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Whistleblower Protection Act 2010:
A Powerful Tool In Fighting Corruption



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REPORT CORRUPTION

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Whistleblower Protection Act 2010 : A Powerful Tool In Fighting Corruption

By Mohd Azhar Ibrahim



Forum Panelists (from left) Antony Kevin Morais, Deputy Head, Appellate and Trial, Attorney-General's Chambers; Wan Saiful Wan Jan, Institute for Democracy and Economic Affairs (IDEAS) Chief Executive Officer; and Christopher Leong, Malaysian Bar Council President. *Bernama Images*

Many Malaysians are still unaware that they will receive protection under the Whistleblower Protection Act (WPA) 2010 if they disclose any act of corruption or abuse of power in their place of employment to the enforcement agency.

This ignorance was evident in a survey conducted by the Malaysian Anti-Corruption Commission (MACC) last year, which revealed that half of the 10,000 Malaysian respondents did not know of the WPA, which came into force on 5 December 2010.

"The Whistleblower Protection Act was designed to combat corruption and other wrongdoings by encouraging people to disclose improper conduct in the public and private sector. It will protect and cover any employee of the public or private sector who discloses wrongdoing"

Datuk Mustafar Ali

The WPA protects individuals who expose corruption or abuse of power in either the public or private sectors, from criminal or civil charges, including any detrimental action in retaliation for the disclosure.

To qualify for protection the whistleblower must divulge the information directly to any of the following seven enforcement agencies

- Royal Malaysian Police
- Malaysian Anti-Corruption Commission
- Securities Commission Malaysia
- Companies Commission Malaysia
- Royal Malaysian Customs Department
- Immigration Department of Malaysia
- Road Transport Department

This protection is revoked if:

- The whistleblower himself has participated in the improper conduct disclosed.
- The whistleblower made the disclosure knowing it to be false.
- The disclosure is frivolous or vexatious.
- The disclosure involves questioning the merits of government or public body policy.
- The disclosure is made to avoid dismissal or disciplinary action.
- The disclosure contravenes any existing law such as the Official Secrets Acts (OSA), Banking and Financial Institution Act (BAFIA), and

Section 203A of the Penal Code, which prohibits a public servant from releasing sensitive information to the public.

Since the implementation of the WPA the MACC has received 5,000 tip-offs relating to corruption and other wrongdoings every year.

"With the Whistleblower Protection Act 2010, information received is of better quality and has enabled the MACC to facilitate investigations as it comes from the actual source," MACC Deputy Chief Commissioner (Prevention) Datuk Mustafar Ali, said.

Mustafar was speaking after officiating the "Whistleblowing – Your Right, Our Commitment" forum held at the Malaysia Anti-Corruption Academy here recently.

The half-day forum, which attracted an audience of 150 participants comprising representatives from non-governmental organisations (NGOs), professionals, lawyers and students, aimed to explore the platforms available to combat corruption.

Forum panelists, Antony Kevin Morais, Deputy Head, Appellate and Trial, Attorney-General's Chambers; Wan Saiful Wan Jan, Institute for Democracy and Economic Affairs (IDEAS) Chief Executive Officer; and Christopher Leong, Malaysian Bar Council President, gave their views on 'Whistleblowing in Malaysia: Its Nature, the Law, Protection and Challenges'.

Morais started the forum by urging those who have information on corrupt acts or abuse of power to come forward and disclose such information to the enforcement agencies and trust them to take the necessary action.

"You need to trust that the enforcement agency that you are bringing your complaint to will take steps to facilitate an investigation into the disclosure. You need to trust that something will be done,"

Anthony Kevin Morais

However, he conceded that many individuals harbour a lack of trust towards the enforcement agencies.

"Generally speaking, there is an element of distrust, especially if the complaint about a higher-up or a politician. Their immediate response is: is there going to be any good that is going to come out of this?" Morais added.

Christopher Leong pointed out that whistle blowing is not a natural thing for people who were brought up in a believe system that say it is wrong to tell on their friends and colleagues. In some settings, whistleblowing is seen as an act

"Corruption and serious crime are usually cloaked in secrecy, it is very difficult to combat them if you do not have information. The success of our enforcement agencies actually depends on getting inside information,"

Christopher Leong



MACC Deputy Chief Commissioner (Prevention), Datuk Mustafar Ali. *Bernama Images*

of betrayal.

Leong suggested that a whistleblower should be able to disclose information to other people and not lose the protection if:

- The information disclosed to the enforcement agency and to the other person is substantially the same and the identity of the whistleblower is still a secret.
- The enforcement agency has decided not to investigate, or did not complete its investigation within 6 months or such other reasonable time.

The Bar Council President also proposed that:

- Section 4 of the WPA giving power to the minister to give directions to the enforcement agency about the investigation, be abolished. The enforcement agency cannot be said to be an independent institution if a minister can direct how it should carry out its investigation.
- Section 11 of the WPA be amended to provide for the whistleblower to still enjoy protection even he is a participant in the improper conduct, so long as he is not the mastermind or the person most guilty. In most circumstances, the person who has the evidence is usually not completely innocent and may be reluctant to

come forward to make the disclosure. There is a tendency for people to doubt the integrity of our enforcement agencies. Fearing that information given will be suppressed by the very enforcement agency concerned, they go to the media and put it out in the public domain.

To such people, IDEAS chief executive officer, Wan Saiful Wan Jan has this to say: Everybody has vested interest in one media or another.

"How confident are you that the media is truly independent? Corruption goes unchallenged when people do not speak about it. Witness accounts are powerful tools in the fight against corruption," Wan Saiful said.

Whistleblowers are courageous individuals who recognise a wrong and are willing to take risks in order to set things right.

"We need to promote a culture in which the whistleblower is seen as a person of integrity, a person who knows he is doing the right thing in bringing issues that harm others to light, and a person of courage who stand up for what is right regardless of personal safety or consequences."

Wan Saiful Wan Jan

By blowing the whistle, he has the satisfaction of knowing he did the right thing ethically, morally, and professionally, enhancing his reputation for honesty and integrity.

Since whistleblowing is inconsistent with Asian culture and values, the key challenge to the success and effectiveness of the WPA lies in nurturing a value system that makes it socially acceptable and rewarding for people to come forward and expose corrupt practices.

Loyalty cannot imply that we should not report the unethical conduct of our peers, colleagues or superiors.

Reaching Out To Stakeholders To Combat Corruption

It has been 47 years confronting countless challenges in combating corruption and the Malaysian Anti-Corruption Commission (MACC), or earlier known as the Anti-Corruption Agency (ACA) until 1 January 2009, is currently intensifying its efforts to reach out to various stakeholders in the crusade against corruption.

The MACC has made numerous changes in its approaches and strategies to become more effective in discharging its functions and responsibilities. One of these is through its transformation programme vis-à-vis the prevention initiatives and getting various stakeholders together in concerted efforts to educate and create awareness on corruption prevention.

MACC Deputy Chief Commissioner (Prevention) Datuk Haji Mustafar Ali, who took charge of the realm of the prevention sector on 16 June 2014 from Datuk Hajjah Sutinah Sutan, is persistent in ensuring that the MACC aspiration to eradicate corruption is achieved.

Mustafar joined the ACA in 1985. From 16 June 2004 until 28 February 2010 he was seconded to the Malaysian Institute of Integrity as the Deputy President of the Institute. Upon his return he was appointed as MACC Investigation Director on 1 March 2010.

He has played an active role in anti-corruption education programmes, including activities organised by the Project Management Team (PMO) of the Prevention Transformation, which are targeted to raise awareness on the need to fight corruption. His top priority is to ensure that prevention plays an important role in curbing corruption.

"I am thankful to Dato' Hajjah Sutinah Sutan who has established a very strong foundation for the prevention works that has enabled me to carry on her legacy," Mustafar said.

The main role of the prevention sector is to educate, examine and advise on corruption prevention initiatives involving the public and private sectors, civil society and other stakeholders.

Prevention Transformation

The Project Management Team (PMO) of the Prevention Transformation was set up to review the MACC organisational structure, its system and operations in the prevention programmes covering Inspection and Consultation Division, Community Education Division, Public Governance Division and Strategic Communication Division.

The PMO Prevention, which started its operation on 1 April 2013, plays a role in steering the direction of the human capital development in this sector as well as to enhance the capabilities of the Prevention sector in engaging with the private sector, civil society and political fraternity.

To ensure the Prevention Transformation is executed successfully, six service lines were established – Task force based Inspection; Corruption Prevention in Private Sector; Content Development; Political Engagement; Civil Society Engagement; and Media and Communications, to draft up strategic plan, conduct gap analysis and benchmarking of best practices, form prevention tool kits and cooperate with the Transformation Executive Committee to ensure successful implementation of MACC Prevention Transformation.

Corruption Prevention Moving Forward

Asked how he views the status and development of the Prevention Transformation, Mustafar is positive that all programmes planned and implemented thus far have received encouraging support and have been well accepted by various stakeholders.

Various programmes and new initiatives were introduced to enable the prevention sector to yield success, especially in creating awareness and educating the people, the public and private sectors and political and opinion leaders on corruption prevention, as well as getting their support to combat corruption and to enhance the principle of integrity.

"That is why we have reinforced our programmes toward achieving a result that would help get everyone to be together with the Commission in combating corruption, thus enhance public perception and confidence," Mustafar said.

Fighting corruption requires public support and public confidence.

The initiatives that were introduced through the transformation programme since 2011 have doubled the level of public confidence towards the MACC. The confidence level was 31 per cent in 2009. It progressively increased to 64 per cent in 2012 and nearly 66 per cent in 2013. MACC believes the public confidence level will continue to increase as the implementation of the initiatives by the transformation programme has brought a permanent change and impact.

"We have organised several round table discussions and forums with NGOs and politicians, whom we regard as friends of the MACC, to get their support to fight corruption," he added.

Another important initiative to enhance the confidence of investors and to attract foreign direct investments (FDIs) into the country is through the Corporate Integrity Pledge (CIP), which requires companies to demonstrate their commitment in creating a business environment which is fair, transparent and free from corruption.



Datuk Mustafar Ali (second right) meeting representatives from small and medium-sized enterprises. MACC Images

The CIP was jointly developed by the Integrity Institute of Malaysia (IIM), Transparency International Malaysia (TI-M) and the MACC and embeds five principles:

- (i) promotion of values such as transparency, integrity and good governance;
- (ii) strengthen internal control by infusing elements that promote the eradication of corruption;
- (iii) compliance to the laws and related regulations in eradicating corruption;
- (iv) eradicate all forms of corruption;
- (v) support the initiatives in the eradication of corruption spearheaded by the Malaysian government and the MACC.

MACC has also enhanced its cooperation with corporate companies and government agencies to strengthen their corruption prevention system and procedures to ensure they leave no room for corruption.

Another initiative to give exposure on corruption prevention is through the setting up of Corruption Prevention Secretariat at the teacher training institutes and institutes of higher learning throughout the country.

"These institutions will be academic centres with information on offences pertaining to bribery, abuse of power and malpractice as well as on the functions of the MACC in curbing corruption and we hope that the teachers and students will act as key communicators on the evil of corruption," Mustafar said.

The fight against corruption should not be left to the Commission alone. Combating this scourge of society requires persistent, committed and collective effort from all segments of society.

Towards this end, the MACC has made efforts to engage those at the grass root levels to act as spokespersons in getting public support in the fight against corruption.

"We must fight every battle at every front, no matter how big or small. This not only help avoid mismanagement,

misappropriation and fraud, but would also act as a deterrent to others from committing the crime that has affected the people," Mustafar added.

"We are focusing on issues close to the people, issues that would bring great impact should corrupt practice exist; we are going after both the givers and the receivers," he said.

The MACC seeks the support of the people, regardless of status as well as political ideology to be part of the concerted efforts to build a nation free from corruption.

MACC will continue to execute its functions as an anti-corruption agency that is resilient and strong in its roles and functions as an enforcer, advisor, educator and catalyst in curbing corruption in Malaysia.

MACC-UKM Ties Strategic Partnership to Increase Anti-Graft Experts

The Malaysian Anti-Corruption Commission (MACC) inked a Memorandum of Agreement (MoA) with the National University of Malaysia or Universiti Kebangsaan Malaysia (UKM) aimed to increase anti-corruption experts in ensuring effectiveness in fighting corruption at domestic and international level.



MACC Chief Commissioner Tan Sri Abu Kassim Mohamed (left) after the signing ceremony with UKM Vice-Chancellor Dr Nor Azlan Ghazali. *MACC Images.*

Both MACC and UKM are confident that this aim could be achieved through the Masters of Social Sciences course on corruption.

This programme was introduced in 2008 by MACC through the Malaysia Anti-Corruption Academy (MACA) and the Faculty of Social Sciences and Humanities, UKM.

The MACC-UKM Masters of Social Science (Corruption Studies) is open to other enforcement agencies like the Police force, Arm Forces, Customs and Immigration Departments as well as the government link company such as the Audit Department, Tenaga Nasional Bhd,

Telekom, Petronas and Pos Malaysia. The programme also caters to law enforcement agencies from ASEAN countries.

“For the time being, UKM is only offering the programme to Brunei,” said MACC Deputy Chief Commissioner (Management and Professionalism) Datuk Zakaria Jaffar after the signing of the MoA. He added that

reference for both local and international audience. “This programme uses real cases as examples. Benchmarking with other countries like New Zealand, Finland, Australia, Singapore and Hong Kong is also done.

By combining with the knowledge in UKM, I am confident we can do a benchmarking to achieve better CPI scores,” he explained to the reporters after the signing ceremony.

The MoA was signed by MACC Chief Commissioner Tan Sri Abu Kassim Mohamed and UKM Vice-Chancellor Dr Noor Azlan Ghazali.

Meanwhile, Dr Noor Azlan said the programme implemented since 2009, has produced 48 graduates from various enforcement agencies.

“This is because UKM is the only university which offers a programme on corruption study in the country and we are targeting to take 20 students each year,” he said.

26 officers will enrol for the course in the 2014-2015 academic year.

One of the unique features of this programme is that its research encompasses various disciplines such as sociology, criminology, forensic, law, management and information technology.



(From left) MACA Director, Dato' Abdul Wahab Bin Abdul Aziz, MACC Chief Commissioner Tan Sri Abu Kassim Mohamed and UKM Vice-Chancellor Dr Nor Azlan Ghazali during the signing of MACC-UKM Memorandum of Agreement (MOA). *MACC Images.*

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