

INFORMAL MEASURES IN MUTUAL LEGAL ASSISTANCE — SUCCESS STORIES; PUBLIC–PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

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This paper is a continuation of our first paper entitled “MLA in Action: Prosecution’s Challenges – The “Perwaja case”: Then & Now”. As earlier mentioned in that paper, the investigation and prosecution of the Perwaja Case took a long time. The investigation process took about 8 years to complete. An important aspect of the investigation involved MLA requests to several States. The Perwaja Case has shown the difficulties faced in obtaining evidence by way of MLA from a foreign jurisdiction¹. Of all these difficulties, time remains the most crucial element when dealing with the MLA process, as more often than not, delay will occur.

This paper will attempt to show a few cases where MACC, despite resorting to informal measures to obtain MLA, was successful. The cases will be explained here.²

I. INFORMAL MEASURES IN MUTUAL LEGAL ASSISTANCE — SUCCESS STORIES

It must be stated here that informal assistance does not mean all types of assistance can be obtained by this means. The most common form of informal assistance is direct contact at the law enforcement level or agency to agency. The requested law enforcement may call their counter-parts in other States to render assistance on obtaining publicly available information such as land title records or company registration. This can be done easily between the relevant officers of the anti-corruption agencies in the requesting and requested States. Other types of assistance include locating a person, premises, arrangement to interview a person and verifying information.

A. Case No. 1: MACC, Malaysia — KPK, Republic of Indonesia

The MACC requested assistance to detect one material witness (Mr. A) believed to be residing in Ponorogo District in the Republic of Indonesia for the purpose of getting Mr. A to testify for a corruption case in a court in Malaysia. The accused person is a Malaysia Road Transport Department officer who was charged with soliciting and accepting bribery. Mr. A was successfully located by the KPK, and he was willing to cooperate with the KPK and the MACC. The KPK then assisted the MACC by arranging Mr. A’s transport to Malaysia. The whole process of assistance took less than two weeks.

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¹ Refer to our first paper “MLA in Action: Prosecution’s Challenges – The “Perwaja case”.

² Subsection 4(1) Mutual Assistance in Criminal Matters Act 2002 [*Act 621*]: “This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization.”

After the trial, the accused person was found guilty of 2 charges of corruption and was sentenced to 12 months' imprisonment and fined RM 10,000 for each charge on 18th January 2011. The trial could not have succeeded without Mr. A's testimony.

B. Case No. 2: MACC — ACB, Brunei Darussalam

This case involves a request for assistance to locate and obtain copies of documents from the Brunei Customs Department and to record a statement from an officer of the Brunei Customs Department. A company (ABC Sdn. Bhd.) based in Sarawak, Malaysia was being investigated. The response from the ACB, Brunei Darussalam was received in less than two weeks and the assistance process was concluded as scheduled. Although no charge was made, the Public Prosecutor's Office instructed a "Departmental Report" to be sent to the Royal Malaysian Customs Department to notify them of the internal weaknesses to detect falsified customs documents in their system and procedures.

C. Case No. 3: MACC — NACC, Kingdom of Thailand

This was a request for assistance from the NACC, Thailand to locate a suspect (Malaysian) who was believed to be residing somewhere in Songkhla, Thailand using a false identity. The suspect was supposed to be charged in Malaysia for a corruption case under section 17(b) MACC Act 2009. The suspect was located in Songkhla Central Prison, Thailand. It was later discovered that the suspect had been sentenced to imprisonment for 16 years for a drug-trafficking offence under Thai law since 2010. The process of assistance in this particular case took less than six months. The investigation paper for this case was later submitted to the Deputy Public Prosecutor for further directions.

D. Case No. 4: MACC – CPIB, Singapore

This was a request to locate and take a statement from a material witness in Singapore who was working at a private company in Singapore. The witness is a Singaporean. The witness statement was required to conclude a forgery case amounting to more than RM200,000 that was being investigated by the MACC in the State of Negeri Sembilan, Malaysia. The process of assistance in this particular case took a week.

E. Remarks on Informal Measures

Informal measures can be effective tools in the MLA process and the above-mentioned cases show that informal measures may be a better option than a formal MLA request. However, such measures may not be possible in certain situations, for example, where "compulsive measures" are required, or when a particular witness is reluctant to cooperate.³ It is also important to note that, in so far as the Malaysian law is concerned, admissibility of foreign evidence in a criminal proceeding is governed by Chapter VA (sections 90D – F of the Evidence

³ Baizura Kamal, "International Cooperation: Mutual Legal Assistance and Extradition", http://www.unafei.or.jp/english/pdf/PDF_GG6_Seminar/05-4_Malaysia.pdf. "An example of compulsive measures would be the issue of subpoenas to witnesses to record statements before a judicial authority and production orders to financial institutions or companies. Thus it operates under different and much stricter rules than those that apply to the informal channels."

Act 1950 [Act 56].⁴ It may be an issue in a criminal proceeding if a particular witness statement or deposition is obtained informally.

II. PUBLIC-PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

Efforts in fighting and eradicating corruption will not succeed simply by a public-sector-based strategy only. An alliance with the private sector is also extremely vital. Thus, forging public-private partnership is one of the important approaches to be considered in the prevention and detection of corruption.

A. Corporate Integrity Pledge⁵

An important measure in this regard has been the introduction of the Corporate Integrity Pledge (CIP). Introduced in March 2011, it is a collaboration between Transparency International with the MACC, the Malaysia Institute of Integrity, the Performance Management and Delivery Unit, the Companies Commission of Malaysia, the Securities Commission Malaysia and Bursa Malaysia. What CIP simply means is, a company signs a declaration witnessed by the MACC that it will not commit corrupt acts, will create a business environment free from corruption and will conduct its business based on anti-corruption principles when dealing with other business entities and the government. Five principles are contained in a CIP:

- (i) committing to promoting values of integrity, transparency and good governance;
- (ii) strengthening internal systems that support corruption prevention;
- (iii) complying with laws, policies and procedures relating to fighting corruption;
- (iv) fighting any form of corrupt practice;
- (v) supporting corruption prevention initiatives by the Malaysian government and the MACC.

However, the CIP on its own is not enough. Companies that sign the CIP must come up with self-assessment mechanisms and action plans to strengthen their integrity systems. Further, the companies concerned must establish their own internal infrastructure such as a committee for corporate governance and internal training. Finally, such companies must also do the necessary auditing and annual reporting as to their achievement. All these are important so as to ensure any CIP entered and signed by the companies will not be empty promises.

To date, the MACC has entered CIPs with more than 500 companies. These include multi-national corporations, publicly listed companies, private limited companies, small and medium

⁴ Section 90D Act 56: "Notwithstanding any other provision in this Act, this Chapter shall apply for the purpose of determining the admissibility of evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [Act 621]."

⁵ <<http://www.sprm.gov.my/ikrar-integriti-korporat-cip.html?&lang=en>>.

industries, NGOs, Government-linked companies (GLCs), educational institutions, professional bodies and even Government departments and agencies.

B. Certified Integrity Officer Programme (CeIO)

The CeIO programme is a one-of-a-kind training programme conducted by the Malaysia Anti-Corruption Academy (MACA). The certified programme was first conceptualized in 2006 when two government-linked companies requested MACC staff to be stationed in their respective offices to monitor corruption activities. The MACC certifies selected senior officers, upon completion of the six month programme, from Government agencies and the private sector as Certified Integrity Officers (CeIOs) to assist the Commission in corruption prevention efforts.

This programme is geared to form the CeIO Network which will act as a catalyst to create an *integrity-based work culture* in the Government and private sector and as experts in the areas of:

- Anti-corruption
- Misuse and abuse of power
- Integrity development

To date, Petronas, Telekom Malaysia (TM), Tenaga Nasional Berhad (TNB), Social Security Organisation (SOCSO), Amanah Raya Berhad (ARB) and various enforcement agencies including the Royal Malaysia Police (RMP), the Road Transport Department (RTD), the Royal Malaysian Customs Department and Immigration Department have participated in the programme, to mention some.