



## FORUM REPORT

### ABOUT THE FORUM

Corruption has undoubtedly been one of the most deep-rooted, pervasive problems that has crippled economies around the world. Even in advanced economies, authorities have not been able to quell corruption completely.

The Corruption Perception Index (CPI) has ranked Malaysia number 51<sup>st</sup> out of 180 countries in 2019. Though we have done substantially better than some countries in the Middle East, Africa, and some of its ASEAN neighbours, corruption is still a huge impediment to progress for the nation, especially in terms of economic development and income inequality within the society. Government agencies such as the Malaysian Anti-Corruption Commission (MACC) and the newly launched National Anti-Corruption Plan (NACP), has been instrumental in putting Malaysia back on track as a transparent and corruption-free country, giving a confidence boost to investors and bringing in much needed investments for our infrastructure needs.

At last year's Malaysia Anti-Corruption Forum, we have covered a variety of topics but most important is the discussion on corporate liability law which, for the first time, will institutionalise the penalisation of the giver of corruption, instead of just the receiver of corruption. This will indeed create a huge impact on the fight against corruption, and most importantly to break the strong link between governments and big corporations, which has thus far been an impediment to progress and innovation in the country.

The 2<sup>nd</sup> Malaysia Anti-Corruption Forum, brought to you by International Strategy Institute (ISI), is a platform to bring together all concerned Malaysian citizens, government authorities, the media and the private sector to discuss, exchange ideas, and formulate key proposals to be submitted to the Malaysian Anti-Corruption Commission (MACC), with the hope that Malaysia will soon be able to tackle corruption sustainably as it moves towards a high-income nation status in the foreseeable future.

### ABOUT ISI

The International Strategy Institute (ISI) is a not-for-profit organisation that helps connect governments and businesses across Asia and the world. We stand for universal ethical business values such as: equality, transparency, fair trade, and sustainable development.

Our dialogues, research and networking platforms, are designed to drive economic growth in the region. We aim to,

1. build platforms for regional dialogue and networking opportunities that allow businesses, industry captains and governments to come together to drive economic growth of the region;



2. provide timely research to keep our members and governments informed and updated on global trade and political issues that may have an impact on their operations;
3. match businesses to the right investors- to ensure that the companies are paired with the right strategic investment partner

## VISION AND MISSION

International Strategy Institute (ISI) aims to be the leading regional connector and networking platform for governments and businesses across Asia and the Pacific.

Through our networking events, conferences, and rigorously research publications, we hope to promote a robust Asian business environment that is strategic, inclusive, innovative and sustainable.

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## OPENING CEREMONY

### *Welcoming Remarks:*

***Cheah Chyuan Yong***

***Chairman, International Strategy Institute (ISI)***

Malaysia Anti-Corruption Forum (MACF) is a platform which aims to bring together the enforcement agency and the general public to address the uncertainties about corruption and what are the agencies doing to address it. As MACF steps into the second year of deliberating this critical issue notwithstanding on the global pandemic we are in right now, it is important to review and examine the gone to the extent of implementing reform initiatives so far. It was indeed impactful for MACF able to understand and discuss the new corporate law which has just been passed in June this year as well as deepen the discussion of how corporations can protect themselves from being implicated. Since now, the act of a corrupt employee can implicate the whole company, therefore, it is important for employers to understand the scope of the law and what the steps needed to prevent this from happening. It is a huge step forward for authorities to start looking at the source of corruption and tackle corruption earlier by urging parents, teachers and citizens as a whole to have an urgent responsibility of educating the next generations of the negative effect of corruption.

### *Opening Keynote:*

***Dato' Sri Shamshun Baharin Mohd Jamil***

***Deputy Chief Commissioner (Prevention), Malaysian Anti-Corruption Commission (MACC)***

Malaysia is ranked 27 on the global platform in the World Economic Forum Global Competitiveness Index 2019 that identified a list of top-performing economies in the world by looking at achievement in world class education, educational attainment, focus on innovation as well as good governance framework. This would also mean that Malaysia has one of the most competitive economies in the system.



Meanwhile, Malaysia's ranking in the Transparency International Corruption Perception Index has improved from 61 in 2018 to 51 in 2019 among the 180 countries surveyed. The index measures public sector corruption, including bribery, diversion of public funds, use of public office for private gains and nepotism in the civil service. One of the factors for the improved ranking would be the introduction of the corporate liability law and the launching of the National Anti-Corruption Plan 2019 to 2023.

The introduction of the corporate liability law which is the new Section 17A of the Malaysian Anti-Corruption Commission Act 2009 was passed on 5 April 2018 and takes effect on 1 June 2020. Under this new law, any Malaysian company is included whether carrying on a business in Malaysia or elsewhere. Secondly, the liability also extends to foreign companies carrying on a business or part of a business in Malaysia. Thirdly, the section applies to a Malaysian partnership or Malaysia limited liability partnership, whether they carry on business in Malaysia or elsewhere.

Accordingly, the list of individuals falling within the term person associated with the commercial organization includes director, partner, employee will be deemed to have committed the offence when an offence is committed by a commercial organization, unless it can be proven that the offence was committed without the person's consent. Therefore, it will be critical for directors and management to have systems in place to demonstrate due diligence in preventing such corrupt offenses.

Adequate procedures are an absolute defence where a commercial organization is charged with this new corporate offense and shows that the organization had adequate procedures in place to prevent such associated person from carrying out corrupt conduct. It is very important to safeguard both the company itself as well as the company's directors and officers.

The guidelines on adequate procedures issued by the Prime Minister's Office has been drawn up to assist commercial organizations in understanding what are the adequate procedures that should be implemented to prevent the occurrence of corrupt practices in relation to their business activities and should be based on the principle of TRUST which can be further elaborated as the following. However, the most important is the policy on prevention of corruption as no share fits all. Companies should have more allocation in terms of finance and human capital in adopting more comprehensive corporate corruption prevention measures in their organizations. Promotes transparency in business dealings plays a prominent role in ensuring sustainability of a particular business or industry.

National Anti-Corruption Plan (NACP) which was launched on 29 January 2019 is an anti-corruption policy formulated to combating corruption by practicing the element of transparency, responsibility and integrity in the area of political governance and public sector administration, public procurement, legal and judicial law enforcement as well as corporate governance.





## HOW STRONG IS THE LINKAGE BETWEEN GOVERNMENTS AND BIG CORPORATIONS?

***Tan Sri Abu Kassim Mohamed***

***Director General, National Centre for Governance, Integrity and Anti-Corruption***

The National Integration Plan with 115 initiatives launched by the government really addresses the root cause of corruption especially on the political agenda and political reform. The first group to reform is politicians if we want to make a difference in this country and the most difficult is political donation. They should be disciplined and must inject the element of transparency, therefore, donation would not be used as a reason for a politician to receive money or for whatever political reason. A draft bill was discussed in the cabinet and Select Committee.

An evaluation of a person including the professional background should take place before the appointment into the board. Therefore, those who are really professional can be appointed. In addition, a person who has high integrity should be appointed as well. GLC needs a leadership who are truly independent and especially from politics at least.

Nomination committee will be very important for GLC where the chairman should not be the final decision maker to appointing who should be on the board. It might not be fair to reject government officers to be there since a lot of government officers are very strict and build up the private sector of this country. In addition, all GLCs are urged to have the corruption risk assessment in the organization due to lack of governance always is the reason for an organization to commit corruption from the previous cases and experience.

***Haridas S Krishnan Nair***

***Chairman, Business Ethics Institute of Malaysia (BEIM)***

The linkage between government and big corporations is strong and huge. The top 300 listed companies by market capitalization in Malaysia paid around RM122000 to the non-executive directors which most of these directors sit on audit committees, nomination and remuneration committees, risk management committees and so on. They are there for patronage, not for their interpersonal skills but they still get an allowance. There is a need for regulatory reforms since Government Link Companies is a privilege but it possesses minimum levels of accountability and limited transparency.

Civil servants and politicians have their own role and might not play an effective role in the board. Therefore, the nomination committee can reject these people and select people for the expertise that they are able to contribute to the company.



***Zakiah Binti Hassan***

***Head Section for Inspection and Consultancy Division (Public/Private), MACC***

MACC Inspection and Consultancy Division is actually doing inspection, examining the system and procedures for companies, public bodies and government leading companies. In addition, a proposal was made from the division which the board will not comprise of any political person which is still in power. It might be a conflict if the political person is wearing two hats that sit at a very prominent place in making decisions for the country and making investment decisions for the organization.

Besides that, corporate governance should be emphasized in GLCs since it is crucial in eliminating corruption. Hence, organizations should embrace and accept the corruption risk assessment even though they have enterprise risk.

However, there are still a lot of GLCs not accepted yet the proposal proposed by the MACC especially those on the vetting process and under the structure of the governance in board of directors. Moreover, some companies might only know the surface value of the proposal while most of the SMEs do not even know about this since they are struggling to survive in the industry. MACC will continue to educate and explain about it, even a small handbook that will explain the five principles for that.

## **TACKLING CORRUPTION IN SOCIETY – CIVIL SOCIETY PERSPECTIVES**

***Dr. Muhammad Mohan***

***President, Transparency International Malaysia***

The CPI was a downtrend all the way when the 1Malaysia Development Berhad scandal surfaced and there was a dramatic jump when the PH government took control due to the NACP and other actions taken by the government. In addition, Malaysia scored the lowest in the ASEAN countries in the percentage of those who agree that it's socially acceptable to report corruption. It means Malaysia still needs a lot of hard work and effort in education and awareness to speak up and report wrongdoings.

The Independent Police Complaints of Misconduct Commission (IPCMC) Bill and the two-year term limit for Prime Ministers was withdrawn at the same time. Then the Independent Police Conduct Commission (IPCC) Bill came up to replace IPCMC but it has been known as a watered-down version. In addition, Integrity Pack which will reform the government procurement that will have the contractors who bid for the job and independent expert monitors is not heard anything from the government as well.



**Tricia Yeoh**

**CEO, Institute for Democracy and Economic Affairs (IDEAS)**

Systemic issues are one of the extremely difficult issues to tackle in combating corruption and bribery. There is sometimes an inevitability that will become part of this system no matter who joins it. It becomes an inherent culture and the norm rather than the exception in Malaysia. Those who opt out of the system are the ones who are conceived of as being strange.

There is a must for providing transparency and accountability for how political parties get their funding to crack the problem of corruption. It is a very real consequence to the public as there is no assurance that the voters on the ground will get equal access to the public services. Corruption impacts upon that due to the money not being used to service constituents in the right and fair manner.

**Zaim Mohzani**

**International Strategy & Diplomacy, Chevening Scholar and Community Builder**

The role of the NGOs is to be the watchdog of government and monitor as well as evaluate the progress of anti-corruption in Malaysia. There is a role to play for NGOs in making sure the government adheres to the commitments that they have already signed and ratified. In addition, NGOs also work on networking and coalition building as well as raising awareness among netizens.

It's intuitive to think that young people are always against corruption. According to a survey done in UKM, 23% of UKM graduates found that it was okay to solicit for bribes if they had a chance. Besides that, a survey done for different universities found that 35.8% of students consider receiving a bribe for doing something such as accelerating the service to make it easier is not corruption and one fifth of them consider it was okay to appoint a family member to the same company where they work at. Therefore, nepotism is accepted by young people.

However, young people are precious for the country as well as vulnerable. Policymakers should work together in more considerate, more concerted and more coherent effort towards changing the views of young people towards corruption. The general view of young people in primary school and secondary school is the key.

**Siti Kamariah Ahmad Subki**

**CEO, Selangor Women's Empowerment Institute**

There are strict rules and conditions for people to set up an organization of society. For instance, it needs a minimum of one million in the account but how many new organizations have such money when they first started it without the patronage. In addition, it needs to wait at least 6 months to set up but victims are already screaming. Therefore, young people wonder why it is





hard to do good in this country. Besides that, it is hard to put the right people in the right places in civil society since they don't get paid very well and how do expect them to remain in integrity. This is the structural problem.

Secondly, is the cultural problem. Corruption has been normalized because we don't call it corruption. For example, people thought it was just showing gratitude when someone gives them a big hamper after they help someone. They call it favours. However, they do not understand and realize they are showing the same example to our children and showing them it is normal to do such things.

### **Summary in Q&A session**

There is a tipping point for people to adopt novel ideas. Young people are extremely frustrated with the direction of the country. A lot of young people decided to branch out of mainstream politics and start their own movement to challenge the status quo. Those days of two-party systems or waiting for one party to reform the system are over. They are ready to disrupt the system.

Malaysia actually faces an existential threat. Malaysia will soon be in the mix of the third world countries if it continues on the path that it is on. It is at a tipping point already and it is a generation opportunity for Malaysians to change the way they do things. It is now or never for legislation reform. People are unable to express their own ideas due to the abolition of Freedom of Information Act. For instance, people go to the jail because they release a video to expose the corruption.

It is true that the adults or the older generation does not provide a good moral narrative for the country today. Therefore, young people will not want to participate in the political system and even not vote. They opt out of the system and leave the country as well as not come back to contribute to the economy.

At the end of the day is political will. It is disappointed with the withdrawal of the IPCC Bill. Malaysia needs leaders who can be brave to be prepared to lose their position but fight on principles.

Besides that, prevention of corruption should start with the young since it is hard to get rid of bad habits that formed from young. Therefore, a serious review of our education system and curriculum is needed to parallel with the Undang 18. Nowadays, schools are emphasizing more on technical subjects and less about nation building.



However, there is a danger if the discourse all boils down to education. Everyone has a role to play. If the top doesn't want to make changes, there's only so much others can do. The frustration of young people comes from the inability of people at the top to adopt the changes. The burden is heavy on older people to do the right thing and break the status quo.

Moreover, the value of speak up needs to be glorified and built among the citizens. The culture of wanting to be nice is the issue. Government is also partly to be blamed for this culture. For example, if a person gets fined by police for speeding, most of them will choose to settle with the police by giving "kopi duit". People should be brave to speak up and rise up.

Integrity might not be rewarded but the person could sleep at night if the person chose the more moral path at the expense of himself. If enough people choose to have a moral conscience behind all these whatever rewards in life, it is able to make integrity sexy again.

## **SPECIAL PRESENTATION: HOW EFFECTIVE ABMS CAN BE FOR SUSTAINABLE GROWTH?**

***Fauziah Sulaiman***

***Head, Management System Certification, SIRIM QAS. International Sdn Bhd***

Anti-Bribery Management System (ABMS) is a tool for an organization to be implemented to support Sustainable Development Goals and National Anti-Corruption Plan. In addition, ABMS helps in identifying the root causes of corruption in the organization. Therefore, organizations are able to ensure that the employees are in high integrity and sustain the business. ABMS will be the defence mechanism which prevents, detects and responds to the corruption. There are a total 62 organizations adopted ABMS this year which includes 26 government agencies, 18 private companies and 18 GLCs.

## **UNDERSTANDING CORPORATE LIABILITY LAW AND ITS IMPACT**

***Datuk Seri Azman Ujang***

***Former Chairman, BERNAMA / Member, Anti-Corruption Advisory Board (ACAB)***

The most important thing in fighting corruption is prevention. The priority should be on prevention rather than on enforcement because it can prevent corruption from happening in the first place as well as much easier and cheaper. Enforcing, prosecuting and bringing corruption cases to the legal process is a very lengthy process. In addition, a corresponding law in the civil service for the person who holds the power should be considered because it is not fair that only penalize the directors and management in the private sector.





***Dato' Paduka Muhammad Juanda Abdul Rashid***  
***Consultant (Ethics and Compliance)***

The corporate liability offence under Section 17A stated that any person associated with the commercial organisation pays a bribe in order to obtain or retain business or for the advantage of the commercial organisation, the director or controller of the company shall be charged under this law since the director has failure to prevent the bribery from happening.

There is a defence for the commercial organisation to prove that it had in place adequate procedures to prevent persons associated with the company from paying bribes. It means that when individuals associated with the company have committed an offence of bribery, the company will then also be held to be accountable for committing that offence.

In other words, what matters the most is that this new law is putting in the commitment that a company that failed to prevent bribery by its employees or agents would be guilty of this offense. However, it would merely be criminalized for negligence of the company because of failing to prevent the bribery from happening. This also means that any conviction on the company would not be for the offense of giving a bribe, but for the failure to prevent the offense from happening.

Organizations need to have a full understanding of the corruption risk before drafting the codes and procedures of the process and operations. Risk varies in different business transactions. Corruption risk management is needed in an organization to identify where risk and red flags are prevalent.

However, the purpose of establishing adequate procedures should not be the defence's argument that the organization have all these internal controls in place. There needs to be a clear understanding within every organization as to the purpose of what such policies and procedures are intended to achieve.

Adequate anti bribery proceedings are an essential part of the overarching ethics policy of every organization, if the right corporate culture exists and if there is a genuine desire to stamp out bad behaviour, including corruption, frauds, evasions, then it is more likely that procedures will be adequate. Without such a culture, no written policy, procedures or ethics statements will be sufficient to meet the requirements of this law.

***Mohammed Noor Ahmad***

***Deputy Chief Executive Officer (Compliance), Inland Revenue Board of Malaysia***

Inland Revenue Board of Malaysia have conducted a lot of engagements with the taxpayer and organization by tax education and tax awareness to increase the willingness to pay tax and no intention to avoid paying tax.



Section 75A stated that it is the responsibility of the director if the company failed to pay the taxes and it can bar the director from leaving the country if invoked Section 104.

Inland Revenue Board of Malaysia is the biggest tax agency being appointed by the government to collect taxes for the government. In order for the taxpayer to pay the tax willingly and declare their income correctly, building up the right work culture and trust is important for taxpayers to have trust in the organization.

Inland Revenue Board of Malaysia values their corporate culture and integrity as the foundation in their service delivery. Every “Hasilian” must uphold the principles of Rukun Negara and discharge their duty with professionalism and integrity as they are fed by the taxpayer. In addition, Inland Revenue Board of Malaysia also carries on the certification and continuous quality enhancement in the effort of emphasizing the importance of integrity in the organization. It has a department which will carry out the program on integrity and risk management systems. For instance, messages will be passed to the officers from time to time through email or even through posters.

Pelan Antirasuah LHDNM (PeARL) 2019-2023 which in line with government policy was implemented on the 1st of January 2020. Besides that, Inland Revenue Board of Malaysia has the special committees on Corruption which are anti-corruption committees at all levels of the state office, headquarters and board level as well as including vendors and contractors. If the contractors breached the contract, they will report it to the board members and also to the Ministry of Finance so that the company will be blacklisted.

### ***Roslan Mat Nor***

#### ***Director, Legal and Prosecution Division, Malaysian Anti-Corruption Commission (MACC)***

Section 17A not only prosecutes an individual who committed corruption but with the intention where all these GLCs and big companies will be part of this process of eradication of corruption in this country as well as make sure these companies comply with international standards.

Section 17A has brought positive impacts to the corporate which politicians will think twice to be a board of director because they have to be responsible if any employee of the organization commits any offense. Secondly, the company must come up with a new culture of administration of companies which there are no more sleeping partners, directors and managers that just come and claim the allowance without knowing what is going on with the companies. All the partners, directors and senior managers must be aware of what is going on with the day to day activities of the companies since they will be answerable if any employee makes a mistake.

Besides that, it is responsibility for the managers, directors and the senior management of the company to ensure there will be adequate measures taken by the company to make sure there



is no corruption involved with the Section 17A. In addition, any government projects awarded to the companies will be scrutinized by the MACC to make sure the companies which get that project comply with certain procedures stated by the government. The Guidelines for adequate measures issued by the Prime Minister's Office is just a minimum standard. Companies should do more than the Guidelines.

The most important for Section 17A is not waiting for the first person or organization being charged under this new law. It is asked for all companies to fight and eradicate corruption together with MACC. Section 17A will give a good effect to the governance of corporate and good image to the investors from other countries.

## **LEADERSHIP DIALOGUE WITH TAN SRI RAFIDAH AZIZ: WHERE IS MALAYSIA HEADING?**

### ***Tan Sri Rafidah Aziz***

#### ***Former Minister of International Trade & Industry***

Malaysia cannot be a country and a society without Malaysians and every Malaysian vote and entrust to a person to lead, govern and administer the country. All individuals have the roles and responsibilities in shaping this country even in a small little way. If a person does something good, it adds value to the country while if a person does something that is wrong and negative, it detracts the national interest.

Corruption refers to dishonest or fraudulent conduct of those in power, such as involving bribery and abuse of power. In addition, corruption is like a disease such as the common cold which it is normal to happen in an individual or organization. One of the reasons is there is a pervasive distrust and erosion of confidence among everybody.

Anti-corruption must begin with the right attitude, mindset, values and principles, especially those values that reside in individuals. Malaysia is lacking leaders with honesty, integrity, self-discipline and leadership in public sector, private sector and politics. Malaysia always has people in charge but they are not able to take charge and have the commitment to stop corruption in its tracks as well as put the nation before self-interest.

Good governance has been defined as an exercise of power in managing economic and social resources for development in the interest of people and nation. It is the circuit breaker and key element in combating corruption. Corruption is a cost to the nation and the beginning of a vicious cycle of national degradation.





### Summary in Q&A session

Education should start in the family unit which begins to raise a generation of young people who understand what is right and wrong. However, education should be done in all spheres and levels of society, not only young people.

There is a start of corruption and the worst level if every person is attracted to money. High salary is not the method to respond to this problem since everyone has their own trigger point. For example, RM100 is not able to ask a person with RM10000 month salary to corrupt, but RM 5000 may be enough for the person to corrupt.

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