

MALAYSIA: EFFECTIVE INVESTIGATION MANAGEMENT

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I. INTRODUCTION

The Malaysian Anti-Corruption Commission (MACC) is progressively moving towards a greater degree of professionalism and transparency in the field of investigation. After years of combating corruption through conventional ways and techniques of investigation, the MACC has embarked on a model known as the Effective Investigation Management (EIM) Model. This model is an overhaul of the way we perform our duties and tasks. The MACC believes that this is the way forward to enhance our ability to investigate corruption cases.

II. EFFECTIVE INVESTIGATION MANAGEMENT

The EIM model was created after much study and research to see how the investigation process could be effectively carried out to render the desired efficacy. This model incorporates some best practices that have been used in some of the branches in the organization. The EIM Model is now deployed in the day-to-day operations of the MACC. The EIM is basically made up of five processes or components — the means to achieve the desired outcome. The five components are:

- (i) Quality Information & Case Analysis
- (ii) Investigation Plan
- (iii) Team-based Investigation and collaboration with other agencies
- (iv) Case Monitoring
- (v) Investigation Outcome

The underlying code of conduct in any investigation is that it should be carried out in an independent, fair and transparent manner.

A. Quality Information and Case Analysis

The Malaysian Anti-Corruption Commission (MACC) receives countless reports of corrupt practices, malpractice and mischievous acts from various sources. Every morning, five top ranking officers (Commissioner's and above) will meet to discuss all reports received. This high-powered committee (Assessment Information Committee) will then make a landmark decision as to whether the MACC should proceed with the necessary action or not. This committee considers the merits, pros and cons of the information received.

Among the tasks of this committee is to study the case and see if relevant laws, rules and regulations might have been violated. A case can be seen from many angles — such as a

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simple one involving a member of the public, public interest, high profile, economic crime, syndicated crime, high impact, project based, quick response and others.

There can be no one size fits all approach. In other words, no single approach can be used for all of the above angles. Some are to be done in a proactive manner and some in a reactive manner. Some cases also should use an intelligence methodology rather than an investigation methodology: (i) open investigation and (ii) pre-inspection paper. Alternatively, maybe the case is just a misunderstanding of the procedure and codes by the complainant, which warrants the complainant to seek recourse elsewhere.

With this, committee members having read and considered the complainants' grievances that were brought to the MACC's attention. This committee can also take a macro and holistic view of the current level of corruption and see other ways and means to eradicate it. This includes advising necessary ministries through official means to be vigilant on certain aspects of their operations and to redirect some legitimate complaints made by the public to the relevant authority.

B. Investigation Plan

An investigation must have a plan. Without proper planning the investigation is likely to fail. In fact, the much desired outcome of charging the suspect with the crime may not come to fruition if diligent and proper planning is not carried out.

EIM is a tool kit supplying an itemized checklist to enable the Investigation Officer to prepare necessary investigation plans and procedures. If the Assessment Information Committee has instructed the Investigation Division to do a necessary task, the appropriate planning (investigation) model is used. If the Intelligence Division has been instructed to take on a task, the approach then uses an intelligence methodology.

The benefit of having an investigation plan is to forecast what necessary resources are needed to conduct the investigation. Among the resources needed are the 4M's — man, money, machine and method.

1. *Man* — besides the quantity of personnel involved, the investigation plan also looks into the "quality" of the persons needed. That is their educational discipline (law, accounting and engineering) and previous jobs (Immigration, Road Transport and others) and experiences that will benefit the investigation.

In this current time of each investigation unit clamouring for more manpower, proper planning with the aid of Gantt charts can help the Investigation Division to better utilize officers at appropriate times.

2. *Money* — Various expenses are incurred during the course of an investigation. In the plan, the budgetary aspects are also looked into. This is to ensure that enough money is provided at the onset. In any investigation, there will always be some exigencies that may require some quick expenses. By having some leeway and access to some monetary resources, quick planning and decisions can be made during the investigation process.
3. *Machine* — gone are the days when information is sent via telegrams or through a post man — where immediate interception could be made. Information (whether

good or bad) is often sent by some form of gadget or machine, right from hand held devices, like mobile phones, to desktop computers. Money is also telegraphically transmitted through the banks with a “click”. Humans perform the remittance and a machine will be the conduit.

Today’s hand-held devices (smart phones, tablets and iPads) are coupled with capacious storage, unlimited access to the internet, and they are virtually capable of functioning from every part of the globe. These devices are also protected via various passwords and access codes. Equipment to break those passwords and access codes has also been developed for official law enforcement agency usage.

In Malaysia, the MACC has a special dedicated forensics team that dissects and analyzes devices and machines that have been used to facilitate a crime. Recycle bins, caches and passwords are not safe places for criminals to hide documents.

Another factor is also logistical purposes — whereby the investigation plan must also state where the seized items are kept until the court case is over.

Method — the method of investigation is also looked into. For instance, when the investigation plan is being prepared, investigators must deal with a number of eventualities, like witnesses (whether local or foreign) who are currently abroad, situations in which the proceeds of the crime are located at various banks within and outside the country, or the proceeds of the crime have been used to purchase other assets. When situations such as these occur, there is a possibility that another investigation paper has to be opened to look into the possibility of freezing the account and pursuing forfeiture of the assets. At the same time, it may be necessary to look to current bilateral agreements to obtain statements from important witnesses in Malaysia or abroad.

C. Team-Based Investigation and Collaboration with Other Agencies

EIM also places emphasis on conducting investigations by a team and not in a silo, or individually. This team-based approach is more effective as it blends all aspects of human capabilities to ensure effective investigation. The team of individuals works together to achieve specific goals in completing an investigation. Team-based methods of investigation in a systematic and organized manner can optimize the resources available for the investigation, leading to the successful prosecution of cases of corruption and abuse of power.

In any corruption case, the MACC sometimes cannot afford to investigate the matter by itself. Those who want to commit corruption crimes have more technical knowledge and knowhow as compared to an MACC officer, and this allows the criminals to circumvent the system. This is where “Team-Based Investigation” is not just a matter of getting an investigation branch or officers in one room, nor is it getting some bright sparks from the investigation division or the whole organization, but rather looking into and not discounting the fact that outsiders may be the missing link in solving the corruption case. Outsiders here involve members of industry, reliable sources and informants, former employees of industry and people who can assist in some way or another in the advancement of the investigation paper.

Being in the MACC service, officers are rewarded with promotions. At times, these promotions do come with relocation of officers in terms of place or division. Of course, some

dedicated officers also retire when their time comes. When work is done as a team, the whole Investigation Paper is reviewed and every team member watches the progress from birth until maturity. Therefore should an officer of the team get transferred or go on extended leave, the investigation process is not stalled.

D. Case Monitoring

Cases that are investigated are all done in a team. Investigation officers do not work in silos. These team-based investigations will not succeed if the team members are not disciplined to meet every morning and evening for a briefing session. This meeting is documented so that all instructions and latest updates are recorded.

In the evening, all members of the team will be called in for a debriefing. This is when all work done for the day will be reported and the next courses of action and strategies are planned. All problems that come along can also be resolved there.

It is also in these sessions that team members will be updated about the investigation stage. To investigate a corruption case, time is of the essence. One cannot wait for a full and whole account of one witness to be recorded before moving on to the next witness. Counterchecks and verification may need to be done simultaneously. If every officer is abreast with the latest updates and all the witness accounts, more questions can be asked to subsequent witnesses.

III. OUTCOME

It was a practice in the agency (before it became the Commission) to end the investigation paper with a suggestion to charge the suspect(s) in court (more often than not in limiting to only corruption charges and some popular charges under the Penal Code) or to say that there is no case as the burden of proof is high (beyond a reasonable doubt). In the case of a government servant, there is recourse for the suspect to be hauled before an internal inquiry body, in which the inquiry would be conducted by the suspect's department. In the case of a civil servant, the suspect may be given a show cause letter and later be subjected to a disciplinary hearing, which is conducted by the suspect's department upon the report of the MACC. However, with the introduction of the EIM model, various outcomes are listed so that some form of punitive action can be taken on the suspects, and maybe on the department and on the organization.

Among the actions that can be taken against a suspect are (i) advisory letter, (ii) warning letter, (iii) disciplinary report which will lead to an internal inquiry by the relevant department, (iv) forfeiture of assets, (v) deportation of foreigners, (vi) reporting to professional bodies to have their licenses revoked or suspended upon their investigation, and (vii) referral to the Inland Revenue Board. Actions that can be taken by a department include, but are not limited to, (i) conducting system and procedure audits or (ii) requiring an Integrity Pledge. Actions that can be taken against errant companies include (i) blacklisting of companies and (ii) referring the relevant departments that tendered the bribes.

IV. CONCLUSION

The five components, although separate in the process, are actually complementary to each other. If one fails, then the effect can be seen in some of the other components. The advantages of the EIM are:

1. Investigation papers are completed faster
2. Assistance in training and grooming of officers
3. Complicated cases are not so complicated anymore
4. The quality of evidence gathering and recording of statements is enhanced
5. Ensure the investigation paper comes out with a minimum recommendation
6. Individual Investigation Officer's burdens are shared

The theme of the seminar is Enhancing Investigative Ability in Corruption Cases. The Malaysian Anti-Corruption Commission's Effective Investigation Management model is the method to enhance our investigation ability in corruption cases.