

Transforming Malaysia - The Fight Against Corruption and the Role of the Courts in the Expedition of Corruption Trial

by

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The Fight Against Corruption

1. Fighting corruption is an essential part of any government ambitious plan to transform the nation and accelerate economic growth. The objectives amongst others are to restore public trust, to ensure good governance, to encourage investor confidence and to provide a fair market place and competitive platform.
2. Spurred by its determination to achieve the goal of becoming a high income nation by the year 2020 the Malaysian Government has made fighting corruption a priority which needs to be addressed by both the public and private sectors. Various initiative have been implemented to encourage integrity and transparency as part of the National Key Result Areas (NKRA) goal of fighting corruption under the Government Transformation Programme (GTP).

3. The fight against corruption cannot be won overnight. A change at the policy level by the Government alone will not be sufficient. Broad reforms across the board to minimize the opportunities and practice of corruption must be implemented. To achieve this purpose the Malaysian Government has made fighting corruption a National Key Performance Indicator (NKPI), which is a clear indication of just how serious we are about eradicating corruption from our country.
4. It is also to be noted that the problem of corruption cannot be addressed in piecemeal fashion, and hence resources have to be marshalled to provide a holistic solution. Towards this end the Malaysian Government has adopted and applied anti-corruption measures in its fight against corruption such as the following:

- i. **Creation of Compliance Units across all Government bodies**

The success and impact of the creation of Compliance Units in five enforcement agencies – the Malaysian Anti-Corruption Commission (MACC), Royal Malaysian Police Force (PDRM), Royal Malaysian Customs, the Road Transport Department and the Immigration Department – has encouraged the Government to consider adopting this policy across its various bodies. The Government believes that incidences of corruption can be reduced if there is some

form of monitoring. These Compliance Units, will internally monitor the performance and behaviour of civil servants and enforcement officers, and refer them for disciplinary action if the need arises.

ii. **Minimising opportunities for corruption through automation**

As a starting point under this measure the Road Transport Department implemented its traffic Automated Enforcement System (AES) in August 2012 under the *Reduce Discretion Through Automation* initiative. The goal of this initiative is to reduce opportunities for petty corruption by removing the human equation from traffic enforcement activities. Although the AES has come under criticism from some parties since its inception, these teething issues are minor inconveniences compared to the programmes's overall benefit.

iii. **Corporate Integrity Pledge**

The Corporate Integrity Pledge (CIP) is one of the Government initiatives designed to solicit greater co-operation and participation from the private sector in the fight against corruption. Some of the key signatories of the CIP include private sector companies that are part of the Entry

Point Projects (EPPs), which form the core of the country's Economic Transformation Programme (ETP).

The CIP is a signed commitment by signatories towards the eradication of corruption in their workplaces, and they are held to a number of obligations to do so. This includes tightening their corporate governance policies in compliance with the requirements of the CIP. As at the end of 2012, 154 companies have signed the CIP.

iv. **Whistleblower Protection**

The Whistleblower Protection Act 2010 ["the Act"] was enforced in 2011 and represented a new piece of legislation protecting the rights and identities of persons who report instances of corruption. The purpose here is to create a secure environment in which potential whistleblowers can act without fear of recrimination. The Act has led to an increase in the number of corruption complaints. In 2012, 96 individuals were given protection of identity under the Act.

v. **MyProcurement Portal**

The institution of the MyProcurement Portal under the Government Transformation Programme is the first step in combating corruption in the Government procurement

process. The portal requires that all Government tenders and winning bids be listed on this online database, which provides greater clarity and transparency to the purchasing process. The publication of tender results as well as price benchmarks in the Portal will also provide a clearer picture of Government spending.

vi. **Parameter for Support Letters**

It has been noted in the past that applicants bidding for government projects or contracts often seek recommendation from persons in authority to support their application in the form of support letters to ensure they would be successful in their bidding. Now, the support letters no longer has a place in attempting to influence the decision making process pertaining to Government approvals and applications. There is a clear guidelines in the circular issued that explains support letters are not to be accepted as approvals or supersede existing processes within government agencies in issuance of licenses, procurement, privatisation, fast tracking of approvals etc. All approvals will be based on merits, fulfilled requirements and also subject to current procedures and regulations.

vii. **Name and Shame Database**

Under this measure taken offenders as well as those under trial are highlighted on the Malaysian Anti-Corruption Commission (MACC) website (www.sprm.gov.my) with the objective to create greater awareness on the seriousness of the crime of corruption. The database is an effort in curbing corruption and highlights details of the convicted offenders including detailed of the offence committed and the penalty imposed.

Details of those convicted are made available for public viewing and remains on the website for a maximum of three years. Recently, the database has been an effective reference by the immigration, the banking fraternity and also foreign embassies for applications pertaining to entry permits, financial services and entry visas.

viii. **Job Rotation System**

Under the job rotation system, Government officers will undergo rotations of their job placement and tasks to circumvent possibilities of acts of corruption. The system tends to reduce the “*comfort interaction zones*” between the public and an officer. Furthermore, it ensures that every officer performs his duties and responsibilities according to the process and procedures and to deter the misuse of

power and position. Under this system, the department need to identify where the “Hot Spot” is, what the “Hot Job” is and who is the “*Hot Staff*”.

ix. **Reward and Recognition**

A scheme has been devised to recognize public servants who demonstrate high levels of integrity as well as those who report corruption activities such as bribery, malpractice and abuse of power to the Malaysian Anti-Corruption Commission (MACC).

The objectives of the recognition are to:

- a. encourage civil servant to report on bribe offering and giving which is an offence under section 17(b) of the Malaysian Anti-Corruption Commission Act 2009 (Act 694).
- b. create a specific scheme to give recognition to civil servants who report on corruption cases and dispel the negative perception among colleagues for making such reports.
- c. enhance the public sector’s image and cultivate a positive perception on public officials of their uncompromising attitude when it concerns corruption.

The Role of the Courts

5. In the fight against corruption the Courts too have taken a positive and proactive stand. It is noted in the past corruption cases registered at the Courts were not expeditiously disposed of due to a number of factors. There was no time line for the cases to be disposed and completed. Corruption cases can take years between the arrest of a suspect and the case appearing before a Court of law. Such long intervals have led to public perception that the Government is not keen to prosecute corruption cases and hence have eroded public confidence in the Government's commitment to eradicate the problem.
6. When corruption cases go on trial at a slow pace with postponement at various interval the prosecution will be facing an uphill task in proving its case resulting in the acquittal of the accused person. There is an increase opportunity for material witness to go missing. The memory of witnesses when giving evidence in the trial may be fading and they become uncooperative as they have lost interest in the case if the trial is not speeded up. There is also the possibility of giving room for the tampering of witness evidence. This will ultimately result in a lower conviction rate.
7. As it is now all trial Judges have been directed to speed up the trial of corruption cases and to ensure the expeditious disposal of such cases. All corruption cases must be completed within

one year particularly for public interest cases. To further expedite the hearing and disposal of corruption cases, 14 special corruption Sessions Courts at the major cities and towns in the country were established on 16 February 2011 to specifically handle corruption cases, presided by experienced Judges. Judges of these special corruption courts shall ensure all procedures in the Criminal Procedure Code (CPC), Malaysian Anti-Corruption Commission (MACC) Act and other relevant statutes must be strictly complied to speed up the hearing of cases.

8. Judges presiding in these special corruption session courts are also given training specifically on corruption related cases. These trainings are aimed at equipping these judges with the necessary knowledge and understanding of the laws relating to corruption.
9. The establishment of the special corruption Sessions Court to hear corruption cases as from 16 February 2011 has resulted in a significant increase in the statistics of disposition of corruption cases as compared with the years before 2010. For the year 2011 itself 75.6% of the trial cases on corruption were completed within a year from the date of registration when compared to only 36.8% for the year 2010. For cases registered up to May 2012, the Courts have managed to dispose of 77.7% of the cases within a year of registration.

10. On the success of the prosecution of corruption cases before the Courts in 2011, a total of 472 persons were convicted on corruption offences such as bribery, misappropriation and abuse of power. Some of these cases caught the attention of the public as the sentences meted out had reflected the seriousness of the crime of corruption.

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