

CURRENT SITUATION OF AND COUNTERMEASURES AGAINST TRANSNATIONAL ORGANIZED CRIME IN RELATION TO CORRUPTION IN MALAYSIA

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I. INTRODUCTION

Corruption has existed ever since antiquity as one of the worst and, at the same time, most widespread forms of behaviour, which is inimical to the administration of public affairs. Corruption can occur in various form. Klaus M. Leisinger divides forms of corruption into 'petty' corruption, gift and 'big' corruption.

'Petty' corruption is defined as small payment to get someone empowered to take and enforce decisions to see to it that something he or she is duty bound to do is actually done within a reasonable period of time. These payments are used as stimulus or nothing would happen or it happens with some delay. The word 'petty' in petty corruption refers to both the size of the financial transaction and the size of the obligation the transaction buys. In some societies, petty corruption pervades almost every public service institution like the police and customs department.

Gifts are another type of corruption. In many societies gifts, including an invitation to dinner or other favors, are considered as something to respect which will strengthen a friendly relationship. Refusing them would be an offence. In other societies, accepting gifts may be close to corruption. The problem lies not only in the intention behind offering the

gift but in the value of the gifts themselves. If their values are too high, they are likely to be ethically suspect. The intention of the giver is also relevant. If the gift is intended to motivate the receiver to do or not to do a certain thing within a period of time in the interest of the giver, it will be a corrupt practice.

A more serious type of corruption is 'big' corruption. One of the usual practices in this type of corruption is getting 'commission'. In many developing countries, big construction schemes, purchases of armaments and other equipment like telecommunications and commercial planes, the tenders who won the bids had to give commissions to the people in the authority concerned. Since the commissions are high, they are one of the major attractions for political leaders and top ranking public officials who want to increase rapidly their personal wealth.

In which ever way one defines corruption, the effect toward one's society due to the practices of corruption are devastating in the way it:

- erodes the moral fabric of every society;
- violates the social and economic rights of the poor and the vulnerable;
- undermines democracy;
- subverts the rule of law which is the basis of every civilized society;
- retards development; and,
- denies societies, and particularly the poor, the benefits of free and open competition.

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In view of the seriousness of the effect of corruption in all societies, delegates of the 8th International Anti-Corruption Conference held in Lima, Peru from 7–11 September 1997 adopted that:

- fighting corruption is the business of everyone throughout every society
- the fight involves the defence and strengthening of the ethical values in all societies;
- it is essential that coalition be formed between government, civil society and the private sector;
- a willingness to enter such a coalition is a true test of an individual government's commitment to the elimination of corruption;
- the role of civil society is of special importance to overcome the resistance of those with stake in the status quo and to mobilize people generally behind meaningful reforms;
- there must be a sustained campaign against corruption within the private sector as, with greater privatization and deregulation, it assumes a greater role in activities traditionally performed by the state;
- that top leadership sets the tone in all societies, as "You clean a staircase by starting at the top".

II. ANTI-CORRUPTION AGENCY MALAYSIA

A. Perspective

The Anti-Corruption Agency (ACA) Malaysia is one of the agencies under the Prime Minister's Department. It was officially established on 1st October 1967. The setting up of the ACA is closely linked to the hopes and intentions of the government to create an administration which is clean, efficient and trustworthy. In line with this aim, it is the role and

responsibility of the ACA to eradicate corruption and the abuse of power.

B. Objective

The elimination of all forms of corruption and abuse of power prohibited by Government regulations and the laws of the country.

C. Vision

1. Toward the creation of a Malaysian society free from elements of corruption and based on high spiritual and moral values, led by a Government which is clean, efficient and trustworthy;
2. To make the ACA a professional, world class agency dedicated to the eradication of corruption, guided by principles of justice, resoluteness and integrity.

D. Mission

The eradication of corruption and the abuse of power in an integrated, ongoing manner in which:

1. All agencies and major institutions of the Government are fully involved in the enforcement of the relevant laws and regulation in a just and firm way in order to ensure the sovereignty of the law and to protect the national and public interest;
2. All levels of leadership, political, administrative, corporate, religious and non-governmental agencies are involved in the task of nurturing and internalizing the highest moral values until there is a consensus in Malaysian society that corruption is abhorrent and must be wiped out.

E. Function

1. To detect and ascertain the commission of corruption and the abuse of powers based on information and complaints obtained through

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- accurate, comprehensive and efficient covert and open investigations;
2. To procure and compile concrete and comprehensive evidence to prove commission of corruption, abuse of power and disciplinary misconduct through prompt and effective investigation;
3. To ensure that public interest and justice are continually safeguarded under the guidance of the relevant national laws and regulations through legal counsel and fair trial in cases of corruption and abuse of power;
4. To assist heads of public and private sectors in handling disciplinary action against officers who have violated work regulations and the code of ethics based upon comprehensive ACA reports;
5. To curb roots and opportunities for corruption and abuse of powers due to apparent weakness in the system of management that have been ascertained from ACA investigation results and analytical reports;
6. To assist in ensuring that only candidates who are not involved in corruption and abuse of powers are confirmed based on the ACA's expeditious and accurate vetting of:
 - (i) The promotion, optional retirement, conferment of prestigious awards and titles including filling-up vacancies for important posts in the public sector; and,
 - (ii) The filling of important posts in certain institutions as well as conferment of prestigious awards and titles in the private sector;
7. To enhance participation and garner undivided and continuous support from leaders, influential groups and the general public in efforts to counter corruption as well as the abuse of power;
8. To ensure that actions taken by the ACA in intelligence gathering, investigations and prevention of corruption and abuse of powers are executed with discipline through its relationship and cooperation with relevant agencies at the national and international levels;
9. To create values of excellence by enhancing expertise and professionalism and fostering the spirit of solidarity amongst ACA officers through dedicated and dynamic leadership as well as planned and systematic training programmes;
10. To enhance the leadership capability and departmental management quality of ACA officers at all levels through development programmes in human resources, information technology and systematic work processes.

F. Strategy

The ACA has identified the following three principal strategies to achieve its stipulated Vision and Mission.

1. Reinforcement Strategy

To enhance the effectiveness of the ACA, this strategy focuses on reinforcing the professionalism of its officers as well as enhancing co-operation with other international anti-corruption law enforcement agencies and the mass media.

2. Encouragement and Prevention Strategy

This strategy emphasizes unwavering efforts to inculcate noble value, prevent corruption and improve the supervision system when enforcing laws and regulations.

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3. Enforcement Strategy

New laws to enhance the powers of the ACA so that they will include aspects of mandatory punishment, burden of proof on the accused found in possession of property in excess of known legal income,

seizure of property where no satisfactory explanation of its source is provided as well as the ability to deploy agent provocateurs in its investigations. These aspects seek to generate a deterrent effect on the offender.

**III. CURRENT SITUATION OF
CORRUPTION IN MALAYSIA**

To have a clearer current situation of corruption in Malaysia, figures and statistics for the year 1999 will be used in place of figures and statistics for the year

2000 which are still in the process of gathering and analysis.

A. Information

For the fiscal year 1999 ACA Malaysia received a total of 7,829 complaints and reports through various sources as indicated in Table 1.

Table 1

No.	Source of Information	Total	%
1	Anonymous letters	2674	34.16
2	Official letters from individuals	1963	25.07
3	ACA officers	1921	24.54
4	Personal visits	434	5.54
5	Telephone call	405	5.17
6	ACA aerogramme	114	1.46
7	Electronic media (homepages, e-mail, facsimile)	106	1.35
8	Letters from private companies	69	0.88
9	Letters from government department/statutory bodies	43	0.55
10	Police	42	0.54
11	Printing media	40	0.51
12	Letters from political parties	11	0.14
13	Official letters from government companies	4	0.05
14	Public Complaint Bureau	3	0.04
Total		7829	100

After being processed and assessed, only 3,526 or 45.05% of the information received contained elements of corruption capable of open and covert investigations while 2,205 or 28.16% contained only general complaints in connection to the services and administration of certain departments or private companies. The

information was then referred to the respective departments or private companies for their internal action. No action taken on the rest of the 2,098 complaints or 26.80% as they had no basis for investigation.

B. Investigation

In 1999, 413 Investigation Papers (IP), 157 Preliminary Inquiry Papers (PIP), 2,282 Intelligence/Surveillance Papers (SP) and Project Papers were opened in respect of the 3,526 complaints. Other action such as making secret observations together with opened IPs/PIPs/SPs were taken on the remaining 674 complaints.

From 413 complaints investigated in 1999, a total of 406 involved offences under the Anti-Corruption Act 1997 while the remaining 2, 1 and 4 complaints involved the Prevention of Corruption Act 1961, the Emergency (Essential Powers) Ordinance No. 22 of 1970 and the Penal Code respectively. Table 2 shows a statistical breakdown of the total IP(s) opened by types of offence under the relevant laws.

Table 2

No.	Type of Offence	1999
1	Prevention of Corruption Act 1961 Sec. 4 (c) - using of claims containing false particulars.	2
2	Anti-Corruption Act 1997 Sec. 10 (a) (aa) - Offence of accepting benefits from members of the public. Sec. 10 (a) (bb) - Offence of accepting benefits on account of being a public servant. Sec. 10 (b) (aa) - Offence of giving benefits by members of the public. Sec. 11 (a) - Offence of accepting benefits by an agent. Sec. 11 (b) - Offence of giving benefits to an agent. Sec. 11 (c) - Using claims containing false particulars. Sec. 15 (1) - Offence of using office/position for benefit. Sec. 29 (b) - Obstruction of inspection and search.	23 7 2 201 61 82 29 1
3	Emergency (Essential Power) Ordinance No. 22 of 1970 Sec. 2 (1) - Offence of using an office/position for benefit.	1
4	Penal Code Sec. 165 - Public servant accepting an item of value without consideration. Sec. 193 - Fabricating evidence in court. Sec. 409 - Criminal breach of trust by a public servant.	1 2 1
Total		413

C. Arrest

By the end of the year 1999, a total of 289 persons have been arrested, of which 21 were detained for offences under the Prevention of Corruption Act 1961, 241 for offences under the Anti-Corruption Act 1997, 5 under the Ordinance No. 22/70 and the remaining 22 for offences under the Penal Code. The total amount of gratification gleaned from the arrests

was RM 39,063,674.54 while the comparison of arrests according to categories of person is shown in Table 3.

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Table 3
Comparison of Arrests According to Categories of person in the year 1999

No.	Category	Total
1	Management & Professional	18
2	Support staff/group	136
3	Members of public/private sector	127
4	Politicians	2

From the figures and statistics above, it's safe to say that the general public in Malaysia is well aware of the existence of ACA and it's function as an agency which is responsible to eradicate corruption and abuse of powers. This is clearly shown by the amount of information received by ACA, excluding information gathered by ACA officers, totaling 5,908. Although more than half of the information received from the public does not contain elements of corruption or abuse of power, it does reflect the general obligation of the public to fight, hand-in-hand with the ACA, to eradicate corruption and abuse of power in Malaysia.

The statistics from Table 2 show that most offences of corruption in Malaysia are related to accepting of benefits by an agent. An 'agent', under Section 2 of the Anti-Corruption Act 1997 means:

“any person employed by or acting for another, and this includes an officer of a public body or an officer serving in or under any public body, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, and a person employed by or acting for such trustee, administrator or executor, or sub-contractor”,

As such it shows that most of the IP(s) open for investigation under the offence of accepting benefits involve agents of a certain body, whether public or private

sector. Mostly the accepting of benefits which are investigated under Section 11 (a) of the Anti-Corruption Act 1997 is regarded as 'stimulus', as stated by Klaus M. Leisinger, or inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the agent's principal affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to the agent's principal affairs or business.

The second most investigated offence in relation to the Anti-Corruption Act 1997 for the year 1999 is in relation to Section 11 (c) in which 82 IP(s) were open. Section 11 (c) stated that:

“any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal”.

Looking at the above given figures and statistics, it is not wrong to say that the larger portion of corruption offences that occur in Malaysia are those that could be categorized as 'petty' corruption. The act of corruption is done more on the basis of one's personal gains. Although many of

the offences are done by one person, it can not be denied that there exists syndicated or organized corruption. The nearest example that could be put forward is the investigation in the year 2000 against officers of the Forestry Department which is said to receive large benefits from illegal loggers. Also there was an investigation against officers of the Road And Transport Department and driving school instructors with regard to the issuing of driving licenses without the applicant going through the normal driving test conducted by the department.

Whatever it is, petty or syndicated, corruption in Malaysia is basically an internal problem that has to be dealt with by all segments of society. In view of this, the government, public agencies, private sectors, non-government agencies, political parties and the public have a role to play.

IV. COUNTERMEASURES AGAINST CORRUPTION IN MALAYSIA

A. Anti-corruption Act, 1997

1. Efforts in combating corruption started in the colonial days of the British administration with the setting up of a commission which is responsible to investigate malpractices in the public service sector. When Malaysia achieved its independence, the government setup the Anti-Corruption Agency in 1967 which is equipped with the Prevention of Corruption Act 1961 and the prescribed laws as its weapon in combating corruption.
2. Having considered the past trends and current challenges, the Malaysian Government, has carried out a comprehensive evaluation of the circumstances and symptoms of corruption and its effect at the national and international level. As a result, a new Anti-Corruption Act has been passed by the Parliament in 1997 to combat corruption and related crimes. In this act, several new provisions to widen and enhance the scope of the Anti-Corruption Agency and the Public Prosecutor's functions in areas of detection, enforcement and punishment of corruption, abuse of public position or powers and related crime which are lacking under the old Prevention of Corruption Act, 1961.
3. Among the important aspects of this new Act was the inclusion of provisions pertaining to the forfeiture of property and the explanation of excessive properties acquired or held. The ACA 1997 doesn't have a specific provision which has a "money laundering" word in it or specifically spells out the offence of "money laundering". Nevertheless, Section 18 of the act provides a provision which makes it an offence for any person whether within or outside of Malaysia to be involved in any dealing in relation to any property which is the subject matter of the corruption offence.
4. As with any other legislation that intends to penalize the criminals, the ACA 1997 provides the Agency with several provisions which are to be used for the purpose of "asset tracing", seizure and forfeiture. Among the provisions of the ACA 1997 are as follows:

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(i) *Dealing in Property (Laundering)*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 18 Dealing in property	Besides the accused person, this provision also allows investigation and prosecution of any person who assists or abets the accused.	Fine < RM50,000 or Jail < 7 years or both

(ii) *Investigation Powers in Relation to "Asset Tracing"*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	Officer's Powers (Direct) S. 22 (1)(b) Order to produce documents.	Compel any person to produce documents without having to conduct a search.	NC—S. 22 (10) and punishable by S. 58. Fine < RM10,000 or Jail < 10 years or both
2	S.22 (8) Recording of witness' statement	Witness shall not refuse or answer questions which are incriminating. Used as a source of information pertaining to property acquired/ held, details of incomes/expenditure, network analysis, etc. Statement to be admissible as evidenced for forfeiture of property.	S. 19—giving false statement or a misleading one. Fine < RM100,000 or Jail < 10 years or both
3	S. 23 (3) Search without DPP's Order	Search can be done immediately and as such reduce the possibilities of documents or properties being destroyed.	S. 29—obstruction and punishable by S. 58. Fine < RM10,000 or Jail < 2 years or both

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No	Provision	Effect	Offence or Non-Compliance (NC)
4	S. 45 (3) Recording of accused's statement	Compel the accused to give his defence or else if he holds back until in court, then he/she will be less likely to be believed by the court. Used as a source of information pertaining to property acquired/held, details of incomes/expenditure, network analysis etc.	
5	Officer's Powers (through DPP) S. 23 (1) Search with DPP's Order	Search done with a written authorization from DPP.	S. 29—obstruction and punishment by S. 58. Fine < RM10,000 or Jail < 2 years or both
6	S. 27 (1) Solicitors to disclose information by High Court order.	Overcome 'privileged information' barrier in respect of dealing of properties under investigation.	NC—S. 27 and punishable by S. 58 Fine < RM10,000 or Jail < 2 years or both
7	S. 31 (1) Order allowing investigation of any bank account.	Supersede banking secrecy provision. Banking documents are used to trace movements of money and to ascertain <i>modus operandi</i> .	NC—S. 31 (4) Fine < RM10,000 or Jail < 2 years or both
8	S. 32 (1) Notice for declaring assets to the accused or any person, and to the bank for disclosure of any account of the above party.	An avenue for investigators to have detailed information pertaining to any property owned/held within or outside Malaysia.	NS—S. 32 (2) Mandatory Jail > = 14 days < 20 years and fine < RM100,000

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No	Provision	Effect	Offence or Non-Compliance (NC)
9	S. 32 (3) Explanation on excessive properties (only for officer of a public body)	The accused or any person to furnish a detailed explanation on how properties are owned/held.	Failure to explain satisfactorily. Mandatory Jail \geq 14 days $<$ 20 years and fine \geq 5 times the value of the excess or RM10,000 whichever higher. NS—S. 32 (4) Mandatory Jail \geq 14 days $<$ 20 years and fine \geq 5 times the value of the excess or RM10,000 whichever is higher

(iii) *Seizure*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	Officer's Powers (Direct) S. 23 (1) Seizure of movable property (except under bank's custody).	Allows property to be seized for further due course.	S. 29—obstruction and punishable by S. 58. Fine $<$ RM10,000 or Jail $<$ 2 years or both
2	DPP's Powers S. 33 (1) Seizure of movable property under bank's custody.	Allows seizure/restraining order on bank accounts for further due course.	NC—S. 33 (3) Fine $<$ 2 times the amount paid out in contravention of the order or RM50,000 whichever is higher and mandatory Jail $<$ 2 years

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No	Provision	Effect	Offence or Non-Compliance (NC)
3	S. 34 (1) Seizure of immovable property.	Allows seizure/restraining order on property for further due course.	NC—S. 33 (3) Fine < 2 times the value of the property or RM50,000 whichever higher and mandatory Jail < 2 years
4	S. 35 Property outside Malaysia (by High Court order)	Prohibit any dealing on property owned/held overseas.	NC—S. 57 and punishable by S. 58. Fine < RM10,000 or Jail < 2 years or both

(iv) *Forfeiture*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 36 Forfeiture upon prosecution (application to High court)	Allow property to be forfeited whether the offence is proved or not.	
2	S. 37 Forfeiture without prosecution (application to High Court)	Allow property to be forfeited without prosecuting the accused (within 12 months of seizure).	

(v) *Evidence*

No	Provision	Effect	Offence or Non-Compliance (NC)
1	S. 43 Evidence of unexplained wealth	Any evidence of unexplained wealth shall corroborate any evidence relating to the commission of the offence under the Act.	

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No	Provision	Effect	Offence or Non-Compliance (NC)
2	S.44 Evidence of an accomplice and agent provocateur	Evidence of an accomplice and agent provocateur shall be admissible in court.	
3	S. 46 Admissibility of statements and documents of the dead or untraceable person	Statements or documents given by a person who died later or is untraceable shall be admissible in court.	

B. Integrity Management Committees

To complement and in tandem with the new legislative anti-corruption measure, the Prime Minister's Directive No. 1 of 1998, provides that the Special Cabinet Committee On Management Integrity, be entrusted with more functions and wider scope of duties to oversee and monitor the activities of similar Integrity Management Committees (IMC) setup at Ministerial, Federal Department, even at state and district levels. This directive is to consolidate a further integrity system of administrative management of the Government of Malaysia to enable efforts in combating corruption and malpractices among civil servants to be enhanced by agencies of the Government of Malaysia internally, comprehensively, systematically and continuously.

The objective of the IMC is: "to create a Government and Public Administration that is efficient, disciplined and imbued with the highest integrity through enhanced inculcation of moral values over and above tackling problems and weakness particularly in the areas of Government financial management, public administration, handling of

disciplinary referrals, corruption, abuse of powers and malpractices prohibited by regulation, laws and religion."

C. Anti-Money Laundering Act

As a member of Asia Pacific on Money Laundering Group (APG) since May 2000, Malaysia have seriously taken steps to met the 40 Recommendations of the Financial Action Task Force on Money Laundering (FAFT). Malaysia have made a commitment to implement legislation and other measures based on the 40 FATF Recommendations. As such, Malaysia, as a member APG, is committed in providing a regional focus for co-operation against money laundering, especially in the implementation of the 40 FAFT Recommendations in legal, financial and law enforcement sectors.

By that Malaysia has responded to the call of the international community by enacting the Anti-Money Laundering Act 2001 expeditiously. It is hoped that the law, with 119 serious offences including drug trafficking, corruption, kidnapping, robbery, human trafficking, gambling and fraud, will provide a strong foundation for Malaysia's efforts in

countering money laundering. The Act provides comprehensively for prevention, detection, investigation and prosecution of money laundering and forfeiture of property derived from, or involved in, money laundering activities. In addition, the law incorporates the requirement of customer identification, record-keeping and reporting of suspicious transactions by reporting institutions. With the new law Malaysia has adopted the majority of the FAFT's 40 Recommendations.

V. CONCLUSION

The fight against corruption involves the defence and strengthening of ethical values in all societies. The lack or absence of the element of accountability and responsibility is a frightening symptom of moral decadence and the real threat of increasing economic crimes, corruption, violence and crimes of all sorts in every part of the world. Mankind, therefore, should seriously start looking beyond codes of ethics, criminalized or otherwise. No laws, regulations or codes of ethics, no matter how good and comprehensive they are, unless effectively enforced, can wholly eradicate crime, greed, corruption, incompetence or sin. For this reason again we have to fall back on religion and that god is the source of correct principles and that our conscience should be guided by the divinely-inspired values, principles ethics and norms.