the public and resulted in an increase of the amount of corruption information provided to the MACC.

C. Special Law on Beneficial Ownership (BO)

A beneficial owner is an individual or natural person who ultimately owns or controls an entity. In Malaysia, business entities play an important role in economic growth. However, the legal structure of this business such as Sdn Bhd, or Limited Liability Partnership, is susceptible to being misused for carrying out illicit activities such as money-laundering, terrorism financing, corruption and others. The individuals that hide behind such businesses employ devious means to avoid their identities from being detected.

The Companies Commission of Malaysia (SSM) is the Registrar issuing the Guidelines Reporting Framework for Beneficial Ownership of Legal Persons, which came into effect on 1 March 2020 and established a transitional period of 1 March 2020 to 31 December 2020. During the transitional period, entities need to obtain, keep and update the beneficial ownership information at the entity level. After the transition period, they are required to obtain, keep and update the beneficial ownership information and inform the Registrar. However, as of now, the period has been extended to a later date to be determined by the Registrar to coincide with the enforcement date of the proposed Companies (Amendment) Bill and Limited Liability Partnerships (Amendment) Bill.

D. Special Law on Anti-Jump Party

On 9 December 2020, Datuk Seri Akhbar Sattar, former President of Transparency International Malaysia (TI Malaysia), stated that “Malaysia should enact an Anti-Party Hopping law to overcome the ‘political pandemic’ in the country.” He said the rather regular cases of party-hopping among elected representatives at both Parliament and State Legislative Assembly levels should no longer be allowed to persist as they undermined the stability of the government. Apart from this, such party-hopping would also lead to corrupt practices. When they hop from one party to another, it could also lead to the collapse of a ruling government, and they do this because they are paid to do so.

Many Malaysians seem to agree with the above statement, and they believe that the act of hopping from one party to another party was influenced or inspired by something valuable like money (huge sums), positions or projects. The act of hopping by politicians (dubbed as “frogs”) is considered as betraying the trust given by the voters and as being selfish. Money is a major

incentive for elected representatives to party hop. Though hard to prove, money is certainly a big reason why Malaysia is experiencing political instability.

Malaysia needs a law to stop this unethical behaviour, and history was made in Malaysia on 4 October 2022, after the King consented to the enforcement of the anti-hopping law, which entered into force on 5 October 2022. The law, Constitution (Amendment) (No. 3) Act 2022 will be enforced against any Members of Parliament who switch parties.

E. Special Law on Political Funding

Political funding, or political financing, refers to how political parties or politicians raise money for election campaigns and other activities. A political funding law regulates how parties and politicians receive and use money by ensuring disclosure of the source of funds and donations as well as the amounts received. Proponents of the law argue that it is essential for holding political parties and politicians accountable, ensuring transparency over funds and preventing misappropriation, bribery, fraud or abuse of power where funding is concerned.

Former President of Transparency International Malaysia Datuk Seri Akhbar Sattar also pointed out that a law on political funding to check and balance the risks of corruption among politicians that had long been debated about should be enacted without further delay. Such law would be an effective means to curb abuse of power, corruption, breach of trust and uncontrolled political funding.

On 19 May 2022, the Malaysian Prime Minister announced that Special Cabinet Committee on Anti-Corruption had agreed in principle to a political funding bill, adding that the proposal would be discussed in the Cabinet before further engagement with political parties. The Law Minister announced that the bill on political funding will be tabled in the House of Representatives and is hoped to be passed before the 15th General Election.

F. The Judiciary

On August 2022, the Special Committee on Corruption (a committee formed under the MACC Act 2009) proposed the creation of the Anti-Corruption Court as an enhancement to the existing Special Session Court of Corruption. Currently, there are 18 Special Session Courts in Malaysia. There is a need for an Anti-Corruption Court, or a court on corruption to be established specifically, from (the level of) the Sessions Court, the High Court, the Court of Appeal and the Federal Court, with judges who are experts and who are not changed periodically. This is to ensure the country has expertise, as well as the precision to run a court specifically to handle corruption cases.

Currently, trials related to corruption are considered ordinary trials, without any priority accorded to them. The establishment of the Anti-Corruption Court (High Court, Court of Appeal and Federal Court) will speed up the trials and help to reduce the number of pending cases. The appointment of experienced judges is expected to uphold justice, transparency and integrity, and they should not be easily compromised. Ridiculous excuses and requests to postpone scheduled proceedings would be rejected. Justice delayed is justice denied! This proposal was in the attention of the Government of Malaysia. I hope the Malaysian Government will give due attention to this and not delay its implementation.

G. Government Administration

In 2018, an asset declaration portal administered by MACC was launched whereby the government agreed that all Ministers and Deputy Ministers would be required to declare their assets. Further, this policy was enhanced by the current Prime Minister of Malaysia on 19

September 2022, whereby it was announced that Members of Government Linked Companies (GLCs), Members of Linked Investment Companies (GLICs) and Judiciary Members are required to declare their assets to MACC as well. However, these are still being researched by MACC and to be presented later.

H. Governance, Integrity and Anti-Corruption Centre (GIACC)

GIACC formed on 1 June 2018. GIACC's objectives are to plan, coordinate and monitor the implementation of the policies about anti-corruption and good governance initiatives. The coalition has created the institutions and pathways, and articulated the objectives and norms that warrant documentation and assessment. GIACC reports directly into the Prime Minister's Office, which underscores its commitment to all efforts to strengthen governance in Malaysia post GE14.

GIACC also launched the National Anti-Corruption Plan (NACP) on 29 January 2019 to create a corrupt-free nation through specific goals which are the Accountability and Credibility of Judiciary, Prosecution and Law Enforcement Agencies, Efficiency and Responsiveness in Public Service Delivery, and Integrity in Business. The NACP aims at establishing practical targets based on the initiatives to address national issues of corruption, integrity and governance to be undertaken during the next five years.

I. Curbing the Cartel

Elite corruption is the most difficult to combat because of the power at the disposal of the elite unless there is a major political upheaval. Based on the corruption trend in Malaysia over the last five years (2013-2018),² the public sector has been the most vulnerable to corruption. Compared to the vulnerability rate of 17.06 per cent in the private sector, the public sector showed a more alarming rate of 63.30 per cent. It was discovered that such a high vulnerability to corruption in the public sector stemmed from weak governance in its procurement practices, legal enforcement agencies and administration. This fact was further substantiated by the MACC's statistics. The agency found that between 2015 and 2018, a total of 30 top civil servants had been arrested for corruption charges. Their involvement does not only cause losses in the public funds, but more crucially it questions the public sector's integrity in ensuring the country's security and prosperity.

Recently, however, a new style of crime has been developing widely, which is corruption by cartel. A group of crime perpetrators are working together to get contracts from the government by manipulating their quotation and price submitted during the tender process of the government contract. When the selected contractor are chosen, pricing are manipulated, services provided are minimal and sometimes the jobs are not performed at all. MACC's prevention section managed to overcome this issue by advising government on short-term and long-term remedies. Although it shall never eliminate these cartel issues, it helps government offices to control and restrain further the losses to the value of government contracts.

Integrity pledges have also been introduced for public and private offices in Malaysia. This is a pledge taken by the leader of the office leading the whole staff, including officers and even board members, to give their oaths to refrain from taking bribes or becoming engaged in corruption within the office. To date, there are 1,828 agencies that have taken the oath.

² Statistics from MACC's records.

III. CONCLUSION

It is apparent that corruption not only ruins the corruptors, but it can go beyond to ruin the entire country. Malaysia has come under the spotlight for being involved in mega scandals. These scandals have seen billions of ringgit being syphoned off from the country. Syndicated cases involved high-level corruption and lack of governance on funds amounting to millions of ringgit affected multiple countries. The adverse effects of corruption on countries' economic development are widely acknowledged. Such large-scale corruption will also affect the overall public confidence, which will shake the confidence of investors, reduce the productivity of public expenditures, distort the allocation of resources and, thus, lower the economic growth of countries. Therefore, to combat corruption in full force, government plays a critical role in ensuring resources (e.g., human resource and financial) as well as access to these resources are made available to all the relevant stakeholders to undertake the various initiatives. We at the MACC do hope that the responsibility in achieving Malaysia as a corruption-free country is not only on us solely but on other public and private agencies as well. In the end, the benefits will be shared by all.