

CHAIR'S SUMMARY

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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