

# **MALAYSIAN ACCOUNTING REVIEW**

Volume 15 No. 1  
June 2016

# CORRUPTION: A COMPARISON BETWEEN SINGAPORE AND MALAYSIAN LEGAL REGIME

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## ABSTRACT

*Corruption is a global problem. Without effective legal regime, corruption would cost economic, political, and social instability. Based on the International Transparency perspective index on corruption, Singapore ranked 8<sup>th</sup> as less corrupt nation and scored 85 out of 100 based on the transparency index. These data show Singapore as a leading country in fighting corruption in South East Asia region. Therefore, this paper intends to examine the legal regime in Malaysia and Singapore in order to identify the legal gap and propose an improvement and comprehensive legal framework against corruption.*

**Keywords:** *Corruption, Singapore, Malaysian legal regime*

## INTRODUCTION

Corruption has become a global problem and the complexity of the crimes has evolved based on the economic development. Without any doubt, every country on the surface of earth experiences this global epidemic. The high number of corruption will not only affect the political, economic and social growth in the respective countries but also indirectly affect the world economic through unbalanced economic sharing (Noore, 2010). Thus, such scenario creates unproductive public institutions while maintaining the said unproductivity causes unhealthy economic development (Noore, 2010). Furthermore, corruption does not only affect the foreign direct investment

### **ARTICLE INFO**

Article History:

275

Received: 20 October 2015

Accepted: 31 March 2016

Published: 23 June 2016

of the respective countries but also change their economic, political, and social structures (Cuervo-Cazurra, 2006). To address the seriousness of the corruption globally, United Nations introduced United Nations Convention against Corruption (UNCAC) in 2005. The main purpose of this convention is to highlight the prevention mechanism, corruption criminalisation, multinational and international cooperation, and asset recovery (Noore, 2010). However, UNCAC does not highlight the issues of legal enforcement and prevention mechanism policy.

In Malaysia, a survey conducted by KPMG concluded that 65 percent respondents believed that corruption is a problem in their organisations. 80 percent believed that corruption and bribery incidents have increased from 2010 to 2013 and surprisingly 90 percent said that bribery and corruption have become a major problem in doing business in Malaysia. However, Malaysian Anti-Corruption Commission (MACC) tries to ensure that the act of corruption can be handled accordingly based on the law by improving the investigation methods, education, and monitoring mechanism. This can only be achieved through comprehensive legal framework that can strengthen the power of MACC as an independent body.

In Singapore, corruption issues in the nineteenth centuries have become a problem. However, the economic development of Singapore requires the public and private sectors to be more competent and transparent (Koh, 2012). As a result, according to the Transparency International, Singapore ranked highest in terms of transparency and free corruption country in South East Asia region. The change of political behaviour set up a policy to combat corruption cases by way of introducing comprehensive laws, enforcement, regulations, and self-regulation. The main reason that Singapore was included in this comparative study with Malaysian legal regime is because these countries share similar historical and legal background. Furthermore, Singapore, since its independence from the British Empire, has faced major problems particularly in corruption issues.

## **OBJECTIVES**

The first objective of this research is to identify the legal strengths and weaknesses of the current Malaysian legal regime. Secondly, this study

is meant to critically examine the Singapore legal regime by employing comparative analysis of the law particularly in legal framework against corruption. Finally, this study aims to recommend legislative improvements in the current Malaysian laws to enhance national integrity agenda through the government's transformation program.

## **SCOPES AND LIMITATIONS OF THE RESEARCH**

Several limitations were foreseeable which must be considered in this research. The question of secrecy of certain data, the willingness of the respondents to disclose sensitive data, and accuracy of legal provision by the reason of deference jurisdiction would be the main problems. Furthermore, this research did not examine the areas related to the theory of criminology but only examined the concept and legal framework in Malaysia and Singapore.

## **METHODOLOGY**

This research employed a qualitative method in order to explore and discuss the Singapore and Malaysian legal frameworks against corruption. For that reason, this research was designed based on the primary and secondary data in providing comprehensive understanding on the laws in question.

Primary data of this research was obtained through a semi-structured interview which were conducted with the stakeholders such as Malaysia Anti-Corruption Agency, Attorney General Chambers, legal practitioners, members of Judiciary, police departments and legal academia.

In addition, the primary data was triangulated by the secondary data in providing a better analysis and comprehensive discussion of this research. These include articles, books, judicial precedents, Acts, and other necessary sources of law that are interrelated with the Malaysian and Singapore legal frameworks.

## **SIGNIFICANCE**

This research is mainly to assist policy makers, stakeholders, and the authorities who either directly or indirectly deal with the crime of corruptions in terms of drafting effective policies and procedures, empowering the enforcement agencies, and recommending comprehensive legal frameworks. Furthermore, this research is hoped to improve certain legal provisions stated in the Malaysian legal regime.

## **LITERATURE REVIEW**

Corruption has been defined in various ways. There are no standards and exact phases to describe the term corruption. Various organisations in the world have their own definitions of corruption. The general norm of corruption can be defined as ‘misuse of public office for private gain’ (Tanzi, 1998). The United Nations Development Program (UNDP) classifies corruption into two main categories, spontaneous and institutionalised. Tanzi (1998) suggests that the cause of the rising number of corruption cases is inter-related with the lack and incompetency of regulations, laws, penalty systems, rules, and processes. This also includes the issues of transparency when the law itself indirectly protects the act of corruption where the public documents are not available to the public because of the secrecy under government confidential practices. Furthermore, the investigation of corruption cases is quite politically sensitive when political matters are involved. Therefore, the investigative institution must be free from any other influences to ensure the success and effectiveness of combating corruption. Hamin, Elias and Omar (2012) argue on the existence of corruption activities due to existing opportunities, motivations, and justifications. To combat corruption activities, policymakers must identify the sources of corruption and develop comprehensive legal frameworks by understanding the theories of opportunity, motivation, and justification. Opportunities exist when there are weaknesses in legal control and when the legal frameworks fail to fill up the legal weaknesses. Motivation takes place when there is lack of education on how to deal with surrounding factors which trigger the desire to commit the crime and justification that takes place where the surrounding and the practices of certain institutions indirectly allow corruption which becomes their working culture. In a more sophisticated economic environment, the

traditional definition of corruption and the theory surrounding it must look into the contributing factors from the public and private sectors (Kaufmann & Vicente, 2011). In order to understand the factors that contribute to the increasing number of corruption cases, perception is not a concrete evidence to justify any changes including legal reform. On the contrary, it requires in-depth analysis of the causes and effects of the corruption activities (Olken, 2009). Thus, the government institutions and enforcement agencies must develop transparent mechanisms to monitor corruption activities and at the same time understand the nature of the actors and the crime itself (Shleifer & Vishny, 1993). This can be done by establishing an independent legal control to develop a dynamic legal regime (Lange, 2008). However, without political will and cultural determination, even an excellent law is unable to eradicate the corruption practice in total (Deflem, 1995).

In Malaysia, the legal framework of corruption is mainly governed under the Malaysian Anti-Corruption Commission Act 2009 (MACCA). This act set up the Malaysian Anti-Corruption Commission (MACC) to cater the investigation process and initiate a prosecution under the power given by the Public Prosecutor. As far as the matter is concern, the power to prosecute, initiate and discontinue the prosecution lies only under the prosecution discretion that is governed under the Federal Constitution. Article 145 of the Federal Constitution states that *'the attorney general has a power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceeding before Syariah Court, at native court or court martial'*. This section also incorporated under Section 376 of the Criminal Procedure Code (CPC) states that *the attorney general shall be the public prosecutor and shall have the control and direction of all criminal prosecutions and proceedings. To assist him, the public prosecutor may appoint and authorize other persons such as the assistant and deputy public prosecutors, advocates, police officers, officers of any government department, local authority or any statutory authority to conduct criminal prosecutions before any court or any inquiry before a magistrate'*.

Tan (2008) argues that the power to prosecute only lies on the public prosecutors and no other person other than them. He also argues that the prosecutions must be done free, fair, and without the existence of mala fide (Dolak, 2004; Sharpe, 1995). Therefore, the power to prosecute other than the public prosecutors can be held unconstitutional. Tan (2008) suggests

that the power of prosecution as in Article 145 of the Federal Constitution must be amended. This provision carries a supreme authority that other enforcement agencies including MACC cannot initiate any criminal proceeding including corruption charges without the consent from public prosecutors. It must be noted that under the Malaysian legal framework, what has been laid down under the Federal Constitution, the Public Prosecutor, and the Attorney General is the same person under similar positions.

The courts address the seriousness of the acts of corruption and the importance to combat corruption at all level. In *PP v. Ruhayah Yunus [2013] 1 LNS 843*, the court ruled that, '*much of be said and the of the evils of corruption and it is important for us to shoulder the responsibility together with the efforts to overcome this phenomenon so that corruption especially in the government delivery system and procurement be reduced and eradicated.*' In terms of evidence and tendering and evidence of corruption offences, the prosecution must able to supply credible evidence as per required beyond reasonable doubt. As in the case of *Public Prosecutor v. Zul Hassan & Anor [2013] 1 LNS 141*, the court ruled the common law was not applicable to admit the evidence of the intercepted telephone conversations as the admissibility of such exhibits was governed by the statutory provisions of Section 49 MACCA. It is trite law that the court cannot import common law principles from other jurisdictions if there are specific statutory provisions thereof. The evidence of the intercepted telephone conversations by the prosecution, if admitted, would be an important evidence for the prosecution to prove the involvement of the respondents in the act of corruption activities. Unfortunately, no certificate was signed by the Public Prosecutor as required under Section 39 MACCA in relation to the admissibility of the exhibits. Furthermore, the presumption of corruption must be carefully observed as the court ruled in order to invoke the statutory presumption under Section 42 MACCA. To establish an offence under Section 10(a)(aa) MACCA, it is not sufficient for the prosecution to establish that the accused has received the gratification. For this case, the prosecution had to prove that the purpose of the gratification contradicts the law. The circumstantial evidence was insufficient to infer that the accused had indeed accepted the gratification for the purpose of securing the proposed project. Thus, the prosecution had failed to prove that the money had been corruptly received. This case illustrates the importance of the investigative authorities to carry out the process of investigation in

accordance with high standards of evidence to obtain a conviction against the accused person. Furthermore, the prosecution is required to follow all the requirements stated under the respective statutory provision in relation to the tendering and evidence. It is within the guided discretion of the court whether or not to accept the evidence.

It becomes an important requirement that the ingredients of the offences have been fulfilled before successful convictions. It must be noted that the requirements for investigation and prosecution are different. The investigation can be commenced if there is a report and there is reasonable suspicion to initiate the investigation. However, for prosecution, it requires high degree of certainty. In *KeeYiik Kwok v. Public Prosecutor [2005] 1 LNS 75*, the court stated; *'Firstly, the prosecution must prove that a gratification was given or received by the appellant and secondly, at the time of payment or gift, as in the instant case, the receiver of the payment or gift is a public officer or in the employment of a public body. Once these two factual ingredients were proved then the existence of the third ingredient of the offence viz, that the gratification was paid or given or received, as the case may be, corruptly as an inducement or reward for doing or forbearing to do an act in relation to the affairs of that public officer or body is to be presumed unless the contrary is proved. The burden to rebut the presumption is on the accused or appellant and it is on the balance of probability'*. It is submitted that, to rebut the presumption of gratification, the accused has to prove the balance of probabilities which requires less standard of evidence compared to beyond reasonable doubt.

In Singapore, the main legal framework is Prevention of Corruption Act 1960 which allows the creation of an independent body known as Corrupt Practice Investigation Bureau (CPIB) (Koh, 2012). For the purpose of investigation, CPIB has an extensive authority in terms of investigating not just the suspect, but also the suspect's family or agents. It also has the power to examine their financial and other records, to require the attendance of witnesses for interview, to investigate any other sizable offence, which are disclosed in the course of a corruption investigation. The law enforcement agency is also given the powers of search and arrest individuals, as well as investigates bank accounts, share accounts, or purchase accounts of any suspect (Koh, 2012). The extensive power given under the legal framework allows the CPIB access all information that is required as to collect credible



evidence for prosecution purposes (Lichtman, 2004). Under Section 22G of the Singapore Constitution, it provides that: “*Notwithstanding that the Prime Minister has refused to give his consent to the Director of the Corrupt Practices Investigation Bureau to make any inquiries or to carry out any investigations into any information received by the Director touching upon the conduct of any person or any allegation or complaint made against any person, the Director may make such inquiries or carry out investigations into such information, allegation or complaint if the President, acting in his discretion, concurs therewith.*” Thus, the Director of CPIB has a wide power in order to investigate without interference from government authorities. Therefore, CPIB is an independent body that is guarded by the Constitution of Singapore. This provision is extremely significant to ensure that, any other law cannot limit nor restrict the power of the CPIB Director to initiate any criminal investigation if there is a reasonable suspicion to begin the said proceeding. The main aspect of this provision is to prevent any interference while CPIB conducts any criminal investigation.

In respect of the law enforcement particularly at the prosecution stage, Singapore’s criminal legal process actively encourages plea bargaining to enhance the efficiency of the administration of criminal justice (Wang, 2013). However, in certain aspects, plea bargaining has been criticised because the power solely relies on the prosecutors and without interference from the court (Schulhofer, 1984). Plea bargaining begins when lawyers representing accused persons routinely make written representations to the Attorney General Chambers with a view to having the charges against their clients withdrawn, reduced in severity or persuading the prosecution to proceed with fewer charges. However, any change as per charge depends on the evidence. The Attorney General Chambers will review all representations from the defence counsel and decide on them carefully based on the evidence collected through the investigation and examine the content of the investigation papers. If the representations are successful and acceded to, this will result in the accused pleading guilty to lesser charges, or pleading guilty to fewer charges or an acquittal based on the evidence. There are also certain instances where the prosecution applies to the Court for a discharge not amounting to an acquittal against the accused. If the Court allows the prosecution’s application, the prosecution will stay (Wang, 2013). In terms of the accepted standard of proof, the court in *Public Prosecutor v. Peter Benedict Lim Sin Pang [2013] SGDC 192* ruled the knowledge of the

accused person as to have conflict of interest, which is an important element to identify the corruption practice. The definition of conflict of interest and the degree of seriousness of the offences are pertinent to the establishment of corruption offences. Thus, this case illustrates the approach by the court in Singapore with respect of the level of evidence requires for a conviction.

Even the legal framework in Singapore is extensive in terms of investigation. Koh (2011) argues that there are challenges that must be overcome by reasons of the changing of corruption and the complexity of the transaction such as false accounting, phantom workers, and money mules. These require the CPIB to improve its investigation methods. Furthermore, the internationalisation of the corruption cases creates difficulties in investigation process due to the jurisdiction issues (Koh, 2012). This includes the lack uniformity of international mutual assistance at the international level and requires multinational efforts and international laws to intervene (Posadas, 2000).

## CONCLUSION

As a conclusion, this research examines the legal gap between Malaysian and Singapore legal frameworks pertaining to the corruption practice. This includes the statutory provision of each respective country, judicial precedent, institutional, and enforcement system in order to develop a systematic legal framework in Malaysia.

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