CURRENT CHALLENGES AND BEST PRACTICES IN THE INVESTIGATION, PROSECUTION AND PREVENTION OF CORRUPTION CASES—SHARING EXPERIENCES AND LEARNING FROM ACTUAL CASES

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I. INTRODUCTION

Corruption is a serious crime in society. It occurs at all levels of society—local and national governments, civil society, large and small businesses, and in the public and private sectors. Because of its large scope, corruption seriously affects the public trust, the process of a country's development and the state's stability. Moreover, corruption is also a major cause and a result of poverty, and it affects the poorest people. For these reasons, the Lao Government has been promoting the fight against corruption and has started to develop anti-corruption legislation. The guidelines, policies and laws of Lao express a strong determination to prevent and eliminate corruption. In 2005, the National Assembly had adopted the first anti-corruption law. The law defines principles, rules, and measures for the prevention and countering of corruption. The purpose of this law is to secure the property of the State, society, and the rights and interests of the citizens. In addition, the law also subjected offenders to legal proceedings and protect those who are innocent, with the aims of strengthening State organizations, increasing transparency, strengthening the ability to inspect at all times. Although the Anti-Corruption Law was amended in 2012, the process of implementation has been slow due to the strength and determination of those involved in corruption. Some corruption cases are postponed. Nevertheless, the government has tried to improve the criminal justice system, its anti-corruption agency and the laws to combat corruption.

II. THE ORGANIZATION OF THE GOVERNMENT INSPECTION AND ANTI-CORRUPTION AUTHORITY

The Government Inspection and Anti-Corruption Authority is organized into various agencies and services, as follows:

1). Government Inspection and Anti-corruption Authority;

2). Department of Ministerial and Organizational Inspection

3). Government Inspection Service at the provincial level, and the Vientiane Capital Inspection Service;

4). Inspection Offices of Districts and Municipalities and Inspection Sections under the Provincial Service and Vientiane Capital

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The roles, duties and rights of the Government Inspection and Anti-Corruption Authority at different levels are identified in the law concerning anti-corruption, the law on government inspection, the law on resolution of complaints and other related laws.

A. Responsibility of Counter-Corruption Organization

The counter-corruption organization is a State organization that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at the central level and state inspection authorities at the provincial level to implement this task. The counter-corruption organization is an investigation organization and performs its duties independently.

B. Establishment of the Anti-Corruption Investigation Department

Like other countries in the world, Lao PDR is experiencing the problem of some negative activities within its bureaucracy. The government is not immune to corruption, and, in accordance with amended anti-corruption law, the prime minister allowed the creation of the Anti-Corruption Investigation Department on 13 July 2015. This Department has the role to investigate government staff involved in corruption cases, especially government staff under the supervision and management of the central level of government, as well as other government staff of the organization at the central level.

III. MEASURES FOR INVESTIGATION OF CORRUPTION

The law on anti-corruption clearly regulates measures for corruption investigations. However, the implementation of this law is not effective. The coordination between the investigation organization of anti-corruption officers and other investigative agencies at the central and local levels is not strong. Only a few small cases of corruption reach the court; many cases are solved by using disciplinary measures.

The following investigative measures are stipulated in the anti-corruption law, and some are included in the criminal procedure law:

- Chapter 5. To investigate the corruption prosecution
- Causes for opening corruption investigations, article 34 (Law on Anti-corruption)
- Investigation procedures, article 35 (Law on Anti-corruption)
- Ordering an investigation, article 36 (Law on Anti-corruption)
- Conducting an investigation, article 37 (Law on Anti-corruption)
- Timeline for conducting an investigation, article 38 (Law on Anti-corruption)
- Conducting an investigation, chapter 5 (Law on Criminal Procedure)

Most of these above-mentioned measures are very important to combat and investigate corruption. Also important for investigation of corruption cases is coordination between the investigation organization of anti-corruption officers and other investigative agencies for exchange information related to corruption cases. Besides that, without the participation and

support of the public and other state organizations, investigators would not be successful at conducting investigations and gathering information on corruption cases.

IV. CORRUPTION INSPECTION, PROSECUTION OF CORRUPTION IN THE PRESENT, INVESTIGATION OF CORRUPTION CASES AND PROBLEMS ENCOUNTERED IN INVESTIGATION

A. Inspection of Corruption Cases

The Government Inspection and Anti-corruption Authority at all levels conducts regular monitoring of, and requests recommendations from the citizens about the performance of, government officials, civil servants and other government employees in different sectors. Previously, the Government Inspection and Anti-corruption Authority at the national level collaborated with the Governmental Inspection and Anti-corruption Authority of concerned ministries/organizations and some Inspection Committees at the local level to inspect targets as follows:

An investigation was conducted on timber exploitation and business in Savannakhet province. Some government officers and their private businessmen accomplices who have exploited 1400 m^3 of prohibited timber (Nile wood) were identified. 11 public officers were fired. It was discovered that an officer of the National Treasury in Champassak and his accessory embezzled State property in the excess of LAK 5.1 billion, and these persons have been prosecuted and convicted through the justice system. In Khammouane province, a difference of 12 billion kips of a construction project's value was identified after inspection of a municipal road construction project.

From 2012 to 2013, the national and local authorities inspected 104 targets and identified damages costing more than 80 billion kips; some of these damages were recovered. There were 472 wrongdoers, 178 embezzlements, 62 frauds, 50 briberies, 88 abuses of position, 22 cases of exceeding authority, and 64 counterfeiting cases. These wrongdoers have been prosecuted under the regulations and laws. Thus, these numbers show that anti-corruption measures are being implemented in Lao P.D.R.

B. The Prosecution of Corruption at Present

The authorities at various levels have focused on improving organizational structure, formulating job descriptions, implementing laws and regulations and have tried to address societal dissatisfaction within their responsibilities, but there are still corrupt practices. So the prime minister allowed the creation of the Anti-Corruption Investigation Department on 13 July 2015, and we found the following problems in some organizations and ministries, as stated below:

1. There are officials of some ministries, organizations and local governments who violate orders, laws and misuse the law for their own benefit. There is corruption in the fields of infrastructure development, tax collection, budget management, natural resource exploitation and land management. The utility of the funds and budgets is not effective and is therefore wasted. Many sectors have violated the financial rules, made projects outside of the approved plan, and have assumed debts for which it is not clear how they will be paid. There are situations where officials do not fully collect state income and where they hand over the income not in full performance of their role, and where they do not hand over the full amount of income they have received.

2. Some ministries and organizations have not fully performed their roles and responsibilities, such as not fully concentrating on policy making. Some projects are not effectively implemented and are of sub-standard quality.

C. Investigating Corruption Cases

In Laos, corruption happens in many areas and at many levels; it occurs on a widespread basis, which means that it happens mainly in the economic sector such as in the Ministry of Planning, the Ministry of Finance and other agencies of the state at the central and provincial levels. In particular, government staff have engaged in the embezzlement of state property or collective property, the swindling of state property or collective property, taking bribes, abuse of position, power, and duty to take state property, collective property or individual property.

Through inspection, it was found that more than one trillion Lao kip and one million U.S. dollars have been misappropriated during 2015. In one province in northern Laos, there were 9 education staff who cooperated to misappropriate money from the state budget. According to the inspecting authority, the staff members were investigated in 2015, and the story, described below, is a valuable example of the investigation and prosecution of corruption cases in Huaphanh province.

Mr. A confessed to corruption, and the facts related to the crime in Huaphanh province were confirmed. From 2005-2007, Mr. A was employed as a member of the technical staff of Huaphnah province and was working for the Division of Finance on the budget for the province. Mr. A conspired with Mr. B, and Mr. C to increase the figures of the salary budgeted for the education staff in the province and in rural areas. The changed budget was given to Mr. B for approval. When the proposed budget was approved, they received the excess money and shared it among themselves, but there was some disagreement as to how the money should be divided. Later, from 2008 to 2009, they involved Mr. D, Chief of the Inspection, Division of Finance, in Huaphanh province and Miss C, Deputy of Property, Division of Finance, in Huaphanh province.

Mr. A and his gang told the problem to Mr. D and Miss C to protect their scheme from being discovered. Thus, they continued to receive excess money from the budget, and they continued to share the money. Later, from 2009 to 2010, Mr. A continued the scheme, and from 2005 to 2010, the group misappropriated 2.4 billion Lao kip.

When he was detained during the procedure, Mr. A's family returned money and materials to the state amounting to 2.1 million, but 2.2 billion kip remains unaccounted for. Now the Huaphanh court has sentenced him to be punished in accordance with the anti-corruption law.

In the area of province-level and rural construction investment, the majority of construction projects result in losses because of corruption and breaking the law. Violations occur in most stages, from project planning, design, cost estimates to bidding, consulting, supervision, construction, testing and finalization of the project. Those involved often fail to comply with procedures of province-level and rural construction investment; commit fraud due to lack of transparency in the bidding; and use poor quality materials and equipment in the construction process to reduce costs. For instance, among 26 infrastructure projects in Oudomxay, we found that the government staff of the province and upper-level staff of the

Ministry of Finance conspired together to commit fraud by document forgery to receive money from the state budget. Now we are conducting investigations of 100 targets.

In addition to the above areas, corruption is quite common in the relationships between state agencies and the relationship between public officials, enterprises and individuals, such as traffic police, education, the health sector, and tax officials.

D. Problems Experienced during Investigations

1. Difficulties in Identifying Corrupt Acts

Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle or receive bribes, give bribes or any other act which is committed to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and legitimate interests of citizens. Furthermore, corruption is a white–collar crime, along with fraud, bribery, insider trading, copyright infringement, money laundering and forgery.

2. Difficulties in Investigation of Corruption Cases

Firstly, there are many problems in collecting and preserving evidence in corruption cases because most of those cases concern persons in high positions of power and other high level people in the government. They abused their positions and powers to commit and conceal their crimes. Because they have extensive personal networks on various levels, when they receive information that an investigation is being started, they will destroy the information and evidence of corruption. Secondly, another difficulty in investigation and prosecution of corruption cases is that many cases involve government staff at the central level or at the provincial level by those who have positions of power. Also, many employees who investigate corruption have little experience in the corruption proceedings. Finally, mechanisms for coordination between the investigation organization of anti-corruption officers and other investigative agencies is not strong.

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

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I. MLA IN ACTION: PROSECUTION'S CHALLENGES—THE "PERWAJA CASE": THEN & NOW

Crimes today are transnational in nature. Criminals now are not limited by geographical or distance factors. Criminals also use time and space to cover their tracks, and to hide or move their ill-gotten gains to another jurisdiction. It is becoming more difficult for the authorities to find admissible evidence and witnesses obtained from foreign jurisdictions, or to trace the proceeds and the instruments used during the commission of those crimes. Thus, mutual legal assistance ("MLA") is an important tool or mechanism to obtain evidence from foreign jurisdictions. However, having a law in place to cater for MLA alone is not sufficient to ensure success in getting foreign evidence to be used in Malaysian courts, as will be demonstrated below in the case of *Public Prosecutor v. Tan Sri Eric Chia Eng Hock*, commonly known as the Perwaja case.

The Perwaja case bears a huge significance in the context of MLA in Malaysia as it is the best case to showcase the use of MACMA extensively and the challenges faced by the prosecution during the trial to admit the evidence obtained from the relevant countries.

A. Brief Facts of the Perwaja Case

On 4 November 1993, a Technical Assistance Agreement ("TAA") was entered into between NKK Corporation, Japan and Perwaja Rolling Mill and Development Sdn. Bhd., Malaysia ("Perwaja"). The assistance was to be provided free of charge. On 18 February 1994, Tan Sri Eric Chia Eng Hock ("Eric Chia"), the Managing Director of Perwaja authorized the payment of 2,891,580,000 Yen (approximately RM76,433,134.14) by Perwaja to NKK, purportedly for the assistance to be provided under the TAA. Payments were made as follows:

(i) Firstly, the above payment was made into the account of Frilsham Enterprise Incorporated ("Frilsham") with the American Express Bank Ltd. ("Amex") in Hong Kong;

(ii) On 25 February 1994, the money was transferred into the account of Waterfront International Ltd ("Waterfront") at the same bank;

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(iii) On 1 March 1994, a sum of 2,486,260,000 Yen (about RM65,700,000) was transferred into the account of Borneo Enterprises Inc. ("Borneo") at Banque Indosuez (now Calyon Corporate and Investment Bank) in Geneva, Switzerland;

(iv) Subsequently, a sum of 2,294,600,000 Yen (about RM60,650,000) was transferred to the account of Sitar Investment Ltd. with the Union Bank of Switzerland, Zurich;

(v) The said amount was then transferred to the account of Lotus Development Inc. at the same bank;

(vi) Both the accounts of Sitar Investment Ltd. and Lotus Development Inc. at the Union Bank of Switzerland, Zurich belonged to an immediate member of Eric Chia's family.

The Executive Director of NKK Japan denied receiving any payment for the technical assistance provided and stated that the technical assistance provided by NKK to Perwaja was free of charge. On 10 February 2004, about 10 years after the incident, Eric Chia was charged under section 409 of the Penal Code[1] for the offence of criminal breach of trust.[2]

B. The Perwaja Case at the Sessions Court

During the trial, the prosecution sought to adduce evidence recorded earlier by a Magistrate in Hong Kong between June and July 2005 pursuant to a request made by the Attorney-General of Malaysia under subsection 8(1) of the Mutual Assistance in Criminal Matters Act 2002 ("MACMA").[3] The evidence consisted essentially of the transcripts of the evidence of six witnesses and of documents produced by one of the witnesses. In the taking of the evidence, the Attorney-General himself conducted the examination-in-chief of the witnesses and the defence counsel from Malaysia was present to conduct cross-examination of the witnesses. At that point in time (2005), which was before the insertion of the new Chapter VA into the Evidence Act 1950 (via Act A1424 w.e.f. 1.6.2012), the admissibility of that evidence was governed solely by subsection 8(3) of MACMA,[4] which provided that the evidence may be

[1] Act 574.

[2] S.409: Criminal breach of trust by public servant or agent: "Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which shall not be less than two years and not more than twenty years and with whipping, and shall also be liable to fine." Under s.402A Act 574, an "agent" includes a company director. A criminal breach of trust offence is also a "prescribed offence" under section 3 of the Malaysian Anti-Corruption Commission Act 2009 [*Act 694*], which means it is an offence that can be investigated by MACC and charged if necessary, despite it not being a corruption offence. Act 694 took effect on 1.1.2009. Previously, corruption matters were governed by the Anti-Corruption Act 1997 [Act 575]. Subsection 7(3) of Act 575 provided that an officer of the Anti-Corruption Agency may get an appropriate direction from the Public Prosecutor to investigate etc. if a non-corruption offence is disclosed while an investigation is made on a corruption case.

[3] Act 621.

[4] Subsections 8(1) and (2) of MACMA provide, *inter alia*, that the Attorney General may request for evidence or thing in a foreign State to be taken and sent to him if he is satisfied that there are reasonable grounds for believing such evidence or thing are relevant to a criminal proceedings or criminal matter in Malaysia. Subsection 8(3)

admitted subject to the provisions of the Evidence Act 1950 ("EA") and the Criminal Procedure Code ("CPC").[5] There was no specific reference to evidence by way of MLA in EA and CPC.

After a trial that took about three years, on 26 June 2007 the Sessions Court held that the prosecution had failed to prove a *prima facie* case and accordingly acquitted Eric Chia on the grounds that the transcripts of the evidence of witnesses obtained by way of MLA from Hong Kong (including Japan and Switzerland) were inadmissible due to authentication issues under MACMA, and because of non-compliance with section 33 of the EA.[6] The prosecution appealed against the acquittal to the High Court.

C. The Perwaja Case at the High Court

At the High Court, the defence counsel argued that the qualification "subject to the provisions of the Evidence Act 1950" as appears in subsection 8(3) of MACMA 2002 must mean that the admissibility of the Hong Kong evidence must be subject to the provisions of section 33 of the EA.[7] The defence counsel thus argued that the situation in this case was actually reversed in that in obtaining the Hong Kong evidence, much money and time was unnecessarily spent and that the prosecution had not even attempted to procure those witnesses in Hong Kong to testify in Malaysia, which the Attorney General could request under section 9 of MACMA.[8] Justice Abdull Hamid Embong, however, disagreed with this line of argument and ruled that the evidence obtained pursuant to a request made under subsection 8(1) of MACMA is not subject to section 33 of the EA and thus it is not required to pass the test and qualifications laid down in section 33 of the EA.

The Judge further stated that MACMA is a specific piece of legislation to facilitate mutual assistance in criminal matters and thus should not be hampered by the requirements of the EA, notwithstanding its mention in sub-section 8(3). He went further by adding that to subject its operation to the technical requirements as found under section 33 of the Evidence Act would render nugatory or redundant Parliament's intention of a speedy and convenient method of evidence taken overseas. Thus, the High Court found the Hong Kong evidence to be admissible. Further, the High Court said it is unfortunate that the Malaysian EA was not consequently amended to cater for evidence taken under MACMA as was done to section 77F of the Hong Kong Evidence Ordinance, which provides that evidence obtained pursuant to a similar request in respect of any criminal proceedings, shall on its production without further proof be admitted

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provides that any evidence or thing received by the Attorney General pursuant to an MLA request may be admitted in such proceedings subject to the provisions of EA and CPC.

[5] Act 56 & Act 593, respectively.

[6] S.33 EA provides, among others, that evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the court considers unreasonable.

[7] Subsection 8(3) MACMA: "Any evidence or thing, or photograph or copy of a thing, received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Evidence Act 1950 [Act 56] and the Criminal Procedure Code [Act 593], be admitted as evidence at any criminal proceedings to which the request relates."

[8] Section 9 MACMA provides that the Attorney General may request a foreign country to assist in arranging a person in that foreign country to testify in Malaysia.

in those criminal proceedings as *prima facie* evidence of any fact stated in the evidence. The appeal by the prosecution was thus allowed. Eric Chia appealed to the Court of Appeal.

D. The Perwaja Case at the Court of Appeal

The Court of Appeal, in a 2 – 1 majority decision, agreed with the prosecution and dismissed Eric Chia's appeal, holding that section 8 of MACMA provides a scheme for the deliberate gathering of testimonies of witnesses in a foreign country to be used specifically in a particular criminal proceeding in Malaysia. Thus, section 8 is not within the contemplation of section 33 of the EA and the Hong Kong evidence was admissible. Dissatisfied, Eric Chia appealed further to the Federal Court, the highest court in Malaysia.[9]

E. The Perwaja Case at the Federal Court

The appeal initially began with a preliminary objection by the prosecution that the appeal was incompetent, as an appeal from a decision of a Sessions Court, the trial court in the Perwaja case could only go so far as the Court of Appeal. However, the Federal Court overruled this objection on the grounds that the inherent powers of the Federal Court under Rule 137 of the Federal Court Rules 1995[10] can be invoked to prevent an injustice or to prevent an abuse of the process of any court where there is no other available remedy.

Having dismissed this preliminary objection, on 31 January 2007, the Federal Court, by a unanimous decision, went on to affirm the decision of the trial court, i.e. the Sessions Court, and held that the evidence from Hong Kong was inadmissible.[11]

F. Amendment to the Evidence Act 1950

After the Perwaja case, the EA was amended to include a new Chapter VA (effective date 1.6.2012 via Act A1424), containing sections 90D, 90E and 90F. This amendment caters specifically for evidence obtained by way of MLA.

The provisions of sections 90D, 90E and 90F are reproduced below as follows:

> "CHAPTER VA
> ADMISSIBILITY OF EVIDENCE OBTAINED UNDER MUTUAL ASSISTANCE IN CRIMINAL MATTERS REQUESTS
> *Application of Chapter VA*
> 90D. Notwithstanding any other provision in this Act, this Chapter shall apply for the purpose of determining the admissibility of evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*].
> *Admissibility in criminal matter of evidence obtained pursuant to requests for mutual assistance in criminal matters*

[9] Reported in Malaysian Current Law Journal (2006) 2 CLJ 544.
[10] Rule 137: "For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court."
[11] Reported in Malaysian Current Law Journal (2007) 1 CLJ 565.

90E. (1) Subject to subsections (2) to (9), any testimony, statement or deposition, together with any document or thing exhibited or annexed to such statement or deposition, that is received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of the criminal matter, shall on its production be admitted in those criminal proceedings as evidence without further proof of any fact stated in the testimony, statement or deposition and in the document, if any, exhibited or annexed to such statement or deposition.

(2) The testimony, statement or deposition shall be taken —

(a) on oath or affirmation;

(b) under an obligation to tell the truth imposed, whether expressly or by implication, by or under a law of the foreign country concerned; or

(c) under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.

(3) The testimony, statement or deposition shall—

(a) be signed or certified by a judge, magistrate or officer in or of the foreign country to which the request was made; and

(b) bear an official or public seal of—

(i) the foreign country; or

(ii) a Minister of State, or a department or officer of the government of the foreign country.

(4) A certificate by the judge, magistrate or officer referred to in subsection (3) shall, without further proof, be admitted in the proceedings as conclusive evidence of the facts contained in the certificate.

(5) All courts in Malaysia shall take judicial notice of the official or public seal referred to in subsection (3).

(6) The testimony taken under subsection (2) may be reduced to writing or be recorded on a tape, disk or other device from which sounds or images are capable of being reproduced or may be taken by means of technology that permits the virtual presence of the person in Malaysia.

(7) Where the testimony has been reduced to writing or recorded on a tape, disk or other device from which sounds or images are capable of being reproduced, the writing, tape, disk or other device shall be authenticated as provided under subsection (3).

(8) Where the testimony has been made by means of video or other means which permits the virtual presence of the person in Malaysia, that testimony shall be deemed to have been given in Malaysia.

(9) For the purposes of this Chapter, the testimony, statement or deposition need not—

(a) be in the form of an affidavit; or

(b) constitute a transcript of a proceeding in a foreign court.

(10) For the purpose of this Chapter, where the prosecutor seeks to adduce any testimony, statement, deposition, document or thing specified in subsection (1) as evidence in the criminal matter, the court shall not give any direction that such evidence or any part thereof is not to be adduced.

(11) In this Chapter, "criminal matter" has the meaning assigned to it under the Mutual Assistance in Criminal Matters Act 2002.

Certificate relating to foreign evidence

90F. A certificate by the Attorney General or by a person authorized by the Attorney General to make such a certificate certifying that any testimony, statement or deposition to which such certificate is attached, together with any document or thing exhibited or annexed thereto, if any, has been received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of any criminal matter referred to in the certificate, shall on its production without further proof be admitted in the proceeding as conclusive evidence of the facts contained in the certificate."

G. Some Other Challenges in MLA Process

Although the issues regarding the admissibility of evidence obtained by way of MLA have been resolved with the amendments to the EA to include the new Chapter VA above mentioned, the fact remains that the new provisions have yet to be tested in courts. The above provisions were inserted into EA as a consequence of the Perwaja case. It is foreseeable that new technical legal challenges may be made in future cases where the prosecution wishes to tender foreign evidence obtained by way of MLA, which may touch upon issues or areas not catered for by the above provisions.

It is also pertinent to note that the MLA process is in itself not a simple one. The drafting of an MLA request is a process that requires meticulous drafting by the enforcement agency concerned, or in this case of the MACC, so as to ensure the final version is not only accurate but complete in material particulars. A request that contains mistakes or is incomplete will result in possibly a supplementary request to be prepared and sent, or at least may result in further

communications between the authorities of both requesting and receiving countries to clarify certain facts or issues.

An MLA request also takes time to be executed and this may not allow the prosecution in the requesting country to wait, as the court in which a trial is conducted may not wait for several months pending the execution of the request. In a few cases, the trial continued and the prosecution case was closed without waiting for the MLA evidence requested for. For MACC, there was only one case where a witness was successfully arranged to appear and testify here, which resulted in the conviction of the accused concerned. However, in the majority of cases, witnesses cannot be found, while tracing for them takes time. Furthermore, a potential witness in a foreign country is not obliged to come here to testify.[12]

H. Recovery of Assets Obtained from Corruption in Foreign Jurisdictions

This is an area which remains largely unexplored. Malaysia has not made any request to recover assets obtained by way of corruption or other crimes. We also do not have the experience of executing any request for freezing or forfeiture of assets. In the Perwaja case, the request was only limited to obtaining witnesses' statements or depositions and documentary evidence. Despite the fact that millions of ringgit were siphoned out by Eric Chia from Perwaja company to certain overseas accounts belonging to his family member, no specific request was made to recover the money.

[12] Section 9 MACMA. Conversely, a person in Malaysia is also not bound to go to a foreign country to testify there pursuant to a request under section 27 MACMA.