
PARTICIPANTS' PAPERS

COMPLIMENTING FINANCIAL INTELLIGENCE UNIT (FIU) INFORMATION AS A TOOL IN COMBATING CORRUPTION IN MALAYSIA

*Asrul Ridzuan Bin Ahmad Rustami**

I. INTRODUCTION

As technology advances, the investigation of corruption cases has become more complex and difficult. The criminals themselves have evolved where they are highly organized at evading detection by LEAs, especially involving ill-gotten assets. The investigation of corruption cases no longer focuses on the essence set out in the law, but the investigation needs to be more comprehensive and the need to obtain data to build a case becomes very pertinent, especially at the initial investigation stage. One of the methods where data is most needed is the financial information available at the Financial Intelligence Unit (FIU). For the Malaysian Anti-Corruption Commission (MACC), the information obtained from the FIU has become more essential to construct a decent case against the offenders.

The Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA) is the primary statute governing the AML/CFT regime in Malaysia. The Act was gazetted as law on 5 July 2001 and came into force on 15 January 2002.

The AMLA provides for the offence of money-laundering and terrorism financing and the measures to be undertaken for the prevention of money-laundering and terrorism financing offences. This law also provides wide-ranging investigation powers including powers for law enforcement agencies and Public Prosecutors to freeze and seize properties that are involved or suspected to be involved in money-laundering or terrorism financing offences, and the power of the court to forfeit properties derived from the proceeds of serious crimes.

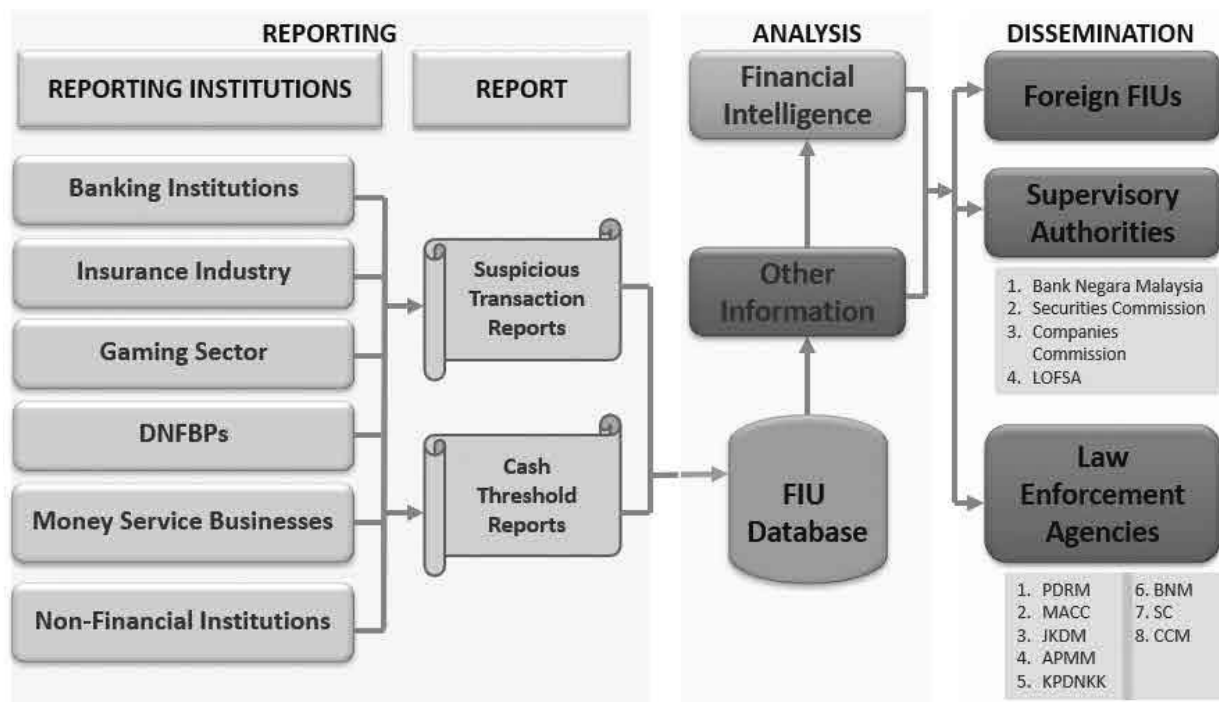
Section 7 of this law provides for the establishment of a Financial Intelligence Unit, where the Financial Intelligence and Enforcement Department (FIED) of the Central Bank of Malaysia is responsible to manage and provide comprehensive analysis on the financial intelligence information received relating to money-laundering, terrorism financing or any other crimes. The financial intelligence received may come from various sources such as STRs and CTRs received from the reporting institutions such as financial institutions as defined under the First Schedule of the AMLATFPUAA 2001 Act, local law enforcement agencies and foreign FIUs.

In Malaysia, the Anti-Money-Laundering investigation regime is coordinated by the National Coordination Committee (NCC), which is responsible for coordinating, implementing and monitoring the development of the national anti-money-laundering initiatives. Members of the NCC are drawn from ministries and government agencies from supervisory/regulatory authorities, law enforcement agencies and policymaking ministries. It is spearheaded by the Central Bank of Malaysia and includes enforcement and regulatory agencies in Malaysia such as the Royal Malaysia Police, the Malaysian Anti-Corruption Commission, the Inland Revenue Board of Malaysia, the Immigration Department of Malaysia, the Royal Malaysian Customs Department, the Companies Commission of Malaysia, the Securities Commission Malaysia and the Attorney General's Chambers among others.

The financial intelligence information will be disseminated to the respective law enforcement agencies as listed above for their further action depending on the nature of their crime under their respective purviews. MACC has been empowered to investigate money-laundering cases relating to laws administered by MACC

* Senior Assistant Commissioner, Malaysian Anti-Corruption Commission (MACC).

pursuant to the Malaysian Anti-Corruption Commission (MACC) Act 2009.



II. THE USAGE OF CASH THRESHOLD REPORTS (CTR) AND SUSPICIOUS TRANSACTION REPORTS (STR) IN CORRUPTION CASES

Apart from the information of the whistle-blower, CTR and STR information play a major role in developing a corruption case, especially in MACC when it involves grand corruption cases.

As we all know, CTR is referring to a limit of cash transaction that has been set up by the competent authority for the reporting institution to escalate to the FIU for further verification. In Malaysia, the FIU has set the cash transaction that needs to be reported as any transaction above RM 25,000.00. Section 14 of the AMLATFPUAA 2001 Act states that the reporting institution shall promptly report to the competent authority any transaction exceeding such amount as specified by the competent authority. This involves physical currencies and bearer negotiable instruments such as travellers' cheques but excludes bank drafts, cheques, electronic transfers or fixed deposit rollover. These include transactions involving withdrawal of cash from accounts or exchange of bearer negotiable instruments for cash.

On the other hand, STR is referring to any transaction (regardless of the amount) that appears unusual, has no clear economic purpose, appears illegal, is not commensurate with the customer's profile or business activities, or involves proceeds of unlawful activities. Section 14 of the AMLATFPUAA 2001 states that a reporting institution shall report to the competent authority if any officer/employee suspects that any transaction or property involves proceeds of an unlawful activity or instrumentalities of an offence or related or linked to any terrorist act/entity or terrorism financing.

In a world where corruption has become increasingly challenging and rampant together with the evolution of technology due to globalization and cross-border issues, data has become essential in investigations, and the CTR and STR are very useful and helpful in the corruption investigations. The data contained in the CTR and STR is very informative for the LEAs and helps them build a case, and both CTR and STR act as an indicator or red flag on the customer's profile. These data are very beneficial for profiling purposes as there is a bank account involved, account holder information including the beneficial owner, person conducting the transaction, amount involved, frequency of transactions performed, where transactions are performed and other information that is very useful in the investigation.

PARTICIPANTS' PAPERS

But how can this information be built into a good case? For the MACC, the customer's personal information in the CTR and STR will be used to complete the profiling on suspects. This information will be expanded to the family of the suspect, companies belonging to suspects or affiliates. A second review of CTR and STR towards the family, associates and companies will be conducted. When this information is obtained, subsequent behavioural analysis will be conducted on the suspect, his family and their allies to determine pattern and establish their lifestyle.

Besides that, these disclosures assist in identifying the accomplices who are involved in the scheme through the information of the person who conducted the transaction. It enables the profiling of accomplices to be done easily, whereby the information may at times include the employment details of the person who conducted the transaction. Another benefit is where through the disclosures of CTR and STR, it allows us to be able to identify the transactions early and helps in tracing the source of the funds. Initial analysis on the transactions can commence with the help of financial institutions in providing documents, and if foreign transactions may be involved, investigators would be able to initiate a mutual legal assistance (MLA) request.

For bank account information that has been identified, MACC will work together with the FIU to obtain all financial information and documents belonging to suspects, families, associates and the companies owned by them. The specific provisions that provide power to MACC to gather financial information are Section 35 of the MACC Act 2009 and Section 48 of AMLATFPUAA 2001. From this financial information, the investigating officer will conduct an analysis and trace the money trail of the bank accounts owned by the suspect, family and associates. This is an important step given that this will show whether the suspect committed a corruption offence or not.

Apart from CTR and STR information, the FIU also provides international transaction information to LEAs to facilitate cross-border investigations. Among the information that can be supplied is information on the outflow or inflow of money to or from abroad. From this information, the investigating officer can figure out the source of funds and can identify whether a money-laundering offence has been committed by the suspect. With this data, the process to prepare mutual legal assistance (MLA) requests is becoming easier ever since we can request the details of information from foreign counterparts by using the information received. However, the setback for this system is that it only captures a transaction above RM 200,000.00. Information that can be obtained through this indicator such as the details of the beneficiary, details of the bank and account involved, name of the non-resident and the country involved, the currency of the transaction and details of the transaction such as the description and date of transfer.

III. CASE STUDY - THE OPERATION EL NINO CASE

“Operation EL NINO” is the first project that is recognized by the Chief Commissioner of MACC as the first FULL analysis case by MACC. This case involved the participation of Malaysia FIU to facilitate and assist MACC in developing the case.

This case was first handed out to MACC through an STR disclosure from the FIU, where the information related to a senior official in the Ministry of Sport and Youth who made large payments on his credit card bills. In addition, in the STR also stated that the payment was made by a man using his company's cheque. The information also stated that the use of the credit card is for the purchase of luxury and expensive items such as luxury watches, bedding, paintings, art and others. Also mentioned in the STR provided, the emolument received by the senior official was not commensurate with his spending.

Based on this information, comprehensive planning has been carried out to ensure the success of this project. A full profiling of the suspect was extensively conducted, which included open-source searches and personal information gathered from various agencies. Besides that, by engaging the Intelligence Department of the Commission, physical surveillance and the setting up of wiretapping was done. Financial institutions were engaged in the process of performing accounts analysis on the transactions that were triggered and money trail of the accounts and funds in subject. Besides that, integrity offices of the Commission that were based in the relevant ministries assisted in gathering the job scope of the suspect.

During the profiling stage, MACC figured out that the two of them met frequently and based on the wiretapping, MACC also has established that the payment of the credit card bills is as an inducement to approve the payment for a contract awarded to the companies belonging to the accomplice.

In addition, the financial profile of these individuals was also gathered by using legal provisions under the MACC Act 2009 and AMLATFPUAA 2001. The FIU also acts as a cooperation platform to expedite the request from the financial institution. All the financial information was then analysed, and the results of the analysis have shown that both suspects have been involved in corrupt practices since 2008. From the financial documents as well, MACC was able to trace the projects that had been awarded to the accomplice and as a result of the initial investigation disclose that the contracts involved approximately RM 40 million with a bribe of more than half of it.

The major operations were then launched in February 2016. Throughout the investigations, 11 people have been detained consisting of two public officials and nine non-public officials. During the investigation, MACC has seized cash approximately RM 16 million, an assortment of jewellery and luxury items that amounted to RM 4 million, 12 luxury cars and a few properties that amounted to millions of ringgits. In late May 2016, both the public official and the accomplice were brought to the court and charged with 32 charges under Section 18 and Section 23 of MACC Act 2009 and 64 charges under AMLATFPUAA 2001.

During the investigation, MACC had proposed to the Ministry of Youth and Sport to enhance its procurement system in awarding future contracts since it was noted from this investigation that the Government had incurred an estimated loss of RM 100 million and future losses arising from a similar nature had to be prevented. Section 7 of the Malaysia Anti-Corruption Commission Act 2009 stipulates that the Commission shall have the function of advising public bodies of any changes in practices, systems or procedures where the Chief Commissioner thinks may be necessary to reduce the likelihood of the occurrence of corrupt practices. The Commission proposed for the establishment of a “check and balance mechanism” in awarding contracts to prevent similar incidents from reoccurring.

IV. CONCLUSION

Crime, especially corruption, has evolved, and conducting investigations of corruption cases have become increasingly complicated. The existence of up-to-date technologies also poses additional threats and challenges to investigating officers. In this regard, the use of data, such as CTR, STR and international transaction records provided by the FIU, is very useful as the data can show the pattern of how a crime is committed. Strengthening domestic cooperation between LEAs and the FIU will be helpful to understand every case in more depth to draw level with the evolution of crime itself. This is the way forward in the future.