

**SEVENTH REGIONAL SEMINAR ON GOOD GOVERNANCE  
FOR SOUTHEAST ASIAN COUNTRIES**

**ENHANCING INVESTIGATIVE ABILITY  
IN CORRUPTION CASES**

Hosted by UNAFEI

With the support of the Malaysian Anti-Corruption Commission and the  
Malaysia Anti-Corruption Academy  
3-5 December 2013, Kuala Lumpur, Malaysia

**UNAFEI**

**UNITED NATIONS ASIA AND FAR EAST INSTITUTE  
FOR THE PREVENTION OF CRIME  
AND THE TREATMENT OF OFFENDERS**



November 2014

TOKYO, JAPAN

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The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policies of UNAFEI, the Government of Japan, or other organizations to which those persons belong.

## FOREWORD

It is my great pleasure and privilege to present this report of the Seventh Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Kuala Lumpur, Malaysia from 3 – 5 December 2013. This was our first opportunity to hold a Good Governance Seminar in Kuala Lumpur, and we were deeply impressed and touched by the warm hospitality afforded to us by our Malaysian hosts.

The main theme of the Seminar was “Enhancing Investigative Ability in Corruption Cases”, and it was attended by three speakers from public institutions and thirteen international participants — all criminal justice practitioners — from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam. The Seminar was organized by UNAFEI, with the support of the Malaysian Anti-Corruption Commission and the Malaysia Anti-Corruption Academy.

As anti-corruption practitioners, the Seminar’s participants were keenly aware of the dangers that corruption poses to democracy and the rule of law. In addition to distorting business activities and competition, corruption also threatens the security of societies and creates environments in which organized crime, terrorism, and other forms of unlawful activity may prosper. Yet in contrast to the grave and far-reaching threats it poses, corruption is very difficult to detect because it is ordinarily committed in secret among a very limited number of parties. As a result, it is a challenge for criminal justice authorities to obtain effective leads and to fully develop and investigate them. Investigative authorities must enhance their investigative abilities in order to punish these offenders and learn to cope with the concealment of evidence.

To accomplish these aims, investigators must obtain the cooperation of key witnesses during the investigation and persuade them to testify at trial. It is also effective to use covert surveillance to secretly record oral statements of suspects and related persons, using methods such as lawful wiretapping. Additionally, it is important for investigators to master how to track the flow of the proceeds of corruption. Necessary skills include the analysis of bank statements and related documents, conducting investigations in cooperation with banks, seizing the proceeds of corruption and so forth. Moreover, the progress of science and technology has enabled many other forensic investigations, and investigative authorities must master the newest forensic investigative methods to combat sophisticated corruption offenders.

The Seventh Regional Seminar explored the legal frameworks and techniques of anti-corruption investigation in the participating countries. Through discussion of the issues, participants exchanged knowledge, experiences, effective strategies, and best practices in the fields of anti-corruption investigation and asset tracing. In addition, the Seminar developed contacts between anti-corruption authorities and investigators in East Asia and Southeast Asia.

It is my pleasure to publish this Report of the Seminar as part of UNAFEI’s mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy.

Finally, on behalf of UNAFEI I would like to express my sincere appreciation to the Malaysian Anti-Corruption Commission and the Malaysia Anti-Corruption Academy for their great contributions to convening the Seventh Regional Seminar.

A handwritten signature in black ink, reading "Tomoko Akane". The signature is stylized with a large, sweeping flourish that starts from the left, goes over the top of the name, and ends with a sharp downward stroke on the right.

Tomoko AKANE  
Director, UNAFEI

October 2014

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# **INTRODUCTION**

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Ms. Tomoko Akane  
Director of UNAFEI

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Opening Remarks by  
Mr. Datuk Hj. Mustafar bin Hj. Ali  
Director of Investigation  
Malaysian Anti-Corruption Commission

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Keynote Address by  
Mr. Kenichi Kiyono  
Deputy Director, UNAFEI

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Keynote Address by  
Mr. Datuk Hj. Mustafar bin Hj. Ali  
Director of Investigation  
Malaysian Anti-Corruption Commission

## **OPENING REMARKS AT THE SEVENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES**

*Tomoko Akane\**

Honourable Datuk Hj. Mustafar bin Hj. Ali, Director of Investigation of the Malaysian Anti-Corruption Commission (MACC), Honourable Dato Abdul Wahab Abdul Aziz, Director of the Malaysia Anti-Corruption Academy, honourable guests, distinguished experts and participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Seventh Regional Seminar on Good Governance for Southeast Asian Countries. I would like to extend my heartfelt welcome to the honourable guests, distinguished speakers and participants who have come to join this significant forum.

UNAFEI has held the Good Governance Seminar annually since 2007. This year is the seventh Good Governance Seminar, held in Kuala Lumpur, and it is being co-hosted by the Malaysian Anti-Corruption Commission. I would like to take this opportunity to express my deepest appreciation to the Government of Malaysia, especially to the Malaysian Anti-Corruption Commission and Malaysia Anti-Corruption Academy, for their great contributions and assistance in co-hosting this seminar.

The main theme of this seminar is “Enhancing Investigative Ability in Corruption Cases”. Needless to say, just criminalizing various forms of corruption is meaningless. For us, as law enforcement officers and government attorneys, the most effective measure to eradicate corruption is exposing each case of corruption, exposing each wrongdoer, and bringing such criminals to justice. That includes imposing the appropriate punishment on each offender.

However, many challenges arise in investigating and prosecuting corruption cases, such as undue pressure from powerful politicians and public officials, difficulties obtaining objective evidence and so forth. We must regrettably admit that corruption cases are still prevalent, and we have not succeeded in investigating and prosecuting all corruption cases. High investigative ability and techniques are necessary to overcome those challenges.

Now, let’s recall the date of 31 October 2003, when the United Nations General Assembly adopted the United Nations Convention against Corruption. Since then, 10 years have passed. I quote the words that Secretary-General Kofi Annan, the then UN Secretary General, jubilantly wrote in the foreword, “The new Convention is a remarkable achievement, and it complements another landmark instrument, the United Nations Convention against Transnational Organized Crime, which entered into force just a month ago. It is balanced, strong and pragmatic, and it offers a new framework for effective action and international cooperation.” Indeed, UNCAC has inspired strong political will to fight against corruption in many countries.

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\* Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI).

During these ten years, such countries have made tremendous efforts to strengthen their legal and regulatory regimes and to make use of various and powerful measures introduced by UNCAC and UNTOC. I believe that we are steadily moving forward to defeat the vice of corruption by “Enhancing Investigative Ability in Corruption Cases”.

This forum is a good opportunity for us to exchange knowledge and good practices in investigating corruption cases based on the experience of your respective countries. Of course, there are still differences in legal regimes and rules, but the lessons learned through the investigation of specific cases should lead us beyond such differences to improve the investigative methods of each country.

Finally, I hope that the discussion at this seminar will strengthen international cooperation and help each participant clear higher hurdles in the investigation of corruption cases in the future.

Thank you very much for your attention.

**OPENING SPEECH AT THE SEVENTH REGIONAL SEMINAR ON GOOD  
GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES —  
“ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES”**

*Datuk Hj. Mustafar bin Hj. Ali\**

Your Excellency, Mr. Shigeru Nakamura, Ambassador of Japan to Malaysia,

Mr. Kunihiko Sakai, Director General, Ministry of Justice Japan,

Dato’ Abdul Wahab bin Abdul Aziz, Director of the Malaysia Anti-Corruption Academy,

Mdm. Akane Tomoko, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI),

Visiting Experts,

Senior officers of UNAFEI and the Malaysian Anti-Corruption Commission,

Dear Participants, ladies and gentlemen,

*Very good morning and assalamulaikum,*

It gives me great pleasure indeed to welcome all to the Seventh Good Governance Seminar on anti-corruption jointly organized by UNAFEI and MACA. I would like to extend a special welcome to our international delegates, especially as it is the first time for some of you to come to the beautiful city of Kuala Lumpur. It is my sincere hope that we shall be seeing more of you in the future in Malaysia, perhaps in a private capacity.

The participating countries should have the primary responsibility for addressing corruption, good-governance-related problems, and the regional and international community as well as civil society and the business sector have key roles to play in supporting countries’ reform efforts.

The donor countries and others supporting the action plan endeavour to provide the assistance required to enhance the capacity of participating countries to achieve progress in the priority areas and to meet the overall policies.

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\* Director of Investigation, Malaysian Anti-Corruption Commission.

Looking forward I would like to suggest what I will call “A Good Governance Doctrine”, one which will help governments, state enterprises and those who run them remain worthy of the trust of their citizens.

*Ladies and Gentlemen;*

In Malaysia, fighting corruption is the priority agenda of the government. Nonetheless, the government alone would not be able to successfully eradicate corruption. The establishment of MACC is only a part of the official mechanism to fight corruption but the Commission, however effective it is, would not be able to fully eradicate the scourge without the support and trust by all parties concerned.

Fighting corruption needs the will power of everyone — the government, organizations, communities and each and every individual. No single organization or nation can win the war against corruption without the concerted efforts and cooperation of the citizenry.

First and foremost there must be sustained and committed leadership that embodies the core values of good governance. Direction starts at the top. Leadership can make good governance become a reality. When senior management is committed to transparency, integrity and accountability, and lives by these standards, it will set the tone for staff.

All organizations need a soul, a compass to guide them regardless of the pressures or turmoil which will come their way. Let me suggest a very short list of these values, those that I see as essential.

*Integrity and Probity* sit above everything. If everyone in an organization acts with integrity and probity there will be no room for corruption. Staff will be hired on merit and professional competence not because of whom they know. All payments will be properly recorded; all decisions will be made based on judgment not graft.

*Transparency and Accountability.* Information is power — an adage often quoted — and it belongs to the people unless there is a threat to national security. For the majority of state enterprises this will rarely be the case. People should always have the information accessible to hold their institutions to account.

In working with staff over the years, I have discovered that they kept coming back to this set of values as those most important guidelines for them in the delivery of their responsibilities. Working in this kind of cultural indoctrination is not built overnight. There must always be consistent and sufficient regular training and retraining to ensure the old and new employees stay the course.

This leads me to another very important point. Just as ethical behavior guides an organization, good governance also requires a robust legal and regulatory framework, properly enforced to ensure legitimacy. This includes a clear mandate for State enterprises enshrined in laws that drive operations.

Unfortunately in many countries although these structures are nominally in place, they are often either ignored or not enforced. This leaves people unprotected, and creates the kind of uncertain environment that drives investors away. If a state enterprise, for example, cannot guarantee that a contract will remain in force if there is a change of government, investors will think twice before committing resources in that country.

Finally, indeed, every issue raised is the illustration of the objective, principle, measure and mechanism for implementing the integration, policies in order to achieve the significant objective of this course, the creation of the anti-corruption awareness through good governance is the social safety net, reducing crime, vulnerability as well as corruption reduction among the mothers of the crimes. In this connection, we strongly believe that with joint efforts together and active participation among the anti-corruption entities, we will be highly effective.

However, we must acknowledge that what we have done so far has not wholly answered our need. In this regard, all of us must exert utmost effort and ability to continue the anti-corruption task and never be satisfied, and the true demand of the fight against corruption should never end here.

Thank you for being here. I wish you an enjoyable and productive seminar and God bless.

# BEST PRACTICES FOR INVESTIGATION OF CORRUPTION

*Kenichi Kiyono\**

## I. INTRODUCTION

Generally speaking, anti-corruption measures take a three-pronged approach: prevention, enforcement and education. Although all three of these measures are of great importance, enforcement — that is, to detect, prosecute and punish corruption — is the most powerful measure to combat corruption. Further, enforcement has great preventive and educational effects.

However, enforcement is a very difficult task for investigators and criminal justice officials, because bribery is a hidden crime which benefits the collusive parties. We cannot expect to receive victims' complaints. Little, if any, evidence is left at the crime scene. Corruption cases are often committed by powerful politicians or high-ranking officials, which makes it difficult for investigators to obtain the cooperation of witnesses and suspects. Investigation of large scale corruption cases demands perseverance, knowledge, experience, expertise and organizational strength.

In addition to these difficulties, investigators have recently been confronting other challenges. The protection of human rights imposes significant restrictions on suspect interviews, which play a very important part in the investigation of corruption cases. The globalization of society and development of the Internet and information technologies allow criminals and crime proceeds to cross borders easily.

We must develop the capacity to investigate corruption cases in response to these difficulties and challenges. To achieve this goal, two of UNAFEI's international training courses conducted this year addressed criminal investigation — the 155th International Training Course, which focused on "The Effective Collection and Utilization of Evidence in Criminal Cases" (21 Aug.-27 Sep. 2013) and the 16th International Training Course on the Criminal Justice Response to Corruption (UNAFEI UNCAC Training Course, 9 Oct.-13 Nov. 2013).

As the keynote speech at this Seventh Good Governance Seminar for Southeast Asian Countries, I would like to share the outcomes of these two training courses.

## II. BEST PRACTICES

### A. Covert Operations Based on Information from the Public (ICAC, Hong Kong)

Ms. Rebecca Li, the Director of the Investigation Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, gave her lectures during the 16th UNCAC Training Programme.

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\* Deputy Director, UNAFEI.

The Prevention of Bribery Ordinance stipulates a full range of offences including private sector corruption, illicit enrichment, and no defence of custom or cultural practices. It further provides special powers of investigation by the ICAC including access to records of banks and financial institutions, access to information of the Inland Revenue Department with the approval of a High Court Judge, and notice to the suspect or witnesses to provide declarations or statements in writing. The Ordinance also has provisions to recover proceeds of corruption crimes.

Using these powers effectively, the ICAC conducts proactive investigations such as developing intelligence sources, telephone interception, covert surveillance, physical surveillance and undercover operations. A considerable number of these investigations are opened based on information from the public. As the ICAC enjoys strong confidence from the general public and the intelligence sources are strictly protected, three-fourths of informants identify themselves, which contributes to the credibility of the information.

### **B. Intelligence-Based Investigation (MACC, Malaysia)**

Mr. Dato' Abdul Wahab bin Abdul Aziz, the Director of the Malaysia Anti-Corruption Academy (MACA), has rich experience as an investigator at the Malaysian Anti-Corruption Commission (MACC), which is MACA's parent body. He gave his lectures on "Intelligence-Based Investigation (IBI)" during the 16th UNCAC Training Programme.

MACC started IBI in 1999. IBI is conducted by collecting information discreetly using technical aids such as recording, interception and wire-tapping. Officers investigate current and potential offences by various methods like sting operations, integrity testing, electronic surveillance (covert or overt), interception, and the use of undercover officers, undercover agents, etc.

The benefits of IBI are tremendous. It shortens the investigation process, saving time and money. It can uncover syndicated and organized crimes. Investigators can gather quality information and reliable evidence, so conviction rates are very high.

### **C. New Anti-Bribery Legislation (SFO, United Kingdom)**

Mr. David Green, the Director of the Serious Fraud Office (SFO) of the United Kingdom, gave his lectures during the 16th UNCAC Training Programme. There has been important legislative progress regarding the anti-corruption measures in the UK, such as the Bribery Act 2010 and the introduction of deferred prosecution agreements (DPA) by the Crime and Court Act 2013.

The 2010 Act stipulates various bribery offences including bribery of foreign public officials, failure to prevent bribery by a corporation, private sector bribery, etc. The UK authority has robust jurisdiction pursuant to the 2010 Act as follows:

- if any part of the conduct is committed in the UK;
- if the person is a British national, resident in the UK, incorporated in the UK, or has a close connection with the UK; or
- if a commercial organization carries on its business or part of its business in the UK.

Mr. Green also discussed key corruption indicators such as abnormal cash payments, abnormally high commission payments, payments routed through offshore accounts with no apparent business links, agents with little or no subject knowledge, little evidence of due diligence, etc. Alongside the normal investigative powers, the Criminal Justice Act 1987 bestowed the SFO with special powers to notice any person to answer questions, to disclose specified documents, etc.

#### **D. Interview Techniques: the PEACE Model to Interview Cooperative Witnesses/Suspects (Hampshire Police, United Kingdom)**

Mr. Tim Curtis, who has rich experience as an investigator and trainer of investigative interviews at the Hampshire Police in the United Kingdom, delivered his lectures during the 155th International Training Course.

He started his lectures by introducing seven principles of investigative interviews: to obtain accurate and reliable information to discover the truth; investigators must approach the suspect with an open mind and information obtained must be tested; the police officer must act fairly; investigators are not bound to accept the first answer; the suspect possesses the right of silence/right to question; investigators should ask questions to establish the truth; and vulnerable people must be treated with consideration at all times.

The PEACE model has its roots in the four-phases-of-interview method, which was developed in 1992: rapport; free narrative account; questioning; and closing. PEACE is a simplified acronym for PPEEACCCE, that is, Plan and Preparation; Engage and Explain; Account, Clarify and Challenge; Closure.

Special care must be taken when investigators interview vulnerable people. The government published “Achieving Best Evidence in Criminal Proceedings” in 2001 and amended it twice thereafter. These guidelines target vulnerable witnesses with learning disabilities, physically disabled witnesses, witnesses with mental disorders or illness, and intimidated witnesses.

To extract the best possible information from the interviewee, the interviewer must understand the system of encoding, storage and retrieval of memory, establish a good relationship (rapport) with the interviewee, and ask proper questions which progress from open to closed questions and then on to forced-choice and leading questions.

#### **E. Interview Techniques: the Reid Technique to Interrogate Uncooperative Suspects (FBI, United States)**

Ms. Shelagh Sayers, an FBI agent and legal attaché at the US Embassy in Tokyo, delivered her lectures on interrogation techniques, especially the Reid Technique during the 155th International Training Course.

The purpose of the interrogation technique is to extract full confessions from suspects. It should be emphasized that the purpose of the Reid Technique is not to extract false confessions or confessions at any cost. The credibility of confessions and any statements extracted by the interrogation technique must be carefully analyzed and corroborated by other evidence.

Effective listening is crucial to the success of the Reid Technique. Qualities of an effective listener include: desire; sincerity; projecting empathy; maintaining control; listening critically; staying at the suspect's level; being non-judgmental; remaining relaxed; remaining engaged; being polite; being patient and consistent; being persuasive; being flexible; being well prepared; and maintaining professional appearance and demeanour. The interrogator must understand the importance of the introductory statement, the differences between open, closed and direct questions, and indicators of truthfulness and deception.

The nine steps of Reid interrogation are: Step 1: The investigator directly and positively confronts the suspect; Step 2: The investigator introduces an interrogation theme; Step 3: The investigator handles the initial denials of guilt; Step 4: The investigator overcomes the suspect's objections; Step 5: The investigator gets and retains the suspect's attention and clearly displays sincerity in everything he says; Step 6: The investigator recognizes the suspect's passive mood; Step 7: The investigator uses an alternative question, that is a suggestion of a choice to be made by the suspect concerning some aspect of the crime; Step 8: The investigator has the suspect orally relate the various details of the offence that will serve ultimately to establish legal guilt; Step 9: The verbal confession is converted into a written or recorded statement.

#### **F. Public Prosecutors' Independent Investigations under Conventional Legislation (Japan)**

During the 16th UNCAC Training Programme, I delivered a lecture, as the Deputy Director of UNAFEI, on the Japanese Public Prosecutor's independent investigation of corruption cases. Despite operating under very conventional criminal law and criminal procedure statutes, the Japanese Public Prosecutors' Office has been successfully detecting and prosecuting bribery cases which involve high-ranking officials, Ministers and politicians through public prosecutors' independent investigations. The main clues in bribery cases come from investigation of other cases such as tax evasion, embezzlement, breach of trust, fraud, violation of antitrust laws, organized crime, etc.

Prosecutors conduct financial investigations through inquiries to financial institutions without requiring warrants or subpoenas. We identify suspicious expenditures, trace the flow of funds, identify the true ownership of pseudonymous bank accounts, find out where the funds were held, and identify secret funds for bribery.

We conduct thorough searches and seizures and analyze physical evidence. Identifying all relevant places and establishing proper chains of command are the keys to successful search and seizure. The seized evidence is immediately analyzed and the results are shared by intranet.

Interviews play a very important part in the investigation of corruption cases. After some inappropriate interviews of suspects were revealed, we have been in the process of reforming the interview system by balancing human rights with the punishment of offenders.

#### **G. Ad Hoc Lectures**

The following ad hoc lecturers delivered their lectures during the 155th International Training Course and the 16th UNCAC Training Programme.

- An officer from the Criminal Identification Division of the National Police Agency explained crime scene identification and the importance of cooperation between police and prosecutors.
- A Professor at the Department of Forensic Medicine of Jikei University School of Medicine explained forensic medicine in Japan.
- A Professor at the Research and Training Center for Interview and Interrogation Techniques of the National Police Academy talked about “Investigative interviews and interrogations by Japanese Police: basic techniques for interviews and interrogations on the basis of psychological knowledge”
- The Director of the General Affairs Department of the Supreme Public Prosecutors’ Office talked about “Interrogation of suspects from the viewpoint of public prosecutors”.
- An experienced criminal defence lawyer talked about “Investigation and interrogation from the viewpoint of criminal defence practice in Japan”.
- An officer from the Japan Financial Intelligence Center explained the current situation of anti-money-laundering measures in Japan.
- An officer from the Japan Fair Trade Commission (JFTC) explained the roles of the JFTC in fighting corruption.
- A senior executive of a private computing company explained digital forensic technology and cooperation with the investigative authorities.
- A Senior Ethics Officer of Planning from the National Public Service Ethics Board explained the public service ethics system in Japan.
- The Deputy Director of the International Affairs Division, Ministry of Land, Infrastructure, Transport and Tourism explained Japan's bid-contract system regarding public procurement and securing its transparency.
- The Director of the Trial Department of the Tokyo District Public Prosecutors’ Office explained the international legal cooperation focusing on the importance of informal communication and exchange of information.

### **III. CONCLUSION**

The best practices for corruption investigation which I have discussed today are very important but not exhaustive. I am sure that there are other best practices in each of the countries participating in this Good Governance Seminar. I sincerely hope that we will share our best practices on successful detection, investigation and prosecution of corruption cases, which will cultivate strong ties of international cooperation amongst us during this Seminar.

## SUMMARY OF KEYNOTE ADDRESS

*Hon. Datuk Hj. Mustafar bin Hj. Ali<sup>\*†</sup>*

Mr. Ali's keynote address introduced the situation of corruption in Malaysia and emphasized important steps taken by the Malaysian Anti-Corruption Commission (MACC) to fight corruption. He stated that although "[m]ost people know corruption when they see it, [t]he problem is that different people see it differently." The Malaysian Anti-Corruption Commission (MACC) tries to educate people as to why they should join the fight against corruption. He stressed that it is vitally important that all countries must have anti-corruption agencies in order to conduct specialized and efficient anti-corruption investigations. Further, such agencies must be independent in terms of authority, financing, and personnel.

According to Robert Klitgaard, the corruption equation is as follows: Corruption = Monopoly + Discretion – Accountability. Mr. Ali said that he would add "integrity" to the equation. For this reason, MACC utilizes Corporate Integrity Pledges (CIPs), which are documents entered into between MACC and private corporations. Through CIPs, companies represent that they will not commit corrupt acts. He concluded by noting that the three main focuses of MACC's anti-corruption efforts are grand corruption (corruption engaged in by people in power), public procurement, and regulatory enforcement.

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\* Director of Investigation, Malaysian Anti-Corruption Commission.

† This summary was drafted based on the notes of UNAFEI's Linguistic Adviser.

## **CHAIR'S SUMMARY**

**Chair's Summary**  
**Seventh Regional Seminar on Good Governance**  
**for Southeast Asian Countries**  
**Enhancing Investigative Ability in Corruption Cases**  
**(3-5 December 2013, Kuala Lumpur, Malaysia)**

**General**

1. The Seventh Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) and the Malaysian Anti-Corruption Commission (MACC), was held in the Main Conference Room of the Malaysia Anti-Corruption Academy (MACA), in Kuala Lumpur from 3 to 5 December 2013.
2. Officials and experts from the following jurisdictions attended the seminar: Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand, Vietnam, Malaysia, Japan, Hong Kong, Singapore, and the United States of America.

**Opening Ceremony**

3. Ms. Tomoko Akane, Director of UNAFEI and the Honourable Datuk Hj. Mustafar bin Hj. Ali delivered opening speeches, expressing their gratitude to the participants for their attendance. Their speeches were followed by a special address by His Excellency, Sigeru Nakamura, the Ambassador of Japan to Malaysia. All three speakers stressed the importance of good governance and the rule of law.

**Keynote Remarks and Lectures by Experts**

4. Mr. Kenichi Kiyono, Deputy Director of UNAFEI, provided introductory remarks on "Best Practices for Investigation of Corruption". He explained best practices discussed at UNAFEI's two recent International Training Courses, which included: covert operations based on information from the public (ICAC, Hong Kong); intelligence-based investigation (MACC, Malaysia); new anti-bribery legislation (SFO, United Kingdom); interview techniques including the PEACE Model to interview cooperative witnesses/suspects (Hampshire Police, United Kingdom) and the Reid Technique to interrogate uncooperative suspects (FBI, United States).
5. The Honourable Datuk Hj. Mustafar bin Hj. Ali from MACC delivered a welcome address and a presentation on the "Current Situation and Challenge of Investigation of Corruption Cases of MACC." He talked about the implications of corruption, critical success factors in setting up effective anti-corruption agencies, the establishment and organization of MACC, detection of corruption offences, preventive efforts, and corruption-free policies, strategies and action plans.
6. Mr. Ang Seow Lian from the Corrupt Practices Investigation Bureau (CPIB) presented on the "Singapore Experience — Corruption Control System and Effective Enforcement Methods". He talked about the importance of political will, an

independent judiciary, effective enforcement, effective laws, effective adjudication and strong public support, and he also addressed trends and challenges etc.

7. Mr. Kenneth C. Kohl from the American Embassy in Kuala Lumpur presented on “Enhancing the Investigation and Prosecution of Corruption Cases”. Mr. Kohl emphasized that the keys to fighting corruption include an independent judiciary, proactive police, tracing and recovering the proceeds of corruption, etc. He explained that unsuccessful prosecutions often result from (i) the lack of prosecutorial independence, (ii) failure to cultivate insider witnesses, (iii) insufficient corroborative evidence, and (iv) failure to adhere to high ethical standards.
8. Mr. Tony Kwok Man-wai from the Hong Kong Special Administrative Region of China made a presentation on “Effective Investigation of Corruption Cases, Hong Kong’s Experience”. He talked about prerequisites for an effective investigation, understanding the process of corruption, investigating past/current corruption offences, investigation techniques, etc.

### **Discussion Summary**

9. **The Evils of Corruption**  
Corruption destroys nations. It undermines democracy and the rule of law, distorts business activities and competition, and hinders sustainable development and prosperity. It is also a threat to the security of societies as it creates environments in which organized crime, terrorism, and other forms of unlawful activity may prosper. Corruption makes fortunes for a very limited number of powerful people; thus the human rights of poor and vulnerable people are infringed the most.
10. **The Importance of Enforcement in Fighting Corruption**  
Mr. Kwok pointed out the importance of enforcement under a three-pronged approach of prevention, enforcement and education, and the importance of making corruption a high-risk crime. Mr. Ang also explained his view that law enforcement agencies (LEAs) would not be able to deal with corruption cases without comprehensive evidence. Additionally, he explained that LEAs must obtain evidence from interviews with witnesses, interested parties, and involved parties, and they must gather physical, documentary and computer evidence and must chase the money trail. These views were shared by every participant.
11. **The Difficulties of Enforcement of Corruption Offences**  
Investigation of corruption cases is a very difficult task for law enforcement officials because: (i) bribery is a hidden crime which benefits the collusive parties; (ii) little, if any, evidence is left at the crime scene; (iii) corruption cases are often committed by powerful politicians, high-ranking officials or organized criminals, which make it difficult for investigators to obtain the cooperation of witnesses and suspects; (iv) investigation of large-scale corruption cases demands perseverance, knowledge, experience, expertise and organizational strength; (v) the increasing demands for the protection of human rights imposes significant restrictions on suspect interviews; (vi) corruption crimes are getting more and more sophisticated; (vii) the globalization of society and development of the Internet and information technologies allow criminals

and crime proceeds to cross borders easily. In addition to these difficulties, country-specific challenges were identified during the Seminar.

- A) In Indonesia, investigators must overcome the principle of *unus testis nullus testis* (“one witness is no witness”), which prevents judges from admitting the testimony of a lone witness into evidence; the testimony of a second witness is required to corroborate the testimony of the first.
- B) Indonesian authorities find it difficult to obtain information on financial intelligence without support from other institutions such as the Indonesian Financial Transaction Report and Analysis (PPATK).
- C) The Vietnamese participants raised the issue of insufficient or outdated legislation on the subject of confiscation of proceeds of corruption.
- D) The Vietnamese participants pointed out that cooperation between LEAs is lacking.

12. Strong Political Will against Corruption and Independence of Anti-corruption Agencies

All participants shared the view that strong political will is most important to the fight against corruption. They also shared the view that Anti-Corruption Agencies should have high independence, good resources, and effective investigative powers.

- A) In Singapore, the corrupt Practices Investigation Bureau (CPIB) was formed in 1952. The CPIB has acquired strong independence and enforcement powers. The Bureau investigates major and minor cases, public and private sector cases, and not only corruption cases but also other related crimes.
- B) The predecessor to the Malaysian Anti-Corruption Commission (MACC) was established in 1967. The strong independence of MACC was assured by law in 2009.
- C) The Independent Commission Against Corruption (ICAC, established in 1974) in Hong Kong has been enjoying strong independence, adequate investigative power and adequate resources. Investigators at ICAC have a sense of professionalism and maintain confidentiality.
- D) The Office of the Ombudsman (OMB) of the Philippines was established in 1987. Strong independence and seven-year tenure of the Ombudsman are assured by the Constitution.
- E) In Thailand, the National Counter Corruption Commission (NCCC, established in 1999) and its successor, the National Anti-Corruption Commission (NACC), were established as constitutional bodies. Further, the Public Sector Anti-Corruption Commission (PACC) has the power to investigate corruption cases which involve lower-ranking public officials.

- F) In Lao PDR, the State Inspection Authority (Anti-Corruption Authority) was established under the Prime Minister's Office in 2001.
- G) *Komisi Pemberantasan Korupsi* (KPK) of Indonesia was established in 2003. Although KPK shares the responsibility of investigation of corruption cases with the Attorney-General's Office and the National Police, KPK is bestowed far stronger investigative powers than the other two bodies.
- H) The Anti-Corruption Council and the Anti-Corruption Unit (ACU) of Cambodia were established in 2010.
- I) In Myanmar, the Anti-Corruption Law was passed by the Parliament in 2013, which will establish the Anti-Corruption Commission (ACC). The Preliminary Scrutinizing Team and Enquiry Committee will be formed within the ACC. The Chief Investigator will investigate corruption crimes under the guidelines of the ACC.
- J) Despite the absence of a dedicated anti-corruption body, the Japanese Public Prosecutors' Office has been enjoying high independence and successful investigation of high-profile corruption cases. Special Investigation Departments (SIDs) were established at the Tokyo District Public Prosecutors' Office in 1949 at several Public Prosecutors' Offices. The SIDs conduct independent investigations and are composed of the most competitive prosecutors with great knowledge, skill and experience to investigate high-profile corruption cases. The Japanese Police enjoy high independence as well, and they have the high confidence of the public.

### 13. Detecting Corruption Offences

- A) Mr. Ang explained effective ways to detect corruption crimes: building up public confidence to invite reports of corruption crimes; investigating not only complaints from known complainants but also from anonymous complainants; encouraging self-policing within government departments; embarking on targeted enforcement of corruption-prone areas with other enforcement and regulatory agencies; embarking on pro-active intelligence projects. He insisted on the importance of easy accessibility to the CPIB.
- B) Mr. Kwok pointed out the importance of having an anti-corruption body to facilitate an effective complaint system. ICAC has a 24-hour reporting hotline, and all complaints are promptly investigated.
- C) The importance of cultivating insider informants was pointed out by Mr. Kohl and the Indonesian participant.
- D) The participants from Cambodia stated that the ACU has methods of gathering information from the public, such as receiving letters deposited in the ACU's letter boxes, receiving e-mails and phone calls directly from the public, etc.

- E) The Lao State Inspection Authority has successfully investigated serious corruption cases in the areas of tax collection, wood extraction, import of vehicles and public procurement.
- F) The participant from Malaysia explained that MACC's Assessment Information Committee composed of five top-ranking officers meets every morning to discuss all reports and to decide whether to proceed with enforcement actions.
- G) The OMB of the Philippines gathers financial information from personnel records of public officials (201 files), the Statement of Assets, Liabilities and Net Worth (SALN), Local Assessors' Offices, the Land Registration Authority, local building officials; Certificates of Yearly Compensation, Allowances and other Benefits; the Bureau of Internal Revenue; the Securities and Exchange Commission; the Government Service Insurance System (GSIS); the Social Security System (SSS), etc.
- H) The NACC of Thailand has the power to inspect assets and liabilities of persons holding political positions and high-ranking state officials. This power is essential to discovering evidence of illicit enrichment.
- I) The participant from Japan stated that corruption offences are often detected during the course of investigation of other cases such as tax evasion cases, embezzlement cases, securities fraud cases, antitrust cases and so forth.

14. Protection of Witnesses and Whistleblowers

All participants agreed that the protection of witnesses and whistleblowers is the key for successful investigation and prosecution of corruption cases.

- A) Mr. Kwok stated that ICAC's comprehensive witness protection system is highly recommended, which includes 24-hour armed protection, safe housing, new identification and overseas relocation.
- B) The participant from Indonesia stated that the Victim and Witness Protection Agency (LPSK) plays a key role in protecting witnesses and whistleblowers.
- C) The participants from Cambodia stated that building public confidence and trust in ACUs for witness protection is indispensable.
- D) The Philippines has a Witness Protection Program (WPP) where witnesses may be provided with protection, housing and eventual relocation.

15. Financial Investigation

A) Inquiries to financial institutions

- i. Participants from Cambodia, Japan and Indonesia stated that inquiries to financial institutions are one of the most basic and important tools to identify the flow of illegal money.

- ii. The participant from Indonesia stated that the KPK has the power to request information from banks or other financial institutions for the financial details of suspects or defendants.

B) Suspicious Transaction Reports (STR) / Financial Intelligence Units (FIU)

- i. It was also pointed out that information obtained from Financial Intelligence Units (FIU) plays an important role in the course of investigations in Indonesia and Japan.

C) Identifying the flow of illegal money

- i. The participant from Indonesia stated that the Indonesian Financial Transaction Reports and Analysis (PPATK) collects suspicious transaction reports from financial institutions and other reporting parties.
- ii. The participant from Japan stated that SID prosecutors and assistant officers prepare a comprehensive tabular form of financial transactions to trace the exact flow of funds between many bank accounts. Detecting secret funds and pseudonymous bank accounts are both crucial to identifying the sources of bribes.
- iii. The Filipino participants explained how to conduct “lifestyle check investigations” by assessing the value of property; determining sources of income; comparing increases in income with other reported sources of income; investigation of immediate friends and relatives; discovering property held in others’ names; conducting surveillance, etc.
- iv. Mr. Kwok pointed out that employing professionally qualified investigative accountants is very useful to performing financial investigations.

D) Preserving evidence

- i. The Indonesian KPK has the power to block accounts suspected of harbouring the gains of corrupt activities. It also has the power to temporarily halt financial and other forms of transactions to effectively preserve evidence and prevent corruption.

16. Search and Seizure

- A) The participant from Japan stated that thorough simultaneous search and seizure is necessary to prevent the concealment and destruction of important evidence. To do this, the following elements are important: selecting proper places to be searched, arrangements and preparations; appropriate advanced briefing of the search team; maintaining confidentiality; and establishing a good chain of command.

- B) The participant from Japan also stated that analysis of seized evidence should be done swiftly and systematically by establishing analysis teams, sharing the information effectively.

17. Digital Forensics and Expert Evidence

- A) Mr. Kwok stated that computer forensics is vital and that investigative authorities must possess the ability to break into encrypted computers and to recover data from destroyed devices.
- B) The participant from Cambodia stated that the ACU has a forensics department to conduct digital forensics.
- C) The Indonesian participant pointed out the effectiveness of using expert witnesses such as auditors, forensic accountants and IT experts.
- D) The Myanmar Criminal Procedure Code has a provision on the use of experts on machines and instruments etc.
- E) The participant from Vietnam stated that there are forensics centers operated by the police and the army.

18. Interview of Witnesses/Suspects

- A) The Cambodian participants pointed out that there are many skills and tactics (e.g., good preparation, not asking open questions) to interview both suspects and witnesses. Maintaining confidentiality of witnesses is one of the keys. Securing confessions from suspects is important to proving the case in court.
- B) The Indonesian KPK, the Office of the Attorney General, and the National Police have the power to ban persons related to investigations from travelling abroad.
- C) The participant from Japan stated that interviewing suspects and witnesses is very important. The reliability of their statements must always be corroborated by other evidence. He also explained that after some inappropriate interviews came to light, the Public Prosecutors' Office has started reforming the interview system.
- D) The participants from Vietnam reported that interviews of the accused are tape-recorded, but the statements must be confirmed by investigators.
- E) The Philippines has legislation allowing courts to discharge an accused from prosecution in exchange for the agreement of the accused to testify as a state's witnesses.
- F) Mr. Kohl spoke on the use of "cooperation plea agreements" or "witness inducement agreements" to secure accomplice testimony and the use of Non-Prosecution Agreements" and "Deferred Prosecution Agreements" to address self-reporting under the United States' Foreign Corrupt Practices Act.

- G) Mr. Kwok explained that the sentencing guidelines issued by the Chief Justice of HK allows judges to reduce up to two-thirds of the sentence of defendants who plead guilty to corruption offences and testify on behalf of the prosecution.

19. Special Investigative Techniques

- A) Mr. Kwok pointed out that investigation of past corruption offences demands meticulous investigation, that investigating current offences should always be preferred where possible, that proactive investigation methods are essential to investigating current corruption cases, and that proactive investigation needs professional investigative support from intelligence, surveillance, technical services, and information-technology, financial-investigation and witness-protection sections.

B) Wiretapping

- i. During the Discussion Session, the Chairman surveyed the participants on whether their countries allowed the use of wiretapping. Malaysia and Indonesia reported that wiretapping is allowed. Further, the Indonesian KPK can conduct interception or recording of communications without judicial approval.
- ii. Cambodia and Thailand reported that wiretapping is allowed, but it may only be used for investigation and may not be admissible as evidence in court.
- iii. Vietnam reported that they are now reforming the law to make wiretapping available in criminal proceedings.

C) Undercover Operations

- i. During the Discussion Session, the Chairman surveyed the participants on whether their countries allowed the use of undercover operations. Cambodia and the Philippines reported that undercover operations are allowed. Participants from the Philippines also stated that investigators conduct surveillance to investigate the lifestyles of corruption suspects.
- ii. Vietnam reported that undercover operations are used in practice, but information derived therefrom is not admissible in court; however, the information is still used to obtain confessions.
- iii. The participants from Cambodia stated that the ACU has undercover agents, and that they disguise themselves particularly as motor taxi drivers, small ice-cream sellers and so forth, in order to get as close to the suspect as possible.

#### D) Effective Investigation Management

The participant from Malaysia explained that MACC has embarked on a large-scale transformation to employ an Effective Investigation Management Model (EIM). The five components of the EIM are: (i) quality information and case analysis; (ii) investigation plan; (iii) team-based investigation; (iv) case monitoring; and (v) outcome.

#### 20. Proceeds of Corruption

- A) Confiscation of the original value of proceeds is possible in Cambodia.
- B) A new initiative for targeting stolen assets was explained by the participant from Indonesia. He also emphasized the importance of international cooperation in the asset recovery process.
- C) To trace the proceeds of corruption, the Office of the Ombudsman (OMB) of the Philippines conducts “lifestyle checks” or “lifestyle investigations” in cooperation with the Civil Service Commission (CSC), the National Bureau of Investigation and other agencies. The details of case initiation, case evaluation, collection of documentary and testimonial evidence, and methods of proof were explained.

#### 21. The Importance of Cooperation

- A) Every participant recognized the importance of domestic cooperation between anti-corruption authorities, police forces, prosecution services (including Attorney General’s Offices), anti-money laundering offices and other governmental authorities to combat corruption. Some participants also pointed out the importance of cooperating with the private sector.
- B) Every participant shared the recognition of the importance of international cooperation to catch criminals, collect evidence and seize corrupt money in this globalizing society.

#### 22. Effective Legislation

- A) Mr. Ang pointed out that effective and enforcement-friendly laws give the CPIB the necessary teeth and a cutting edge. He shared some examples from the Prevention of Corruption Act: acceptance of gratification without quid pro quo is an offence; wealth disproportionate to income is admissible as corroborative evidence of corruption at trial; every person under investigation is legally obliged to give information; customary practices (such as wedding and New Year’s gifts) are not valid defences against corruption; extra-territorial jurisdiction; strict punishment acts as a deterrent.
- B) Hong Kong and Singapore have criminalized corrupt activities in the private sector.

- C) During the Discussion Session, the Chairman surveyed the participants on the criminalization of “illicit enrichment”. Cambodia, Malaysia, the Philippines and Thailand reported that they have criminalized “illicit enrichment”. Although Vietnam has not criminalized “illicit enrichment”, it has other laws, such as embezzlement, to address such conduct.
- D) Lao PDR has criminalized abuse of position, abuse of state property, cheating or falsification, deception in bidding and concessions, forging documents, disclosure of state secrets, holding back or delaying documents.

23. Preventive and Educational Measures

This Seminar was mainly focused on the effective investigative techniques against corruption. However, all participants agreed that preventive and educational measures are also critically important and that these measures must be used with enforcement so as to maximize synergies. The following preventive or educational measures which were explained during this Seminar are worth mentioning.

- A) Mr. Ang explained the “Public Service in the 21st Century” strategy in Singapore to establish good governance.
- B) Mr. Mustafar explained the robust preventive measures employed by MACC such as: deployment of ex-MACC officers as corruption prevention officers in the private sector, introduction of Certified Integrity Officers, signing of Corporate Integrity Pledges (CIPs) with the business sector and so on. The Malaysian participant further referred to advisory letters, warning letters, review of work flow, and job rotation as preventive measures and as alternative enforcement actions to prosecution.
- C) Cambodia has started the TECHO operation where public service fees are fixed by each ministry.
- D) The Cambodian ACU held seminars on the dissemination of the Anti-corruption Law at many universities and districts.
- E) The Indonesian KPK has the power to order a suspect’s superior to suspend the suspect from the office.
- F) The Lao State Inspection Authority is making many efforts at prevention and education of corruption including holding workshops at different levels, advertising via print and other media, education, awareness raising, making government structures transparent, etc.

24. Importance of Capacity Building

- A) All participants recognized the importance of recruiting capable employees and developing their capacities by both off-the-job and on-the-job training.

- B) Mr. Ang stressed the need for investigators to understand how the public sector acts and how the private sector does business. They must be capable of learning quickly and understanding what is going on so as to take effective action.
  
- C) Mr. Kwok emphasized that investigators should be trained to understand the typical acts or stages of corruption: the “softening up” process; soliciting bribes; withdrawal of funds from banks; payment of bribes; disposal of bribes; acts of abuse of power. The task of investigators is to collect sufficient evidence to prove each of these stages. They must understand the process of investigating corruption cases, including the preliminary, protracted and overt stages of investigation. He also pointed out that to perform proactive investigation, professional training and operational support are essential.

Kuala Lumpur, 5 December 2013

## **SPEAKERS' PAPERS AND CONTRIBUTIONS**

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## **THE SINGAPORE EXPERIENCE — CORRUPTION CONTROL SYSTEM AND EFFECTIVE ENFORCEMENT METHODS**

*Ang Seow Lian\**

1. Corruption control has been at the top of the Singapore Government's agenda since we attained self-government in 1959 and subsequently independence in 1965. It is a social and economic necessity, inextricably tied to good governance, much less a virtue for its own sake. It supports the meritocratic ideal that we believe in and has strategic significance in our national development.

2. From 1959 till now, Singapore's successes in the fight against corruption are broadly due on the following:

- a. Strong political will
- b. Effective enforcement
- c. Effective legislation
- d. Independent Judiciary
- e. Responsive public service
- f. Strong public support

### Political Will

3. Political will is the foundation stone for any anti-corruption movement. It, undoubtedly, is a key ingredient in the transformation effort from Singapore's corruption-infested past. It provided the necessary climate for the growth and sustenance of our anti-corruption movement. With patronage and drive from the top by our government, deeds matched words and anti-corruption programs automatically jump started without having to contend with problems of consensus building and conflict management.

4. In the early beginning in the 1950s and 1960s, pay levels were low, society was poorly educated. But that did not stop government from taking a tough stance against corruption. Civil servants were charged in court for corruption even if it was because they were poorly paid and needed extra cash. At the same time, the government enacted measures to uplift the living standards, and pay levels were enhanced over the years.

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\* Deputy Director, Intelligence Division, Operation Department, Corrupt Practices Investigation Bureau (CPIB), Singapore.

### Effective Enforcement

5. The Corrupt Practices Investigation Bureau, the agency tasked with the enforcement of the anti-corruption laws, reports to the Prime Minister. This gives us functional independence so that no government body can question or influence us in our enforcement and investigation efforts. In fact, by 1992, CPIB's independence of action was more or less guaranteed constitutionally. It was such independence of action that enabled CPIB to take action against Ministers and many top civil servants, all these years.

6. Strong enforcement is crucial in the fight against corruption. Regardless of what laws, systems of punishment, education and prevention that we have, if we are not able to enforce the anti-corruption laws successfully, the corrupt offender will get away, and we cannot suppress corruption. In Singapore, we developed over the years, and we adopted a total approach to enforcement. The CPIB is the only agency empowered to investigate corruption in Singapore. We are one of the oldest dedicated anti-corruption agencies in the world, having been formed in 1952. There are some key aspects of our enforcement policy, e.g.:

- a. We are prepared to deal with big and small cases. We don't want to let cases involving small amounts become endemic, and we don't want to let big cases escape punishment.
- b. We can deal with corruption in both the private and public sectors. Even conduct between two private parties can be subject to investigation. In the modern world, these two sectors are closely intertwined and hence behavior and developments can have cross influences.
- c. We can deal with both the giver and receiver of bribes as well as middlemen, and we do prosecute all parties in court.
- d. We can deal with other crimes uncovered in the course of corruption investigation. This is very important because corruption crimes may be mixed up with other crimes, and investigators must be able to question the offenders on all other crimes.

7. Let me elaborate more on the rationale behind curbing both the demand and supply side of corruption and enforcing the anti-corruption law in both the public and private sectors. Sometimes, we refer to the private sector as the supply side and the public sector as the demand side of the corruption problem. This is generally accurate. But it can overgeneralize and lead us to overlook some facts of corruption. Private companies can and do bribe other private companies. So both the demand and supply side are private companies. We cannot ignore this conduct. In Singapore, unlike some countries, enforcement action can be taken against such acts where private companies bribe other companies or where private individuals bribe other private individuals. Action consistently taken within the private sector will remind all and set the standards expected from businesses and companies.

8. In many instances, the demand and supply sides are represented by the public sector and the private sector, respectively. In economic terms, demand and supply have a close relationship. Does demand drive supply or supply drive demand? Sometimes this is a chicken and egg issue — which came first? Was it the bribe demand that came first leading to bribe supply or was it the supply that came first and enticed the demand? In reality, we have seen cases where the government official was the greedy one, who sticks his hand out to press businesses for bribes. Then again, we have also seen cases where businesses actively offer bribes so as to entrap government officials to do their bidding. So who came first? This is ripe for an academic argument, but it really does not matter. Both sides are equally devious and must be dealt with decisively.

9. Indeed under Singapore law, both are equally culpable. In addition, it is expressly provided in our law that an accomplice's testimony is not deemed unreliable in corruption cases (unlike in other criminal cases). We do often prosecute both parties, and on many occasions both receive similar sentences by the court. We hardly grant immunity to givers or receivers, and if we do, it is more often than not only as a last resort. If the law only criminalizes one side, you can never eradicate corruption. If you try to deal with one side first followed by the other in sequential order, you will also never be able to reduce corruption. Our experience in Singapore is that you need to deal with both sides simultaneously.

10 Prosecuting both parties brings with it difficult challenges. If both sides are your accused persons, who then are your prosecution witnesses? We need to be thorough in investigation work, and amass all the evidence we can get by way of interviews with witnesses, interested parties, involved parties, gathering physical, documentary and computer evidence and chasing the money trail. Without comprehensive evidence, we will not be able to deal with both the supply and demand sides of the corruption equation.

11. We sometimes take it for granted that because there is an anti-corruption agency, it will be effective. When we look at the agency fighting both the demand and supply sides, we need to be sure that the agency understands what is going on. The agency must understand how the public sector does things and how the private sector does its business. The private sector is large and varied, with different industry types. Anti-corruption agencies need to be capable of learning fast and understanding what is going on so as to take effective action. No agency can be expert in understanding different fields of business, and so it's incumbent on every agency to develop its officers' abilities to learn fast and to establish connections with experts in various business fields who can serve as resource persons when the need arises.

12. In terms of enforcement strategies, we adopted a "3 D" approach; Detect, Deal & Deter. The following are what we have done to ensure that corruption crimes are detected early:

- a. Building up public confidence in the country's and agency's commitment in fighting corruption thereby increasing the public's willingness to report corruption crimes.
- b. Investigating not only complaints with known complainants but also pursuable anonymous complaints.

- c. Encouraging self-policing within government departments.
- d. Embarking on targeted enforcement of corruption-prone areas with other enforcement and regulatory agencies.
- e. Embarking on pro-active intelligence projects.

13. In the ever changing and evolving world, the key challenge for the anti-corruption agency in dealing with corruption crimes is the ability to stay nimble and responsive to the changing environment we operate in and to adapt our investigative methods accordingly and swiftly. Over the years, CPIB has remained relevant in our investigative and enforcement methods by staying ahead in building new capabilities in the following areas:

- a. Intelligence
- b. Computer Forensics
- c. Financial Investigation Capabilities
- d. Polygraph
- e. Specialization
- f. Team-Based Investigation
- g. Special Investigative Techniques

#### Effective Laws

14. Effective laws are enforcement-friendly laws that give us the necessary teeth and the cutting edge. This is particularly necessary because corrupt practices, by their very nature, make evidence collection and the eventual conviction in a court of law difficult. Corrupt practices are consensual in nature, with both the giver and the taker motivated by mutual interests. Some of the distinctive features of the Prevention of Corruption Act, our law that gives us the much needed cutting edge, are:

- a. An acceptor of gratification can be guilty even if he does not have the power, right or opportunity to return the favor.
- b. Wealth disproportionate to income is admissible as corroborative evidence of corruption at trial.
- c. Every person under investigation is legally obliged to give information.
- d. Customary practices (weddings and New Year's gifts etc.) are not valid defences in court.

- e. Extra-territorial jurisdiction can be exercised against Singapore citizens committing corruption offences outside Singapore. (For this, we will need the help of our counterpart agencies in other jurisdictions to secure the necessary evidence)
- f. Punishment is sufficiently deterrent. A single charge attracts a maximum fine of \$100,000 or an imprisonment term not exceeding 5 years or both. A penalty equal to the amount of bribes taken shall also be imposed. In addition, the Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits Act) can also be invoked to confiscate any benefits derived from corruption from anyone convicted of the crime.

#### Effective Adjudication and Independent Judiciary

15. Sure detection and strict enforcement of laws, no matter how effective, must however, be complemented by effective adjudication. Detection, prosecution and subsequent court conviction have specific deterrence on offenders. This also has a general deterrence on the like-minded. It is about prevention through sure detection and conviction in a court of law. Aided by tough laws, the Judiciary successfully created a regime of punishment that is deterrent enough to hammer home the message that corruption does not pay.

#### Responsive Public Service and Good Governance

16. Corruption control, which forms part of the broader framework of good governance in Singapore, has benefited us in at least two ways:

- a. Corruption control, a key feature of good governance, helps the government to create national wealth — that initial abundance and prosperity that enables it to pay public officials commensurate wages, thus reducing correspondingly their likelihood of resorting to corruption.
- b. There is an inter-relationship between efficiency and corruption control. The theory is that when an administration is so efficiently run, there is no room for corruption which thrives better in an inefficient and ineffective administration.

17. On-going and sweeping civil-service-wide reforms under “Public Service in the 21<sup>st</sup> Century” to attain sound administrative governance, organizational excellence and service excellence can certainly reduce corruption even further. Likewise, various government agencies, including CPIB, are working with private sector organizations and companies to improve the standards of corporate governance to achieve, amongst others, the objective of reducing corruption in the private sector. The public also has direct access to government to report government wastage and to cut red tape via the Internet. Businesses can make suggestions to the Pro Enterprise Panel to enhance business facilitation by the government. Direct channels such as these provide the public and businesses the means to influence the efficiency of government and keep governance strong.

### Strong Public Support

18. Public support, so vital in any anti-corruption program, is best won through successful action against the corrupt, regardless of color, creed or status and executed without fear or favor, firmly and fairly. Public support cannot be taken for granted. The Bureau makes itself accessible to the public. Anyone with a complaint of corruption has many easy means to lodge the complaint. They can use the Internet, walk in to the Bureau, place phone calls, and send letters and faxes. As we are accessible, we even find the public coming to us with problems which are not corruption matters, but matters more appropriately handled by other government departments such as the Police, Immigration or Ministry of Manpower. Our Bureau will not turn away these complainants but will take down the information and pass them on to the relevant department. This is in line with the spirit of the government's "No Wrong Door" policy. This approach helps to keep the public's faith in the Bureau and in government. Public perception surveys are done regularly by the Bureau and many government departments to gauge public sentiments. The media is an ally in the fight against corruption as it helps highlight the corruptors charged in court. They will often print the photograph of the accused and spread the deterrent messages.

### Trends and Challenges

19. Before I conclude, I would like to briefly talk about some of the trends and challenges we faced:

- a. Most of our cases now come from the private sector. Low rates of corruption in the public sector means that we have the added task of ensuring that public officials do not become complacent as corruption is likely to creep in and take root once complacency sets in. When everyone, especially the management and the supervisors, thinks everything is fine, corruption can creep in undetected right under our noses.
- b. Corruption crimes are getting more and more sophisticated. While we are enhancing our capabilities in detecting corruption and gathering evidence, the criminals are also moving in the same direction albeit to avoid detection. They, like us, are also leveraging technology, and thus we have always got to strive to be a step ahead of them. From our recent experiences, computer-forensic capabilities are a must in any anti-corruption outfit or for that matter, any enforcement agency. The seizure and analysis of computers and electronic storage media are critical and could often be the breaking point in solving cases.
- c. It is also increasingly difficult for us to distinctly link a specific benefit/favor to a specific bribe. There have been instances where bribes were given not for any specific favor at that material time but as a form of "cultivation" for future favors. For example, a few years ago, we prosecuted and convicted a crime syndicate boss for giving bribes to numerous police officers as a form of cultivation for future favors when the need arises.
- d. International and cross-border co-operation is increasingly critical in fighting corruption as economies become more and more globalized. We believe strongly in agency-to-agency co-operation whether in operations or capacity building.



# Enhancing the Investigation and Prosecution of Corruption Cases

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7<sup>th</sup> Regional Seminar on Good Governance (UNAFEI and MACC)  
Malaysia Anti-Corruption Academy, 3-5 December 2013

**Illinois Governors In Prison: 4 Of  
State's Last 7 Governors Were  
Convicted, Imprisoned**

By The Associated Press 01/30/13 03:07 AM ET EST **AP**



## **Building blocks of a successful anti-corruption prosecution**



- Need the kind of persuasive evidence that results from intelligence led proactive policing
- Robust use of income & asset declarations
- Rigorous integrity and accountability mechanisms
- Cultivating cooperation from private sector
- Protection of informant witnesses
- Tracking and recovery of ill-gotten assets
- Penetration of safe-havens
- Independent judiciary / adherence to rule of law

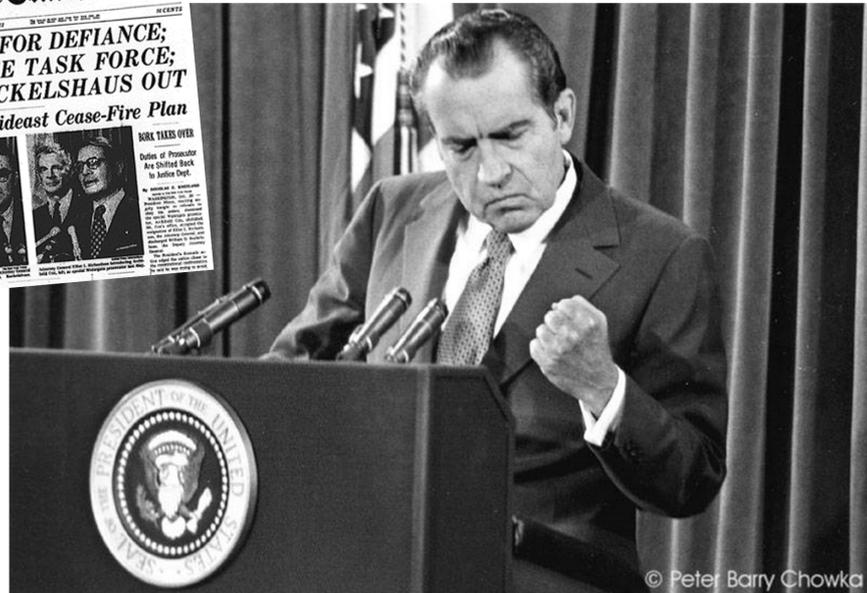
## **Common causes of unsuccessful corruption prosecutions**



- Lack of prosecutorial independence
- Failure to cultivate “insider” witnesses
- Failure to anticipate defenses and adequately corroborate the case
- Failure to adhere to high ethical standards



# #1. Lack of Prosecutorial Independence



## Prosecutorial Independence



### Assessing Partisan Bias in Federal Public Corruption Prosecutions

SANFORD C. GORDON *New York University*

*The 2007 U.S. Attorney firing scandal raised the specter of political bias in the prosecution of officials under federal corruption laws. Has prosecutorial discretion been employed to persecute enemies or shield allies? To answer this question, I develop a model of the interaction between officials contemplating corruption and a prosecutor deciding whether to pursue cases against them. Biased prosecutors will be willing to file weaker cases against political opponents than against allies. Consequently, the model anticipates that in the presence of partisan bias, sentences of prosecuted opponents will tend to be lower than those of co-partisans. Employing newly collected data on public corruption prosecutions, I find evidence of partisan bias under both Bush (II) and Clinton Justice Departments. However, additional evidence suggests that these results may understate the extent of bias under Bush, while overstating it under Clinton.*

# Prosecutorial Independence



REPORT TO CONGRESS  
ON THE ACTIVITIES AND OPERATIONS  
OF THE  
PUBLIC INTEGRITY SECTION  
FOR 2011



Public Integrity Section  
Criminal Division  
United States Department of Justice

- ***Bottom up rather than top down***  
Decisions to open an investigation and recommend charges are made by line-level, career prosecutors
- ***US DOJ Public Integrity Section***  
UNCAC Article 26 encourages “Specialized Authorities” in combating corruption through law enforcement.
- ***Recusal & highly sensitive cases***
- ***Statutory accountability***  
Required to submit annual report to US Congress (pursuant to Ethics in Government Act of 1978)

# Public criticism comes with the territory



LEGAL/REGULATORY | WHITE COLLAR WATCH | APRIL 30, 2012, 1:55 PM | 3 Comments

## Taking Aim at the Foreign Corrupt Practices Act

BY PETER J. HENNING

The Foreign Corrupt Practices Act has been at the center of a tug of war between business interests and federal authorities.

The United States Chamber of Commerce has led efforts to change the law, in response to ramped up prosecutions by the Justice Department and the Securities and Exchange Commission in the last few years. While the proposed changes are described as a means to “improve” the law, they would also make it more difficult to pursue cases.



Saul Loebl/Agence France-Presse — Getty Images

“[A]fter more than two decades of bipartisan and business support, the US Chamber of Commerce has launched an effort to weaken the Foreign Corrupt Practices Act”

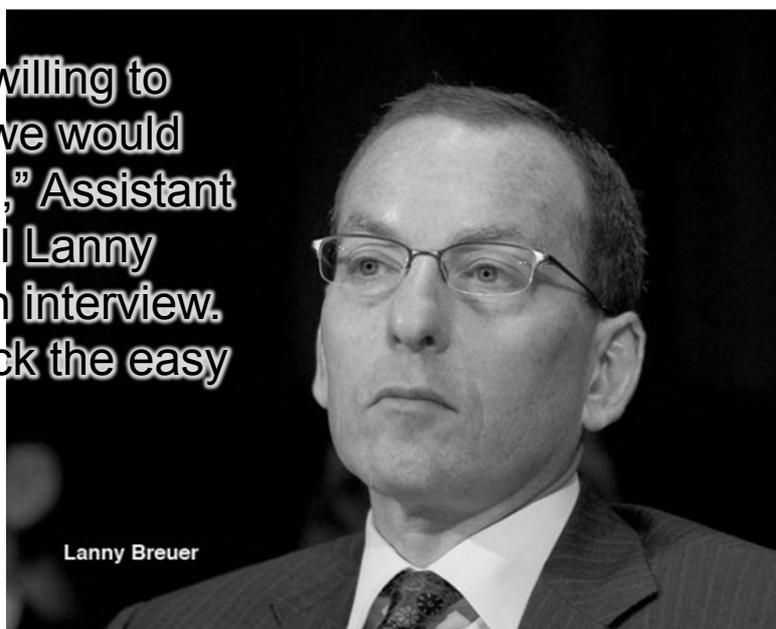


6 September 2012

## Public criticism comes with the territory



“We have to be willing to take cases that we would be willing to lose,” Assistant Attorney General Lanny Breuer said in an interview. “We can’t just pick the easy cases.”



## 2. Failure to cultivate insider witnesses



- Whistleblowers
- Outraged competitor
- Agent provocateurs / undercover officers
- Accomplice witnesses



## Cultivating insider witnesses

### Accomplice Witnesses, Organized Crime and Corruption: Theory and Evidence from Italy\*

Antonio Acconcia<sup>1</sup> Giovanni Immordino<sup>2</sup> Salvatore Piccolo<sup>3</sup> Patrick Rey<sup>4</sup>

June 19, 2009

#### Abstract

The optimal accomplice-witnesses regulation is characterized in a model with hierarchical criminal organizations and corruption. We identify the determinants of the optimal amnesty rate and show that such a policy stifles incentives for crime as well as corruption. We argue that rewarding informants is sometimes necessary to fight organized crime and show how the optimal amnesty rate varies with the effectiveness of the witness-protection program, the reliability of the informants' testimonies and the degree of trust and cohesion between the members of the organizations. The implications of our analysis are tested by exploiting a quasi-experimental panel data set, relative to 95 Italian provinces. The evidence allows to identify the positive effect of the policy on prosecution as well as its deterrence effect on crimes. Moreover, by using data on the number of accomplices we also underscore the positive impact of the policy on corruption prosecution.

Keywords: Accomplice-witnesses, Criminal Organizations, Leniency, Whistle-Blower.

- 2009 study on impact of accomplice-witness leniency program adopted in Italy in 1991
- “The analysis robustly shows that the introduction of a leniency program stifles both the crime and the corruption rates . . .”



## Cooperation Plea Agreements: An Essential Tool

“[W]itness inducement agreements have been an integral part of the American criminal justice system since its inception. American jurisprudence has adopted and expanded the practice beyond its common-law ancestors, and has developed procedural safeguards to insure that criminal verdicts in trials involving witness inducement agreements are based upon reliable evidence. Witness inducement agreements will continue to be an important tool to prosecutors in the twenty-first century.”

WHY PROSECUTORS ARE PERMITTED TO OFFER WITNESS INDUCEMENTS: A MATTER OF CONSTITUTIONAL AUTHORITY

Hon. H. Lloyd King, Jr., 156 Stetson Law Review [Vol. XXIX] 1999

# Cooperation Plea Agreements: International Consensus



FOURTH REGIONAL SEMINAR ON GOOD  
GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

## SECURING PROTECTION AND COOPERATION OF WITNESSES AND WHISTLE-BLOWERS

Co-hosted by UNAFEI  
and the Department of Justice of the Republic of the Philippines  
6-9 December 2010, Manila, the Philippines

November 2011  
TOKYO, JAPAN

### RECOMMENDATION:

“13. Mitigation of punishment and grants of immunity from prosecution encourage accomplices and “insiders” to supply useful information and testimony. Providing for the possibility, in appropriate cases, of mitigating punishment or granting immunity to persons who provide substantial cooperation in the investigation and prosecution of criminal offences should be duly considered.”

# Cooperation Plea Agreements: International Consensus

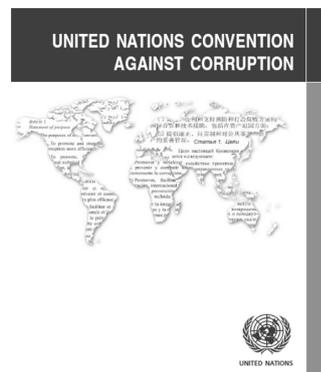


### *Article 37. Cooperation with law enforcement authorities*

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.

2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.

3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.



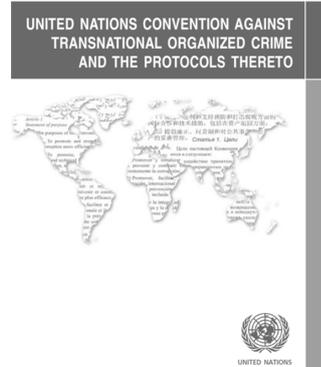
Signatories: 140  
States Parties: 162

## Cooperation Plea Agreements: International Consensus



*Article 26. Measures to enhance cooperation with law enforcement authorities*

“Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.”



Signatories: 147  
States Parties: 172

## Cooperation Plea Agreements (US Practice and Procedure)



1. Identify potential cooperator
2. Prosecutor/officer does an “off the record” interview of witness
3. Negotiate terms of written plea agreement
4. Plea hearing before judge (usually closed proceeding)
5. Prosecutor meets with cooperator to prepare for trial
6. Witness testifies at trial of former codefendant
7. Witness is sentenced

## **Reducing Cooperation Plea Agreement to Writing**



- Transparency is key: Every promise must be reduced to writing
- Government obligations and accused's obligations
- Generally charge bargain, not sentence bargain
  - Best option: accused pleads to all charges, gets hope of reduced sentence
  - More charges in plea = more credibility as witness
- Consider a written factual proffer for judge
- Include disclaimer that proffer is under inclusive

## **Reducing Cooperation Plea Agreement to Writing**



- Accused agrees to testify truthfully and completely
- Accused agrees to turn over documents, materials
- Accused agrees to defer sentencing until his cooperation is completed
- Accused agrees to submit to polygraph
- Accused agrees to waive rights to appeal
- Consequences of breach spelled out
  - False statement will result in cancellation of his plea, and he may be charged w/ perjury, obstruction
  - Accused's statements can be use against him

## **Reducing Cooperation Plea Agreement to Writing**



- agreement should ideally include all of accused criminal conduct
  - increases leverage if cooperation not fruitful
  - enhances credibility as a witness
- detention status should be explicit
  - release based solely on potential operational cooperation, and bond revoked if agreement breached or accused commits new crime
- government obligation to provide witness security
  - articulate justification / nature of the threat

## **Preparation of Cooperator Witness Before Trial**



- Prosecutor has a “duty to truth” and an obligation to do justice, and must satisfy himself that the witness he is sponsoring is truthful and credible, and will not mislead the Court
- If for no other reason, DPP’s have a duty to interview witnesses of dubious credibility to satisfy his /her obligation to disclose exculpatory information under CPC Rule 51

# Preparation of Cooperator Witness Before Trial



- Specific direction to witness
  - “Tell the truth, tell the truth, tell the truth”
  - Witness not an advocate for either side
- Prosecutor explains courtroom procedures, and what questions to expect from prosecutor and defense attorney
  - Okay to do mock direct, cross-examination
- Never give witness a script, or coach a witness, or suggest answers

## 3. Insufficient corroborative evidence



### *The New York Times*

February 23, 2012

### **Bribery Case Falls Apart, and Tactics Are Doubted**

By LESLIE WAYNE

The case seemed tailor-made for a movie: 22 business executives were arrested in an undercover sting in which F.B.I. agents posed as greedy bribe-taking officials seeking to arm their tiny African nation with grenade launchers and other military hardware.

The Justice Department hailed it as a turning point, promising that it would apply hardball tactics commonly used to take down organized-crime figures to prosecute executives who had violated a federal ban on paying bribes to obtain foreign business.

“The fight to erase foreign bribery from the corporate playbook will not be won overnight,” Lanny A. Breuer, an assistant attorney general, said in announcing the case with great fanfare two years ago. He added that potential lawbreakers “should stop and ponder whether the person they are trying to bribe might really be a federal agent.”

But this week, the government’s case collapsed in a federal courtroom in what many view as an embarrassing setback for the Justice Department, raising questions about the agency’s tactics and its zeal to pursue such bribery cases.

- Accomplice testimony can never stand alone
- Corroborating innocent details of witness testimony
- Overreliance on audio or videotape
- Sting operations raise additional proof issues
- Prosecutors: know your evidence

## 4. Adherence to high ethical standards



- Don't allow political partisanship to creep in
- Transparency in charging decisions
- Procedures for disclosure of exculpatory evidence

## Discovery Obligations



- Discovery requirement to disclose all “benefits conferred.”
  - plea agreement
  - other promises and considerations
  - witness security payments
- Obligation to produce “material, exculpatory” information
  - prior inconsistent statements
  - contradictions with other witnesses

# Voluntary Self-Disclosure



THE WALL STREET JOURNAL.

September 6, 2012, 11:03 AM

## Study Says Voluntary Disclosure Doesn't Change FCPA Penalties

By Samuel Rubenfeld

Debate over whether a company should disclose a potential bribery problem to the government has been a topic of discussion for years. It always revolved around one question: Does it help a firm avoid a stiffer penalty in the end?

Well, a draft study done by professors at New York University School of Law attempts to provide an answer. The study, which examines U.S. anti-bribery enforcement actions from 2004 through 2011, found no evidence that voluntary disclosure of wrongdoing results in lesser penalties.

"We cannot rule out the possibility that voluntary disclosure does result in some form of leniency," said Kevin Davis, a vice dean at NYU Law school who co-authored the study, in an email.

- Clarifying incentives from voluntary disclosure and a strong compliance program
- Use of Non-Prosecution Agreements (NPAs) and Deferred Prosecution Agreements (DPAs)

# Questions?

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# EFFECTIVE INVESTIGATION OF CORRUPTION CASES: THE HONG KONG EXPERIENCE

*Tony KWOK Man-wai*<sup>\*†</sup>

## I. INTRODUCTION

The Hong Kong Independent Commission Against Corruption (ICAC) is popularly regarded as a successful model in fighting corruption, turning a very corrupt city under colonial government into one of the relatively corruption free places in the world. One of the success factors is its three-pronged strategy — fighting corruption through deterrence, prevention and education. All three are important but in my view, deterrence is the most important. That is the reason why the ICAC devoted over 70% of its resources to its Operations Department, which is responsible for investigating corruption. Nearly all of the major corruption cases I have dealt with were committed by people in high authority. For

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\* SBS, IDS, Adjunct Professor & Honorary Course Director, Postgraduate Certificate in Corruption Studies, Hong Kong University SPACE and Former Deputy Commissioner and Head of Operations, Independent Commission Against Corruption (ICAC), Hong Kong.

† *About the author:* Mr. KWOK has 38 years' experience in the anti-corruption field, including 27 years of practical experience working in the Hong Kong ICAC and 11 years as an international anti-corruption specialist, travelling to 25 countries on a total of 185 missions.

He joined the ICAC shortly after its inception in 1975, and hence had witnessed and participated in the successful battle in transforming Hong Kong from one of the most corrupt places to one of the cleanest cities. He retired as the first local Deputy Commissioner and Head of Operations in 2002, after having led the Commission through the smooth transition of sovereignty from a British Colony to China in 1997 despite international pessimism.

Since his retirement in 2002, he has been invited to 25 countries and 13 provinces in China to provide professional anti-corruption consultancy, lectures, and to conduct anti-corruption seminars and workshops. He has taken up a number of anti-corruption projects with the UNDP, UNODC, World Bank, Asian Development Bank, European Commission, etc. He has assisted a number of countries to set up their new anti-corruption agencies.

In Hong Kong, he assisted the Hong Kong University in designing the world's first International Postgraduate Certificate Course in Corruption Studies, and he is the Adjunct Professor and Honorary Course Director. Since the first launch in 2003, 11 annual courses have been organized, and it has attracted over 300 delegates, mostly senior officials of anti-corruption agencies, coming from 35 countries. He lectured as a Visiting Expert annually (2002-2008 & 2011-2013) at the International Corruption Control Training Course of the United Nations Asia & Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) in Japan. In 2011 & 2012, he was the only Asian Visiting Lecturer at the International Anti Corruption Summer Academy Course in Vienna.

His publications include "Comparative Studies of the Anti corruption system in 38 jurisdictions – HKU SPACE 10th Anniversary Commemorative Book on the Postgraduate Certificate in Corruption Studies, 2012", Co-author of the book "Practice Meets Science – Contemporary anti-corruption dialogue Volume 1" published by the International Anti-Corruption Academy (2011), and "365 Stories to my daughters" in 2007. He has set up his own homepage at <http://www.kwok-manwai.com> to share his experience through publication of his writings, speeches and media interviews.

In the Hong Kong National Day Honour List, Mr. KWOK was awarded the ICAC Distinguished Service Medal (IDS) by the Chief Executive in 1998 and the Silver Bauhinia Star (SBS) in 2002, in recognition of his contribution to the success of the ICAC in the fight against corruption in Hong Kong. On 1st November 2013, he was presented with the Honorary University Fellowship by the Open University of Hong Kong, in recognition to his contribution and education in the anti-corruption field in Hong Kong and internationally.

them, they have certainly been educated about the evil of corruption and they may also be subject to a certain degree of corruption prevention control. But what inspired them to commit corruption? The answer is simply greed, as they would weigh the fortune they could get from corruption against the chance of them being discovered. If they think that it is a low risk, high return opportunity, they will likely succumb to the temptation. So how can we deter them from being corrupt? The only way is to make them realize that there is a high risk of them being caught. Hence the Mission of the ICAC Operations Department is - ***to make corruption a high risk crime***. To do that, you need a professional and dedicated investigative force.

## **II. DIFFICULTIES OF INVESTIGATING CORRUPTION**

Corruption is regarded as one of the most difficult crimes to investigate. There is often no scene of the crime, and there are no fingerprints and no eye-witnesses to follow up with. It is by nature a very secretive crime and can involve just two satisfied parties, so there is no incentive to divulge the truth. Even if there are witnesses, they are often parties to the corruption themselves, hence tainted with doubtful credibility when they become prosecution witnesses in court. The offenders can be equally as professional as the investigators and know how to cover up their trails of crime. The offenders can also be very powerful and ruthless in enforcing a code of silence amongst related persons through intimidation and violence to abort any investigation. In this modern age, the sophisticated corrupt offenders will make full advantage of the loopholes across jurisdictions and acquire the assistance of other professionals, such as lawyers, accountants and computer experts in their clandestine operations to help them launder their corrupt proceeds.

## **III. CORRUPTION AND ORGANIZED CRIME**

Corruption rarely exists alone. It is often a tool to facilitate organized crimes. Over the years, the ICAC has investigated a wide range of organized crimes facilitated by corruption. Law enforcement officers have been arrested and convicted for corruptly assisting drug traffickers and smugglers of various kinds; bank managers for covering up money laundering for the organized crime syndicates; hotel and retail staff for perpetuating credit card fraud. In these cases, we need to investigate not only corruption, but some very sophisticated organized crime syndicates as well.

## **IV. PREREQUISITES FOR AN EFFECTIVE INVESTIGATION**

Hence, there is an essential need for professionalism in corruption investigation. There are several prerequisites to an effective corruption investigation:

1. Independent — corruption investigation can be politically sensitive and embarrassing to the Government. The investigation can only be effective if it is truly independent and free from undue interference. This depends very much on whether there is a top political will to fight corruption in the country, and whether the head of the anti-corruption agency has the moral courage to stand against any interference.
2. Adequate Investigative Power — Because corruption is so difficult to investigate, you need adequate investigative power. The HK ICAC enjoys wide investigative power. Apart from the normal police power of search, arrest and detention, it has power to check bank accounts, intercept telephone communications, require suspects to declare

their assets, require witnesses to answer questions on oath, restrain properties suspected to be derived from corruption, and hold the suspects' travel documents to prevent them from fleeing the jurisdiction. Not only is the ICAC empowered to investigate corruption offences, both in the Government and private sectors, they can investigate all crimes which are connected with corruption. I must hasten to add that there is an elaborate check and balance system to prevent abuse of such wide power.

3. Adequate Resources — investigating corruption can be very time-consuming and resource intensive, particularly if the cases involve cross jurisdictional aspects. In 2007, the HK ICAC's annual budget amounted to US\$90M, about US\$15 per capita. You may wish to multiply this figure with your own country's population and work out the anti-corruption budget that needs to be given to be the equivalent of ours! However, looking at our budget from another angle — it represents only 0.3% of our entire Government budget or 0.05% of our Gross Domestic Product (GDP). I think you will agree that such a small "premium" is a most worthwhile investment for a clean society.
4. Confidentiality — it is crucial that all corruption investigation should be conducted covertly and confidentially, at least before an arrest is ready to be made, so as to reduce the opportunities for compromise or interference. On the other hand, many targets under investigation may prove to be innocent, and it is only fair to preserve their reputation until there is clear evidence of their corrupt deeds. Hence in Hong Kong, we have a law prohibiting any one, including the media, from disclosing any details of ICAC investigations until overt action such as arrests and searches have been taken. The media once described this as a "press gag law" but they have now come to accept it as a right balance between press freedom and effective law enforcement.
5. International Mutual Assistance — many corruption cases are now cross jurisdictional, and it is important that you can obtain international assistance in the areas such as locating witnesses and suspects; money trails, surveillance, exchange of intelligence, arrest, search and extradition, and even joint investigation and operation.
6. Professionalism — all the investigators must be properly trained and professional in their investigation. The HK ICAC strives to be one of the most professional law enforcement agencies in the world. The ICAC is one of the first agencies in the world to introduce the interviewing of all suspects on video, because professional interview techniques and the need to protect the integrity of the interview evidence are crucial in any successful corruption prosecution. The investigators must be persons of high integrity. They must adhere strictly to the rule of confidentiality, act fairly and justly in the discharge of their duties, respect the rights of others, including the suspects, and should never abuse their power. As corruption is so difficult to investigate, they need to be vigilant, innovative and be prepared to spend long hours to complete their investigation. The ICAC officers are often proud of their sense of mission, and this is the single most important ingredient of success of the ICAC.
7. An Effective Complaint System — No anti-corruption agency is in a position to discover all corrupt dealings in the society by itself. They rely heavily on an effective complaint system. The system must be able to encourage quality complaints from members of the public or institutions, and at the same time, deter frivolous or malicious complaints. It should provide assurance to the complainants on the confidentiality of their reports and, if necessary, offer them protection. Since the strategy is to welcome

complaints, customer service should be offered, making it convenient to report corruption. A 24-hour reporting hotline should be established, and there should be a quick response system to deal with any complaints that require prompt action. All complaints, as long as there is substance in them, should be investigated, irrespective of how minor the corruption allegation might be. What appears to be minor in the eyes of the authority may be very serious in the eyes of the general public!

## V. UNDERSTANDING THE PROCESS OF CORRUPTION

It should be helpful to the investigators to understand the normal process of corruption, through which the investigators would be able to know where to obtain evidence to prove the corrupt act. Generally a corrupt transaction may include the following steps:

1. Softening up Process — it is quite unlikely that a government servant would be corrupt from his first day in office. It is also unlikely that any potential bribe-offerer would approach any government servant to offer bribe without building up a good relationship with him first. Thus there is always a “softening up process” when the briber-offerer would build up a social relationship with the government servant, for example, inviting him to dinner, karaoke, etc. Thus the investigator should also attempt to discover evidence to prove that the government servant had accepted entertainment prior to the actual corrupt transaction.
2. Soliciting/Offering of the Bribe — when the time is ripe, the bribe-offerer would propose to seek favour from the government servant and in return offer a bribe to him. The investigator should attempt to prove when and where this had taken place.
3. Source of the Bribe — when there is agreement for the bribe, the bribe-offerer would have to withdraw money for the payment. The investigator should attempt to locate the source of funds and whether there was any third person who assisted in handling the bribe payment.
4. Payment of the Bribe — The bribe would then be paid. The investigator should attempt to find out where, when and how the payment was effected.
5. Disposal of the Bribe — On receipt of the bribe, the receiver would have to dispose the cash. The investigator should try to locate how the bribe was disposed, either by spending the money or depositing it into a bank.
6. Act of Abuse of Power — To prove a corruption offence, you need to prove the corrupt act or the abuse of position was done in return for the bribe. The investigator needs to identify the documents or other means proving his abuse of authority.

The task of the investigator is to collect sufficient evidence to prove the above process. He needs to prove “when”, “where”, “who”, “what”, “how” and “why” on every incidence, if possible.

However this should not be the end of the investigation. It is rare that corruption is a single event. A corrupt government servant would likely take bribes on more than one occasion. A bribe-offerer would likely offer bribes for more than one occasions and to more

than one corrupt official. Hence it is important that the investigator should seek to look into the bottom of the case, to unearth all the corrupt offenders connected with the case.

## **VI. METHODS TO INVESTIGATE CORRUPTION**

Investigating corruption can broadly be divided into two categories:

- A. Investigating past corruption offences
- B. Investigating current corruption offences

### **A. Investigating Past Corruption Offences**

The investigation normally commences with a report of corruption, and the normal criminal investigation techniques should apply. Much will depend on the information provided by the informant and from there, the case should be developed to obtain direct, corroborative and circumstantial evidence. The success of such investigation relies on the meticulous approach taken by the investigators to ensure that "no stone is left unturned". Areas of investigation can include detailed checking of the related bank accounts and company ledgers, obtaining information from various witnesses and sources to corroborate any meetings or corrupt transaction etc. At the initial stage, the investigation should be covert and kept confidential. If there is no evidence discovered in this stage, the investigation should normally be curtailed and the suspects should not be interviewed. This would protect the suspects, who are often public servants, from undue harassment. When there is a reasonable suspicion or evidence discovered in the covert stage, the investigation can enter its overt stage. Action can then be taken to interview the suspects to seek their explanations and if appropriate, the suspects' home and offices can be searched for further evidence. Normally further follow-up investigation is necessary to check the suspects explanation or to follow the money trails as a result of evidence found during searches. The investigation is usually time-consuming.

### **B. Investigating Current Corruption Offences**

Such investigation will enable a greater scope for ingenuity. Apart from the conventional methods mentioned above, a proactive strategy should always be preferred, with a view to catch the corrupt red-handed. In appropriate cases, with proper authorities obtained, surveillance and telephone intercepts can be mounted against the suspects and suspicious meetings monitored. A co-operative party can be deployed to set up a meeting with a view to entrap the suspects. Undercover operations can also be considered to infiltrate into a corruption syndicate. The pre-requisite to all these proactive investigation methods is professional training, adequate operational support and a comprehensive supervisory system to ensure that they are effective and in compliance with the rules of evidence.

As mentioned above, corruption is always linked and can be syndicated. Every effort should be explored to ascertain if the individual offender is prepared to implicate other accomplices or the mastermind. In Hong Kong, there is a judicial directive to allow a reduction of two thirds of the sentence of those corrupt offenders who are prepared to provide full information to the ICAC and to give evidence against the accomplices in court. The ICAC provides special facilities to enable such "resident informants" to be detained on the ICAC's premises for the purpose of de-briefing and protection. This "resident informant" system has proved to be very effective in dealing with syndicated or high-level corruption.

## VII. INVESTIGATION TECHNIQUES

To be competent in corruption investigation, an investigator should be professional in many investigation techniques and skills. The following are the essential ones:

- Ability to identify and trace persons, companies and properties
- Interview techniques
- Document examination
- Financial investigation
- Conducting search & arrest operations
- Surveillance and observation
- Acting as an undercover agent
- Handling informers
- Conducting an entrapment operation

## VIII. PROFESSIONAL INVESTIGATIVE SUPPORT

In order to ensure a high degree of professionalism, many of the investigation techniques can be undertaken by a dedicated unit, such as the following:

- **Intelligence Section:** as a central point to collect, collate, analyze and disseminate all intelligence and investigation data, otherwise there may be a major breakdown in communication and operations
- **Surveillance Section:** a very important source of evidence and intelligence. The Hong Kong ICAC has a dedicated surveillance unit of over 120 surveillance agents and they have made significant contributions to the success of a number of major cases
- **Technical Services Section:** provides essential technical support to surveillance and operations
- **Information Technology Section:** It is important that all investigation data should be managed by computer for easy retrieval and proper analysis. In this regard, computers can be extremely useful aids to investigation. On the other hand, computers are also a threat. In this modern age, most personal and company data are stored on computers. The anti-corruption agency must possess the ability to break into these computers seized during searches to examine their stored data. Computer forensics is regarded as vital for all law enforcement agencies worldwide these days

- **Financial Investigation Section:** The corruption investigations these days often involve sophisticated money trails of proceeds of corruption, which can go through a web of off-shore companies and bank accounts, funds, etc. It is necessary to employ professionally qualified investigative accountants to assist in such investigations and in presenting such evidence in an acceptable format in court.
- **Witness Protection Section:** The ICAC has experienced cases where crucial witnesses were compromised, with one even murdered, before giving evidence. There should be a comprehensive system to protect crucial witnesses, including 24-hour arms protection, safe housing, new identity and overseas relocation. Some of these measures require legislative backing.

## **IX. CONCLUSION AND OBSERVATION**

In conclusion, the success factors for an effective corruption investigation include:

- An effective complaint system to attract quality corruption reports
- An intelligence system to supplement the complaint system and to provide intelligence support to investigations
- Professional and dedicated investigators who need to be particularly effective in interviewing techniques and financial investigation
- More use of proactive investigation methods, such as entrapment and undercover operations
- Ensure strict confidentiality of corruption investigation, with a good system of protection of whistleblowers and key witnesses
- International co-operation

## **PARTICIPANTS' INDIVIDUAL PRESENTATION PAPERS**

Ms. Khiev Sophany & Mr. Hou Sthabna, Cambodia

\*\*\*

Mr. Muhammad Y. Adhyaksana, Indonesia

\*\*\*

Mr. Phongsavanh Phommahaxay & Mr. Xaysana Rajvong, Lao PDR

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Mr. Premraj Victor, Malaysia

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Ms. Htu Htu Ngwe & Mr. Thaw Win Tun, Myanmar

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Ms. Maria Melinda S. Mananghaya-Henson & Mr. Niven Redillas Canlapan,  
The Philippines

\*\*\*

Mr. Mongkol Sirijunrattana & Mr. Sarun Tirapat, Thailand

\*\*\*

Mr. Vu Dang Khoa & Mr. Nguyen Hoanh Dat, Viet Nam

# ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

*Sophany Khiev* \*

## I. MEASURES FOR ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

Every country in the world is affected by corruption. It undermines democratic institutions, slows economic development and contributes to the instability of governments. The Royal Government of Cambodia is one such government in which corruption continues to be systematic and linked with a number of issues.

Fighting corruption is prioritized by the Royal Government of Cambodia, as mentioned in its *Rectangular Strategy in 2003* where *Good Governance* is the core element and combating corruption is in the first angle. Moreover, *Samdech* HUN Sen, the Prime Minister of Cambodia, stated that the key thrust of the Royal Government of Cambodia's strategy to fight corruption is to take concrete actions that attack the roots of corruption. Nevertheless, there are only three articles, prescribed in the criminal law act in 1992 — under the United Nations Transitional Authority in Cambodia — related to corruption (embezzlement, bribe taking and bribe giving).

Until 17 April 2010, the anti-corruption law was promulgated by the King. This leads to the quotation of Prime Minister HUN Sen who stressed that fighting corruption is to make it so that each individual does not want to, cannot and dares not to engage in corruption.

The Anti-Corruption Institution is a body that was established under the new law. This body is composed of the Anti-Corruption Council and the Anti-Corruption Unit (ACU). Regarding the investigation of corruption cases, Cambodia has started to implement two measures: TECHO Operation and Open-up investigation in each ministry.

### A. TECHO Operation

The TECHO Operation refers to the fixation of public service fees for each ministry. The official public service fees are designed in the table format that is posted in public places as public information. Every ministry and public institution is bound to publish the official fee for their public service activities (1). The obvious advantage of that operation is the guaranty of revenue collection (2).

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\* Under Secretary of State of the Ministry of Justice, Cambodia.

## 1. Getting All Ministries Engaged

### (i) *Facilitating Investigation*

The opportunity for corruption has been reduced since the public has been informed about the official fees for public services, and, thus, the public participate actively in combating corruption. However, there are some people who bribe to accelerate the processing of their documents. In this regard, the other officials and people concerned join hands in the investigation. For instance, in the company registration process, one applicant can claim that another one who submitted the application later received the certificate sooner. The first applicant can prove the date using the receipt as evidence. In such cases, it may be a group of officials who take bribes to accelerate the process. By making the processing of public services more transparent, applicants are able to look at each other's activities and hold public officials accountable. In addition to improving investigation with the help of the public, we can also strengthen the ability of officials to resist bribery.

### (ii) *Reduction in corruption cases*

The TECHO Operation has been working very well. It always reminds the officials not to take extra fees or unofficial fees from applicants. Step by step, the number of corruption cases has been reduced steadily. This operation greatly facilitates investigation through the comparison between the official fees disseminated and the unofficial fees demanded by the officials.

## 2. Ensuring the Collection of Revenue

Before the so called TECHO Operation, the collection of revenue was an issue for the State. This means the State was not able to govern the amount of revenue collected. Fees depended on each ministry or institution. It is hard to express that the State lost its power in terms of collecting taxes. Without the TECHO Operation, the Anti-Corruption Unit (ACU) could hardly accomplish its work. This Unit was inactive and the investigations were limited. The reason is that ACU did not know about the public service fees to be paid. Since the TECHO Operation has been in place, there have been many MOUs, or Joint *Prakas*, between each ministry and the Ministry of Economics and Finance regarding the fees collected for the State.

## **B. Opportunity for Investigation**

### 1. Posting of ACU Officials in the Ministries

Some of the duties of the ACU are to monitor, investigate, check, and do research as well as propose measures related to corrupt practices in ministries, institutions, and public and private units, in conformity with the procedures in force. Accordingly, some officials of the ACU are bound to investigate directly and thoroughly each department of all ministries. This option facilitates the investigators in accomplishing their mission. They work closely with the departments concerned. These cases are not complicated to investigate since the ACU officials know the identities of the suspects and witnesses, which allows our investigators to discover cases *in flagrante delicto*.

### 2. Complaint System

Concerned people have many ways to make their complaints to the ACU or offices in the Capital or to branch offices in all provinces of the Kingdom of Cambodia. From our experiences,

there are (i) six ways to report corruption offences, and (ii) considering the contents of those complaints, many of them are quite related to corruption cases. .

*(i) Forms of complaints made*

To start with, complainants can contact the ACU directly by phone (1282) or email: info@acu.gov.kh or complaint@acu.gov.kh. Secondly, they hand deliver complaint letters to the ACU. Moreover, there are many white boxes on the public streets for receiving any complaints. In addition, they can send their complaints through the post office. Finally, they can submit complaints via the ACU's website. The guidelines on reporting corruption and complaints are available to the public and can be downloaded at www.acu.gov.kh. However the guidelines are only in the Khmer language. In addition, the complaint procedure and decision-making process are currently in draft form, but we expect them to be finalized soon.

*(ii) The analysis of those complaints*

Even though there are many complaints made, most of them are not related to corruption offences. They are mostly about politics or do not fall within the competency of the ACU. In addition, some complaints are discovered to be false after the investigation. For instance, there was a case in which the mayor was accused of taking money for free official documents from the villagers. However, we found that the mayor was innocent after officials of the ACU interviewed most of the villagers. In this regard, the villagers defended the mayor and complimented his hard work. In this case, it was about a political issue where the opposition wanted to accuse the government of wrongdoing. Thus, the investigation was closed. In some cases, there are complaints made by officials of NGOs who accuse project managers of embezzlement. Accordingly, the ACU cannot start an investigation since these cases are not within the scope the Anti-Corruption Law, even though Article 3 provides that this law is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia which occur after the law took effect. Based on the interpretation of this article, it is not within the competency of the ACU. The ACU can only inform the donor about the alleged embezzlement.

## **II. MECHANISM, PROCEDURE AND HUMAN RESOURCES**

### **A. Mechanism and Procedure**

Mechanism and procedure are main points related to the investigation of corruption cases and will be described below.

#### **1. Mechanism**

*(i) Interview*

There are many skills and tactics to interview both suspects and witnesses successfully. To start with, it is important to note that cooperation from the witnesses is crucial. On the other hand, the suspects never tell the truth and manipulate the situation. Then, from our experience there are two kinds of questions: closed questions and open questions. Accordingly, interviewers use these tactics to make the witnesses comfortable and to make them feel that their identity is secure. Moreover, building the witnesses' confidence and trust in the ACU is indispensable. Some witnesses refuse to tell the truth. The reason is that they think they will be accused as well. For example, in the case of the head of the anti-drug unit who participated in drug trafficking, there

is no official who would dare to report his offence because they are the ones who take the bribes on his behalf and manipulate the documents. If they didn't follow his instructions, they would lose their positions. Concerning the suspects, the interviewers try to convince the suspect to confess in exchange for the ACU's report to Court that the suspect/witness cooperated in the investigation.

*(ii) Covert techniques*

According to Article 25 of Anti-Corruption Law, the court can order the ACU to undertake forensic inquiries in order to facilitate the work of the court. The Department of Investigation and Intelligence and the Department of Technology and Forensics are part of the ACU. Covert techniques fall under its responsibility. A group of undercover agents disguise themselves particularly as taxi drivers, small ice-cream sellers, or beggars in order to be as close as possible to suspects. In this connection, it is noted that the suspects disguise themselves as well. For instance, they change their clothes when they leave home, and get into another car to change clothes again. In these cases, they change their transportation often as well from their locations to their destinations. The official of this department usually convinces a person close to the suspect to provide as much information as possible and to identify the suspect. Collecting and preserving evidence is crucial to their activities. It is interesting to note that the Chairman, deputy chairpersons of the Anti-Corruption Unit and some officials of ACUs are legally entitled to the status of judicial police officials in order to perform their duties in accordance with the provisions in the Code of Criminal Procedure (Article 23).

*(iii) Search and seizure*

In cases where there is some clear evidence of a corruption offence, the ACU (under Article 27) can:

- Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.
- Check and order the provision or copying of authentic documents or individual documents, or all bank, financial and commercial documents.
- Monitor, oversee, eavesdrop, record sound, take photos, and engage in wiretapping.
- Check documents and documents stored on electronic systems
- Conduct operations aimed at collecting real evidence.

The seizure shall be implemented in accordance with the Code of Criminal Procedure.

2. Procedure

*(i) Role of the prosecutor*

There are no special prosecutors, courts or judges for corruption cases. Investigations are overseen by the ACU in partnership with the police and other law-enforcement agencies. The Royal Prosecutor leads and coordinates the operations of all judicial police agents and judicial

police officers within his territorial jurisdiction. The Royal Prosecutor shall exercise all authority designated in this code and delegate it to the judicial police officers for investigative action. He may visit the investigation site and give useful instructions to the judicial police officers. He can inspect a judicial police unit at any time. He can participate in interviews and can examine witnesses.

*(ii) Preparation for trial by the prosecutor*

After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure (Article 25).

**B. Human Resources**

1. How to Recruit

The officials of the Anti-corruption Unit are appointed, transferred or assigned to work for the Unit and the contractual officials. These officials have to follow the provisions of the law and legal norms in force. The Chairperson of the Anti-Corruption Unit can recruit local or international experts, specialists or researchers, on a voluntary or contractual basis, to provide technical expertise on anti-corruption (Article 14).

2. Training Mechanism and Curricula for Investigation

*(i) Curricula*

The curricula focus mostly on all offences related to corruption prescribed in the Criminal Code and the power of investigation of the ACU stated in the Code of Criminal Procedure. For instance, from 1st January to May 2012, the ACU held a seminar on the dissemination of the Anti-Corruption Law at 18 universities and 9 districts. 10,110 participants attended the seminars. Furthermore, from 7 November to 16 December 2011, the ACU conducted a nationwide campaign on Anti-Corruption Law dissemination. There were 9,967 officers from relevant ministries and institutions who attended the seminar. National Anti-Corruption Day in Cambodia is 9 December. In 2011, the ACU, with support from DANIDA and Pact Cambodia, organized a public concert to raise public awareness on the negative effects and prevention of corruption.

**III. CONCLUSION**

To sum up, Cambodia is ready to combat corruption offences. The Anti-Corruption Law promulgated on 17 April 2010 contains fundamental rules used in corruption cases. Furthermore, TECHO Operation is an additional measure to strengthen the ability in fighting corruption in Cambodia. With all mentioned measures, mechanisms, procedures and human resources, we are optimistic that the corruption offences will be steadily reduced.

# ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

*Hou Sthabna\**

## I. OVERVIEW

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption takes place in all human societies and in all walks of life.

Cambodia is also experiencing this social phenomenon. The Royal Government of Cambodia (RGC) does not turn a blind eye to this problem. The RGC is strongly committed to fighting corruption, formulating a separate anti-corruption law, and empowering an independent anti-corruption mechanism.

## II. BACKGROUND

The Royal Government of Cambodia has paid great attention to combating corruption since the UN-organized General Elections in 1993. In 1992, Cambodia adopted the Criminal Law Act in which three of its articles were related to corruption, namely Embezzlement, Acceptance of Bribery and Proffering of Bribes. In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the *Anti-Corruption Activities Unit*. In 2006, the RGC established the Anti-Corruption Unit, ACU.

On 17 April 2010, the Anti-Corruption Law was promulgated by the King. The new law required the establishment of an Anti-Corruption Council and Anti-Corruption Unit (ACU). Since its creation, the ACU has been implementing three intertwined approaches: Education and Prevention, Law Enforcement, and International Cooperation.

In its effort to combat corruption, the RGC has carried out the Rectangular Strategy since the first to the third mandate of the fifth legislation, focusing on multi-sectorial reforms for the sake of social development and justice. The RGC continues to view fighting corruption as a priority, as mentioned in the *Rectangular Strategy* where *Good Governance* is the core element and *fighting corruption* is the first angle.

## III. ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

### A. Agencies and Organizations Responsible for Investigating Corruption Cases

Article 22, “Officials Competent to Investigate Corruption Offences”, of the Anti-Corruption Law stipulates that:

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\* Technicality and Forensic Dept., Anti-Corruption Unit (ACU), Cambodia.

- The President, Vice Presidents and officials of the Anti-Corruption Unit who are appointed as judicial police officers are empowered to investigate corruption offences as stipulated in this Law and those in the Penal Code.
- Other units that are aware of corruption offences as stipulated in the Anti-Corruption Law and those stated in the Penal Code shall make corruption complaints to the ACU or its branch offices in the municipalities or provinces.

## **B. The Outline of Investigative Procedures**

Article 25, “ACU’s Investigative Authority”, of the Anti-Corruption Law stipulates that:

- The ACU officials who are appointed as judicial police officers shall carry out investigation of corruption offences in compliance with the provisions of the Code of Criminal Procedure and the provisions in this Law.
- Officials of the Anti-Corruption Unit who are appointed as judicial police officers take charge of investigating corruption offences. If, during the investigation of a corruption offence, a different offence is found with facts related to the offence being investigated by the Anti-Corruption Unit, officials of Anti-Corruption Unit can continue the investigation of the offence to the end of the proceedings.
- The Anti-Corruption Unit is not entitled to launch its own investigation into any offence except corruption offences, unless there is a court order.
- The court is entitled to issue an order to the Anti-Corruption Unit to undertake forensic inquiries in order to facilitate the court’s judgement.
- In the framework of these investigations and contradictory to Article 85 (Authority of Judicial Police Officers in Enquiry of Flagrante Delicto Cases), Article 91 (Searches), Article 94 (Order to Appear in Inquiry of Flagrante Delicto Cases) and the Article 114 (Order to Appear in Preliminary Investigation) of the Penal Procedure Code, the President or an officially assigned representative of the ACU has the duty to lead, coordinate and control the mission of those officers on behalf of the prosecutor until a suspect is arrested.
- After the arrest, the prosecutor shall exercise his/her power as stated in the provisions of the Penal Procedure Code.
- At the end of each investigation, the Anti-Corruption Unit shall submit all facts to the prosecutor for further action in conformity with the provisions of the Penal Procedure Code.

## **C. Agencies and Organizations Responsible for Interrogating**

Paragraphs 1, 3, and 4 of Article 72, “Police Record”, of the Penal Procedure Code stipulate that:

- Every complaint received by judicial police officers requires the establishment of a written record.
- The record of the complaint shall mention the following:

- The names and status of the judicial police officers
- The units of the judicial police officers and
- The date.
- Each page shall be signed by a judicial police officer and by the complainant.

Currently, the ACU has a total of 90 judicial police officers. Article 23 of the Anti-Corruption Law, “Appointment of Anti-corruption Unit officials as judicial police”, stipulates that:

- The President and Vice Presidents of the Anti-Corruption Unit are legally entitled to status as judicial police officers in order to perform their duties.
- Officials of the Anti-Corruption Unit may be entitled to status as judicial police officers pursuant to the provisions stated in the Penal Procedure Code.
- The ACU President takes charge of preparing the list of the ACU officials who are entitled to status as judicial police officers through *Prakas* of the Minister of Justice.

#### **D. Specific Methods for Good Interrogation**

- If intelligence is working well, it is best to collect all relevant documents for accusation as much as possible before making the decision to open an investigation.
- Prepare questions beforehand for interrogating witnesses or suspects.
- Get all related documents and evidence ready before an interrogation.
- Never ask open questions.
- Use no violent means to receive answers from witnesses or suspects.

#### **E. Importance of Confessions of Suspects in Investigation as Evidence at Trial**

- Once the suspect provides a confession during the investigation process, the judicial police shall seek more evidence to verify the suspect’s confession before filing a court case.
- The suspect’s confession during the investigation stage of the judicial police can be revealed in front of the judge for considering the reduction of penalty.

#### **F. Outline of Systems to Facilitate Witness Cooperation**

Paragraphs 7 and 8 of Article 13, “Duties of Anti-corruption Unit”, of the Anti-Corruption Law stipulate that the ACU has the duties to:

- Keep absolute confidentiality to protect sources of corruption-related information
- Take necessary measures to keep corruption whistleblowers secured.

The Anti-Corruption Unit can meet and talk to complainants or whistleblowers at their location or talk to them on the phone in the event that they find it uncomfortable to come to the ACU compound.

## **G. Outline of Searches and Confiscations**

### **1. Searches**

- Paragraph 5 of Article 25, “Investigative Authority of Anti-corruption Unit”, stipulates that:
  - In the framework of these investigations and contradictory to Article 85 (Authority of Judicial Police Officers in Enquiry of Flagrate Delicto Cases), Article 91 (Searches), Article 94 (Order to Appear in Inquiry of Flagrate Delicto Cases) and the Article 114 (Order to Appear in Preliminary Investigation) of the Penal Procedure Code, the President or an officially assigned representative of the ACU has the duty to lead, coordinate and control the mission of those officers on behalf of the prosecutor until a suspect is arrested.

### **2. Confiscation**

- Article 48, “Confiscation”, of the Anti-Corruption Law stipulates that:
  - When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, material, and instruments which were the outcome of the corrupt act, and they shall become the property of the state.
  - If the aforementioned confiscated asset is transformed into an asset different from its original nature, this transformed asset shall also become the subject of confiscation at the place where it is located.
  - If the corruption proceeds produce other benefits or advantages, all of these benefits and advantages will also be confiscated.
  - If the corruption proceeds dissolve or lose value, the court may order a settlement of the original value of the proceeds.
- Article 49, “Repatriation of the Proceeds of Corruption”, of the Anti-Corruption Law states that:
  - In case asset and corruption proceeds are found and kept in foreign states, the competent authority of the Kingdom of Cambodia shall take measures to claim that asset and [repatriate the] proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall also cooperate with other countries that request the repatriation of corruption proceeds that are kept in Cambodia.

## **H. The Outline of the Public Reporting and Complaint System**

- The ACU publicly informs those who wish to file a corruption complaint or report corruption-related information. They can accordingly:
  - Write a letter and place it in an ACU white box
  - Write a letter and post it to the ACU P.O Box by writing *Box No. 626 or Anti-Corruption Unit* on the envelop without stamps
  - Send an electronic mail to [complaint@acu.gov.kh](mailto:complaint@acu.gov.kh)
  - Visit the ACU during the office hours at #54, Norodom Blvd, Sangkat Phsar Thmei III, Khan Daun Penh, Phnom Penh or
  - Call the ACU hotline at 1282

## **I. The Outline of Preparation for Trial by Prosecutors**

Paragraphs 1 and 2 of Article 40, “Processing of Criminal Proceedings”, of the Penal Procedure Code stipulate that:

- The Prosecutor shall consider the written complaint and protests that have been received personally by him or submitted by judicial police officers.
- The Prosecutor can decide to either hold a file without processing or to conduct proceedings against the offenders. Before making the decision, the Prosecutor can conduct preliminary investigations or order supplemental investigations.

## **IV. CONCLUSION**

Though Cambodia has enjoyed full peace for only a short time, the Royal Government of Cambodia, under the clear-sighted leadership of Prime Minister Samdech Techo Hun Sen, has made remarkable progress in all fields, especially in enhancing Cambodia’s prestige in the international arena.

The RGC is strongly committed to strengthening good governance and fighting corruption. Fighting corruption is a key to ensure equitable division of social resources and attracting foreign investment. Cambodia continues to cooperate closely with the international community, especially SEAPAC members, to combat corruption. Despite many challenges, the ACU continues to work untiringly to promote integrity, transparency, accountability and prosperity in Cambodian society.

# CORRUPTION INVESTIGATION AND INTERNATIONAL COOPERATION

*Muhammad Y. Adhyaksana\**

## I. INTRODUCTION

After more than 15 years of implementing *reformasi*,<sup>1</sup> corruption remains to be one of the most problematic issues in Indonesia. Indeed, the prevention and eradication of corruption is a complicated task. Corruption is still a systemic problem hampering the nation's efforts to advance the national development. It is a high value political campaign as it often involves high level officials, both from the government and political parties' elites. The eradication of corruption continues as one of the priorities determined by the nation. However, the complexity of corruption cases and the unavailability of effective resources reduce the promotion of the effort, despite a higher corruption perception index earned this year.<sup>2</sup>

For Indonesia, *reformasi* needs to continue and legal reforms must be a priority. With stronger legal frameworks, it is expected that the eradication of corruption would produce more achievements. Indonesian society demands that corruption be eliminated from the country, a wish that stimulates innovation and capacity to increase numbers of successful prosecution of corruption cases, both from the aim of punishing the offender and recovering the proceeds of crime.

Investigation is an important part of criminal proceedings to achieve the goal of having a successful case. Legislation, as a legal basis, will guide investigators in conducting their responsibilities in collecting evidence and in finding the suspect. Investigation must follow lawful procedure and must be conducted in line with the rules of evidence to make it admissible and usable in court proceedings.

## II. CORRUPTION INVESTIGATION

### A. Legislation on Investigation and Admissible Evidence

Investigation of corruption cases is provided in Law No. 31 Year 1999 as amended by Law No. 20 Year 2001 on the Eradication of Corruption Crime. In relation to *Komisi Pemberantasan Korupsi* (the Corruption Eradication Commission, or the KPK), Law No. 30 Year 2002 on the KPK also provides power regarding investigation. However, investigation is generally governed in the Indonesian *Kitab Undang-Undang Hukum Acara Pidana* (Criminal Procedure Code, or KUHAP). KUHAP defines investigation and breaks down details on how investigatory power should be conducted. As corruption is classified as "a special crime", the rules of procedure are provided in legislation outside KUHAP, for instance in the area of money laundering, terrorism, etc.

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\* Attorney-General's Office, Indonesia.

<sup>1</sup> *Reformasi* is an era of promoting democracy and good governance in all aspects of the society. It refers to the time of the fall of Suharto in May 1998 as a starting point. *Reformasi* is also considered as a mile stone for the modern history of Indonesia.

<sup>2</sup> "At Least 360 Indonesians jailed for corruption: VP", *The Jakarta Post* [online], (31 Oct. 2013) <<http://www.thejakartapost.com/news/2013/10/31/at-least-360-indonesians-jailed-corruption-vp.html>> accessed 27 Dec. 2013. Indonesia's ranking has improved to 87th out of 176 countries on The Global Competitiveness Index 2012-2013.

Nevertheless, the general rules of the Criminal Procedure Code apply when there is no special rule provided in the anti-corruption law.

Types of evidence are pivotal because they establish the scope of evidence admissible in criminal proceedings, particularly when a case is prosecuted before a judge. Indonesian criminal law recognizes the following types of evidence:

- Witness testimony
- Expert testimony
- Letters (including written documents)
- Indication
- Defendant testimony (confession or denial)<sup>3</sup>

In addition to those five types of evidence, the anti-corruption law introduces new forms of evidence: evidence in the form of electronic or digital documents. These two types of evidence are provided in Article 26A Law No. 20 Year 2001 on the amendment of Law No. 31 Year 1999 on the Eradication of Corruption Crime. The inclusion of documents is to avoid disputes that documents containing pictures or images would not be construed as “letters” as governed by KUHAP.

The KPK is considered to be a new investigative body, established under the spirit of *reformasi*. It has been provided with powers to strengthen its function against corruption; powers that do not apply to the two other counterparts: *Kejaksaan* (Attorney-General’s Office-AGO) and *Kepolisian Negara Republik Indonesia* (Indonesian National Police-POLRI). The law provides authorization for the KPK, both investigators and prosecutors, to conduct the following actions in any criminal proceedings:

- tap into communication lines and record conversations;
- order the relevant institution to ban an individual(s) from travelling abroad;
- request information from banks or other financial institutions about the financial details of a suspect or defendant;
- order banks or other financial institutions to block accounts suspected to harbor the gains of corrupt activities of a suspect, defendant, or other connected parties;
- order the superior of a suspect to temporarily terminate the suspect from office;
- request data on the wealth and tax details of a suspect or defendant from the relevant institutions;
- temporarily halt financial transactions, trade transactions, and other forms of

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<sup>3</sup> As provided in Article 184 KUHAP.

contract, or to temporarily annul permits, licenses, and concessions owned by suspects or defendants, assuming that preliminary evidence points to connections to a corruption case currently being investigated;

- request assistance from Interpol Indonesia or the law enforcement institutions of other nations to conduct searches, arrests, and confiscations in foreign countries;
- request assistance from the Police or other relevant institutions to conduct arrests, confinements, raids, and confiscations in corruption cases currently under investigation.<sup>4</sup>

## **B. Advancing Prosecution of Corruption Cases: Targeting Stolen Assets**

### **1. Anti-Money-Laundering Regime**

Indonesia has improved its legislation against money laundering by passing Law No. 8 Year 2010 on the Prevention and Eradication of the crime of money laundering. It provides a breakthrough on the investigation of money-laundering offences by allowing the investigator of the predicate crime to simultaneously conduct investigation of the money laundering case; an issue that was previously complained about when the previous law only provided power to investigate money-laundering crimes to police investigators.

### **2. Recovering Stolen Assets**

One of the approaches to increase the deterrent factor in the fight against corruption is promoting asset recovery and using the anti-money-laundering provisions to confiscate illegal assets owned or controlled by the defendant. Asset recovery has become an important method for law enforcement agents, prosecutors and judges to remove tainted assets of corrupt officials or their co-offenders from the private sector. Recovering stolen assets can be done through a few channels such as criminal proceedings, civil proceedings or mediation (non-litigation). What is lacking however is that the Indonesian law has not criminalized corruption in the private sector; hence, it is difficult to extend the arms of anti-corruption to the other side of combating corruption.

### **3. Approach to Investigation: Follow the Money**

In the past, prosecution of corruption cases targeted punishment of the defendants; hence, neglecting the other aspect of the case: recovering the proceeds of corruption. Nowadays, asset recovery has become one of the strategic approaches in achieving more successful prosecution. Combined with the anti-money-laundering provisions, the eradication of corruption continues to pursue convictions that include confiscation or compensation to the state in the event that the offence has resulted in state financial loss. To simplify this approach, Indonesian investigators and prosecutors are implementing the concept of “follow the money”, meaning that not only are the offenders punished, but also the money and financial capacity must be taken away. This would reduce number of situations where the convicted person enjoys privileges during the sentencing or takes benefits from the proceeds of crime he or she has committed.

## **C. Investigation Bodies**

### **1. Kejaksaan (AGO);**

The AGO was the only investigator of corruption cases when Law No. 3 Year 1971 on the Eradication of the Crime of Corruption was implemented. In 1981 Indonesia passed a new

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<sup>4</sup> Article 12 Law No. 20 Year 2002 on the Commission on the Eradication of Corruption Crime can be found at <<http://www.oecd.org/site/adboecdanti-corruptioninitiative/46814420.pdf>>.

codification of the criminal procedure law (KUHAP); hence, the types of evidence applied in criminal proceedings, including at the investigation phase. Implementing this law of criminal procedure, the AGO investigators basically took a conventional approach when it came to the investigation of corruption cases. This is understandable because KUHAP restricts evidence to the five categories mentioned above.

In practice, it was inevitable that investigators from the AGO, the only investigative power left to the prosecutor office regarding financial crimes, relied on interviewing witnesses and experts from the state or the government auditors. In 1999, and as amended in 2001, a new form of evidence was introduced in the anti-corruption law as mentioned above. Electronic and digital evidence have since been recognized as types of evidence admissible at trial in support of a defendant's guilt.

2. *Kepolisian (POLRI)*;

Police investigators gained power to investigate corruption cases in 2002 when Law No. 2 Year 2002 on the Indonesian National Police was enacted. Similar to its counterpart at the AGO, police investigators must follow all procedures in the anti-corruption law and KUHAP. Because it is quite a new role, police investigators are still promoting their efforts to produce more corruption cases to be submitted to the prosecutors.

With the ability to investigate all crimes in accordance with the legislation, POLRI may develop its capacity in fighting financial crimes by optimizing all facilities to develop investigation and build a solid case before submitting it to the prosecutors' office. The sharing of information throughout the *International Criminal Police Organization* (ICPO) can contribute to the investigation of transnational cases concerning corruption.

3. *Komisi Pemberantasan Korupsi (KPK)*

The KPK was introduced in 2003 to respond to public demand to address the impacts of corruption in day-to-day life. People wanted a new agency that would deal progressively with corruption. In line with the development of the anti-money-laundering regime, the KPK built an effective agency responsible for prevention and the eradication of corruption, adding yet another super-investigative body to the arena of combating corruption.

The approach of investigation can be done through a different way because the legislation provides a special mechanism for the KPK. It has been given power to intercept or record communication without court or judicial officer approval. Therefore, the KPK is privileged in the sense that it may use more powerful tools in developing corruption cases. Another powerful tool is the ability to freeze any bank account concerning the suspect, the defendant or any other implicated party.

**D. Investigative Methods to Conduct Effective Investigation**

Collecting evidence is a key process in an investigation. Hence, some investigations require more patience than others. Finding suspects can be difficult; sometimes they are determined in the beginning, but it is not uncommon to find suspects at a later stage of the investigation. Because the law states that financial information can only be obtained concerning suspects or defendants, it is hard to gain information on financial intelligence without support from other institutions such as *Pusat Pelaporan dan Analisis Transaksi Keuangan* (Indonesian Financial Transaction Reports and Analysis-PPATK). This is one of the challenges in establishing evidence of a financial crime such as corruption.

Whistle-blowers or cooperative witnesses can play a great role in reducing the challenge in tackling corruption. The establishment of *Lembaga Perlindungan Saksi dan Korban* (Victim and Witness Protection Agency-LPSK) allows key and cooperative witnesses to be protected. This helps investigators when developing the case and collecting evidence.

Methods of investigation generally can be defined into the following:

1. Interviewing Witnesses

Witnesses are one of the key elements for guiding investigations in the right direction. Basically, Indonesia adopts the principle of *unus testis nullus testis* in which one-witness testimony is insufficient testimony to convict a defendant. It means that there must be two witnesses for the evidence to become valid. This applies in corruption cases. Because corruption can involve crimes other than bribery, a witness may play a key role in establishing facts regarding the crime. Particularly, when it involves the element of state financial loss, investigators need information from insiders; hence, witnesses' testimony will be important at the early stage of investigation. In contrast, when it involves bribery or being "caught in the act", other methods of investigation are more helpful.

2. Obtaining Expertise on Technical Matters

Experts in corruption cases are relevant and required because of the fact that prosecutors must prove that the corrupt act has resulted in state financial loss. Therefore, auditors and forensic accountants play a great role in helping prosecutors bring the cases before judges. This contribution of experts who have technical knowledge of the matter helps investigators prepare the cases. However, there is concern over the increased role of criminal law experts. Their testimony often contradicts each other and depends on who is inviting the experts to the court hearing. What often happens is they disagree over the state financial loss. It is important to highlight that experts' testimony aims to help the court in establishing material facts. Hence, the opinions of academic experts should be avoided. The court must rely only on technical experts to establish whether a state financial loss exists. In these cases, an auditor, a forensic accountant or an IT expert will be more relevant.

3. Collecting Financial Intelligence and Documents

Corruption is a financial crime. Financial information on suspects or persons implicated in the corrupt acts is needed to develop the case and broaden the scope of investigation. With the development of Financial Intelligence Units' (FIU) networks, Indonesian law enforcement agents can strengthen their investigation by using information and analysis available on PPATK. Bank statements or other documents are also useful to establish the trail of the proceeds of crime and to help investigators follow the illegal money.

PPATK also can play a great role as a trigger to investigate corruption cases, because it collects suspicious transaction reports from financial institutions and other reporting parties. Therefore, its analysis, which is later submitted to the national police and the AGO, may become a key lead in a corruption case.

4. Conducting Surveillance, Interception and Recording

The corruption investigators basically are equipped with power to conduct surveillance, communication interception or recording. However, the privilege is given to KPK to intercept or to record communication without court approval. Indeed, the power given to KPK has led to successful high profile cases that primarily involve bribery.

### III. INTERNATIONAL COOPERATION

#### A. International Asset Recovery

The legal actions for pursuing asset recovery are various. They include the following mechanisms:

- domestic criminal prosecution and confiscation, followed by an MLA request to enforce orders in foreign jurisdictions;
- NCB (non-conviction-based) confiscation, followed by an MLA request or other forms of international cooperation to enforce orders in foreign jurisdictions;
- private civil actions, including formal insolvency process;
- criminal prosecution and confiscation or NCB confiscation initiated by a foreign jurisdiction (requires jurisdiction over an offence and cooperation from the jurisdiction harmed by the corruption offences); and
- administrative confiscation.<sup>5</sup>

Indonesia should avoid problems of investigating cross-border corruption by dedicating the necessary resources to pursue the stolen assets abroad. It should be a special agency or unit dealing with the investigation, and asset recovery consists of financial investigators, prosecutors, state attorneys, auditors, forensic accountants and other competent authorities involved in asset recovery issues. Specialized agencies or units within existing agencies should be given the resources to satisfy their mandate to facilitate asset recovery, bearing in mind that the central authority does not become involved in financial investigations or in criminal proceedings but is mainly an administrative authority.<sup>6</sup>

Investigators also must take advantage of the developments in the area of international legal cooperation, to enable assistance from other countries. Establishing the trail of the money and other necessary financial intelligence is important to demonstrate the link between the proceeds of corruption and the criminal conduct done by the accused. *Mutual legal assistance* (MLA) is an effective method of gathering evidence and conducting criminal proceedings. Informal cooperation is even crucial to cope with the challenges of differences in a domestic legal system. Global networks against money-laundering, such as Egmont Group or ICPO, are also helpful in broadening the investigation in order to achieve maximum results.

#### B. Technical Assistance

Technical assistance is addressed in Chapter VI of *the United Nations Convention against Corruption* (UNCAC) on technical assistance and information exchange. Indonesia has ratified UNCAC. The aim of technical assistance is to help countries, including Indonesia to recover their assets by providing technical assistance agreed on by the parties. The assistance must meet the specific needs of the actual case and of course the local context. The donors must also consider paying lawyers' fees, so as to avoid countries abandoning their efforts to trace assets and cooperate with the requested State, because they lack the necessary

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<sup>5</sup> Jean-Pierre Brun et al., *Asset Recovery Handbook* (The World Bank, 2011) 9.

<sup>6</sup> Kevin M. Stephenson et al., *Barriers to Asset Recovery* (The World Bank, 2011) 31.

financial resources. Eventually, helping the requesting government to use the recovered funds properly, or monitoring the use of these funds, is crucial so as to avoid further misuse.<sup>7</sup>

In relation to the availability of dedicated resources, it is important therefore to encourage Indonesia to dedicate specific resources to conduct improvements in capacity building and other related matters. Technical assistance includes more than technical advice and the transfer of expertise. In many cases it involves support for institutional and cultural changes. Strategic planning and prioritization should be carried out taking local context into account. The development of UNCAC's implementation brings about guidelines and knowledge, so it opens ways of sharing of experience and exchange of information.<sup>8</sup>

Effective technical assistance is required to change the way of thinking of investigators, prosecutors or even judges where possible<sup>9</sup> to promote the implementation of UNCAC in practice. The change required in our law enforcement agencies leads naturally to the need for an increase in capacity and expertise to carry out the work. Almost all countries, whether developed or developing, have deficiencies in capacity and expertise in the areas of MLA and asset recovery cases. Corrupt officials across the world have exploited this. The solutions may include political will, capacity building and funding.<sup>10</sup> Changing the way of thinking, however, requires more than these solutions. It needs a comprehensive policy across the whole system, including the strengthening of investigative capacities of the agencies involved in the fight against corruption. Increasing skills and expertise will make international cooperation in investigating cross-border corruption and asset recovery more achievable.

#### IV. CONCLUSION

Corruption investigation is not an easy task. It needs resources, skills and expertise. Approaches, strategies and techniques must follow the development of technology as well as the complexity of the crime. Indonesia has extended its types and scope of evidence that is governed by criminal procedure law to include new types of evidence such as electronic and digital evidence to support investigative abilities. These opportunities must not be ignored and must be promoted in line with the current policy to emphasize the anti-money-laundering provisions.

Indonesian society demands stronger prosecution of corrupt officials both on the sentencing and the recovery of the proceeds of corruption. Therefore, achievements in handling corruption cases are now determined by the ability to punish the offender through sentencing and confiscating the proceeds of the crime. Despite challenges in proving the trail of money, investigators should exercise all available resources in collecting evidence, so the facts described in the indictment are clear and complete. Solid evidence will help prosecutors in defending the case against high-profile defence lawyers. Combining domestic investigation abilities and international cooperation in criminal matters will enhance the capacity of the

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<sup>7</sup> Anne Lugon-Molin, "Assets Recovery: Concrete Challenges for Development Assistance", in Mark Pieth (ed.), *Recovering Stolen Assets* (2008) 298.

<sup>8</sup> Nikos Passas, "UNCAC, Technical Assistance and Development Efforts" in Mark Pieth (ed.), *Recovering Stolen Assets* (2008) 294.

<sup>9</sup> Some years ago, it was not easy to invite judges to attend trainings, particularly because of concerns over judicial independence; a judge should not be told what to do in handling cases. However, it has become more common in Indonesia that judges will join trainings together with prosecutors and other practitioners.

<sup>10</sup> Alan Bacarese, "Tracing, Freezing, Confiscating, and Repatriating the Proceeds of Corruption", the 6<sup>th</sup> Regional Seminar on Making International Anti-Corruption Standards Operational, Paper presented at ADB/OECD Conference in Bali, Indonesia, 5-7 September 2007, 124.

investigators, increase the possibility of producing a successful case, and practical and real experience for future improvements.

Lacking expertise and skills can be a great obstacle for handling a complicated corruption case. Therefore, it is necessary for Indonesia to keep advancing capacity-building projects under technical-assistance cooperation. The shift in the way of thinking among key players in the criminal justice system requires consistent training and education to balance the need of appropriate response to the systemic problem of corruption. The fact that Indonesia now has three agencies responsible for investigating corruption cases may lead to more success in the prosecution of high-profile corruption cases.

# ENFORCEMENT PRACTICE AGAINST CORRUPTION IN JAPAN

*Shinichiro Iwashita\**

## I. INVESTIGATION OF CORRUPTION CASES

Japan has no specialized commission or agency which is responsible for investigating corruption cases. In Japan, there are two authorities that have responsibility for investigating all criminal cases: the first is the police, the second is the Public Prosecutors' Office. No other agencies have the power to investigate corruption cases; only the police and public prosecutors have the power to investigate.

### A. Police

[Art. 189(2) Code of Criminal Procedure (CCP)]

A judicial police official ***shall***, when he/she deems that an offense has been committed, investigate the offender and evidence thereof.

The police are obliged to investigate any crime including corruption offences.

### B. Public Prosecutors

[Art. 191 CCP]

A public prosecutor ***may***, if he/she deems it necessary, investigate an offense him/herself.

This article also provides public prosecutors with the power of criminal investigation; however, it leaves that power to the prosecutors' discretion. Thus, the police are the primary investigative organ in Japan, while public prosecutors have discretionary power to investigate all criminal cases.

### C. Relationship between the Police and Public Prosecutors

Most criminal cases (over 99%) are initially investigated by the police, and the police must refer the case to public prosecutors with documents and evidence after they launch an investigation. The public prosecutor who receives the case from the police begins his investigation, which is supplementary to the police investigation and is undertaken with the cooperation of the police. The public prosecutor requests the police to conduct further investigation and to collect more evidence crucial to proving the offender's guilt. In addition, public prosecutors directly conduct interrogation of suspects and interview key witnesses of the case. Finally, public prosecutors determine whether to indict the suspect or not.

This framework also applies to investigations of corruption cases. Most corruption cases are first investigated by the police, and public prosecutors investigate the case supplementary. However, in a very small number of cases (less than 1%), public prosecutors conduct investigation independently, without the cooperation of the police. These tend to be the major corruption cases involving politicians, high ranking officers, and complicated economic crimes.

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## Statistics of Bribery 2011

	Newly received			Final disposition			
	Total	Initiated or received directly by public prosecutors	Referral from the police	Total	Indicted	Suspension of Prosecution	Other non-prosecution
Total	61	5	56	47	41	1	5
National Diet Members	-	-	-	-	-	-	-
Local assembly	18	1	17	6	5	-	1
Government officials	4	1	3	4	3	-	1
Local government officials	34	3	31	32	30	1	1
<i>Quasi-public officials</i> <sup>1</sup>	5	-	5	5	3	-	2

※White Paper on Crime 2012

The above statistics are about passive bribery (bribery-taking) suspects newly received and whose cases were disposed of in 2011. As shown, 56 suspects were investigated and referred to prosecutors by the police while 5 suspects were investigated by prosecutors independently.

### D. Structure of Independent Investigation of Corruption Cases in the Public Prosecutors' Office

In large offices, public prosecutors are divided into several departments and share the work. For example, there is the criminal department, traffic department and public security department which all handle the investigation of the cases referred from the police. There is also the trial department, which conducts the trials of the cases indicted by prosecutors in the above departments.

On the other hand, there is also the Special Investigation Department (SID). Public prosecutors in this department do not investigate cases referred by the police. They independently investigate major corruption cases and complicated economic cases by themselves. In Japan, there are three SIDs — in Tokyo, Osaka, Nagoya — and there are Special Investigation Units in 10 other district public prosecutors' offices. The most competitive prosecutors with great knowledge, skill and experience in corruption cases are assigned to these departments and units, especially in the SIDs of the Tokyo District Public Prosecutors' Office. For example, currently, around 30 public prosecutors and around 80 assistant investigators belong to the SIDs of the Tokyo District Public Prosecutors' Office.

<sup>1</sup> "*Quasi-public officials*": persons who are regarded as engaging in official duties pursuant to laws and ordinances, such as officers of the Bank of Japan and the Japan Broadcasting Corporation.

## II. PUBLIC PROSECUTORS' BASIC INVESTIGATION METHODS FOR CORRUPTION CASES

### A. Investigative Tools

Japan has not introduced any advanced investigative techniques for corruption cases. For example, Japan has no plea bargaining or immunity, no electronic surveillance, wiretapping or eavesdropping, and no undercover or sting operations. On the other hand, it is necessary for public prosecutors to obtain enough evidence to meet the high standard of proof, that is, "beyond the reasonable doubt", by making the best of all investigative methods permitted by law. In this sense, public prosecutors conduct "Intensive Investigation" in terms of physical evidence gathering and its analysis, interviewing key witnesses and interrogating suspects.

### B. Typical Process of Investigation

#### 1. Main Elements of Bribery under Japanese Criminal Law

The main elements constituting bribery under Japanese criminal law are as follows:

- Delivery of a bribe / Flow of funds
- Connection between the bribe and the public official's duties ("quid pro quo")
  - Request of bribe-giver to bribe-taker
  - Favour of bribe-taker to bribe-giver
- Criminal intent ("*mens rea*")

Among those elements, the hardest to find and prove is delivery of a bribe, usually a flow of funds between a bribe-giver and a bribe-taker, because the source of the bribe is usually a secret account of a company. On the other hand, establishing a connection between the bribe and the public official's duties, "quid pro quo", is not so difficult as far as government officials are concerned because their official duties have been interpreted broadly enough to cover almost all corrupt activities.

#### 2. Outline of the Typical Process of Investigation

Investigation is roughly divided into four steps:

- 1) Collecting Clues
- 2) Non-Compulsory Investigation
  - Analyzing clues / voluntarily submitted evidence
  - Obtain further information and evidence to identify the crimes and suspects
  - Interview key witnesses
- 3) Compulsory Investigation
  - Search and Seizure
  - Interrogate suspects under arrest / detention
- 4) Indictment
  - Decision whether or not to indict the case

Collecting clues is important. When public prosecutors have good clues, they begin investigations to obtain more evidence. As the CCP in Japan requires that investigations must be conducted on a non-compulsory basis as much as possible, firstly, public prosecutors conduct non-compulsory investigations. In the non-compulsory investigation stage, public prosecutors gather as much evidence as they can without relying on compulsory investigation. Public prosecutors aim to gather enough evidence to indict suspects even though they deny the facts constituting the crime in the non-compulsory stage. In other words, if enough evidence was not collected in the non-compulsory stage, public prosecutors may move to compulsory investigation,

in particular by arresting suspects. Therefore, it usually takes several months and sometimes more than a year to complete the non-compulsory investigation stage.

The compulsory investigation stage follows if prosecutors succeed in identifying indictable corruption offences through non-compulsory investigation. Massive raids on relevant sites and thorough search and seizure take place. Public prosecutors also arrest suspects and interview them while in detention. Public prosecutors try to gather more evidence to be able to paint the whole picture of the corruption by introducing evidence at trial. Finally, at the termination of a suspect's detention, public prosecutors determine whether to indict the suspect.

### 3. Collecting Clues

The following are sources of information for gathering clues at the beginning of an investigation:

- Rumors / Media coverage / Internet accusations
- Criminal Complaints
- Informants / Whistleblowers
- STR / FIU (Suspicious Transaction Reports / Financial Intelligence Units)
- Investigation of other cases

However, good clues are hard to come by, especially direct indications of bribery. Public information such as rumors, media coverage and internet accusations are important as basic information rather than concrete clues. The SIDs receive many complaint letters or telephone accusations every day; however, most of them are frivolous. While informants or whistleblowers directly involved in corruption, especially bribery, are rare, sometimes their information of any wrongdoing is critical to corruption investigations.

The most important source of information is facts discovered through other investigations, for example, investigation of tax evasion referred by the Regional Taxation Bureau, securities fraud cases referred by the Securities and Exchange Surveillance Commission, and anti-trust cases referred by the Japan Fair Trade Commission. It is indispensable to investigate secret accounts and to follow the money trail connecting the people and companies concerned in those cases. The direct involvement of the Public Prosecutors' Office is a great advantage of Public Prosecutors' in such corruption investigations.

### 4. Non-Compulsory Investigation ① - Tracing the Flow of Funds

In the investigation of corruption cases, identifying and proving the flow of illicit funds, namely the source of the bribe, concealment, laundering or use of the bribe, is indispensable but very difficult. Sometimes the evidence that directly proves the flow of funds cannot be obtained until the final stage of the investigation through interrogation of suspects. On the other hand, even if one party to bribery confesses, evidence of the actual flow of the funds must be detected in order to corroborate the confession. Therefore a financial investigation to establish the flow of funds must be started at an early stage.

#### *( i ) Source of the Bribe*

Since the source of a bribe is usually a secret fund, corruption tends to be accompanied by "cooking the books", or the maintenance of false or forged financial records, of the bribing company. Such fraud frequently includes kickbacks and disguised expenditures. Through the examination of account books and other financial documents obtained in other investigations or submitted voluntarily, suspicious expenditures may be identified, and then prosecutors trace them more closely by directing further inquiries to financial institutions.

*( ii ) Inquiries to financial institutions*

Inquiries to financial institutions are one of the most important and widely used tools of investigation.

**[Art. 197(2) CCP]**

**Public offices, or public or private organizations, may be asked to make reports on necessary matters relating to investigation.**

In Japan, jurisprudence has interpreted this statute as requiring financial institutions to respond to prosecutors' requests. It is not necessary to obtain a warrant or subpoena to ask for such reports. In the SID, there are many trained assistant investigators who assist prosecutors, and they are trained to make such inquiries for bank records. Also they know well where and what kind of records are kept in each financial institution. They actually go to banks and their warehouses to find and obtain necessary information and documents.

*( iii ) Secret funds*

By tracing suspicious expenditures, prosecutors may find the funds withdrawn somewhere in cash, which is highly indicative that the funds were being used for corrupt purposes. Then prosecutors prepare to conduct the most effective interview or interrogation of the suspects. In order to detect secret funds, accurate analysis of financial documents is essential. Many prosecutors and assistant investigators in the SID have bookkeeping qualifications. To trace the flow of funds between many bank accounts exactly, we usually integrate all transaction records into one tabular form. On the completed table of transaction records, investigators can trace the flow of funds connected with bribery.

*( iv ) Pseudonymous Bank Accounts*

It is important to discover pseudonymous bank accounts in the investigation of corruption cases because they are likely to be highly connected with bribery. To find them, public prosecutors and assistant investigators in the SID ask financial institutions to voluntarily submit the application documents for opening the bank account, and analyze them carefully. Also, public prosecutors interview bank clerks, the person who opened the bank account, and persons who remitted the funds to the bank account.

5. Non-Compulsory Investigation ② – Interviewing Key Witnesses

*( i ) Importance of interviewing key witnesses*

It is important to find witnesses who are willing to cooperate with the investigation. They will be the key players to support the prosecutions' claims at trial. At the same time, the key witnesses might be the suspect's coworker, a close partner, boss or subordinate of many years. Investigators should make every effort to take statements from such persons because we often face difficulty in detecting where the important evidence is without their statements.

Also, the credibility of statements of the witness should be carefully evaluated, taking into account all factors, such as his/her position, character, knowledge, memory, integrity, relationship with suspects, and so forth.

Once witnesses cooperate with the investigation, they often testify to important facts not only in interviews but also in court. However, sometimes, they refuse to testify in court because they are intimidated by the defendant, who is seated in front of them. To cope with such situations, public prosecutors always obtain signed and sealed written statements during interviews.

*( ii ) Exception to the Hearsay Rule*

The Code of Criminal Procedure of Japan has adopted following exception to hearsay rule.

**[Art. 321(1) ii CCP]**

**A document, which contains a statement of a person given before a public prosecutor, with the person's signature and personal seal, is admissible as evidence in the following conditions:**

- **He or she does not appear or testify on the date either for preparation for the trial or for the public trial for inevitable reasons; or**
- **He or she gives testimony contrary to or materially different from his or her previous statements: This shall apply only where there exists special circumstances, because of which the court may find that the previous statements are more credible than the testimony given mentioned above.**

If the witness gives testimony at trial which is contrary to or materially different from his/her previous statement during the investigation, public prosecutors try to prove special circumstances, namely that the previous statements in investigation were more credible than the testimony in court, and request judge to admit the written statements made during the investigation stage.

Special circumstances are, for example:

- where the witness has a close relationship with the suspect
- where the witness shared a common interest with the suspect for a long time
- where the defendant is an influential person, such as a politician, and the witness is not expected to tell the truth in front of the defendant.

Therefore, in case the witness cannot testify truthfully, public prosecutors submit the written statement of the interview after proving the existence of such special circumstances.

6. Compulsory Investigation ① – Search and Seizure

*( i ) Simultaneous seizure*

For effective search and seizure, simultaneous execution of search and seizure warrants is the best, because the more time it takes, the more risk of concealment / destruction of important evidence.

To realize effective search and seizure, the public prosecutor in charge of the case should consider:

- Where and how many places should be searched
- What kind of evidence should be seized at each place
- How many public prosecutors and assistant investigators are necessary to complete the search and seizure

If the search is not properly carried out, it will result in the failure to seize crucial evidence, and would lead to destruction of such evidence by those involved.

*( ii ) Arranging an effective search team*

In order to effectively execute a search at many sites at the same time, it is important to establish a good search team that can communicate well. Also, a good leader should be assigned who can give prompt and appropriate direction to the team. In order to allocate appropriate

persons at each site, public prosecutors in charge of the case should have a clear idea of the number of sites to be searched, their scale and locations.

Moreover, in allocating personnel, the nature and the expected situations of each site should be taken into account. For example, if a site is large, it will take a long time to complete the search and seizure. If important evidence is expected to be hidden at the site, experienced investigators should be present. If the defence attorney is expected to be present at the site, prosecutors should be present, and so forth.

Sometimes, there are too many places to search at the same time by only public prosecutors and assistant investigators from SIDs. In such cases, many prosecutors and assistant investigators in other departments or other district public prosecutors are transferred to SIDs for limited periods to enable the SIDs to achieve simultaneous searches and seizures.

*(iii) Advance briefing – for successful search and seizure*

For successful searches and seizures, appropriate advance briefing of personnel is indispensable because, as mentioned above, there are usually a few personnel who do not know the case in detail, including what evidence should be seized at each place.

The objectives of advance briefing are as follows;

- Establish a chain of command, communication network and division of roles in each unit.
- Share common information and purposes among all personnel.
- Prepare for possible emergency situations on the site and effective measures against them.
- Finalize logistical matters (time and place for gathering, departure time, transportation of persons, vehicles for conveying seized evidence, meals for persons during the search, and arrangement of locksmiths).

Advance briefing is usually held just before the search in order to maintain confidentiality. Even staff prosecutors are not informed in advance of the time and date of the briefing, or where they will search.

In most cases, the public prosecutor in charge of the case first summarizes the case and the material evidence necessary to prove the facts. After this explanation each search team has its own meeting in preparation for their search.

*(iv) Analysis of seized evidence*

After finishing the search, analysis of the seized evidence begins immediately. Thorough and swift analysis of seized evidence and sharing the result of the analysis is the key to a successful investigation. This should be done systematically. Therefore, special units for analyzing evidence are often established.

In the initial stage of analyzing evidence, several analysis teams are established based on the location of the evidence. Each team is composed of public prosecutors and assistant investigators, and one public prosecutor is assigned as the leader in each team. For example,

- Team A - in charge of evidence collected at company E
- Team B - in charge of evidence collected at the residence of President F
- Team C – in charge of evidence collected at the office of politician G
- Team D - in charge of evidence collected at the residence of politician G

Sometimes evidence is divided by the issue or the person to which evidence is supposed to have a connection. Such organization is usually used for the second analysis after the initial stage. For example:

- Team A - in charge of account ledgers collected at company E
- Team B - in charge of evidence collected from President F's desks in his residence and the desks at company E
- Team C - in charge of evidence collected at company E, excluding the above president's desk.
- Team D - in charge of evidence collected at the office and residence of politician G

Also, it is not rare that analysis of evidence and interrogating/interview of the persons concerned are conducted at the same time. In that case, the information is always being relayed to the head prosecutor who is in charge of the case; thus important information is only concentrated on one public prosecutor in charge of the case.

*( v ) Sharing information on seized evidence*

To share the results of the analysis of an extensive amount of evidence, prosecutors and assistant investigators make a database. The data is called "The list of articles of evidence". Investigators can access the data from their PCs at any time. The data includes the following matters:

- Number, name and quantity of the evidence
- Name and address of possessor
- Where discovered
- Specific contents of the evidence
- The name of the officer in charge of the analysis
- Whether or not to retain the evidence

7. Compulsory Investigation ② – Interrogation of Suspects

*( i ) Importance of interrogation of suspects*

Interrogation of suspects is very important because bribery is conducted secretly between collusive parties. So usually there are no eye-witnesses or self-explanatory physical evidence. Even if we collected much physical evidence, it is necessary to explain what it means. Therefore, confessions have vital meaning. Confessions collaborated by overwhelming physical evidence are the most credible of all.

On the other hand, even if suspects do not confess, it is very important to hear and identify the suspect's excuses. This is because public prosecutors can use the defendants' excuses against them at the trial. In this sense, whether a suspect does or does not confess, interrogation of the suspect plays an important role.

*( ii ) Procedure after arresting the suspects – public prosecutors' investigation*

When public prosecutors have a suspect arrested under an arrest warrant, the prosecutors have to request a judge to issue a detention order within 48 hours after the arrest. During these 48 hours, public prosecutors conduct brief interrogation of the suspect and confirm mainly the suspects' excuses surrounding the alleged crime.

The judge considering the detention order reviews the case and interviews the suspect directly. The judge then decides whether to detain the suspect. If the judge issues a detention order, the suspect is detained for 10 days. During those 10 days, the public prosecutor interrogates the suspect every day.

After 10 days, the prosecutor must decide whether to prosecute the suspect. The prosecutor can indict the suspect at this time. But when there is an indispensable necessity, the prosecutor may request the judge for an order to extend the detention. The detention can be extended up to 10 days. Usually, in corruption cases, detention is extended because of the complicated nature of the cases.

By the termination of the detention term, the prosecutor must decide whether to prosecute the suspect. If the prosecutor does not institute any prosecution by this deadline, the prosecutor has to release the suspect.

*(iii) Regulation on interrogation*

The suspect has a right to remain silent. Confessions must be voluntary to be admissible as evidence in court. If a suspect is compelled to confess by threat and assault by the interrogator, the confession is inadmissible. Therefore, public prosecutors pay attention to suspects' rights during interrogation.

In Japan, defence attorneys are not permitted to be present during the interrogation. However, defence attorneys have the right to access the defendant or suspect in detention. Investigators, including prosecutors, provide defence attorneys with reasonable time to meet the suspect anytime there is a request. Moreover, to ensure that the interrogation has been conducted properly, all suspect interrogations by the SID are currently video recorded.

*(iv) Credibility of confession*

When the suspect confesses, the credibility of the confession must be analyzed, taking into account various factors such as, consistency with other evidence, corroboration by objective evidence, disclosure of facts unknown to investigators, vividness and liveliness and so forth.

*(v) For effective interrogation*

Public prosecutors do not question suspects unprepared; they are armed with concrete evidence and information. For effective interrogations, careful preparations are indispensable. SID prosecutors often deal with politicians, high-ranking officials and corporate executives who are educated or trained to be accountable. So before interrogation, public prosecutors make careful and sufficient preparation for the interrogations.

Generally speaking, public prosecutors keep the following in mind when they interrogate suspects.

- Listening patiently and carefully
- Maintaining a resolute and determined attitude
- Creating an appropriate atmosphere in which to tell the truth
- Never showing prejudice
- Contemplating the best timing for showing evidence
- Thorough, persistent and timely questioning, especially when a suspect begins to confess

In addition, the timing for showing material evidence to a suspect is very important. If public prosecutors show important evidence to a suspect too early in the interrogation, the suspect has time to come up with good excuse.

### **III. WHY THERE IS NO SPECIAL AGENCY DEALING WITH CORRUPTION CASES IN JAPAN**

#### **1. Integrity of Police**

In Japan, the police maintain integrity and public confidence. In 2012, the total number of police officers was 293,588, and 458 police officers out of 293,588 were subject to disciplinary procedures. Most of those conduct resulting in discipline involved theft, misbehaviour under the influence of alcohol, inappropriate relations with the opposite sex, and loss of public money or criminal evidence. Of course the police are not entirely free of corruption, and there are corruption cases committed by police officers; however, the number is very small.

All 47 prefectural police in Japan have in their headquarters a division specializing in investigation of corruption with well-trained detectives, and they eagerly pursue corrupt officials. Japanese police enjoy high confidence from the citizens for their discipline and their investigative ability.

#### **2. Independence of Public Prosecutors**

Public prosecutors' political independence has been highly regarded. Public prosecutors' positions are secured by law. No arbitrary dismissal, suspension, or reduction of salary can be made. In regard to the investigation and disposition of individual cases, the Minister of Justice can control only the Prosecutor General, not each prosecutor, directly. For example, the Minister cannot directly interfere with prosecutors in charge of individual investigations and prosecutions.

Accordingly, it is said that this power of the Minister of Justice has been used only once in more than 60 years since its inception. In April 1954, when Public Prosecutors were investigating a big bribery case involving several high-ranking politicians and trying to arrest the Secretary-General of the majority party, the Minister of Justice, who belonged to the same party, ordered the Prosecutor-General to stop the arrest. Consequently, it led to termination of the investigation. However, since it produced severe criticism from the public through the mass media, the Minister himself resigned the next day, and the strong criticism of opposition parties backed by the media and the general public forced the whole cabinet to resign by the end of the year.

As you can see, in addition to prosecutorial independence, a strong opposition party in Parliament, active mass media and public confidence in the prosecution service all support anti-corruption efforts. Japanese prosecutors can investigate and prosecute central political figures with the highest degree of independence.

### **IV. CONCLUSION**

The following are recommendations of some important points for successful investigation of corruption cases.

- Impartiality, integrity and independence of investigative authorities

- Well-organized investigation
- Prominent leaders and investigators with experience and expertise
- Thorough search and seizure and analysis of physical evidence
- Building good relationships with key witnesses
- Thorough interrogation of suspects
- Confidentiality

Corruption offenders use various methods to tamper with evidence, and prosecuting corruption cases is a significant challenge; however, in Japan, the police and public prosecutors, especially those in SIDs, always endeavor to discover corruption and prosecute the offenders by means of intensive investigation.

## ENHANCING INVESTIGATIVE ABILITY IN CORRPTION CASES

*Phongsavanh Phommahaxay\**

It is my great honor and pleasure to participate in this seminar on enhancing investigative ability in corruption cases, held by UNAFEI in Kuala Lumpur, Malaysia. On behalf of the Government Inspection Authority of Lao PDR, I would like to take this opportunity to express my deepest, sincere thanks to the Malaysian Anti-corruption Academy and especially UNAFEI for the invitation and for their great support for our participation in this important event.

### I. INTRODUCTION

Corruption is a widespread phenomenon across the world, in both developed and developing countries. Corruption results in serious and social concern, it erodes the rule of law; undermines good governance; hampers economic growth; inhibits the enjoyment of property; impinges upon competitive and fair business conditions, and, undermines democracy and human rights. Fighting and eliminating corruption is a very necessary, difficult and complex process. Fighting corruption requires determination and persistence from political leadership; support from citizens; and co-operation and support from the region, international community and international organizations. Corruption became and is becoming harmful to the stability and security of each country. It is a problem that countries and international organizations must fight together.

Lao P.D.R is in particular experiencing the harm of corruption occurring at different levels and in many areas of activity such as in public management, in investment on infrastructure construction, use of governmental fund properties, collecting tax and duties for the public treasury, abuse function and position by public officers-civil servants, accepting and giving bribes, etc., including in 12 behaviors of corruption under identified law of anti-corruption of Lao P.D.R. The corruption could not fully ensure the quality of various investment projects. It becomes an obstacle for development missions of the country, affects negatively the public governance and administration, as well as obstructs and slows the growth of our Lao People's Democratic Republic.

Due to danger of the said corruption, investigating corruption cases is a difficult and complex process so the government of Lao PDR puts importance and is very attentive to obstruct and fight against corruption.

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## **II. ISSUING AND IMPROVEMENT OF LEGISLATION.**

Over the last several years, the National Assembly and the Lao government issued many laws to counter corruption and prevention, for example: (1) in 2005, the government issued the decree on the economy and to counter the dissipation of government assets, (2) in 2012, the National Assembly amended the law on anti-corruption by adding provisions covering the Lao population, including foreigners living in Lao PDR, and by assigning the Anti-Corruption Authority to fully investigate corruption cases and to interrogate suspects. The government also approved the strategic plan of Anti-Corruption to 2020, issued a decree on property declaration by public civil servants that will be effective from 2014, and some other legislation.

## **III. PREVENTION AND ANTI-CORRUPTION ACTIVITIES**

1. The administration authorities and the Government Inspection Authority at different levels are attentive to educating public civil servants, soldiers, policemen and villagers to grasp deeply the laws, regime regulations relating to anti-corruption, strategy and action plan for implementation of strategy until the year 2020 under various forms and methods such as: organizing seminar workshops at different levels and promoting anti-corruption efforts via the media, including the print media and others. After education, public civil servants and the general public will recognize, understand and be more conscientious of respecting the laws and regulations and will participate in the prevention of and the fight against corruption.
2. We are attentive to improving organizational structures at different levels and have regulations to manage and close the gaps causing corruption. This will make the government structure more transparent and powerful. We have also improved the benefits regime, including salaries and bonuses for civil servants, in order to respond to their necessary livelihood needs.
3. The Government Inspection and Anti-Corruption Authority at all levels ensures regular monitoring as planned under the order, request and recommendations of citizens about the performance of officials and civil servants in different sectors. Previously, the Government Inspection and Anti-Corruption Authority at the national level has collaborated with the Governmental Inspection and Anti-Corruption Authority of concerned Ministries and some Inspection Committees at the local level to realize inspection of certain targets as follows:
  - In 2007, an investigation into the timber business in Savannakhet province was done, and some government officers and private businessmen accomplices who illegally harvested 1,400 m<sup>3</sup> of prohibited timber (Nile wood) were identified. Eleven public officers were fired. An officer of the National Treasury at the Champassak affiliate and his accessory embezzled State property in the amount of more than LAK 5.1 billion, and these persons were prosecuted. In Khammouane province, a difference of 12 billion kips of the construction project's value was identified after inspection of a road construction project in one of the province's municipalities.
  - The 2010-2011 investigation of a construction project to serve the 25th SEA GAMES identified damages at a cost of more than \$US 1.5 million and many hundreds of millions of kips. In some provinces, we conducted an investigation for embezzlement

and identified damages at a cost of more than 10 billion kips that involved more than 50 government officials. Currently, we are using our regulations and laws to collect these moneys on behalf of the Government.

- During 2012-2013, the national and local authorities inspected 104 targets and identified damages amounting to more than 80 billion kips. Some of these funds were collected, and there were 472 wrongdoers. The offences included 178 embezzlements, 62 frauds, 50 briberies, 88 abuses of power, 22 cases of public officials exceeding their authority, 64 counterfeiters of documents. These wrongdoers have been prosecuted under the regulations and laws.

These investigations confirm the application of prevention and anti-corruption measures that have been implemented in Lao PDR.

#### **IV. THE GOVERNMENT INSPECTION AND ANTI-CORRUPTION AUTHORITY'S ORGANIZATIONAL STRUCTURE**

The organizational system of the Government Inspection and Anti-Corruption Authority includes:

- 1) Government Inspection and Anti-Corruption Authority;
- 2) Department of Ministerial and Organizational Inspection
- 3) Government Inspection Service at the provincial level and the Vientiane Capital Inspection Service;
- 4) Inspection Office of District, Municipality and Inspection Sections under the Provincial Service and the Vientiane capital

The roles, duties and rights of the Government Inspection and Anti-Corruption Authority at different levels are identified in the law concerning anti-corruption, the law on Government Inspection, the law on resolving complaints and other related laws.

#### **V. THE AGENCIES AND ORGANIZATIONS INVESTIGATING CORRUPTION CASES**

In Lao PDR, there are many organizations that investigate corruption cases, especially the government inspection authority, which coordinates with other investigation organization such as:

1. The investigation organization of the police
2. The investigation organization of military officers
3. The investigation organization of customs officers
4. The investigation organization of forestry officers

## 5. The investigation organization of counter-corruption organizations

Investigating corruption cases is the duty of counter-corruption organizations at the central level and provincial level, if there are reports of corruption cases at the central level, provincial level or organization sector. Each organization will inspect its own officers who engage in corrupt practices.

### **A. Counter-Corruption Organization**

The Counter-Corruption Organization is a state organization that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at the central level and state inspection authorities at the province level to implement (this task). The Counter-Corruption Organization is an investigative organization and performs its duties independently.

### **B. Rights and Duties of Investigation Officers**

The staff of each investigative organization consists of the head, deputy heads, and investigators. The head of each investigative organization has the following rights and duties:

1. To direct and lead the overall activities of the investigative organization;
2. To issue orders to open or not to open investigations, to issue orders to suspend or dismiss criminal cases, and to issue orders to detain or release any person from detention;
3. To propose to the public prosecutor to issue orders to arrest, remand, or release before sentencing any person, to extend the period for investigations, and to extend the period of remand;
4. To summarize and prepare the case file to submit to the public prosecutor for consideration after the completion of the investigation;
5. To exercise such other rights and perform such other duties as provided by law.

Each deputy head of an investigative organization has the responsibility to assist the head of the investigative organization in the implementation of activities and will be assigned to perform specific tasks as assigned by the head. When the head of the organization is engaged in other matters, the assigned deputy will act on his behalf.

Each investigative officer has the following rights and duties:

1. To receive and record complaints, reports or claims relating to offences;
2. To take testimony from the injured party, civil plaintiff, accused person, witnesses, and other concerned persons;

3. To inspect the site of the incident, to conduct “inspections of dead bod[ies]”, to conduct searches of buildings, vehicles, and persons, and to collect evidence relating to the offence;
4. To look for, arrest, and escort accused persons, according to the order of the people’s courts or public prosecutors;
5. To implement orders and to report on the status of proceedings in criminal cases to the head of the investigative organization;
6. To exercise other rights and perform other duties according to the order of the head of the investigative organization and as provided by law.

The exercise of rights and performance of duties of the staff of an investigative organization shall be carried out according to the scope of its authority as provided by law.

To ensure the exercise of the rights and the performance of the duties mentioned above, each investigative officer shall have strong political commitment, have good character, be truly faithful to the interests of the nation and the rights and interests of the people, have ethics, and have received education or training in law and in technical subjects relating to investigation.

## **VI. CORRUPT ACTS AND MEASURES FOR INVESTIGATING CORRUPTION CASES**

Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle or receive bribes or any other act provided for in Article 12 of the law, which act is committed to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and interests of citizens.

The officials stipulated in this law means leaders at all levels, administrative staff, technical staff, the staff of State enterprises, civil servants, soldiers, and police officers, including chiefs of villages and persons who are officially authorized and assigned to exercise any right or duty.

Acts that constitute corruption can take the following forms:

- Embezzlement of State property or collective property;
- Swindling of State property or collective property;
- Taking bribes;
- Abuse of position, power, or duty by taking State property, collective property or individual property;
- Abuse of State property or collective property;

- Excessive use of position, power, or duty by taking State property, collective property or individual property;
- Cheating or falsification relating to technical construction standards, designs, calculations, and others;
- Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;
- Holding back or delaying documents.

**A. Abuse of Position, Power or Duty**

Abuse of position, power or duty by taking State property, collective property or individual property is the use of one's position, power, or duty in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

**B. Excessive Use of Position, Power or Duty**

Excessive use of position, power, or duty is the intentional use of position, power, or duty beyond the scope of the authority provided by the laws and regulations in order to benefit oneself, or one's family, relatives, or clan that causes damage to the interests of the State and collectives or the rights and interests of citizens.

**C. Measures for Dealing with Corruption**

The use of measures to counter the corruption of any government employee who commits an offence relating to corruption is based on the severity of the offence. If it is a minor offence, there will be education measures and imposition of disciplinary measures; if it is a serious offence, it will be subject to legal proceedings as provided under the laws.

**D. Education Measures**

If, through the inspection, a minor offence is found, and the offender honestly reports the offence, and admits to the concerned organization that he committed the offence and returns all assets that he took away, he will be subject to education measures and a warning.

**VII. THE OUTLINE OF INVESTIGATIVE PROCEDURES**

Corruption is the act of an official who opportunistically uses his position, powers, or duties to embezzle, swindle or receive bribes. The following factors often lead to the opening of a corruption investigation:

- when firm information and evidence that an act constituting corruption has been committed is found;

- when there is a notification, submission, proposal, report, or claim regarding corruption;
- when any government employee, or husband, wife or child under the charge of such government employee, appears to be unusually rich.

**A. Case Proceedings**

If, after the inspection and investigation, there appears to be solid information and evidence, the Counter-Corruption Organization shall make a summary of the inspection result, complete the file of the case and then send it to the public prosecutor to consider bringing a prosecution in court.

In the event that the public prosecutor fails, without reason, to prosecute the case in court within 30 days from the date of receiving the case file, the counter-corruption organization has the right to submit the case to a higher-level public prosecutor to consider and deal with the issue.

**B. Order to Open an Investigation**

In the case where there is sufficient information relating to the offence of corruption, the head of the investigative organization of a counter-corruption organization, or a public prosecutor, shall issue an order to open an investigation within the scope of their respective authorities. The contents of that order shall set out the date, time, and location of the issuance of the order, the name, surname, position, and title of the issuer and the investigator, the information that is the basis for opening the investigation, the location of the offence, and the relevant article of the Penal Law.

If the investigator issues an order to open an investigation, he shall immediately report that fact to the public prosecutor. If there is insufficient information to open an investigation or there is cause for the dismissal of the criminal case, the head of the investigative organization or the public prosecutor shall issue an order not to open an investigation and shall also inform the individuals or organizations that have brought the claim or complaint of such order.

Parties on either the plaintiff's or the defendant's side can appeal to the public prosecutor against an order not to open an investigation issued by the head of an investigative organization. Parties on either the plaintiff's or the defendant's side can appeal to a higher-level public prosecutor if such order not to open an investigation is issued by the public prosecutor within seven days from the day they have been informed of such order.

Types of investigative measures are:

- Taking testimony;
- Questioning, interviewing and interrogating;
- Inspection of the incident site;
- Inspection of bodies;

- Search of buildings, vehicles, or persons;
- Seizure and sequestration of assets;
- Re-enactment;
- Identification and confirmation.

First, when an inspection official receives a report of corruption, the inspection official will summarize the information for the head of the relevant anti-corruption agency to consider. If the head of the anti-corruption agency agrees with the report and authorizes an inspection, the inspection official will conduct inspections in accordance with the procedures specified by law. If the inspection reveals firm evidence, we will conduct an investigation and coordinate the investigative police handling the corruption case.

### **VIII. PROBLEMS OF INVESTIGATING CORRUPTION CASES**

- Legislation on inspection, investigation of corruption cases and anti-corruption operations remains insufficient, and we need to continue to take more legislative action. The existing laws are not rigorous enough, and the practice is equally insufficient.
- The conscience of civil servants and citizens regarding regulation and law compliance, as well as their practice of discipline, are not really serious. In practice, some leaders and many administration authorities violate the laws and regulations.
- Inefficiencies in government organizational structure, mass organizations and the roles of civil servants remain one of the problems that must be actively solved, especially in terms of the delay of the performance of duties, incoherence of anti-corruption regulation, non-transparency in the performance of some officials' duties and other issues causing a negative image of leadership and governance.
- Within our Inspection Authority, despite our effort to amend, we still have many difficulties, such as, in reality, we are the sole authority with many responsibilities, a limited number of staff, budget and other conditions to ensure adequate performance; limited training and experience on government inspection, investigation of corruption cases and anti-corruption efforts, and other difficulties that we need to successively and actively improve.

### **IX. SOLUTIONS TO INVESTIGATING CORRUPTION CASES AND IMPROVING ANTI-CORRUPTION EFFORTS IN LAO PDR**

1. Continue to strengthen political and conceptual education, build awareness, build consciousness on respect for the rule of law and provide good recognition and understanding about prevention and anti-corruption.
2. Consider, disseminate and implement deeply and entirely different legislation relating to prevention and anti-corruption, and apply them in all sectors of society.

3. Consider the amendment of prevention and anti-corruption legislation already in use but underutilized. At the same time, we could consider the creation of new rigorous and coherent legislation, and coherent with international treaties to which Laos is a member, build regulatory mechanisms and conditions allowing the public and all citizens to become involved in prevention and anti-corruption.
4. Improve and strengthen organizations and officials working on corruption investigations, in particular their roles, duties, rights frameworks, mechanisms, regimes and procedures of activities practiced by the Government Inspection and Anti-Corruption Authority; train and upgrade their degrees, professional skills and capacities, behaviour, professional consciences of the staff working on corruption investigations at the central level and provincial level.
5. Continue to strengthen relationships, collaboration and exchange experiences on corruption investigations and anti-corruption activities with friendly countries and importantly the member countries of SEA-PAC, and regional and international organizations
6. Strengthen the responsibilities of the government, administration authorities at all levels for the inspection, investigation of corruption cases and anti-corruption efforts. Once the corrupt behaviours are identified, we must respond rigorously, absolutely and on time as determined under the law.
7. The governmental organizations, private sector and citizens must be actively responsible to participate strongly and efficiently in inspection, investigation of corruption cases, prevention and anti-corruption activities by prioritizing prevention.

## **X. CONCLUSION**

Lao PDR has laws and procedures for investigating corruption cases, but coordination between government inspection authority and each investigative organization is poor. Furthermore, reporting of corruption cases by citizens and other organizations to the State is low. Therefore, I would like to learn about the experiences of each participant in order to enhance investigation at my organization.

# MALAYSIA: EFFECTIVE INVESTIGATION MANAGEMENT

*Premraj Victor\**

## I. INTRODUCTION

The Malaysian Anti-Corruption Commission (MACC) is progressively moving towards a greater degree of professionalism and transparency in the field of investigation. After years of combating corruption through conventional ways and techniques of investigation, the MACC has embarked on a model known as the Effective Investigation Management (EIM) Model. This model is an overhaul of the way we perform our duties and tasks. The MACC believes that this is the way forward to enhance our ability to investigate corruption cases.

## II. EFFECTIVE INVESTIGATION MANAGEMENT

The EIM model was created after much study and research to see how the investigation process could be effectively carried out to render the desired efficacy. This model incorporates some best practices that have been used in some of the branches in the organization. The EIM Model is now deployed in the day-to-day operations of the MACC. The EIM is basically made up of five processes or components — the means to achieve the desired outcome. The five components are:

- (i) Quality Information & Case Analysis
- (ii) Investigation Plan
- (iii) Team-based Investigation and collaboration with other agencies
- (iv) Case Monitoring
- (v) Investigation Outcome

The underlying code of conduct in any investigation is that it should be carried out in an independent, fair and transparent manner.

### A. Quality Information and Case Analysis

The Malaysian Anti-Corruption Commission (MACC) receives countless reports of corrupt practices, malpractice and mischievous acts from various sources. Every morning, five top ranking officers (Commissioner's and above) will meet to discuss all reports received. This high-powered committee (Assessment Information Committee) will then make a landmark decision as to whether the MACC should proceed with the necessary action or not. This committee considers the merits, pros and cons of the information received.

Among the tasks of this committee is to study the case and see if relevant laws, rules and regulations might have been violated. A case can be seen from many angles — such as a

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simple one involving a member of the public, public interest, high profile, economic crime, syndicated crime, high impact, project based, quick response and others.

There can be no one size fits all approach. In other words, no single approach can be used for all of the above angles. Some are to be done in a proactive manner and some in a reactive manner. Some cases also should use an intelligence methodology rather than an investigation methodology: (i) open investigation and (ii) pre-inspection paper. Alternatively, maybe the case is just a misunderstanding of the procedure and codes by the complainant, which warrants the complainant to seek recourse elsewhere.

With this, committee members having read and considered the complainants' grievances that were brought to the MACC's attention. This committee can also take a macro and holistic view of the current level of corruption and see other ways and means to eradicate it. This includes advising necessary ministries through official means to be vigilant on certain aspects of their operations and to redirect some legitimate complaints made by the public to the relevant authority.

## **B. Investigation Plan**

An investigation must have a plan. Without proper planning the investigation is likely to fail. In fact, the much desired outcome of charging the suspect with the crime may not come to fruition if diligent and proper planning is not carried out.

EIM is a tool kit supplying an itemized checklist to enable the Investigation Officer to prepare necessary investigation plans and procedures. If the Assessment Information Committee has instructed the Investigation Division to do a necessary task, the appropriate planning (investigation) model is used. If the Intelligence Division has been instructed to take on a task, the approach then uses an intelligence methodology.

The benefit of having an investigation plan is to forecast what necessary resources are needed to conduct the investigation. Among the resources needed are the 4M's — man, money, machine and method.

1. *Man* — besides the quantity of personnel involved, the investigation plan also looks into the "quality" of the persons needed. That is their educational discipline (law, accounting and engineering) and previous jobs (Immigration, Road Transport and others) and experiences that will benefit the investigation.

In this current time of each investigation unit clamouring for more manpower, proper planning with the aid of Gantt charts can help the Investigation Division to better utilize officers at appropriate times.

2. *Money* — Various expenses are incurred during the course of an investigation. In the plan, the budgetary aspects are also looked into. This is to ensure that enough money is provided at the onset. In any investigation, there will always be some exigencies that may require some quick expenses. By having some leeway and access to some monetary resources, quick planning and decisions can be made during the investigation process.
3. *Machine* — gone are the days when information is sent via telegrams or through a post man — where immediate interception could be made. Information (whether

good or bad) is often sent by some form of gadget or machine, right from hand held devices, like mobile phones, to desktop computers. Money is also telegraphically transmitted through the banks with a “click”. Humans perform the remittance and a machine will be the conduit.

Today’s hand-held devices (smart phones, tablets and iPads) are coupled with capacious storage, unlimited access to the internet, and they are virtually capable of functioning from every part of the globe. These devices are also protected via various passwords and access codes. Equipment to break those passwords and access codes has also been developed for official law enforcement agency usage.

In Malaysia, the MACC has a special dedicated forensics team that dissects and analyzes devices and machines that have been used to facilitate a crime. Recycle bins, caches and passwords are not safe places for criminals to hide documents.

Another factor is also logistical purposes — whereby the investigation plan must also state where the seized items are kept until the court case is over.

*Method* — the method of investigation is also looked into. For instance, when the investigation plan is being prepared, investigators must deal with a number of eventualities, like witnesses (whether local or foreign) who are currently abroad, situations in which the proceeds of the crime are located at various banks within and outside the country, or the proceeds of the crime have been used to purchase other assets. When situations such as these occur, there is a possibility that another investigation paper has to be opened to look into the possibility of freezing the account and pursuing forfeiture of the assets. At the same time, it may be necessary to look to current bilateral agreements to obtain statements from important witnesses in Malaysia or abroad.

### **C. Team-Based Investigation and Collaboration with Other Agencies**

EIM also places emphasis on conducting investigations by a team and not in a silo, or individually. This team-based approach is more effective as it blends all aspects of human capabilities to ensure effective investigation. The team of individuals works together to achieve specific goals in completing an investigation. Team-based methods of investigation in a systematic and organized manner can optimize the resources available for the investigation, leading to the successful prosecution of cases of corruption and abuse of power.

In any corruption case, the MACC sometimes cannot afford to investigate the matter by itself. Those who want to commit corruption crimes have more technical knowledge and knowhow as compared to an MACC officer, and this allows the criminals to circumvent the system. This is where “Team-Based Investigation” is not just a matter of getting an investigation branch or officers in one room, nor is it getting some bright sparks from the investigation division or the whole organization, but rather looking into and not discounting the fact that outsiders may be the missing link in solving the corruption case. Outsiders here involve members of industry, reliable sources and informants, former employees of industry and people who can assist in some way or another in the advancement of the investigation paper.

Being in the MACC service, officers are rewarded with promotions. At times, these promotions do come with relocation of officers in terms of place or division. Of course, some

dedicated officers also retire when their time comes. When work is done as a team, the whole Investigation Paper is reviewed and every team member watches the progress from birth until maturity. Therefore should an officer of the team get transferred or go on extended leave, the investigation process is not stalled.

#### **D. Case Monitoring**

Cases that are investigated are all done in a team. Investigation officers do not work in silos. These team-based investigations will not succeed if the team members are not disciplined to meet every morning and evening for a briefing session. This meeting is documented so that all instructions and latest updates are recorded.

In the evening, all members of the team will be called in for a debriefing. This is when all work done for the day will be reported and the next courses of action and strategies are planned. All problems that come along can also be resolved there.

It is also in these sessions that team members will be updated about the investigation stage. To investigate a corruption case, time is of the essence. One cannot wait for a full and whole account of one witness to be recorded before moving on to the next witness. Counterchecks and verification may need to be done simultaneously. If every officer is abreast with the latest updates and all the witness accounts, more questions can be asked to subsequent witnesses.

### **III. OUTCOME**

It was a practice in the agency (before it became the Commission) to end the investigation paper with a suggestion to charge the suspect(s) in court (more often than not in limiting to only corruption charges and some popular charges under the Penal Code) or to say that there is no case as the burden of proof is high (beyond a reasonable doubt). In the case of a government servant, there is recourse for the suspect to be hauled before an internal inquiry body, in which the inquiry would be conducted by the suspect's department. In the case of a civil servant, the suspect may be given a show cause letter and later be subjected to a disciplinary hearing, which is conducted by the suspect's department upon the report of the MACC. However, with the introduction of the EIM model, various outcomes are listed so that some form of punitive action can be taken on the suspects, and maybe on the department and on the organization.

Among the actions that can be taken against a suspect are (i) advisory letter, (ii) warning letter, (iii) disciplinary report which will lead to an internal inquiry by the relevant department, (iv) forfeiture of assets, (v) deportation of foreigners, (vi) reporting to professional bodies to have their licenses revoked or suspended upon their investigation, and (vii) referral to the Inland Revenue Board. Actions that can be taken by a department include, but are not limited to, (i) conducting system and procedure audits or (ii) requiring an Integrity Pledge. Actions that can be taken against errant companies include (i) blacklisting of companies and (ii) referring the relevant departments that tendered the bribes.

### **IV. CONCLUSION**

The five components, although separate in the process, are actually complementary to each other. If one fails, then the effect can be seen in some of the other components. The advantages of the EIM are:

1. Investigation papers are completed faster
2. Assistance in training and grooming of officers
3. Complicated cases are not so complicated anymore
4. The quality of evidence gathering and recording of statements is enhanced
5. Ensure the investigation paper comes out with a minimum recommendation
6. Individual Investigation Officer's burdens are shared

The theme of the seminar is Enhancing Investigative Ability in Corruption Cases. The Malaysian Anti-Corruption Commission's Effective Investigation Management model is the method to enhance our investigation ability in corruption cases.

# LEGAL PERSPECTIVE ON ANTI-CORRUPTION MEASURES IN MYANMAR

*Htu Htu Ngwe\**

## I. INTRODUCTION

Corruption is the most challenging governance problem afflicting many countries in the world. At the economic level, corruption, like a flooding river, can inundate a country in financial crisis. At the political level, corruption has risen to the top of national agendas because of its role in political developments. Moreover, corruption has a harmful effect on administrative performance and political and economic development in developing countries.

The consequences of corruption in a country can be minimized or reduced if its government has an effective anti-corruption strategy and implements it. The more effective anti-corruption measures are, the greater their impact on the society in terms of reducing the harmful effects and level of corruption will be. To tackle those corruption issues, Myanmar promulgated a number of laws against corruption.

## II. MYANMAR'S LAWS IN THE AREA OF CORRUPTION

Regarding domestic laws, Myanmar enacted laws before and after independence to combat corruption. They cover the respective areas prescribing offences and penalties related thereto, and laws provide provisions related to corruption and relevant penalties. These laws are the Suppression of Corruption Act, 1948; the Law for Taking Action Owning and Marketing of Properties Obtained by Unlawful Means, 1986; the Mutual Assistance in Criminal Matters Law, 2004; the Control of Money Laundering Law, 2002; the Penal Code, 1860; the Defence Services Act, 1959; the Criminal Law Amending Act, 1951; the Commercial Tax Law, 1990; the Narcotic Drugs and Psychotropic Substances Law, 1993; the Myanmar Police Force Maintenance of Discipline Law, 1995; the Fire Services Law, 1997; the Forest Law, 1995.

There is an international instrument, the United Nations Convention against Corruption (UNCAC), which entered into force in 2005. Myanmar also signed this Convention on 2 December 2005. Based on that Convention, the Anti-Corruption Law was adopted and passed in 2013 with provisions for combating corruption. I can share with you the important points of the objectives of this law, which are to eliminate bribery throughout the country, to establish clean government and good governance, and to develop the economy by attracting local and foreign investments to a business environment that operates under the rule of law and with more transparency in the administrative sector. Moreover, this law provides for the formation of the Commission; its duties and powers are listed in Chapter 3.

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\* Director, Union Attorney General's Office, Republic of the Union of Myanmar.

Regarding the duties of the Commission, Section 16 of the law provides that the duties of the Commission are forming and assigning the duties of Preliminary Scrutinizing Teams and investigation teams as necessary, directing and supervising the teams; forming work committees and working groups as necessary to implement the provisions under this law, amendment of formation and specifying the duties thereof, delegating the Commission's duties to any of the work committees and or other groups, directing and supervising the work committees and working groups; advising the President on the nomination of the Chief Investigator and nominating the Chief Investigator; in respect of revealing and investigating bribery, causing the preliminary scrutinizing teams and investigating teams to submit the reports of their findings after the completion of investigations and so on. In addition, the Commission has the power to cause the investigating team or the investigator in accordance with Section 17(g) and Section 18 to commence litigation over the corruption cases.

Chapter 4 provides for the formation of Preliminary Scrutinizing Teams to investigate unexplained wealth, including money and properties received due to becoming rich by bribery. Chapter 5 provides the formation of the Enquiry Committee and provides the duties thereof. Sections 38, 39 and 40 are important as they are about the duties and powers of the Chief Investigator. According to Section 38, the Chief Investigator shall be responsible for the Commission and shall carry out his duties under the guideline of the Commission. Then, he must submit the report to the Commission according to Section 40. Moreover, Section 41 of the law sets out the duties, powers and exemptions for the investigator.

### **III. CONCLUSION**

Taking into consideration the above laws, Myanmar has legislation to combat corruption in different areas in very effective ways. In addition, Myanmar has actively participated at home and abroad in accordance with the objectives set forth in domestic laws, both in letter and spirit, and also in line with the provisions enshrined in international instruments similar to other countries the world over.

# **THE STEPS CONDUCTED BY THE INVESTIGATION OFFICERS OF THE BUREAU OF SPECIAL INVESTIGATION IN MYANMAR: FROM RECEIVING OF ENQUIRY CASES TO TRIAL**

*Thaw Win Tun\**

## **I. INTRODUCTION**

The subject I am presenting on now is about the investigation of cases by the Bureau of Special Investigation in Myanmar. This procedure consists of the time from which we accept the investigation up to the time of prosecution. In carrying out the investigation of the crime, we are bound by the law and we abide by it. This law is known as the Criminal Procedure Code, which has been in force since the British time. We are practicing under the same law to this day, and we cannot violate it. There are 46 Chapters and 565 Sections. Our procedure is as follows.

1. When the Ministry of Home Affairs appoints the Bureau of Special Investigation to investigate a case, the crime section opens an enquiry case (EC) and informs the concerned state and division of the assignment by letter. Then, the concerned state and division assigns the investigation officer with the filing of an EC.
2. After receiving the EC, the investigation officer has to draw up plan forms Nos. 1, 2, 3 and 4, and submits them to the Deputy Director. The forms then proceed to the Head Office.
3. The investigation officer has to summon the witnesses using the Criminal Procedure Code, Section 160, and according to Section 162 thereof, obtains statements from witnesses.
4. While interviewing witnesses, the investigation officer has the power to conduct searches and seizures:
  - (a) Searches of persons are conducted in accordance with Sections 51, 52 and 53.
  - (b) Searches of property are conducted by summoning the property owner in accordance with Sections 94, 95 and 96 of the Criminal Procedure Code.
  - (c) If someone refuses to be searched, the search must be conducted in accordance with Sections 102 and 103 of the Criminal Procedure Code.
5. Searched properties are to be recorded in Register No. 32.
6. If the searched property will be easily damaged, the investigation officer must apply for a judicial order in court.

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\* Deputy Director, Bureau of Special Investigation, Ministry of Home Affairs, Myanmar.

7. If the searched property requires an expert opinion in accordance with Sections 45, 46 and 47 of the Criminal Procedure Code:
  - (a) For documents, the opinion of handwriting experts.
  - (b) For fingerprints, the opinion of fingerprint experts.
  - (c) For guns or ammunition, the opinion of weapons experts.
  - (d) For blood, poison, acid, or strands of hair, the opinion of chemical experts.
  - (e) For classification of age, gender or inspection of a corpse, the opinion of a doctor.
  - (f) For machines and instruments, the opinion of a mechanic.
8. If a witness is being deposed, the investigation officer must obey Section 164 of the Criminal Procedure Code.
9. If the accused is arrested, the investigation officer must depose the witness according to Sections 164 and 364. If the accused is asking for proof, the investigation officer must follow Section 339 of the Criminal Procedure Code.
10. The investigation officer has to submit the list of seized property and witness statements by submitting a report to the Deputy Director, which then proceeds to the Head Office.
11. The crime section has to submit the report to the legal section for a legal opinion.
12. According to the legal opinion of the legal section, the crime section has to ask the legal section as follows:
  - (a) If a sanction is needed concerning the law, the legal section may approve the applicable legal sanction.
  - (b) If the sanction is needed concerning a person, the legal sanction must be approved by the Department Head of that person.
13. The crime section has to apply for the permission of sending up that case to the Ministry of Home Affairs; the permission from the state and division has to inform for sending up that case to the court to the investigation officer for sending up to the court.
14. In accordance with the instruction of the Head Office, the investigation officer has to arrest the accused in accordance with Sections 61 and 167 of the Criminal Procedure Code.
15. After arresting the accused, the investigation officer has to prepare an FIR according to Section 154 of the Criminal Procedure Code and refers the case to the court according to Section 170 of the Criminal Procedure Code. When sending a case to the court, the investigation officer has to forward the accused, evidence, documents, unmovable properties and movable properties to the court.

## **II. CONCLUSION**

So, now I would like to conclude my presentation. Thank you for your attention and your precious time. I hope you all have a deeper understanding of the investigation of corruption cases in Myanmar. Thank you very much again

# INVESTIGATIVE PRACTICE IN IMMIGRATION CORRUPTION CASES IN THE PHILIPPINES

*ASP Niven R. Canlapan\**

## I. IMMIGRATION CORRUPTION IN THE PHILIPPINES

There are several immigration laws in the Philippines, like the Citizenship Retention and Re-acquisition Act of 2003 or Republic Act No. 9225, the Administrative Naturalization Law of 2000 or Republic Act No. 9139, and it is the Bureau of Immigration (BI) that has the power by virtue of the Administrative Code of 1987 to effect the enforcement of these laws.

There are two kinds of activities at the Bureau of Immigration: the supervision of immigration into and emigration from the Philippines and the granting of visas to aliens. Through the years there have been reports of corruption being done by certain personnel from the BI. This paper will focus on the investigation practices involving the illicit departure of criminals as well as undocumented Filipino workers and the entry of criminals into the Philippines. According to the National Bureau of Investigation, Anti Graft Division (AGD), someone wanting to enter the Philippines can pay immigration personnel a price ranging from Php. 50,000.00 to Php. 1 million depending on the nature of the case and the personality involved while a person wanting to leave the Philippines will pay a price ranging from Php. 10, 000.00 to Php. 300,000.00.

### A. Government Response

Our government enacted approaches to combat this corruption, which are divided into three, namely:

- Preventive Approach: these are schemes that give public officers no room or opportunity to commit graft and corruption (i.e., internal agency policies designed to safeguard government funds, property, wealth, assets, and resources.)
- Punitive Approach: Designed to punish corrupt officials to serve as examples.
- Public censure through the use of media<sup>1</sup>.

Several laws also were enacted by Congress to minimize if not stop corruption in the BI, like the Anti-Trafficking in Persons Act of 2003 or R.A. No. 9208 and Republic Act No. 9160, otherwise known as The Anti-Money Laundering Act of 2001, which gives authorities additional tools in detecting corruption at the BI.

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\* Assistant State Prosecutor, Department of Justice, Philippines.

<sup>1</sup> Source: National Bureau of Investigation, Anti Graft Division (AGD)

1. Methods Used

The methods used in preventing corruption are either lifestyle checks or intelligence gathering. The methods used in investigating an immigration corruption case are usually done by the use of:

- Interview of complainants and taking of sworn complainants
- Review of physical evidence, like, CCTV footage, airline tickets, etc.
- Paper trail investigation
- Lifestyle check, and
- Interview of witnesses to the crime.

(i) *Lifestyle Check Investigation*

Lifestyle Check Investigation has been defined as a discreet/covert investigation to determine whether the lifestyle of a government official or employee is within his/her lawful means. Its objective is to discover the location and kinds of properties of the person who is the subject of investigation, including the places frequented and his hobbies in order to know whether or not he is living within the standards allowable by law. It may not be confined to the person himself/herself but also to the members of his family and his friends.<sup>2</sup>

Its purpose is to determine whether the income, property, assets, and the standard of living of the government official or employee are within the allowable lawful means or are proportionate to his lawful income, and the result of the lifestyle check may be used as evidence in filing criminal charges against the public official/employee.<sup>3</sup>

The steps in conducting lifestyle checks are<sup>4</sup>:

1. Know your Subject:  
Personal Circumstances (name, age, sex, marital status, residential address, names of parents, names of brothers and sisters, names of children, other addresses, his position, item, rank or designation in the agency, and his salary grade)
2. Determine the unlawful acts that he could possibly be involved with (i.e., accepting bribes or kickbacks, malversation (i.e., conversion) of public funds)
3. Locate his/her property, assets, and liabilities;

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<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

4. Try to assess the value of his/her property;
5. Determine whether his source of income is lawful or unlawful;
6. Know his/her hobbies or pastime activities (fond of jewelry collections, going to casinos, club memberships, known womanizer);
7. Compare the increase in his/her yearly income as shown by his/her Statement of Assets, Liabilities and Net Worth;
8. Know his/her immediate family relatives and friends;
9. Discover if he/she has titled his/her real estate or other property in the names of his/her friends or immediate family members;
10. Conduct surveillance and take photographs and videos if practicable;
11. Make a comparative analysis of the official/employee's assets, liabilities, net worth, and income starting from the time that he/she started committing the unlawful acts.

*(ii) Acquisition of Witnesses*

Witnesses are very important for a case build up and prosecution in the Philippines. In my experience, we rely so heavily on witnesses that there is about a 90% probability of a case being dismissed without them. They form part of the testimonial evidence subject to the usual rules on qualification<sup>5</sup> and disqualification of witnesses.<sup>6</sup>

In order to convince ordinary witnesses to come out and make a strong case, we have a Witness Protection Program (WPP) designed to provide protection, housing, and eventual relocation of the said witnesses. More often than not, a co-accused becomes a state witness but Philippine laws require that he must be discharged as an accused to become a state witness.

The Rules for the effective discharge of an accused are:

*Sec. 17. Discharge of accused to be state witness.* – When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

- (a) There is absolute necessity for the testimony of the accused whose discharge is requested;
- (b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

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<sup>5</sup> Source: Sec. 20 of the Rules of Court of the Philippines.

<sup>6</sup> Source: Sec. 21, 22 and 24 of the Rules of Court of the Philippines.

- (c) The testimony of said accused can be substantially corroborated in its material points;
- (d) Said accused does not appear to be the most guilty; and
- (e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence.<sup>7</sup>

The certification of admission into the WPP shall be given full faith and credit by the Provincial or City Prosecutor concerned. Admission into the WPP shall entitle such State witness to immunity from criminal prosecution for the offense or offenses in which his testimony will be given or used and all the rights and benefits.<sup>8</sup>

## 2. The Role of the Prosecution

After all the pieces of evidence are gathered by the investigative arm of the government, which is either the Philippine National Police (PNP) or the National Bureau of Investigation (NBI), the investigative agency concerned forwards their findings to the Office of the Prosecutor General (OPG) or the Office of the Ombudsman (OMB), where all the evidence gathered are evaluated and the corresponding case is filed in court.

### **B. Case Study<sup>9</sup>**

On February 8, 2012, the Fugitive Search Unit (FSU) of the Bureau of Immigration (BI) received a letter from the Korean Embassy requesting assistance relative to the “arrest and deportation” of LEE SOJU, a Korean national wanted for fraud by the Busan District Court. The FSU was further informed that LEE’s Passport was cancelled by the Ministry of Foreign Affairs and Trade and he was the subject of the Interpol Red Notice.

The BI’s Centralized Query Support System (CQSS) revealed that on January 13, 2012, LEE arrived as a tourist in the Philippines and was authorized to stay for twenty-one (21) days. On January 20, 2012, he applied for a Special Study Permit (SSP) and was issued an ACR I-Card valid until January 30, 2013. The Visa Extension Office and CQSS-Visa Issuance Made Simple (CQSS-VIMS) disclosed that on April 12, 2012, he also applied for extension as a temporary visitor and was allowed to stay until May 12, 2012. There was no record of his departure from the country.

In view of the letter from the Korean Embassy, the FSU recommended to the Commissioner the cancellation of LEE’s SSP and ACR I-Card, inclusion of his name on the Blacklist and initiation of deportation proceedings against him. On the same date, Atty. Jose endorsed to Atty. Reyes, Chief, Law and Investigation Division (LID), the case folder of LEE, with the following recommendations: (a) cancellation of the SSP and ACR I-Card, and (b)

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<sup>7</sup> Section 17 of Rule 119 of the Revised Rules of Court of the Philippines.

<sup>8</sup> Source: Sec. 12, Republic Act No. 6981.

<sup>9</sup> Taken from an actual case, with the names and certain details changes so as to respect the rights of the accused, iS No. XVI-INV-13G- 00217.

initiation of deportation proceedings against him, pursuant to applicable immigration rules and procedures, and eventual issuance of a Warrant of Deportation.

On May 31, 2012, Atty. Reyes received said endorsement, with LEE's summary of information, clearances, and letter from the Korean Embassy informing BI of the cancellation of his Korean passport. On said date, Atty. Reyes assigned the case to Atty. Jose, who prepared the charge sheet and watchlist. On June 6, 2012, Atty. Jose prepared the Summary Deportation Order (SDO) and forwarded it to the Board of Commissioners.

On June 29, 2012, LEE's application for Section 9(g) visa (employment visa) was electronically raffled to Atty. Jose. On July 3, 2012, he received LEE's application and conducted the hearing the following day. On July 9, 2012, Atty. Jose recommended the approval of the Section 9(g) visa to Atty. Reyes.

On July 12, 2012, the Board of Commissioners (BOC) ordered the issuance of a Warrant of Deportation against LEE and his inclusion on the BI's Blacklist; and at the same time granted the conversion of LEE's admission status from a Temporary Visitor's Visa to a Pre-Arranged Employment Visa under Section 9(g) of the Philippine Immigration Act of 1940.

On February 13, 2013, the Board of Commissioners issued an Order cancelling the Section 9(g) visa of LEE on the ground that he was a fugitive from justice.

On March 22, 2013, the BI received information from the Korean Embassy that on March 19, 2013, LEE was arrested in South Korea. The closed circuit television (CCTV) footage recorded by the BI and Manila International Airport Authority (MIAA) revealed that Ms. Fernando, Immigration Officer, was in the same counter where LEE passed through. Further, the BI departure stamp on his boarding pass confirmed that Ms. Fernando processed his travel documents. John Cruz, personnel of the Office of Transportation Security (OTS) also appeared to be escorting LEE.

An investigative body was organized by the Department of Justice (DOJ) which submitted a report that found respondents Atty. Reyes, Atty. Jose, Ms. Fernando, and John Cruz guilty of graft and corruption.

1. Findings at the Investigative Hearing

All were found liable for graft and corruption. The evidence showed that there was a conspiracy on the part of the accused to commit the crime. The testimony of Ms. Fernando, who testified as a state witness, was vital. She was able to explain who, what, how and when the crime was planned and consummated.

## TRACING CORRUPTION PROCEEDS IN THE PHILIPPINES THROUGH LIFESTYLE CHECKS

*Atty. Maria Melinda S. Mananghaya-Henson\**

### I. INTRODUCTION

In the words of a former Ombudsman, “fighting corruption in the Philippines is like trying to kill an elephant with a flyswatter.”<sup>1</sup> Particularly with the recent reports of rampant legislative and judicial corruption in the country, a difficult challenge of combating corruption lies ahead of us.

The reasons are quite obvious. First, corruption investigation means going after powerful and influential officials of the national and local government. There is a risk that evidence may be suppressed. There is, likewise, an inherent hazard in the safety and security of those mandated to do the job. Second, corruption is generally a victimless crime. Corrupt officials steal from the government coffers. Oftentimes, the general public to whom the officials should have been accountable are unaware that corrupt activities transpire. Finally, the only people who may be fully aware and knowledgeable of corruption are the same people who have committed the same and are, somehow, involved in its commission. This makes corruption difficult to trace and discover.

In the Philippines, one of the modes of proving whether a public official has been involved in corruption and of tracing its proceeds is through the conduct of “lifestyle checks” or “lifestyle investigations”. Lifestyle checks are an investigation strategy developed by anti-corruption agencies in the Philippines to determine the existence of ill-gotten and unexplained wealth of officials and employees of the government.

Generally, a public official commits corruption-related crimes and offences for the purpose of personal gain. Such gain is converted into assets or manifested by a change in lifestyle. Hence, in order to trace where the proceeds of corruption are directed to, there is a need to check the change in the lifestyle of a public official and his accumulation of assets during his incumbency.

Considering that the accumulation of unexplained wealth is usually the end goal of corruption and that conducting lifestyle checks entails the employment of all investigative techniques and practices in the Philippines, it, therefore, mirrors corruption investigation in the Philippines as a whole.

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\* Graft Investigation and Prosecution Officer II, Acting Head, Field Investigation Unit, Office of the Deputy Ombudsman for Luzon, Office of the Ombudsman, Philippines.

<sup>1</sup>Former Ombudsman Simeon V. Marcelo, as cited by Emil P. Bolongaita. *A Crisis that Should Not Go to Waste*. <<http://www.rappler.com>> (accessed 10/31/2013).

## II. HISTORICAL BACKGROUND

Lifestyle checks, as a tool in tracing corruption proceeds, began in 2003. On March 20, 2003, a Memorandum of Understanding was signed creating the “Lifestyle Check Coalition.” The coalition pools the expertise, resources and manpower of its members in identifying leads, gathering information and prosecuting accused public officials. The public provides the information, while the intelligence-gathering units of the coalition (e.g., National Bureau of Investigation (NBI) and Intelligence Service of the Armed Forces of the Philippines) investigate suspected officials. The findings are forwarded to other member units for evaluation and confirmation. Along this line, lifestyle checks and anti-graft units were formed in six agencies (i.e., the Department of Finance, Department of Agrarian Reform, Department of Health, Department of Public Works and Highways (DPWH), Department of Environment and Natural Resources and Department of Education (DepEd))<sup>2</sup>.

The Office of the Ombudsman (OMB), the Civil Service Commission (CSC), and the Presidential Anti-Graft Commission (PAGC), and the heads of agencies as the primary disciplining authority, cooperate in handling the administrative aspect of the lifestyle check process, specifically in determining the administrative culpability, if any, of the officials involved, and imposing the appropriate administrative sanctions. On the other hand, the OMB handles the criminal aspect of the lifestyle-check process, specifically in filing the appropriate cases in court and prosecuting officials who failed the lifestyle check.<sup>3</sup>

However, the number of personnel mandated to do the task is insufficient. Studies show that during the period when the lifestyle check was launched as a tool in tracing corruption proceeds, the OMB had only 37 field investigators for a bureaucracy of approximately 1,500,000 public officials and employees, making a ratio of one (1) investigator for every 17,241 members of the bureaucracy.<sup>4</sup>

Considering this limitation in manpower resources, the lifestyle investigations of the OMB were focused only on the following agencies: the Bureau of Internal Revenue (BIR), the Bureau of Customs (BOC), and the Department of Public Works and Highways (DPWH).

In 2004, the OMB reorganized and rationalized its fact-finding and intelligence operations by constituting the Field Investigation Office (FIO), which was designated as the investigative arm of the office and the implementing unit of the lifestyle check project. Using as a pattern Hong Kong’s Independent Commission Against Corruption, the OMB recruited fresh college graduates from diverse academic backgrounds as field investigators. Towards the end of 2004, the OMB had already increased the number of its field investigators to 93.<sup>5</sup>

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<sup>2</sup><<http://www.neda.gov.ph/ads/mtpdp/MTPDP2004-2010>>.

<sup>3</sup>Ibid.

<sup>4</sup>Simeon V. Marcelo, *Investigating Corruption in the Philippines: A Former Tanodbayan’s Experience*. Delivered during the 12th Regional Seminar of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific held in Dili, Timor-Leste on 24-25 July, 2013.

<sup>5</sup> Ibid.

The field investigators were given extensive training courses by local and foreign experts on evidence-gathering and field investigation, including intelligence operations.

By the time the field investigators had completed their advanced field investigation courses in 2006, they had already uncovered and recommended the forfeiture of suspected ill-gotten assets with a total estimated value of One Billion Two Hundred Million Pesos (Php1,200,000,000.00).

### **III. LEGAL FRAMEWORK**

Lifestyle checks are anchored on the constitutional principle that public office is a public trust and that public officers and employees must at all times be accountable to the people, and most of all, lead modest lives.<sup>6</sup>

Likewise, the Code of Conduct and Ethical Standards for Public Officials and Employees<sup>7</sup> mandates that simple living should be a norm of conduct. Accordingly, public officials and employees should lead lives appropriate to their positions and income and not indulge in extravagant and ostentatious display of wealth in any form.<sup>8</sup>

There is also a law governing the forfeiture of unlawfully acquired assets – Republic Act. No. 1379.<sup>9</sup> Under Section 2 of the statute,

Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired.

The same law provides the required information for a petition for forfeiture of unlawfully acquired assets, to wit:

1. the name and address of the respondent;
2. the public officer or employment he holds and such other public offices or employment which he has previously held;
3. the approximate amount of property he has acquired during his incumbency in his past and present offices and employments;
4. a description of said property, or such thereof as has been identified by the Solicitor General.

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<sup>6</sup>Article XI, 1987 Philippine Constitution.

<sup>7</sup>Republic Act No. 6713.

<sup>8</sup>Section 4(A)(h), Republic Act No. 6713.

<sup>9</sup>An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing the Proceedings Therefor.

5. the total amount of his government salary and other proper earnings and incomes from legitimately acquired property; and
6. such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.

This required information also becomes the groundwork for conducting lifestyle checks.

#### **IV. PROCESS FLOW**

##### **A. Case Initiation**

Lifestyle investigations proceed from complaints, in any form, intelligence information, and reports from the media. At present, the agency which primarily conducts lifestyle checks is the OMB.

The OMB derives its power to conduct lifestyle checks from its mandate to “investigate on its own, or on complaint by any person, any act or omission of any public official employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.”<sup>10</sup>

As a mechanism for reporting possible accumulation of unexplained wealth, the OMB launched the Ombudsman Lifestyle Check Hotline (OMB LSC Hotline) in 2006. The OMB LSC Hotline opens the line of communication to encourage the public to report incidents of corruption, especially of ill-gotten or unexplained wealth of government officials and employees.

##### **B. Case Evaluation**

As in other corruption cases, the first task of the investigator is to evaluate the information or complaint. Case evaluation involves a two-step process: 1) determining whether the investigation should proceed; and 2) if so, determining how to proceed with it.<sup>11</sup>

Field investigators use two tools for case evaluation and planning — the Evaluation Action Slip and the Investigative Plan of Action.

The Evaluation Action Slip takes into account the following information, among others:

1. whether the public officer involved is low ranking or high ranking, since the law mandates the OMB to give priority to cases involving high-ranking officers;<sup>12</sup>
2. whether the allegations constitute violations of other existing laws;
3. whether the allegations include verifiable leads; and

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<sup>10</sup>Section 13(1), Article XI of the 1987 Philippine Constitution.

<sup>11</sup>Ombudsman Desk Reference.

<sup>12</sup>Republic Act 6770, Section 15 provides: “The Ombudsman shall give priority to complaints filed against high ranking government officials ....”

4. whether there is already a pending case involving the same public official.<sup>13</sup>

After evaluation of the complaint, field investigators prepare an Investigative Plan of Action, which indicates what evidence is needed, and where, when, how, and from whom can the evidence be secured.

### C. Proper Investigation

In lifestyle investigations, the evidence may either be documentary or testimonial. Documentary evidence is usually secured through the issuance of legal processes – *Subpoena Duces Tecum* and letter requests.

The power of the OMB to issue *Subpoena Duces Tecum* is anchored on the provisions of Section 15(8) of the Ombudsman Act of 1989<sup>14</sup>, which states:

**Section 15. Powers, Functions and Duties.** — The Office of the Ombudsman shall have the following powers, functions and duties:

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

The same statute empowers the OMB to seek assistance from other government agencies in the conduct of its investigations, thus:

5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

Further, OMB utilizes Mutual Legal Assistance Treaties (MLATs) in securing documents from other countries.

With respect to testimonial evidence or investigative leads from human sources, investigators may either conduct interviews or elicitation. Sworn statements may also be taken following the issuance of *Subpoena Ad Testificandum*.

When conducting interviews, investigators currently employ two approaches: 1) the traditional approach; and 2) non-confrontational approach.

The traditional approach, otherwise known as the “good-cop-bad-cop approach”, is done by capitalizing on the stress of the human source or interviewee in order to obtain the needed information. On the other hand, the non-confrontational approach is done by taking the role of a mediator-negotiator thereby minimizing the stress or fear of the interviewee.<sup>15</sup> While the good-

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<sup>13</sup>This is determined to avoid duplicity of action.

<sup>14</sup>Republic Act No. 6770.

<sup>15</sup>Lectures on Investigative Interviewing, Specialized Training Enhancement Program, sponsored by the British Embassy.

cop-bad-cop approach is traditional and out-of-date, investigators still find the same useful in extracting information from human sources.

Aside from the techniques for securing documents and testimony, investigators also conduct ocular inspection and surveillance. In conducting inspection, the goal of the investigator is, usually, to take photos of property, particularly real property and motor vehicles of the public officials. Surveillance, on the other hand, is conducted to observe the lifestyle of public officials.

#### **D. Reporting**

After conducting the investigation, investigators prepare an Investigation Report recommending either: 1) closure and termination of the investigation or 2) filing of formal criminal and administrative charges against the public official.

### **V. SOURCES OF INFORMATION**

In conducting lifestyle checks or validating whether a public official has accumulated unexplained wealth, Ombudsman investigators explore the following aspects: 1) personnel information or records; 2) property records; 3) business and income records; 4) expenditure records; 5) records of liabilities.

#### **A. Personnel Records**

The personnel records of a public official are called “201 Files”. These include the Personal Data Sheet, Service Record, Appointment Paper, Oath of Office, and Position Description Form. These documents are sources of information for the public official’s address, his or her family members, and other information on his or her possible personal connections. Likewise, the 201 Files provide the record of employment of the public official, particularly the period he has spent in government service.

Investigators secure personnel records from the following sources:

1. The human resources department of the concerned agency;
2. Civil Service Commission, for appointive officials;
3. Commission on Elections, for elective officials; and
4. Local Government Operations Offices, for local elective officials.

#### **B. Property Records**

The primary source of information on the property and other assets of public officials is the Statement of Assets, Liabilities, and Net Worth (SALN). Public officials and employees are mandated under the law to file their SALN within 30 days after assumption of office, on or before April 30 of every year thereafter, and within 30 days after separation from the service.

Sections 7 and 9 of the Anti-Graft and Corrupt Practices Act<sup>16</sup> state:

**“Section 7. Statement of Assets and Liabilities.** – Every public officer, within thirty days after assuming office and, thereafter, . . . as well as upon the expiration of his term or office, or upon his resignation or separation from office, shall prepare and file . . . a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year . . .

. . .

**Section 9. Penalties for violations.** – . . .

(b) Any public officer violating any of the provisions of Section 7 of this act shall be punished by a fine of not less than one thousand pesos nor more than five thousand pesos or by imprisonment not exceeding one year and six months, or by both such fine and imprisonment, at the discretion of the Court. . . .”

Further, Sections 8 and 11 of the Code of Conduct and Ethical Standards for Public Officials and Employees provide:

**“Section 8. Statements and Disclosure.** – Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households. . . .

. . .

**“Section 11. Penalties.** – (a). . . violations of Sections 7, 8, or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him. . . .”

The SALN contains information about a public official or employee, his spouse and unmarried children under 18 living in their household, as to the following:

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<sup>16</sup>Republic Act No. 3019.

1. real property, including improvements, date and cost of acquisition, assessed value, and current fair market value;
2. personal property, date and cost of acquisition;
3. investments, cash-on-hand, cash-in-bank, and other assets;
4. liabilities;
5. businesses and financial connections.<sup>17</sup>

After extracting information from the SALN as to the possible locations of real property of the public official and his or her other property and investments, investigators proceed to verify the information from other sources. Validation from other sources is a means not only to check the truth and accuracy of the declaration in the SALN; it is likewise a way to discover whether the public official fails to declare other property and investments.

As to the real property, investigators obtain information from the following sources:

1. Local Assessors Offices (Provincial, City, or Municipal), which provide the Tax Declaration, Location, and Vicinity Map of the real property declared under the name of the public official and his or her family members;
2. Land Registration Authority or the Local Register of Deeds, which provide the Original or Transfer Certificates of Title and the documents evidencing the transfer of ownership or mode of acquisition of the real property;
3. Local Building Officials, which provide the cost estimates of any building or improvements constructed on the real property.

With respect to the motor vehicles of public officials, records of the same are obtained from the Land Transportation Office (LTO), which provide the make, model, and plate numbers of the motor vehicles registered under the names of particular persons. In addition, the LTO District Offices provide the registration documents and the documents evidencing the mode and cost of acquisition of the motor vehicles.

### **C. Business and Income Records**

The primary source of information on the income of public officials is the Certificate of Yearly Compensation, Allowances, and other Benefits which may be provided by the Accounting Office of the public official's agency.

In addition, records from the Bureau of Internal Revenue are secured particularly to determine whether the public official and his or her family members have other legitimate sources of income.

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<sup>17</sup>Ombudsman Desk Reference.

As to the information on the business interests of the public official, the same may be obtained from the Securities and Exchange Commission, the Department of Trade and Industry, and the Local Business Permits and Licensing Offices. Information derived from these agencies enable the investigators to determine whether the public official has other sources of legitimate income and whether he has spent funds for starting and operating businesses.

After determination of the business interests and financial connections of the public official, income statements of the same may be secured in order to determine whether he or she could possibly derive income from the same or whether they are merely being used as dummy businesses to conceal the true source of the public official's funds.

**D. Expenditure Records**

In lifestyle checks, it is equally important to determine other expenses of the public official aside from the assets which he or she has acquired. Hence, investigators also secure documents pertaining to the public official's travels, expenses for schooling of his or her children, and other costs of living.

**E. Records of Liabilities**

To check the truthfulness and accuracy of the liabilities declared in a public official's SALN, records of loans are secured from the Government Service Insurance System (GSIS), Social Security System (SSS), and Home Mutual Development Fund or PAG-IBIG.

It should be noted that once the loan is verified, the amount of the same is treated as an additional source of income for the public official. However, the amount spent by the public official in the payment of such loans is treated as expenditure.

## **VI. METHODS OF PROOF**

A finding of unexplained wealth forms the basis for the recommendation to pursue forfeiture proceedings under the Forfeiture Law<sup>18</sup>. Two methods of proof are available to determine the existence of unexplained wealth — the Net Worth Method and the Expenditure Method.

The Net Worth Method is used by computing the official's total assets less his total liabilities (assets–liabilities = net worth). That method is used to compare changes in a person's net worth at the beginning of a period and at the end of that period. This is based on the theory that any increase in the net worth beyond the lawful income of the public official constitutes unexplained wealth.

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<sup>18</sup>Republic Act No. 1379.

Thus:

	Total Assets
Less:	Total Liabilities
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Equals:	Net Worth at the End of the Period
Less:	Net Worth at the Beginning of the Period
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Equals:	Increase (Decrease) in Net Worth
Add:	Total Expenditures for the Period
Less:	Total Income for the Period
<hr/>	
Equals:	UNEXPLAINED WEALTH <sup>19</sup>

The second method, the Expenditure Method is employed by comparing the public official's expenditures to his legitimate sources of income for a particular period. The theory is wealth.

The formula is:

	Total Expenditures for the Period
Less:	Total Income for the Period
<hr/>	
Equals:	UNEXPLAINED WEALTH <sup>20</sup>

By using the foregoing methods of proof, investigators can determine whether a public official has, during his incumbency, accumulated wealth or spent funds which are manifestly out of proportion to his legitimate sources of income.

## VII. CONCLUSION

Corruption investigation is one of the greatest challenges in each nation. And the most difficult aspect of this challenge is tracing the funds and recovering the ill-gotten assets. While the agencies tasked to conduct corruption investigation continuously exert effort in learning and employing advanced techniques in "following the money", corrupt public officials have also developed new modes of concealing ill-gotten assets.

With this great challenge ahead, the cooperation among nations encountering similar difficulties becomes essential. Understanding best practices employed by other anti-corruption agencies is necessary to be able to develop and improve mechanisms to trace corruption proceeds

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<sup>19</sup> Ombudsman Desk Reference Volume I, page 54.

<sup>20</sup>Ibid.

and recover ill-gotten assets. How the Philippines learned from Hong Kong's ICAC is a manifestation that this strategy should and can be done.

And while, indeed, the Philippines is like a soldier trying to kill an elephant with a flyswatter, it can nevertheless pick up techniques from other anti-corruption agencies on how to succeed with this task. Armed with such techniques and best practices, coupled with courage and determination, the task of fighting corruption might turn out to be not so gargantuan after all.

# PROSECUTION OF CORRUPTION CASES IN THE PUBLIC SECTOR IN THAILAND

*Sarun Tirapat\**

## I. INTRODUCTION

Thailand is among the countries long affected by corruption in both the public and private sectors. Despite attempts to prevent and suppress corruption by successive governments, Thailand still cannot eradicate corruption. As a consequence, corruption was one of the key justifications for political reform, leading eventually to the drafting of a Constitution in 1997. This Constitution included key provisions on a number of vital processes designed to increase oversight of the exercise of state power and to keep the government authorities in check. Since then, a number of constitutionally mandated independent organizations or agencies, such as the National Counter Corruption Commission (NCCC) (currently the National Anti-Corruption Commission — NACC), etc., have been established to deal specifically with the issue of corruption. The 1997 Constitution and its successor, the 2007 Constitution, give these bodies and agencies more power, authority and autonomy than any of those Constitutions previously established. It is deemed that these organizations, agencies, or bodies would be capable of dealing with corruption, which is evolving both in form and in practice.

## II. ORGANIZATIONS DIRECTLY RESPONSIBLE FOR INVESTIGATION AND PROSECUTION IN CORRUPTION CASES

Even though there are a number of agencies and organizations in Thailand that have responsibility to prevent and suppress corruption, such as, the National Anti-Corruption Commission (NACC), the Public Sector Anti-Corruption Commission (PACC), the Anti-Money Laundering Office (AMLO), the Royal Thai Police, the Department of Special Investigation (DSI), the Office of the Attorney General, the Supreme Court's Criminal Division for Persons Holding Political Positions, the Office of the Auditor General, the Office of the Ombudsmen, etc., the organizations that have the specific role in investigating corruption cases in the public sector are the National Anti-Corruption Commission (NACC) and the Public Sector Anti-Corruption Commission (PACC); the organization that has authority to issue prosecution orders or institute legal proceedings in court is the Office of the Attorney General, provided that the NACC may also institute legal proceedings in court as stipulated by law.

### A. The National Anti-Corruption Commission (NACC)

The National Anti-Corruption Commission (NACC) is an independent authority established by the 2007 Constitution. The commission consists of the President and eight other members appointed by the King with the advice of the Senate from persons who possess apparent integrity and have the qualifications as stipulated by law.<sup>1</sup> One of the

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<sup>1</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 8, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

qualifications is that the member must have been a Minister, Judge of the Constitutional Court, member of the Election Commission, Ombudsman, member of the National Human Rights Commission, member of the State Audit Commission, or a government official holding a position not lower than Deputy Prosecutor-General, Director-General, or person holding an administrative position in a government agency having administrative power equivalent to a Director-General, or person holding an academic position of not lower than professor, or attorney, or representative of a development organization or a practitioner of a profession regulated by a professional organization established by law who has practiced such profession for not less than thirty years up to the date of nomination to be a member of the NACC and having been certified and nominated for selection by the Law Society, Private Development Organization or Professional Organization.<sup>2</sup> Moreover, the member shall hold the office for a term of nine years from the date of their appointment by the King and shall serve the position for only one term.<sup>3</sup> The NACC has the power to inspect assets and liabilities of persons holding political positions and other high-ranking state officials, to conduct a fact inquiry and issue an opinion in the case where a request is lodged for removing high-ranking state officials from office, and to inquire and give a decision as to whether a high-ranking state official has become unusually wealthy or committed an offence of corruption or malfeasance in office. The Office of the National Anti-Corruption Commission (ONAC), an independent government agency, serves as the NACC's executive body, which has relevant powers and duties as stipulated by law.<sup>4</sup> The ONAC reports to the Secretary-General of the ONAC as its superior, who is directly responsible to the President of the NACC.

## **B. Public Sector Anti-Corruption Commission (PACC)**

Whereas the Thai government had a policy on anti-corruption, it did not have any direct governmental organization having authority and responsibility for anti-corruption efforts; moreover, the NACC, which is an independent organization with the power over anti-corruption efforts against the corruption of state officials has a large number of missions. Therefore, the Public Sector Anti-Corruption Commission (PACC), a governmental organization in the executive branch, had been established to have the responsibility to implement the anti-corruption policy and to be a center to coordinate with all of the relevant state agencies, including to determine a variety of measures to enable the anti-corruption efforts of the executive branch to be operated in a more integrated and efficient manner.<sup>5</sup> The PACC consists of a President and no more than five members. One of the qualifications of its members is that the members must be or must have been Judges of the Constitutional Court, Judges of the Supreme Administrative Court, judges holding office not lower than Judges of the Supreme Court; or they must be or must have been in government service in a position not lower than Deputy Attorney-General, Director-General, or the person holding administrative office in the state agency with administrative power equivalent to Director-General or holding office not lower than professor.<sup>6</sup> Members of PACC can hold office for a term of four years. Concerning the investigation power in corruption cases, it has the powers and duties to inquire into facts and summarize the case file, inclusive of submitting opinions

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<sup>2</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 9, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>3</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 12, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>4</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 104, 105 as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>5</sup> Executive Measures in Anti-Corruption Act B.E. 2551 (2008).

<sup>6</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 5 and Section 6.

to the public prosecutor to bring criminal charges against state officials ranking lower than those who fall within the jurisdiction of the NACC.<sup>7</sup> The Office of the Public Sector Anti-Corruption Commission is the department under the Ministry of Justice which is in charge and directly reports to the Minister of Justice. The Secretary-General is a civil servant having the duty to supervise and take responsibility for the affairs of the Office provided that in the part of the operations in relation to the authorities of the PACC, the Secretary-General shall directly report to the President of the PACC.<sup>8</sup>

### **C. Office of the Attorney General (OAG)**

The Office of the Attorney General (OAG) is an independent organization under the 2007 Constitution. The Constitution guarantees public prosecutors' independence in making prosecution decisions and the performance of other duties in the interests of justice. The appointment and removal of the Attorney General requires a resolution adopted by the Public Prosecutor Commission and requires approval by the Senate. The OAG has autonomy in personnel administration, budgeting and other activities, under the supervision of the Attorney General. Moreover, public prosecutors must not be directors in state enterprises or other state entities of the similar manner unless permission is given by the Public Prosecutor Commission, must not engage in any occupation or profession or other activities that may affect the performance of duty or tarnish the dignity of government officials as well as must not be a director, manager, or legal counselor or other similar post in business entities.<sup>9</sup>

## **III. ROLE OF PUBLIC PROSECUTOR IN CORRUPTION CASES**

In Thailand, public prosecutors do not have power to initiate or investigate criminal cases, including corruption cases, except in certain cases as stipulated by law. However, when NACC or PACC finishes their inquiries, they have to send their reports and inquiries to the Attorney General or public prosecutors in order to issue prosecution orders to institute legal proceedings in court or as the case may be. Since the NACC has the leading role in anti-corruption in Thailand, this paper shall, therefore, present only the role of the public prosecutor in corruption cases referred by the NACC.

Even though the NACC has broad powers to prevent and suppress corruption, there are three types of cases that the NACC has to send to the Attorney General to bring the case to court. These cases are as follows:

1. Cases where the NACC concludes that the person holding the position of Prime Minister, Minister, Member of the House of Representatives, Senator, or any other political official has become unusually wealthy, or has committed an offence of malfeasance in office under the Penal Code or malfeasance in office or corruption under other laws. If the Attorney General agrees with the opinion of the NACC, the Attorney General will institute a prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.<sup>10</sup>

2. Cases where the NACC concludes that the person holding a political position or any high-ranking state official has become unusually wealthy. In this case, the President of the

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<sup>7</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 3 and section 17.

<sup>8</sup> Executive Measure in Anti-corruption Act B.E. 2551 (2008), Section 51.

<sup>9</sup> Constitution of the Kingdom of Thailand B.E. 2550 (2007), Section 255.

<sup>10</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 66 and Section 70, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

NACC shall send the cases to the Attorney General for submission of a motion to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions or the court having jurisdiction over that case, as the case may be, requesting the court to order that the property devolve upon the State.<sup>11</sup>

3. Cases where the NACC concluded that high-ranking state officials, excluding persons holding a political position, committed an offence of corruption, malfeasance in office or malfeasance in judicial office. If the Attorney General agrees with the opinion of the NACC, the Attorney General shall institute a prosecution in the court having jurisdiction over that case.<sup>12</sup>

Since the law requires the above cases to be sent to the Attorney General, and it is an important policy of the government to eradicate corruption in Thailand, therefore, the Attorney General deemed it was appropriate to set up a Department called the "Department of Special Litigation" to handle the cases from the NACC, including other special cases from the Department of Special Investigation (DSI) and the Anti-Money Laundering Office (AMLO). The public prosecutors who are assigned to this Department are senior or relatively senior because of the character of corruption cases, and other special cases are usually complicated and difficult to take to trial.

Even though the Organic Act on Counter Corruption B.E. 2542 (1999), Section 98/1, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011) stipulated that in cases where the prosecution against an alleged offender is instituted in Court, the Court shall rely upon the report and inquiry file of the NACC in the adjudication of the Court, yet the Court may conduct an inquiry for additional facts and evidence. However, this does not mean that the public prosecutor just forwards the report and inquiry of the NACC to the Court for its adjudication. Since it is also the public prosecutor's job to seek justice, public prosecutors shall not issue prosecution orders or institute cases against any one in Court unless the public prosecutor is convinced that the alleged offender has committed a crime. Therefore, before public prosecutors submit their opinions to the Attorney General for orders, the public prosecutor must review the report and inquiry of the NACC to consider whether the alleged offender committed a crime and whether there is enough evidence to prove the offence in Court. That is, the public prosecutor has to consider the position of the offender, the authority of the offender, the act of the offender, the benefit of crime and the path of proceeds of the crime, the statute of limitations of the case, the witnesses and evidence of the case, etc.. Therefore, the public prosecutor must fully understand all of the laws and regulations concerned, all of the facts of the case, and all of the witnesses and evidence as provided by the assigned inquiry official of the NACC.

After the Attorney General has issued a prosecution order or order to submit a motion requesting the court to order that the property devolve upon the State, as the case may be, the public prosecutor has the duty to prepare for the trial. The public prosecutor has to provide a charge which has to contain, among other things, all the acts alleged to have been committed by the accused, all the facts and details regarding the time and place of such acts, and the persons or articles concerned which are reasonably sufficient to give the accused a clear

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<sup>11</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 75 and Section 80, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

<sup>12</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 84 and Section 97, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

understanding of the charge as stipulated by law.<sup>13</sup> Similarity can also apply to the motion. Then the public prosecutor has to prepare his/her presentation before the court which should be clear and concise in chronological order. Concerning the witnesses and evidence, the public prosecutors have to carefully organize and introduce them to the court because the more witnesses or evidence, the greater the likelihood of introducing unnecessary conflicts in the evidence, which may confuse the case. Moreover, the public prosecutor should anticipate and prepare for all possible defences and arguments; especially in certain corruption cases the public prosecutor can expect a tough challenge from experienced defence lawyers.

In cases where the Attorney General believes that the report and evidence together with the opinion of the NACC are not sufficient to justify the institution of legal proceedings, the Attorney General shall notify the NACC for further action. The incomplete matters must also be fully specified. Then the NACC and the Attorney General shall appoint a working committee consisting of representatives of each side in equal number to collect additional evidence and resend the case to the Attorney General for the institution of legal proceedings. If such working committee fails to reach an agreement as to the legal proceedings, the NACC shall have the power to institute legal proceedings in Court.<sup>14</sup>

#### **IV. CONCLUSION**

Even though there are organizations and laws established to combat corruption, it is the personnel of those organizations who are responsible for applying those laws. They must have determination and work hard to accomplish their duties. Especially at present, there is a strong tendency for corruption to result from a coordinated conspiracy employing sophisticated planning and linking up with transnational syndicates. Siphoning and transferring assets gained by corrupt practices to other parties both within and outside the country are some of the methods employed by organized crime syndicates. Such assets are carefully laundered in various ways to avoid detection. Therefore, enhancing the abilities of officials concerned is very important to make them accomplish their tasks and make laws function. They have to know the issue of the case well including what evidence is required to prove the offence. Knowledge other than law, such as knowledge about business and finance, may help in this modern investigation and prosecution in corruption cases. Last but not least, cooperation between agencies or organizations concerned with both internal and international investigations is also crucial to accomplish their duties. Even though there are a lot of measures to combat corruption, investigation and prosecution are still the core measures to prevent and suppress corruption.

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<sup>13</sup> The Criminal Procedure Code, Section 158.

<sup>14</sup> Organic Act on Counter Corruption B.E. 2542 (1999), Section 80 and Section 97, as amended by the Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011).

# INVESTIGATION OF CORRUPTION CASES IN THAILAND

*Mongkol Sirijunrattana\**

## I. FACT INQUIRY

The N.C.C. Commission shall conduct a fact inquiry in the following circumstances:

1. the President of the Senate refers the matter to the N.C.C. Commission for carrying out a fact inquiry in consequence of the lodging of a petition requesting the Senate to pass a resolution removing the alleged culprit from office when the Ombudsman refers the matter to remove any person from office on the grounds that he or she has seriously violated ethical standards;

2. a case calls for a fact inquiry;

3. an allegation is lodged with the N.C.C. Commission for the purpose of devolving property to the State;

4. there is reasonable cause to suspect that a state official has become unusually wealthy or has committed an offence;

5. an allegation is made to the N.C.C. Commission against a state official.

The N.C.C. Commission shall not conduct a fact inquiry in the following circumstances:

1. the matter to be inquired into is the matter in respect of which the N.C.C. Commission has completed its fact inquiry and no fresh evidence which is material to the inquiry is found;

2. the alleged culprit is the same person as the alleged culprit in the matter under inquiry, of which the cause of the allegation is the same.

Before conducting a fact inquiry, the N.C.C. Commission may entrust the Secretary-General to conduct the fact finding and gather evidence in regard to such allegation so as to obtain adequate evidence to continue with the fact inquiry. In this event, the Secretary-General may entrust a competent official to act on his/her behalf, which shall be in accordance with the rules, procedures and conditions prescribed by the N.C.C. Commission. The Secretary-General and competent official entrusted by the Secretary-General shall be deemed as an administrative official or police officer under the Criminal Procedure Code. In a fact inquiry the N.C.C. Commission may appoint an inquiry sub-committee to carry out the

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proceedings on its behalf. The performance of duties of the sub-committee shall be in accordance with the rules, procedures, and conditions prescribed by the N.C.C. Commission. The sub-committee appointed shall consist of the chairman of the sub-committee and members of the sub-committee as determined by the N.C.C. Commission with a competent official as sub-committee member and secretary of the sub-committee, as well as a subcommittee member and assistant secretary of the sub-committee. In a fact inquiry, the N.C.C. Commission may entrust an inquiry official to conduct the fact inquiry, gather evidence, and summarize the case before reporting to the N.C.C. Commission for consideration and decision. The person under the following circumstances shall not be appointed as a member of an inquiry sub-committee:

1. having knowledge of the events or having previously conducted an inquiry or considered the alleged matter in a capacity other than a competent official or inquiry official;
2. being interested in the matter to which the allegation relates;
3. having current animosity towards the person making the allegation or the alleged culprit;
4. being the person making the allegation or such person's or the alleged culprit's spouse, ancestor, descendant, or brother or sister of full- or half-blood;
5. having a close relationship with the person making the allegation or the alleged culprit in the capacity as such person's relative or being such person's partner or having mutual commercial benefits or conflicting interests vis-à-vis the person making the allegation or the alleged culprit.

In a fact inquiry, the alleged culprit shall be given notice of the allegations, and there shall be fixed a reasonable time within which the alleged culprit may give explanations, present evidence or bring witnesses to testify in support of the explanations. In giving explanations and testimony, the alleged culprit shall have the right to have the presence of his or her attorney or the person upon whom he or she reposes confidence for hearing the explanations or testimonies.

In the case where an inquiry sub-committee is appointed, the presence of at least two members of the sub-committee, at least one of whom must be a member who is a competent official, is required for the hearing of the alleged culprit's explanations or the examination of the alleged culprit and witnesses. A member of the inquiry sub-committee shall not commit or cause to be committed any act which amounts to a deception, threat or promise to the alleged culprit or witness with a view to inducing them to give any statements with respect to the matters to which the allegation relates. For the benefit of the performance of duties of the inquiry sub-committee, the inquiry sub-committee shall have the power to carry out the acts.

Upon the completion of the collation of evidence, the inquiry file shall be prepared and submitted to the President. Such file shall contain the following particulars:

1. the names and positions of the person making the allegation and the alleged culprit;
2. the matter to which the allegation relates;

3. the allegation, reply to the allegation, and summary of facts and relevant evidence obtained from the fact inquiry;

4. reason given in the consideration and decision of both issues of fact and issues of law;

5. the provisions of law relied upon;

6. the summary of the opinion on the matter to which the allegation relates.

When the president has received the inquiry file, the president shall cause to be held a meeting for considering it within thirty days. In the interest of justice, in the case where an inquiry sub-committee has been appointed, the N.C.C. Commission may pass a resolution directing the same sub-committee to inquire into additional facts or appointing a new inquiry sub-committee to inquire into additional facts on its behalf. The N.C.C. Commission shall consider the inquiry file and pass a resolution as to whether the allegation establishes a prima facie case. In the case where the N.C.C. Commission passes a resolution that the allegation has failed to establish a prima facie case, such allegation shall lapse.

In the case where the N.C.C. Commission passes a resolution that the allegation has established a prima facie case, the President shall furnish a report, existing documents as well as the opinion to;

1. the Prosecutor-General, if the inquiry reveals a prima facie case for a criminal offence;

2. the superior or the person who has the power to appoint, if the inquiry reveals a prima facie case for a disciplinary offence.

During the fact inquiry, if the alleged culprit vacates office or vacates the government service by any reason other than death, the N.C.C. Commission shall have the power to proceed with the fact inquiry for the purpose of undertaking criminal proceedings, initiating disciplinary action, or making a request that the property devolve to the State.

## **II. INSPECTION OF STATE OFFICIALS NOT HOLDING POLITICAL POSITIONS**

An allegation that the following state officials committed an offence of corruption, malfeasance in office or malfeasance in judicial office shall be submitted to the N.C.C. Commission at the time the person against whom the allegation is made is a state official or has ceased to be a state official for no more than five years;

1. a person holding a political position or high-ranking executive;

2. judge;

3. public prosecutor;

4. state official in agency of the court and constitutional organs;

5. local administrator, deputy local administrator, assistant local administrator, and member of a local assembly;

6. state official in the office of the Secretariat of the House of Representatives and the Office of the Secretariat of the Senate;

7. state official in an anti-corruption agency under the law governing such matters;

8. state official who committed an offence having the characteristics which the N.C.C. Commission finds that proceedings should be taken as prescribed by the N.C.C. Commission;

9. state official who jointly commits an offence with a person under 1, 2, 3, 4, 5, 6, 7, or 8. The allegation under paragraph one may be made orally or in writing as prescribed in the regulation prescribed by the N.C.C. Commission.

The provisions shall apply to the case where a state official or other person is a principal, instigator or aider and abettor. Subject to the provisions of the applicable statute of limitations, in the case where the state official has ceased to be a state official for more than five years, the N.C.C. Commission's power to proceed with an inquiry of an allegation having been made or where there is reasonable cause to suspect that a person holding a political position or state official committed an offence shall not be prejudiced, provided that the proceedings are not taken after the expiration of ten years from the date a person holding a political position vacated office or the state official ceased to be a state official, as the case may be.

The allegation shall at least contain the following particulars:

1. the name and address of the person making the allegation;

2. the name or position of the alleged culprit;

3. the allegation and circumstances under which the alleged offence was committed, together with, or by reference to, evidence.

The N.C.C. Commission shall not accept or invoke for consideration an allegation which is of the following descriptions:

1. a matter involving the same allegation or issue in respect of which the N.C.C. Commission has given its final decision, for which no material fresh evidence is found;

2. a criminal case with the same issue that has been admitted by the court or has been adjudicated by a court's final decision or order, except for a case that has been withdrawn or abandoned or a case where the court has not yet determined the substance of the case, the N.C.C. Commission may accept or invoke such allegation for consideration.

The N.C.C. Commission may refuse to accept or invoke for consideration an allegation which is of the following descriptions:

1. a matter for which no clear evidence or no clear circumstances of the commission of the offence is so sufficiently specified as to enable a fact inquiry;

2. a matter that has lapsed for a period of more than five years from the date of its occurrence to the date of the allegation, for which evidence cannot be so sufficiently obtained as to enable a further inquiry;

3. an allegation against a state official whom the N.C.C. Commission finds that proceedings against such alleged culprit under other law has been completed and properly conducted, and there is no reasonable cause to suspect that such proceedings were unjustly carried out.

In the case where the injured person has lodged a complaint or an allegation is made to the inquiry official requesting action against a state official, the inquiry official shall refer the matter to the N.C.C. Commission within thirty days as from the date of the complaint or allegation. When the N.C.C. Commission has conducted a fact inquiry and passed a resolution that a particular allegation has failed to establish a prima facie case, such allegation shall lapse. Any allegation which, according to the N.C.C. Commission's resolution, has established a prima facie case shall be pursued as follows:

1. in the case where a prima facie case for a disciplinary offence is found, when the N.C.C. Commission, after having considered the circumstances of the commission of the offence, passes a resolution that a particular alleged culprit has committed a disciplinary offence, the president shall send the report and existing documents together with an opinion to the superior or the person who has the power to appoint or remove such alleged culprit for the purpose of considering the disciplinary penalty for the offence in respect of which the N.C.C. Commission has passed the resolution, without the appointment of a disciplinary inquiry committee. In considering the disciplinary penalty to be inflicted upon the alleged culprit, it shall be deemed that the report, documents and opinion of the N.C.C. Commission compose the disciplinary inquiry file of the disciplinary inquiry committee under the law, rules or regulations on personnel administration applicable to such alleged culprit, as the case may be. In the case where the alleged culprit is a judicial official under the law on judicial service, judge of the Administrative Court under the law on establishment of Administrative Courts and Administrative Court procedures or public prosecutor under the law on public prosecutor service, the President shall send the report and existing documents together with an opinion to the President of the Judicial Commission, the President of the Judicial Commission of the Administrative Courts or the President of the Public Prosecutors Commission, as the case may be, for considering and proceeding with the matter in accordance with the law on judicial service, the law on establishment of Administrative Courts and Administrative Court procedures or the law on public prosecutors service without delay. In this connection, the report and documents of the N.C.C. Commission shall also be regarded as part of the inquiry file. The outcome shall be furnished to the N.C.C. Commission for information within fifteen days from the date the order of the disciplinary penalty is issued or the date a decision is given that no disciplinary offence is found. Upon receipt of a report, the superior or the person having the power to order the appointment and removal shall consider the penalty within thirty days from the date of receipt thereof, and the superior or the person having the power to order the appointment and removal shall furnish a copy of the penalty order to the N.C.C. Commission for information within fifteen days from the date the order is issued. Any superior or person having the power to order the appointment and removal who fails to take action is deemed to commit a disciplinary offence or a legal offence under the law, rule or regulation on personnel administration applicable to the alleged culprit in question. An alleged culprit punished may exercise the right to appeal

against the exercise of the superior's discretion in giving the penalty order, in accordance with the law, rule or regulation on personnel administration applicable to such alleged culprit, provided that such right must be exercised within thirty days as from the date of receiving such order.

2. In the case where the N.C.C. Commission passes a resolution that any matter put in the allegation amounts to a criminal offence, the President shall furnish a report, documents and opinion to the Prosecutor-General or, in the case where the alleged culprit is the Prosecutor-General, proceed with the prosecution, for the purpose of criminal proceedings before the court having competence to try and adjudicate the case. In this instance, the report of the N.C.C. Commission shall be deemed as the inquiry file under the Criminal Procedure Code, and the court shall accept the case without conducting a preliminary examination.

When the Prosecutor-General has received the report and documents together with the opinion from the N.C.C. Commission and considers that the report, documents and opinion furnished by the N.C.C. Commission are not so complete as to justify the institution of a prosecution, the Prosecutor-General shall inform the N.C.C. Commission thereof for further proceeding. In this instance, the incomplete items shall, at the same time, fully be specified. In this case, the N.C.C. Commission and the Prosecutor-General shall appoint a working committee consisting of representatives of each side in an equal number, for the purpose of collecting full evidence and furnishing it to the Prosecutor-General for instituting the prosecution. In the case where such working committee fails to arrive at a conclusion as to the prosecution, the N.C.C. Commission shall have the power to initiate the prosecution of its own motion or appoint an attorney to institute the prosecution on its behalf.

### **III. PROMOTION OF COUNTER-CORRUPTION**

When the N.C.C. Commission finds it appropriate in a case to provide protection measures for the alleged culprit, injured person, petitioner, allegor, person giving testimony or person providing a clue pertaining to the corruption, unusual wealth or other information that is beneficial to proceedings, the N.C.C. Commission shall notify the relevant agencies to provide protection measures for such person. Such person shall be deemed as a witness entitled to protection under the law on witness protection. In this event, the N.C.C. Commission shall also submit an opinion on whether to apply general measures or special measures for such person under such law.

Where a person or alleged culprit involved in the commission of an offence by a state official that is an alleged culprit in another case gives testimony or provides a clue or information which constitutes essential evidence relied upon in establishing a prima facie case against such other state official, and the N.C.C. Commission finds it appropriate, such person may be protected as a witness and not be subject to legal proceedings.

# ENHANCING INVESTIGATIVE ABILITY IN CORRUPTION CASES

*Vu Dang Khoa\**  
*Nguyen Hoanh Dat\*\**

## I. INTRODUCTION

Anti-corruption is an important task and is always regarded by countries as a leading priority. One of the components that plays a key role in dealing with this threat is the criminal justice system. Discovering corrupt conduct and applying criminal procedure measures to bring corruption offenders to justice are considered as difficult and sophisticated processes, requiring judicial authorities to have sufficient capacity and expertise along with legal power provided by the laws. In this process, criminal investigative authorities must play a pivotal role to contribute to the effort in the fight against corruption as their main function is to discover, locate and obtain evidence and documents to determine and prove corrupt acts. To effectively perform investigative activities against crimes in general and corruption crimes in particular, it is desirable for countries to establish an appropriate system of investigative agencies in addition to improving the criminal procedure legislation related to the investigative phase. As a result, countries will be able to efficiently investigate crime including corrupt acts. This paper will introduce measures to enhance investigative ability in corruption cases in Vietnam, including its system of investigative agencies, measures in the investigative phase, procedures in the prosecution phase as well as some difficulties and challenges in investigating corruption cases.

## II. SYSTEM OF INVESTIGATIVE AGENCIES

According to its legal system, Vietnam has the following investigative agencies<sup>1</sup>:

1. Investigative agencies in the Public Security Department;
2. Investigative agencies in the Army;
3. The investigative agency under the Supreme People's Procuracy.

The system of investigative agencies in the Public Security Department consists of security investigative agencies and police investigative agencies. The system of investigative agencies in the Army consists of military security investigative agencies and military criminal investigative agencies. Generally, both systems of investigative agencies in the Public Security Department and investigative agencies in the Army are organized at three administrative levels, including the national, provincial or equivalent, and district or equivalent levels. Concerning

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\*\* Legal Expert of the Department for International Cooperation and Mutual Legal Assistance under the Supreme People's Procuracy.

<sup>1</sup> Act of Criminal Investigation 2004.

investigative scope, the system of investigative agencies in the Army shall only investigate crimes under the jurisdiction of the military courts. The investigative agency under the Supreme People's Procuracy shall investigate crimes violating judicial activities and those committed by judicial officers. The system of investigative agencies in the Public Security Department shall investigate all kinds of crime except for crimes investigated by the investigative agencies in the Army and the Investigative Agency under the Supreme People's Procuracy<sup>2</sup>. Most corruption crimes are investigated by the investigative agencies in the Public Security Department. Therefore, there are specialized units in this force, including the Department for Investigation of Corruption Crime under the Police Investigative Agency of the Ministry of Public Security, the Divisions for Investigation of Corruption Crime under the Police Investigative Agency of the Public Security Department in provinces or cities equivalent to provinces and, depending on certain cases, Teams for Investigation of Corruption Crime under the Police Investigative Agency under the Public Security Department in districts of each province.

### III. TYPICAL PROCEDURES AND INVESTIGATIVE ACTIVITIES DURING THE INVESTIGATIVE PHASE

#### A. Some Typical Procedures

**Dealing with reports about crime:** Any citizen, state agency or organization can make reports about crime to law enforcement agencies. Reports about crime can be made in writing or orally, as long as oral reports are reduced to writing.<sup>3</sup> In relation to competency, the investigative agency that receives a report deals with the investigation. The relevant People's Procuracies (prosecution offices) shall be responsible for supervising the handling of reports about crime conducted by the investigative agencies. When receiving reports about crime, the People's Procuracies or other law enforcement agencies shall, without delay, send them to a competent investigative agency to be handled. In terms of procedures to deal with reports about crime, the investigative agency shall deal with the report about the crime within a period of 20 days and decide whether to initiate a criminal case. When the report involves complex crime, the period to deal with such report may be more than 20 days but no more than 2 months. When dealing with a report about crime, the investigative agency must apply measures to protect the people making the report and inform them and the relevant People's Procuracy of the result.<sup>4</sup>

**Initiating criminal investigation:** Upon a finding that a crime occurred, the investigative agency shall issue a decision to initiate the criminal case to conduct investigative activities about the crime. Crimes are typically identified using the following methods: (1) Crime reports made by citizens; (2) Reports of crimes provided by any agencies or institutions; (3) Reports of crime by the media; (4) the law enforcement agencies themselves discover the crime; (5) the offender surrenders himself.<sup>5</sup>

**Initiating the criminal case against the accused:** When there are sufficient grounds for believing that a person has committed a crime, the investigative agency shall issue a decision to initiate investigation against such person. The decision to initiate investigation against a person

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<sup>2</sup> Article 110 of the Criminal Procedure Code

<sup>3</sup> *Id.* at Article 101.

<sup>4</sup> *Id.* at Article 103.

<sup>5</sup> *Id.* at Article 100.

shall indicate the offence that the person is alleged to have committed, the provisions of the penal code applied, the date and place at which the crime occurred and other facts of the crime.<sup>6</sup>

Basically, to officially investigate a crime in accordance with provisions of the Criminal Procedure Code, the investigative agency shall issue the decision to initiate a criminal case, and the decision to investigate, against the suspect. These two decisions shall be sent to the relevant People's Procuracy for ratification.

**Preventive measures:** Along with procedures to issue the above-mentioned decisions and depending on the level of crime, preventive measures may be imposed against the suspect, the accused or any dependents. Such preventive measures include urgent arrest, arrest for detention, and detention. The decision or order to apply preventive measures is made by the investigative agency and shall be ratified by the relevant People's Procuracy. In some cases, preventive measures may not be imposed against the accused or the defendant, but the accused may be placed under house arrest. Other preventive measures may be applied against the accused or the defendant, including release on bail subject to a cash bond or on the defendant's personal recognizance (promise or guarantee to attend court).<sup>7</sup>

**Officer in charge of investigation:** Normally, after the decision to initiate an investigation against the accused is issued, the head of the investigative agency shall assign an investigator to handle the case. Once assigned, the investigator can carry out any investigative activities provided in the Criminal Procedure Code to prove the crime, including interviewing the accused, taking statements of witnesses, the victim or other parties, conducting interviews and interrogations, identity confirmation, conducting searches and seizures of evidence and freezing assets.

## **B. Some Investigative Activities during the Investigative Phase**

**Interviewing the accused:** The accused is interviewed and his/her statement is made in writing in most of cases. In addition, the interview may be tape recorded. The interview is conducted in the form of questions and answers. The questions and answers are to determine whether or not the criminal act occurred and other facts relevant to the case. Any contents of the written statement of the accused must be confirmed by the signature of the accused as well as the investigator. The counsel or the interpreter can participate in the interview pursuant to the Criminal Procedure Code. Where necessary, the prosecutor may participate in the interview and may directly raise questions.<sup>8</sup> The accused has the right to make a confession but is not required to prove his or her innocence.<sup>9</sup> Thus, investigative agencies are not allowed to rely only on a confession by the accused to prove the criminal act. The confession of the accused must be corroborated by other evidence to prove the crime.

**Taking statements of the witnesses:** Those who know about the facts of the case can be summoned to provide statements. When not appearing after being summoned, the accused can be compelled to cooperate with the investigation.<sup>10</sup>

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<sup>6</sup> *Id.* at Article 126.

<sup>7</sup> *Id.* at Articles 80, 81, 86, 88, 91, 92, & 93.

<sup>8</sup> *Id.* at Articles 131 & 132.

<sup>9</sup> *Id.* at Article 10.

<sup>10</sup> *Id.* at Articles 133-135.

**Confrontation:** When there are contradictions between statements of two or more parties in the case, the investigator can conduct interviews and interrogation. The investigator can pose the same question to different parties or can ask the parties separately. The investigator can also allow the parties to ask questions to each other.<sup>11</sup>

**Identification:** Where necessary, the investigator can present objects or photos to the witness, the victim or the accused for the purpose of identification. The investigator must ask the identifying person in advance about the details, traces and characteristics owing to which they may make the identification. The identifying person can be asked to explain why he/she can identify such objects or photos. The identification must be conducted in the presence of the third party.<sup>12</sup>

**Search, seizure and freezing assets:** When there are sufficient grounds for believing that there are instruments or proceeds of crime or any evidential items at a place or in a person's possession, the investigative agency can ask such person or the person controlling such place to voluntarily surrender such instruments or proceeds of crime or evidential items. Otherwise, a search is conducted. The search must be in the presence of a third party.<sup>13</sup>

**Restraint:** Restraint may be applied in cases where the accused may be imposed with the punishment of confiscation or pecuniary penalty or for the purpose of civil responsibility.<sup>14</sup>

**Forensics:** Where necessary, the investigating agency may carry out forensic work to clarify matters such as financial forensics, asset evaluation, and a person's liabilities. Forensic work is conducted by the forensic center in the Public Security Department and the army. Currently, there are not any private forensics centers or forensics centers in universities in Vietnam.

#### IV. PROSECUTION PHRASE

Generally, after finishing the investigative phrase, the investigative agency shall make a report called the "investigative conclusion" of the case. The investigative conclusion is attached to the file of the case, which is later sent to the People's Procuracy to decide whether to prosecute. When finding that the case requires further investigation, the People's Procuracy may either return the file to the investigative agency for further investigation or directly conduct additional investigation. When the investigation of the case is considered to be fully completed, the People's Procuracy shall make an indictment within the period of time required by law. The period in which the People's Procuracy must issue the indictment is 20 days for most cases, which may be extended by no more than 10 days. For serious cases, an indictment must be filed within 30 days, but this period may be extended by no more than 15 days.<sup>15</sup> The content of the indictment shall include the time and place at which the crime occurred; methods, motives, and consequences of the crime; facts and evidence to prove the crime and other matters relevant to the case.<sup>16</sup>

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<sup>11</sup> *Id.* at Article 138.

<sup>12</sup> *Id.* at Article 139 of the Criminal Procedure Code.

<sup>13</sup> *Id.* at Articles 140-143.

<sup>14</sup> *Id.* at Article 146.

<sup>15</sup> *Id.* at Article 166.

<sup>16</sup> *Id.* at Article 167.

After issuing the indictment against the accused, the People's Procuracy shall send the case to the court for trial. The prosecutor must study the case carefully to defend his/her indictment against the accused.

## **V. DIFFICULTIES AND CHALLENGES IN INVESTIGATING CORRUPTION CASES IN VIETNAM**

Corruption is a sophisticated and complicated criminal act, which is committed by those who abuse power, have acquaintances and are able to exert influence on the criminal justice system in order to avoid prosecution for their wrong doings. Like other countries, investigative activities against corrupt acts in Vietnam face numerous difficulties and challenges.

The first concerns Vietnam's current status of legislation. The implementation of investigative activities has shown that Vietnam's legal framework in anti-corruption is probably insufficient, outdated and incomprehensive. An example of this is dealing with instruments and/or proceeds of crime, which is as important as the prosecution of the corruption offender. With regard to this, the purpose of the provisions on tracing, restraining, freezing, and seizing assets in the Criminal Procedure Code is just to facilitate the prosecution of the crime, not really aiming at confiscation of the unlawful assets themselves. Vietnam is now implementing policies to make assets transparent; however, this effort does not seem to be effective. This may allow the corruption offender to conceal the proceeds of crime. Meanwhile, the criminal procedure legislation of well-developed countries considers asset recovery and confiscation as tasks essential as the prosecution of the offender, in which civil forfeiture is a process separate from the prosecution of the offender. Therefore, Vietnam's Criminal Procedure Code is not really an effective legal instrument to deal with the proceeds of corrupt acts. In addition, the criminal procedure code lacks provisions to enable investigative activities aimed at corruption acts, such as asset evaluation, financial forensics, voice recording, surveillance, and collection of electronic evidence. Concerning the Penal Code, some corruption offences remain unclear and obscure. This may cause difficulties determining and proving corrupt acts.

The second is the organization and collaboration of law enforcement agencies. The laws authorize the investigative agencies to investigate corruption crimes; however, these agencies cannot exercise their functions without the cooperation of other law enforcement agencies. In practice, investigating financial matters is a challenge. Vietnam has an anti-money-laundering department, but the powers and functions of this agency have remained limited. There has been an absence of specialized agencies for financial forensics or intelligence units. This has also caused a number of difficulties in investigating corruption cases as well as confiscating proceeds of crime.

The third problem may be human resources. Vietnam has made huge efforts to improve its human resources in the criminal justice system. However, these efforts have not met requirements in reality. Some investigators do not have enough experience, knowledge and capacity related to corruption crime, such as international laws, financial legal matters, intensive investigative skills, foreign languages or high-technology facilities.

The fourth problem is international cooperation in the fight against corruption. Corruption offenders tend to run to foreign countries to avoid punishment. There have been some cases in

which Vietnam has requested foreign countries to extradite offenders for prosecution in Vietnam, but such extradition requests have been refused. Additionally, asset recovery is a problem. Due to differences between legal systems; Vietnam has not implemented the process to return unlawful assets related to corrupt acts.

## *SEVENTH REGIONAL SEMINAR ON GOOD GOVERNANCE*

### **LIST OF PARTICIPANTS, SPEAKERS & ORGANIZERS**

#### **A. International Participants**

Name	Title and Organization
Mr. Hou Sthabna	Deputy Director, Technicalty and Forensic Department Anti-Corrption Unit Cambodia
Ms. Khiev Sophany	Under Secretary of State in Charge of Prosecution Ministry of Justice Cambodia
Mr. Muhammad Yusfidli Adhyaksana	Prosecutor, Bureau of Legal Affairs and Overseas Relations Attorney General Office Indonesia
Mr. Phongsavanh Phommahaxay	Deputy of Investigation Division Anti-Corruption Inspection Department Government Inspection Authority Lao PDR
Mr. Xaysana Rajvong	Director, Division The Office of the Supreme Public Prosecutor Lao PDR
Mr. Thaw Win Tun	Deputy Director Bureau of Special Investigation, Ministry of Home Affairs Myanmar
Ms. Htu Htu Ngwe	Director Union Attorney General's Office Myanmar
Ms. Maria Melinda S. Mananghaya-Henson	Acting Head, Field Investigation Unit Office of the Deputy Ombudsman for Luson Office of the Ombudsman Philippines
Mr. Niven Redillas Canlapan	State Prosecutor National Prosecution Service, Department of Justice Philippines
Mr. Mongkol Sirijunrattana	Director, Provincial Anti-Corruption Office (Chantaburi Province) The Office of National Anti-Corruption Commission Thailand
Mr. Sarun Tirapat	Assistant Secretary to the Inspector-General Office of the Attorney General Thailand
Mr. Vu Dang Khoa	Director, Investigation Agency Supreme People's Procuracy Viet Nam
Mr. Nguyen Hoanh Dat	Legal Expert, Department for International Cooperation and Mutual Legal Assistance in Criminal Matters Supreme People's Procuracy Viet Nam

## B. SPEAKERS

Name	Title and Organization
Mr. Ang Seow Lian	Deputy Director, Intelligence Division Operation Department Corrupt Practices Investigation Bureau (CPIB) Singapore
Mr. Tony Kwok Man-Wai	Anti-Corruption Consultant Former Deputy Commissioner of the Independent Commission against Corruption Hong Kong
Mr. Kenneth C. Kohl	Resident Legal Adviser Embassy of the United States, Kuala Lumpur USA

## C. Speakers and Organizers: Malaysia

Dato' Hj. Sutinah binti Sutan	Deputy Chief Commissioner (Prevention) Malaysian Anti-Corruption Commission
Datuk Hj. Mustafar bin Hj. Ali	Director of Investigation Malaysian Anti-Corruption Commission
Dato' Abdul Wahab Abdul Aziz	Director Malaysia Anti-Corruption Academy
Mr. Premraj a/l Isaac Dawson Martin V	Senior Superintendent Malaysian Anti-Corruption Commission
Mr. Ahmad Ishrakh bin Saad	Public Prosecutor Attorney General's Chambers
Mr. Allan Suman Pillai	Public Prosecutor Attorney General's Chambers
Mr. Mohd Raduan bin Mohammad D.	Inspector Secretariat of IGP Integrity (Discipline) Royal Malaysia Police
Ms. Lai Siaw Khien	Inspector Secretariat of IGP Integrity (Discipline) Royal Malaysia Police

## D. Organizers: Japan and UNAFEI

Name	Title and Organization
Mr. Kunihiko Sakai	Director-General Research and Training Institute, Ministry of Justice
Ms. Tomoko Akane	Director UNAFEI
Mr. Kenichi Kiyono	Deputy Director UNAFEI
Mr. Shinichiro Iwashita	Professor UNAFEI
Ms. Yukako Mio	Professor UNAFEI
Mr. Thomas L. Schmid	Linguistic Adviser UNAFEI
Mr. Motohisa Kaneko	Second Secretary Embassy of Japan, Kuala Lumpur



40th Year of ASEAN-Japan Friendship and Cooperation  
**Seventh Regional Seminar on Good Governance for Southeast Asian Countries**  
*- Enhancing Investigative Ability in Corruption Cases -*

## SCHEDULE

3-5 December 2013  
Malaysia Anti-Corruption Academy (MACA), Kuala Lumpur

Hosts:

United Nations Asia and Far East Institute  
for the Prevention of Crime and the Treatment of Offenders (UNAFEI),  
Malaysian Anti-Corruption Commission (MACC)

### Monday, 2 December

16.30-17.30: Registration  
18.30- : Reception hosted by UNAFEI (at Fukuya Restaurant)

### Tuesday, 3 December

09.00-09.35: Opening Ceremony (at the Dewan Tun Ismail Hall)  
Opening Address by Ms. Tomoko Akane, Director, UNAFEI  
Address by Honourable Datuk Hj. Mustafar bin Hj. Ali, Director of  
Investigation of the Malaysian Anti Corruption Commission  
Special Address by His Excellency Mr. Shigeru Nakamura,  
Ambassador of Japan  
Group Photo session (MACA Lobby, Main Block)

09:35-09:45: Transfer (to the Main Meeting Room – BILIK MESYUARAT  
UTAMA)

09.45-10.15: Introductory Remarks by Mr. Kenichi Kiyono, Deputy Director,  
UNAFEI

10.15-11.15: Lecture by Hon. Datuk Hj. Mustafar bin Hj. Ali, Director of  
Investigation, MACC  
“Current Situation and Challenges of Investigation of Corruption  
Cases at MACC”

11.15-11.30: Coffee/Tea Break – Cafeteria (Main Block)

11.30-12.30: Presentation by Visiting Expert (Mr. Ang Seow Lian, Corrupt  
Practices Investigation Bureau, Singapore)

12.30-14.00: Lunch – Cafeteria (Main Block)

14.00-14.40: Country Presentation (Thailand)

14.45-15.25: Country Presentation (Philippines)

15.25-15.40: Coffee/Tea Break – Cafeteria (Main Block)

- 15.40-16.20: Country Presentation (Viet Nam)  
 16.25-17.05: Country Presentation (Japan)
- 18.30- Reception hosted by MACA (at MACA Cafeteria (Main Block))

Wednesday, 4 December

- 09.20-10.00: Country Presentation (Indonesia)  
 10.05-10.45: Country Presentation (Cambodia)  
 10.45-11.00: Coffee/Tea Break – Cafeteria (Main Block)  
 11.00-12.00: Presentation by Visiting Expert (Mr. Ken Kohl, Legal Attaché, USA)  
 12.00-13.30: Lunch – Cafeteria (Main Block)  
 13.30-14.10: Country Presentation (Myanmar)  
 14.15-14.55: Country Presentation (Laos)  
 14.55-15.10: Coffee/Tea Break – Cafeteria (Main Block)  
 15.10-15.50: Country Presentation (Malaysia)  
 15.50-16.05: Coffee/Tea Break – Cafeteria (Main Block)  
 16.05-17.05: Discussion – Brunei Lecture hall
- 18.30- Reception hosted by MACC (at Saloma Bistro Theatre, Jalan Ampang Kuala Lumpur)

Thursday, 5 December

- 09.20-10.20: Presentation by Visiting Expert (Mr. Tony Kwok Man-Wai, Former Deputy Commissioner of the Independent Commission against Corruption, Hong Kong Special Administrative Region)
- 10.20-10.30: Coffee/Tea Break – Cafeteria (Main Block)
- 10.30-11.30: Chairman’s Summary Statement
- 11.30-11.40: Coffee/Tea Break – Cafeteria (Main Block)
- 11.40-12.00: Closing Ceremony (at the Dewan Tun Ismail Hall)  
 Closing Address by The Honourable Tan Sri Abu Kassim bin Mohamed, Chief Commissioner, MACC  
 Address by Ms. Tomoko Akane, Director, UNAFEI  
 Presentation of Certificates
- 12.00-13.30: Farewell Lunch – Cafeteria (Main Block)
- PM Side event (Sightseeing around Kuala Lumpur)
- Kuala Lumpur Twin Towers Bridge
  - Central Market, Kuala Lumpur

End of the Seminar

## APPENDIX

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### PHOTOGRAPHS

- *Commemorative Photograph*
  - *Opening Address by Director Akane*
  - *Presentation by Mr. Ang Seow Lian,  
Corrupt Practices Investigation Bureau, Singapore*
  - *Presentation by Mr. Muhammad Y. Adhyaksana,  
Attorney General Office, Indonesia*
  - *Presentation by Mr. Kenneth C. Kohl,  
United States Department of Justice*
  - *Presentation by Mr. Tony Kwok,  
Former Deputy Director, ICAC, Hong Kong*
  - *Closing Speech by Deputy Chief Commissioner Dato' Hjh. Sutinah binti Sutan,  
Malaysian Anti-Corruption Commission*
- 



Commemorative Photograph

UNAFEI



Opening Address by Director Akane



Presentation by Mr. Ang



Presentation by Mr. Adhyaksana



Presentation by Mr. Kohl



Presentation by Mr. Kwok



Closing Speech by Deputy Chief Commissioner Sutinah binti Sutan