

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION – A CASE STUDY FROM BRUNEI DARUSSALAM

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I. INTRODUCTION

Investigation of corruption is becoming more complex as perpetrators are becoming more sophisticated in making use of foreign jurisdictions to launder the proceeds of corruption. The Anti-Corruption Bureau in Brunei Darussalam recognizes this problem and the need to facilitate the recovery of proceeds of corruption and continues to improve investigative measures as well as mutual cooperation with enforcement agencies from neighbouring countries.

International cooperation, which includes mutual legal assistance (MLA), be it formal or informal, is crucial in the successful recovery of assets or proceeds of corruption that have been transferred to or hidden in foreign jurisdictions.

This paper aims to illustrate the success of MLA in the recovery of proceeds of corruption using the case of *Public Prosecutor v. David Chong*¹. With the passing of the Criminal Asset Recovery Order 2012 (CARO) in Brunei Darussalam in June 2012, this case is also the first Non-Conviction Based² (NCB) confiscation case, under Section 83 of the CARO 2012.

II. CASE STUDY

A. Case Overview

In 2009, Musfada Enterprise — a registered vendor of Brunei Shell Petroleum Company Sdn Bhd (BSP), whose principal business was the supply of materials such as chemical degreasers, oil spill kits, wooden pallets and fire safety equipment — was discovered to be involved in corrupt practices with employees of BSP. Musfada Enterprise was the sole supplier for “Vitron Degreaser,” a detergent for cleaning oil spills and dirt from the various oil tanks in BSP. The supplies were based on quotation or ad hoc basis with no long-term contract.

Below is an excerpt of a newspaper article about the case.

2013 has been a landmark year in the fight against corruption in Brunei Darussalam. With a conviction in one of the biggest corruption cases in

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¹ *Public Prosecutor v David Chong* (Criminal Trial No. 25 of 2012).

² “Best Practices: Confiscation (Recommendations 3 and 38),” adopted by the Plenary of the FATF, February 19, 2010.

Brunei's history — involving Brunei Shell Petroleum, one the largest public bodies in the country — the government intended to make a statement — that even those who occupy the loftiest positions are not exempt from the rule of law. More investigation and prosecution of corrupt practices have advanced Brunei's standing in Transparency International's 'Corruption Perceptions Index', improving its ranking from 44 to 38.

With a score of 60 points, Brunei ranked 38 out of 177 countries, the second 'cleanest' country in ASEAN. Only Singapore bettered Brunei in corruption rankings among ASEAN nations, ranking fifth overall. In the 31 years since its establishment in 1982, Brunei's Anti-Corruption Bureau (ACB) has investigated 2,469 cases of alleged corruption.

From those investigations, 284 people were brought to court to face criminal charges, with 231 of them convicted for offences ranging from bribery, criminal breach of trust, submitting false financial claims, cheating, and receiving sexual gratification in exchange for favours.³

B. Investigation Findings

Investigation by the ACB revealed that "Vitron Degreaser" was a fictitious brand created by Musfada Enterprise. Investigation revealed that Musfada Enterprise bought Falchem Degreaser, which was produced in Singapore through a "kitchenware supplier" company in Singapore. Once the Falchem Degreaser arrived in Brunei, Musfada Enterprise physically altered the name of Falchem Degreaser to Vitron Degreaser, and supplied it to BSP as an exclusive brand from 2007 to 2009.

Investigation revealed that the cost of one drum of Vitron Degreaser is BND\$1,400.00 equivalent to US\$1,015.54. Over the six (6) year period, BSP had paid a total value of BND\$8,167,875.00 to Musfada Enterprise for the supply of "Vitron cleaning Degreaser 200Liter", which breaks down to a total of 5,835 drums.

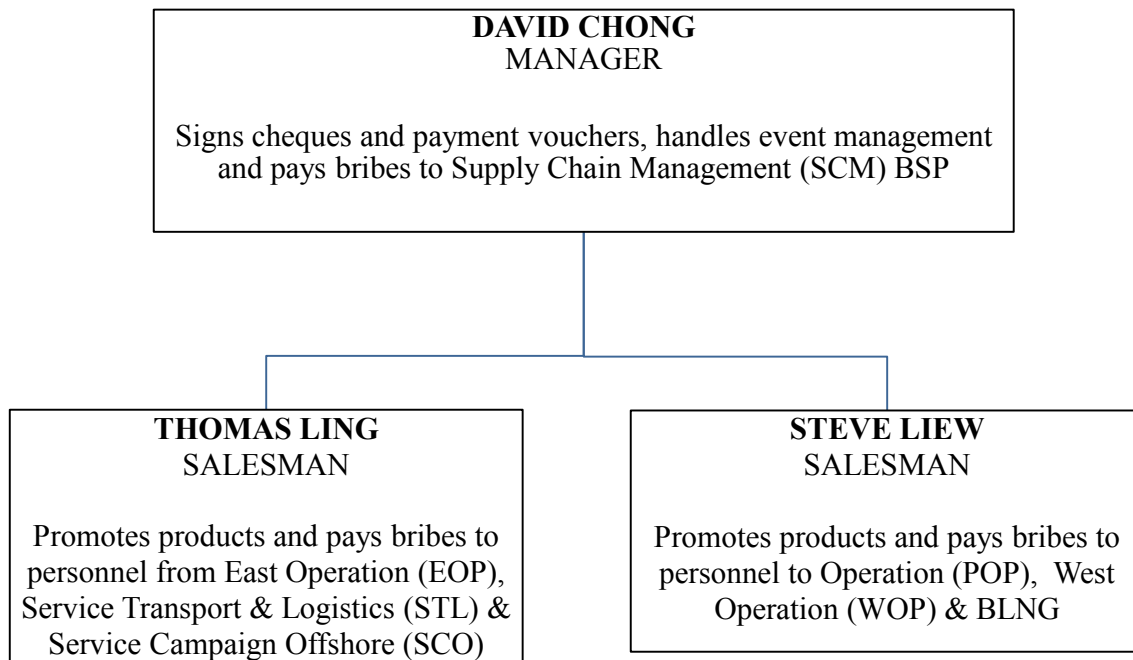
However, investigation also revealed that Musfada Enterprise only ordered 383 drums from the supplier in Singapore from the years 2007-2009. Investigation was able to establish that, during that period, Musfada Enterprise had claimed a total of 5,835 drums of Vitron Degreaser with a total value of BND\$7,354,200.00, equivalent to US\$5,332,352.01.

Investigation established that out of the total 5,835 drums of Vitron Degreaser claimed to be supplied and paid by BSP, 5,452 drums were not delivered to BSP. However, invoices were still raised to BSP causing BSP to make a loss of BND\$7,354,200.00, equivalent to US\$5,332,352.00, for the materials not received by BSP.

C. Musfada Enterprise Key Personnel

The key personnel of this case are identified in the diagram below:

³The Brunei Times, Quratul-Ain Bandial, Bandar Seri Begawan, Monday, December 9 2013.



D. BSP Department Allegedly Involved in Corrupt Activities

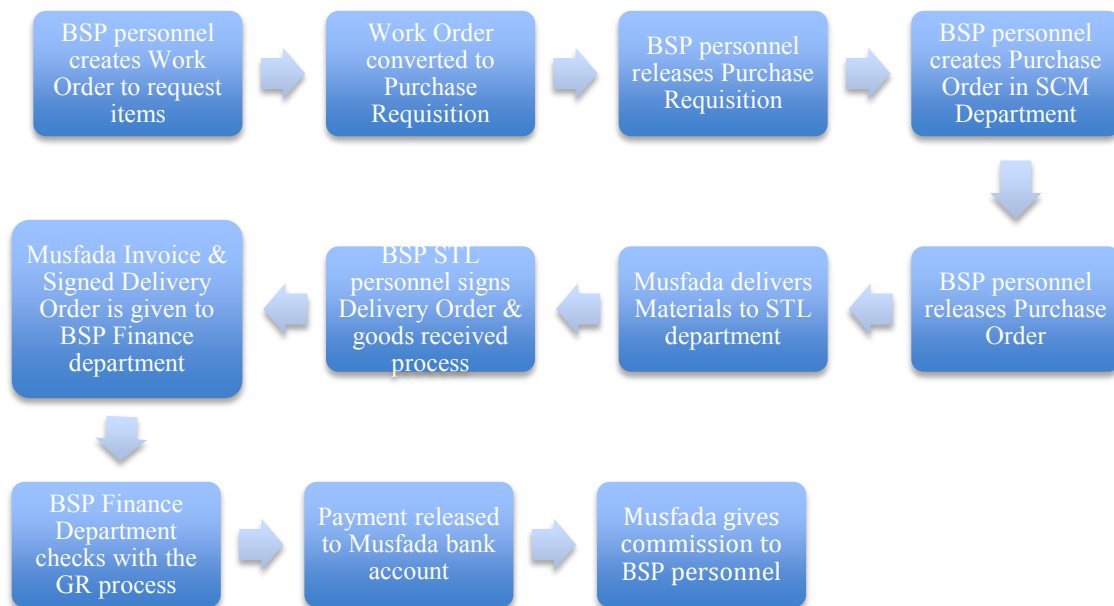
There are six (6) departments from BSP that were involved in this case:

- i. Production Operation (POP)
- ii. West Operation (WOP)
- iii. East Operation (EOP)
- iv. Service, Transport & Logistic (STL)
- v. Supply Chain Management (SCM)
- vi. Service Campaign Offshore (SCO)

E. Modus Operandi

Work orders and purchase requisitions were created and approved by BSP personnel in order to release purchase orders of the degreasers and other items in the BSP's SAP system. David Chong approved the withdrawal of money from the company bank account, of which he was the sole signatory. He then instructed either Steve Liew or Thomas Ling to pay commissions (bribe money) to the BSP employees who created or expedited the approval of these orders via the creation and approval of these work orders, purchase requisitions and purchase orders in BSP's procurement system. Once purchase orders were approved, Musfada would deliver to the BSP departments and the relevant BSP employee would sign the delivery order to acknowledge receipt of full delivery of goods when there was in fact no delivery or only partial delivery.

The diagram below is an overview to understand the flow of work processes in order to comprehend the extent of the corrupt activities of Musfada Enterprise and BSP employees.



Below is the percentage of the commission as instructed by David Chong to Steve Liew and Thomas Ling:

- 50% of the commission if goods were not delivered.
- 30% of the commission if goods were delivered.

Normally the commissions would be given a few days after Musfada Enterprise had received the PO from BSP. Commissions for the Purchase Order (PO) creators were mostly given by David Chong to expedite the release of the PO.

- 3% of the commission would be given to Supply Chain Management (SCM) buyers.

The 3% commissions would be paid at the end of the month, and it was based on the number of POs created in a month. Once the PO was released, Steve Liew or Thomas Ling would approach STL personnel and pay commission for signing the delivery notes and acknowledgment in the SAP System for goods received.

The BSP employee who signed the delivery notes gets BND\$100 to BND\$200 for each signed delivery note. The commission would be paid after signing the delivery notes. The delivery notes were signed without any inspection of the goods delivered. After the delivery notes were signed and acknowledged in the SAP system for goods received, Musfada Enterprise would issue their invoice to claim from BSP. Finally, BSP would then release the payments to Musfada. All payments from BSP were paid into Musfada Enterprise HSBC's bank account in Brunei Darussalam.

As a result of these orders, sales profits increased and benefited David Chong immensely.

F. Money Laundering

From the predicate offence of cheating BSP, David Chong then proceeded to launder the monies from the Musfada sales profits by transferring and depositing them into several bank accounts in Brunei and also to bank accounts in Singapore to conceal the proceeds of his crime.

1. Money Proceeds Deposited into Bank Accounts in Brunei

David Chong withdrew money from the Musfada company account by cashing cheques and subsequently depositing the money into eight (8) bank accounts under his name in Brunei amounting to BND\$439,650.43. It was also discovered that on 27 August 2009 David had transferred BND\$690,000.00 from one of his accounts to his lawyer's company bank account.

2. Money Proceeds Deposited into Bank Accounts in Singapore

Investigation subsequently revealed that several telegraphic transfer transactions from the Musfada account were sent to David Chong's accounts in Singapore, amounting to BND\$642,143.91.

III. RECOVERING THE PROCEEDS

With the passing of the Criminal Asset Recovery Order (CARO) in June 2012, the ACB launched a money laundering investigation under Section 3 (1) of CARO, in parallel to the ongoing investigation on cheating and false claims. The steps taken by the ACB in recovering the proceeds of corruption are illustrated below:

A. Collecting Intelligence and Evidence and Identifying and Tracing Proceeds Domestically and in Foreign Jurisdictions Using MLA

1. Assistance from the Malaysian Anti-Corruption Commission (MACC)

On 14 May 2009, the ACB conducted operations and searched Musfada's office and seized relevant documents relating to Musfada claims to BSP and BLNG. David Chong evaded investigation and fled the country on 20 September 2009 via the Sungai Tujuh Kuala Belait Brunei Immigration Control Post. With the assistance of the Malaysian Anti-Corruption Commission (MACC), the ACB was able to execute the warrant of arrest through the use of the Summons and Warrants Act (Special Provisions) (Cap 155) in Kuching, Sarawak, Malaysia. David Chong was subsequently arrested by the MACC and was surrendered to the ACB officers at the Brunei border. He was charged in Brunei Court in October 2011 for 40 counts of charges under the Prevention of Corruption Act, Chapter 131, and Penal Code, Chapter 22. He was released on a cash bail of BND\$200,000.00.

2. Assistance from the Corrupt Practices Investigations Bureau (CPIB), Singapore

To prevent David Chong from moving and disposing the monies in the bank accounts, the ACB obtained a restraining order against both David and Musfada Enterprise's local accounts in Brunei. However, for bank accounts in Singapore, the ACB sought assistance from the Corrupt Practices Investigation Bureau (CPIB), Singapore. The CPIB then guided the ACB to channels and procedures for obtaining assistance, and the ACB was subsequently referred to the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF). CAD later provided the ACB with information in regard to the procedures to freeze the accounts of David

Chong in the Singapore banks.

B. Freezing, Seizing and Confiscating Proceeds Domestically and in Foreign Jurisdictions Using MLA

1. Money Deposited into Bank Accounts in Singapore

(a) Commercial Affairs Department (CAD) Singapore

The CAD then conducted its own investigation on money laundering on David Chong and helped to freeze the bank accounts and to identify and trace other bank accounts registered under David Chong's name in Singapore. This required a First Information Report to be submitted by the ACB to the CAD.

(b) Attorney General's Chambers (AGC), Singapore

With the Attorney General's Chambers of Brunei and the Attorney General's Chambers of Singapore functioning as the Central Authorities for Mutual Legal Assistance and working together, the ACB was able to obtain the corrupt proceeds amounting to SGD\$642,143.91 from the accounts which were frozen by the authorities in Singapore.

2. Money Deposited into Bank Accounts in Brunei

On 12 October 2009, the ACB applied to the Public Prosecutor for a restraining order to freeze eight (8) bank accounts registered under David Chong and Musfada Enterprise. The funds in Brunei amounting to BND\$439,650.43 were placed under a freezing order under Section 23B (1) of the Prevention of Corruption Act (Cap 131).

C. Court Process

On 28 November 2013, David Chong pleaded guilty to 40 charges under the Prevention of Corruption Act, Chapter 131 and the Penal Code, Chapter 22. David Chong was sentenced to 6 years and 4 months' imprisonment. Based on the judgement made by His Honour Gareth John Lugar Mawson, High Court Judge, Chong consented to a Benefit Recovery Order under section 75 read with Section 132 of the Criminal Asset Recovery Order (2012), under which David Chong was to pay to the state within 9 months of the date of order (28 November 2013) the sums of SGD\$219,838.10 and USD\$326,174.55. These sums were equivalent to the amount and/or value of David Chong's bank account in Singapore. In addition, Chong was order to pay to the state the equivalent of the interest accruing on those accounts at the time of payment, and in default of payment is to serve a term of imprisonment of 5 years, which term is to be served consecutively to the sentences imposed in respect of the substantive charges and the offences taken into consideration.

With the legislation permitting a Benefit Recovery Order (2012) Section 132, under the Criminal Asset Recovery Order (CARO), the ACB managed to recover SGD\$219,838.10 and USD326,174.55. The court also ordered Chong to pay the sum of BND\$180,000.00 for the Prosecution's costs.

D. Enforcement of Orders

On 26 July 2014, the ACB served David Chong with a "Notice of Registration of an Order of forfeiture as a foreign confiscation order" issued by the Attorney-General Chambers of the Republic of Singapore, as well as copies of the Orders of the Court in originating summons 656

of 2014, 657 of 2014 and 658 of 2014, dated 17 July 2014, which have been issued out of the Registry of the Supreme Court of the Republic of Singapore against David Chong. The MLA request was only obtained after the sentencing of David Chong. This is due to the fact that the confiscation order could only be made upon conviction of David Chong. Additional documents such as the Affidavit of the Investigating Officer and certified copies were furnished along with the MLA request. With David Chong cooperating by signing to waive the cancellation of the registration, the Singapore Central Authority then was able to transfer all of his funds in Singapore to Brunei Darussalam. Investigation confirmed that as of 25 November 2014, all the funds from Singapore had been transferred into the ACB HSBC account amounting to BND\$642,143.91.

The total amount of David Chong's and Musfada's frozen funds in Brunei is BND\$850,617.55. An application was made to the Public Prosecutor for the monies to be forfeited to the state under CARO for a Non-Conviction Based (NCB) forfeiture. As for the funds amounting to SGD\$642,143.91 received from Singapore, the funds were transferred to the Ministry of Finance, Brunei Darussalam.

E. Return of Assets

The enforcement of the confiscation order resulted in the transfer of all the funds in the ACB HSBC account to the Criminal Assets Confiscation (CARO) Fund account as of 19 May 2015, which is maintained by the Permanent Secretary of the Ministry of Finance in accordance with Section 123 of CARO.

Below is a newspaper report on this matter:

THE Attorney General's Chambers (AGC) has recovered over BND\$600,000 from the bank accounts in Singapore of a key Brunei Shell Petroleum contractor, who was jailed for bribery in November 2013.

The case marked the first time the Government of Brunei Darussalam has enforced an asset recovery order through the use of Mutual Legal Assistance, the AGC said in a press statement.

The AGC said the recovery of the proceeds of the corruption case served as “a reminder that criminals who hide their money and assets overseas are not untouchable”.

The contractor, Malaysian national David Chong, who was the manager of Musfada Enterprise, was found guilty of multiple counts of bribing Shell employees in what was described by the High Court as a case involving “syndicated corruption on the large scale” between 2005 and 2009. The case was investigated by the Anti-Corruption Bureau.

In addition to Chong's total jail term of six years and four months, the judge in the case, Judicial Commissioner John Gareth Lugar-Mawson, had made a Benefit Recovery Order under the Criminal Asset Recovery Order (CARO) in

order to recover funds held in Chong's bank accounts in Singapore.

The AGC and the Attorney General's Chambers of Singapore, both of which function as the Mutual Legal Assistance Secretariats of their respective nations, had carried out extensive cooperative work to enforce the Benefit Recovery Order.

"The money is to be paid into the Criminal Assets Confiscation Fund, established under CARO which is managed by the Permanent Secretary of the Ministry of Finance," the AGC said.

The AGC said the recovery of proceeds from the crime highlighted the importance of mutual legal assistance.

The successful enforcement of the Benefit Recovery Order is also testament to the strong and robust international cooperation framework that Brunei Darussalam possesses through laws such as the Mutual Assistance in Criminal Matters Order (MACMO) and the Criminal Asset Recovery Order as well as the strong and long-standing working relationship between the Attorney General's Chambers of Brunei Darussalam and Singapore.⁴

IV. CHALLENGES IN RECOVERING THE PROCEEDS

The process for asset recovery by way of formal MLA requests as well as informal requests was not without its challenges. Initially, tracing the proceeds was stymied because there was insufficient information to narrow the search to a particular bank and account number in Singapore when David Chong had refused to give further statements to the ACB upon his bail. Furthermore, due to the Bank Secrecy Act, disclosure of account information delayed the process. This obstacle was overcome with the assistance of CAD Singapore which launched their own investigation via the information given by the ACB and eventually was able to provide the ACB with further information regarding his bank accounts in Singapore.

V. ADVANTAGES

In order to proceed with any MLA, there must be a legal basis for cooperation which in this case, came under the umbrella of Mutual Assistance in Criminal Matters Order (MACMO) between AGC Brunei and AGC Singapore as well as the United Nations Convention Against Corruption (UNCAC).

Furthermore, due to the long-standing relationship between both countries, the ACB was able to first begin the international cooperation efforts through informal channels before formally submitting its MLA request. The investigating unit personally contacted the officer from CAD

⁴Borneo Bulletin, Fadley Faisal, Tuesday, 27 Jan. 2015.

Singapore conducting the case — both by phone and email and eventually in person. Making the personal connection resulted in better efforts to request the MLA request formally.

With regard to bank secrecy, it has been prohibited as a reason for refusing to provide MLA, according to the OECD Bribery Convention⁵ and UNCAC⁶.

VI. CONCLUSION

The success of this case is a testament of how important cooperation and commitment between anti-corruption agencies and how it is becoming the foundation of success in the recovery of assets involving inter-jurisdictional issues including investigation, prosecution and recovery of assets. Therefore, the successful tracing and recovery efforts of this case would not have been possible if not for the international cooperation and mutual legal assistance from the Malaysian Anti-Corruption Commission (MACC), the Corrupt Practices Investigations Bureau (CPIB), the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF) as well as the Attorney General's Chambers (AGC), Singapore.

⁵ Organisation for Economic Cooperation and Development (OECD), Convention of Combating Bribery of Foreign Public Officials in International Business Transactions, Article 9(3).

⁶ United Nations Convention Against Corruption (UNCAC), Article 46(8).

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

Ku Khemlin *

I. INTRODUCTION

In the five mandates issued by the government of Cambodia the core of achieving social justice and sustainable and equitable socio-economic development was clearly identified. In order to further strengthen good governance, the Royal Government has firmly implemented key reform programmes, including: (1) fight against corruption; (2) legal and judicial reform; (3) public administration reform; and (4) reform of the armed forces. The ultimate objective of the reforms, as well as that of other reform programmes, including public financial management reform, land reform, and forestry and fisheries reform, is to strengthen the capacity, efficiency and quality of public services to raise public confidence in the government and respond to the needs and aspirations of the people and business community.

In Cambodia, there is a strong government commitment to combat the criminals and transnational crimes in the context of cooperation and mutual legal assistance among the ASEAN members and international community through bilateral and multilateral agreements. The government has developed legislation and policies aimed at prevention, criminalization of corrupt conduct and capacity building of judges, prosecutors and law enforcement officers through national and international training courses and workshops. These measures are important because addressing the issues of mutual assistance in combating corruption and recovery of proceeds of corruption leads not only to building trust for investors but also to promoting investment in Cambodia.

II. CURRENT LEGISLATION IN CAMBODIA

A. Criminalization and Penalties for Corrupt Conduct

The Penal Code of Cambodia contains protection against corruption and clearly identifies the criminal offences namely: the offences in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity),

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article 592 (definition of misappropriation), article 593 (sentence to be served), article 594 (bribe taking), article 595 (definition of passive business influence), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 601 (intentional destruction and dishonest embezzlement), article 605 (bribe offering), article 606 (active business influence), article 607 (extortion), article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity), article 637 (bribe offered to person who has competence to issue false certificate), article 639 (bribe taking by member of professional board of medicine to issue false certificate), article 640 (bribe offered to member of professional board of medicine to issue false certificate), article 641 (execution of misdemeanour of articles 639 and 640 for all medical professions), article 644 (criminal responsibility by legal entity).

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption. The law aims to guide as a fundamental tool against corruption within the country and promote effectiveness of all forms of service and strengthen good governance and the rule of law in leadership and state governance as well as to maintain integrity and justice, which is fundamental for social development and poverty reduction.

B. Conventions and Agreements

Cambodia has ratified several conventions and agreements, namely: the Convention on the Rights of the Child (1989) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000, the United Nations Convention against Transnational Organized Crime 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children 2005, and the International Labour Organization's (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999. Agreements or conventions between Cambodia and ASEAN (Treaty on Legal and Mutual Assistance in Criminal Matters, Cambodia ratified 2010) each underpin increased border cooperation in anti-corruption matters. These instruments may assist with guiding efforts to strengthen frameworks for regional cooperation to target a wider range of offences; however, they provide little guidance for cooperation to specifically combat corruption. Moreover, Cambodia has already ratified the essential convention, the United Nations Convention against Transnational Organized Crime on 12 December 2015, and has acceded to the United Nations Convention against Corruption on 5 September 2007.

III. MUTUAL LEGAL ASSISTANCE

Procedures for implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multilateral agreements, and national law in force.

A. Mutual Legal Assistance in Civil Matters

The central authority has been established since 2011 within the Ministry of Justice to facilitate mutual legal assistance in matters of criminal, civil, commercial, extradition, and transfer of prisoners. For implementation of these activities the Ministry of Justice of Cambodia has signed a bilateral Memorandum of Understanding on Cooperation between Cambodia and Lao PDR and a Memorandum of Understanding on Cooperation between Cambodia and Viet

Nam for information exchange and capacity building among legal staff, judges and prosecutors. Recently, in order to strengthen mutual judicial assistance between Cambodia and Viet Nam in civil matters, both parties have agreed to provide assistance in civil matters as a service of the judiciary—extra of judicial documents, taking and transferring of evidence, summoning of witness and experts, recognition and enforcement of court judgement and decision, and exchange of legal information and documents relating to judicial assistance¹.

B. Mutual Legal Assistance in Criminal Matters

Cambodia’s legal framework for extradition is provided under the Criminal Procedures Code². The code provides a comprehensive set of requirements for carrying out extradition proceedings in case of absence of an extradition treaty with Cambodia; diplomatic channels may be used. On the other hand, a bilateral extradition agreement is more appropriate. Cambodia has extradition agreements with Thailand, Lao, China, South Korea and Viet Nam.

In the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of any foreign state and may also obtain power from the court authority of any foreign state, in order to collect evidence and information relating to the offence³.

There is a strong basis under bilateral and multilateral treaties for Cambodia and other countries to provide international legal cooperation to investigate and prosecute offences relating to corruption. Under international legal standards, each country is required to facilitate cross-border cooperation for extradition and mutual legal assistance in criminal matters in cases relating to transnational crime. A regional ASEAN treaty on mutual legal assistance in criminal matters is also in place; however, all ASEAN members have not implemented it yet⁴. Informal cooperation between law enforcement agencies is also an essential tool in fighting crime. Informal cooperation—also “police to police” or “agency to agency” (along border) assistance—typically does not require a legislative basis, and facilitates a wide measure of information sharing between primary law enforcement agencies of different countries. Informal cooperation allows police to share law enforcement intelligence (for example, criminal histories and movement records) during the investigation stage, while evidence is still being gathered. The importance of informal law enforcement cooperation is more appropriate because of its closer link compared with the formal mechanism of extradition and mutual legal assistance.

IV. RECOVERY OF PROCEEDS OF CORRUPTION

A. Corruption Proceeds Offences

Corruption proceeds offences are acts to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in the anti-corruption law. Acts that can be counted as corruption proceeds offences are as follows: acting as an intermediary for

¹ Agreement on mutual judicial assistance in civil matters between the Kingdom of Cambodia and the Socialist Republic of Viet Nam 2013.

² Criminal Procedure Code , Book, Article 566 to 595.

³ Law on Anti-corruption, Article 51.

⁴ ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004).

transporting items with the knowledge that they are corruption proceeds; or an act that benefits from corruption proceeds with clear knowledge⁵. If an employee is found guilty, he or she should be imprisoned from 6 months to 2 years⁶.

B. Liability for Corruption

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, materials, instruments that are derived from corruption, and the proceeds shall be transformed into state property. If the seized asset is transferred/changed into different property from the nature of the original asset, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well. If the corruption proceeds disappear or lose value, the court may order the settlement of the proceeds.

The hand-over of property is not mentioned clearly in the code. As a matter of practice, property is seized upon the extradition agreement and its requirement for the evidence of the case at the time of arrest, and the seizure is based on the Investigation Chambers' decision attached to the Appeal Court in Phnom Penh.

V. CONCLUSION

The current legal and policy framework demonstrates Cambodia's firm commitment to fighting against corruption. The criminal code and criminal procedure code play a crucial role as fundamental laws in anti-corruption proceedings. The code provides a comprehensive set of requirements for carrying out the extradition and the procedures of asset recovery which should be agreed to in the bilateral and multilateral agreements in principle.

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption and confiscation of all corruption proceeds including property, material, and instruments that are derived from corrupt acts, and the proceeds shall be transformed into state property.

The essential alternative to legal assistance is informal cooperation—also “police to police” or “agency to agency” (along border) assistance—typically does not require a legislative basis or reciprocity. Facilitating a wide measure of information sharing between primary law enforcement agencies of different countries is the appropriate, successful way of handling corruption offences.

⁵ The Anti-Corruption Law, Article 37.

⁶ The Criminal Code, Article 278.

PUBLIC-PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

Ms. Seng Lina *

I. OVERVIEW

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption is an offence which has the potential to affect multiple sectors and which is very difficult, complex in nature and not easy to overcome. Confronting the challenges presented by corruption requires more practical mechanisms and strategies accompanied by strong legal and professional institutional frameworks.

The Royal Government of Cambodia (RGC) is committed to combating corruption with support, and endeavours to have the Anti-Corruption Law adopted along with other relevant laws and regulations, including the establishment of the Anti-Corruption Institution (ACI), which is empowered by law with independent operations. The participation from all stakeholders, both from the public and private sectors, is important and indispensable to fighting corruption. In order to achieve this, both sectors have to work together and offer full collaboration with the Anti-Corruption Unit (ACU).

II. BACKGROUND

The Royal Government of Cambodia has paid great attention to combating corruption since the UN-organized General Elections in 1993. In 1992, Cambodia adopted the Criminal Law Act in which three of its articles were related to corruption, namely embezzlement, bribe taking and bribe offering. In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the *Unit Against Corruption Practices*. In 2006, the Unit was restructured and renamed the Anti-Corruption Unit.

On 17th April 2010 the first separate Anti-Corruption Law was promulgated and the Anti-Corruption Institution established. The Anti-Corruption Institution is composed of two bodies, the *National Council Against Corruption (NCAC)* and the *Anti-Corruption Unit*. Since its creation, the Anti-Corruption Unit has been implementing three intertwined approaches: Education, Prevention and Law Enforcement, which have been supported and encouraged by the government with the participation from the authorities at all levels, the private sector, the media and civil society. Due to the complicated and sophisticated nature of corruption, the anti-corruption work could not be undertaken solely by any particular ministry or institution. Therefore, the National Council Against Corruption sets out its exact strategy that the Anti-

* Legal, Complaint and International Affairs Dept., Anti-Corruption Unit (ACU), Cambodia.

Corruption Unit needs the collaboration and support from relevant stakeholders, both at national and international levels, in order to fight corruption.

Prioritized policies and programmes on anti-corruption are clearly specified in roadmap papers such as the Rectangular Strategy Phase I, Phase II, and Phase III, and the National Strategic Development Plan (NSDP) 2014-2018 which reflects the government's political will.

III. PUBLIC-PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

A. Government Political Will

1. National Level

The Royal Government of Cambodia views anti-corruption as a priority task. The will has been shown through:

- At the 8th Regional Assembly on Anti-Corruption and Building Trust in September 2014, Samdach Akka Moha Sena Padei Techo HUN SEN, Prime Minister of Cambodia, stressed that *“ I believe it is imperative that both sectors, the public and the private, join hands to fight corruption; this is because the anti-corruption policy and programme laid out by the government will not work to the fullest extent if the private sector does not come on board; of course, failing to do so for the private sector would inherently mean that they are not being privately and socially responsible in conducting their business. It is doubtless that when both the public and the private sector work together, it will not only help improve the effectiveness of the fight against corruption, but also create an environment attracted to investment and clean business in the region and beyond.”*
- The government's “Political Platform” and the continuation of putting forward the anti-corruption task which set forth the first angle of good governance — the core of “the Rectangular Strategy Phase III” of the government.
- The adoption of the Anti-Corruption Law in 2010 and the amendment of the law in 2011 which led to inception of the Anti-Corruption Institution with power, privilege, and independence in its operations.

2. International Level

Cambodia has become a party to international organizations and legal instruments such as:

- The ADB/OECD Anti-Corruption Initiative on 5 March 2003
- United Nations Convention Against Corruption (UNCAC) on 5 September 2007
- South East Asia Parties Against Corruption (SEA-PAC) on 11 September 2007

- ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
- International Anti-Corruption Academy (IACA) on 14 December 2013
- International Association of Anti-Corruption Authorities (IAACA) since 2006
- MOU Cooperation with Thailand and Laos.

B. Public–Private Partnership to Prevent Corruption

1. Establishment of Government–Private Sector Forum (G-PSF)

The Government–Private Sector Forum (G-PSF) was established in 1999. It is a public–private consultation held bi-annually under the chairmanship of the Prime Minister. The objective of the forum is to take into account the progress reports by its 10 working groups, namely: (i) Agriculture and Agro-Industry (ii) Tourism (iii) Manufacturing, SMEs and Services (iv) Laws, Taxation and Governance (v) Banking and Financial Services (vi) Transport and Infrastructure (vii) Export Processing and Trade Facilitation (viii) Industrial Relations (ix) Rice, and (x) Mines and Energy. The aim of this meeting is to collect all comments and challenges faced by the private sector and then come up with immediate solution.

2. Signing Memoranda of Understanding (MOU)

In addition to the action taken related to the prevention tasks through the collaboration with the public institutions, the Anti-Corruption Unit also focused on the support, promotion for the exchanges of views and ideas, as well as to strengthen career development aiming to work even closer with the private sector, through the joint commitment and agreement under a form of signing MOUs on anti-corruption cooperation between the Anti-Corruption Unit and private national and international companies. So far, the Anti-Corruption Unit has signed MOUs with 22 national and international companies. This has been used as an example in an effort to jointly fight corruption and the practices of clean business in order to give a message to the other investors who have always been worried about the investment climate in Cambodia and feel reluctant to invest. These efforts ensure that clean business is being carried out widely, becoming deeply rooted day by day in Cambodia. In December 2013, the Anti-Corruption Unit signed an MOU on cooperation in fighting corruption with the Cambodia Beverage Company Ltd. (Coca–Cola Cambodia Company), and through this MOU the collaboration and exchange of information related to corruption among the two institutions can be made. In addition, in early October 2014, the Anti-Corruption Unit also signed the same kind of MOU with Prudential (Cambodia) Life Assurance PLC, which is one of the leading international life insurance companies in Cambodia.

❖ The Objectives of Memoranda of Understanding

- The company, in its going commitments to be a clean entity and to build a transparent culture, will continue to fully comply with all applicable laws and regulations relating to Anti-Corruption.
- The company will continue not to participate in any acts of corruption or bribery.

- The company will continue to educate all of its employees to promote a clean environment in dealing with government officials, suppliers, customers and other organizations or individuals.
- The company may take a proactive approach in keeping the Anti-Corruption Unit informed of any solicitations or improper payments demanded by government officials.
- The Anti-Corruption Unit will keep absolute confidentiality of corruption-related information sources and take all necessary measures to keep the corruption whistleblowers secured and commence investigation.
- The Anti-Corruption Unit will make its best efforts to cooperate with the company and to fulfill any reasonable requests from the company to contribute to the prevention and combating of corruption in Cambodia.

3. Establishment of Public Service Deliveries

In order to solve the problems faced by the private sector relating to illegal fees, the Anti-Corruption Unit has worked with 21 ministries/institutions to develop a list of public service fees with the joint efforts of the Ministry of Economy and Finance, through consultations with the private sector. The Anti-Corruption Unit, together with all the above-mentioned stakeholders, has worked to create the foundation for the effectiveness of all State public service deliveries at almost all ministries and government institutions. The standard of public service, which is set in the form of a joint proclamation between the Ministry of Economy and Finance and the relevant ministries/institutions, precisely determined the actual fee and time needed for the service to be delivered, the use of uniform receipts officially issued by the Ministry of Economy and Finance, the establishment of One Window Services, a complaint mechanism, the preparation of annual reports of revenues and expenditures, and in particular to give government officials incentives as a result of the public services fee collection work. This task has won applause from both ministries and institutions as the service providers and especially from the private sector as the service receivers who wish to see new development of the legal framework and the context of the country after the Law on Anti-Corruption has entered into force.

4. Observing Public Procurement

- The Anti-Corruption Unit also engages in observing the bidding process run by the Government's ministries/institutions and NGOs when requested by the host ministry/institution. The role of the Anti-Corruption Unit is to observe from the first stage of announcing the bidding process, the opening of the bidding envelopes and the final stage of awarding the contract to the winning bidder.
- The companies taking part in the bidding gained more confidence and trust in the result and the bidding process as the process was transparently undertaken in front of all relevant parties.

5. Anti-Corruption Programme in Education

With the government's long-term vision, the Anti-Corruption Unit collaborated with the Ministry of Education, Youth and Sports setting out policies and an anti-corruption education programme aiming to instill into younger generations a consciousness, clean mindset, disgust at corruption, love of justice, integrity, law abidance, and respect for themselves and others. The anti-corruption course books were developed and introduced into the school curriculum, including private schools. For High School (Grades 10-12), the curriculum is implemented in the academic year 2014-2015 onward and for Lower Secondary School (Grades 7-9) in the academic year 2015-2016 onwards.

6. Anti-Corruption Law Dissemination

- The Anti-Corruption Unit disseminates the Anti-Corruption Law to banks, private companies, private schools, and ministries/institutions. The Anti-Corruption Unit has worked with private schools and companies such as Beltei University, American Intercon School (AIS) and Prudential Life Assurance Company. The purpose of the anti-corruption law dissemination is to raise awareness about corruption and its negative impacts with the aim of making the whole society begin to accept the new mindset and perspective in order that they all join hands to fight corruption, our common enemy.
- The Anti-Corruption Unit has adopted 9th December as its National Anti-Corruption Day. The Anti-Corruption Unit annually takes this opportunity to engage in collective efforts to jointly combat corruption among the public and the private sectors. As an organizer, the Anti-Corruption Unit always broadcasts this event live on TV, which can attract millions of viewers and which results in the support from the public to fight corruption.

C. Public-Private Partnership to Detect Corruption

1. Mechanism of Reporting Corruption

- Companies have an important role to play in the prevention, detection and prosecution of actors involved in corruption, as companies can cooperate and assist anti-corruption authorities to understand how the corrupt act occurred, how it was uncovered and how proceeds of crime can be recovered.
- Companies can cooperate with authorities by self-reporting possible corruption and by providing actual evidence in relation to internal irregularities and business partners to the Anti-Corruption Unit.
- Companies can report corruption to the focal point of the Anti-Corruption Unit through all means which are easier and faster; for instance, via phone call, email or messaging.

2. Public Reporting and the Complaint System

The public can report complaints to the Anti-Corruption Unit as follows:

- Drop a complaint in the ACU white boxes
- Send a complaint to the ACU P.O Box

- Lodge a complaint via the ACU's email: complaint@acu.gov.kh
- Drop at the ACU office at #54, Norodom Blvd, Sangkat Phsar Thmei III, Khan Daun Penh, Phnom Penh or
- Call the ACU hotline 1282.

The complainants can also join the complaint analysis meeting if they wish.

3. Whistle-Blower Protection

-Anti-Corruption Law

- Article 13 : Duties of the Anti-Corruption Unit
 - Point 7: Keep absolute confidentiality of corruption-related information sources.
 - Point 8: Take necessary measures to keep the corruption whistle-blowers secured.
- Article 39: Leakage of Confidential Information on Corruption

“Any person who leaks the confidential information on corruption shall be sentenced from one to five years in prison”.

-Sub Degree No. 05 on the Organization and Functioning of the Anti-Corruption Unit

- Article 3: Duties of the Anti-Corruption Unit
 - Point 8: Keep absolute confidentiality of corruption-related information sources.
 - Point 9: Take necessary measures to keep the corruption whistle-blowers secured.
- Article 13: Department of Security
 - Point 5: Keep witnesses, complainants and corruption whistle-blowers secured.
 - Point 6: Request intervention and cooperation from competent authorities if necessary to protect witnesses and complainants.
- Article 16: Department of Legal, Complaint and International Affairs
 - Point 9: Keep confidentiality of corruption reported by complainants and witnesses.
- Article 19: Department of Investigation and Intelligence
 - Point 8: Cooperate with the Department of Security to keep witnesses, complainants and corruption whistle-blowers secured and safe.

D. Achievements

- Companies create teamwork and focal points to contact the Anti-Corruption Unit
- Companies gain confidence as a result of the fact that the Anti-Corruption Unit has signed MOUs with 22 private companies after Coca Cola Company preceded
- The Guidebook on Anti-Corruption Program for Business in Cambodia, which describes types of business relationships and other measures that are required to deter and prevent corruption, was published and distributed

- Unofficial payment has been reduced maximally and the business runs smoothly.

IV. WORK IN PROGRESS

- Organize serial consultation meetings with the private sector on a regular basis. For example, once a month or every two months
- Encourage private sector players to develop their own anti-corruption frameworks
- Encourage the private sector to create clean business clubs to combat corruption.

V. CONCLUSION

Though Cambodia has enjoyed full peace for only a short time, the Royal Government of Cambodia, under the clear-sighted leadership of Prime Minister Samdach Techo Hun Sen, has made remarkable progress in the economic and social sectors, especially good governance and combating of corruption.

The Royal Government of Cambodia is strongly committed to continue strengthening good governance and fighting corruption. Fighting corruption is a key to ensure equitable division of social resources and attracting foreign investment as well as social justice. The Royal Government of Cambodia and the Anti-Corruption Unit always encourage the private sector to continue collaborating to fight corruption in order to build a clean society and prosperity.

Cambodia continues to cooperate closely with the international community particularly in the implementation of the United Nations Convention Against Corruption (UNCAC). The private sector plays an important role to combat corruption in order to do business with transparency and integrity as well as fair competition. The Anti-Corruption Unit is committed to work with the private sector and all stakeholders to build a clean business environment.