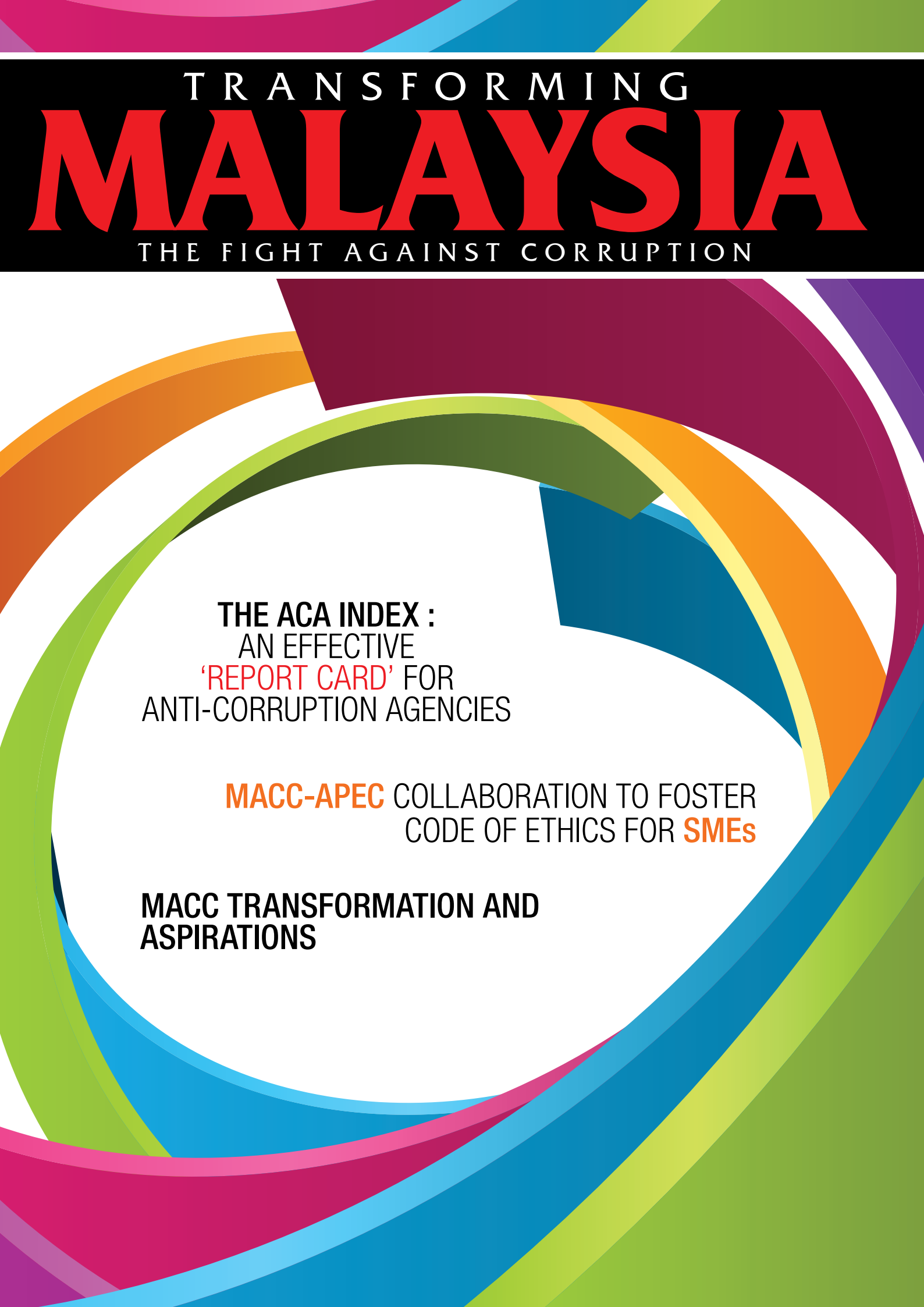




TRANSFORMING **MALAYSIA**

THE FIGHT AGAINST CORRUPTION

THE ACA INDEX :
AN EFFECTIVE
'REPORT CARD' FOR
ANTI-CORRUPTION AGENCIES

MACC-APEC COLLABORATION TO FOSTER
CODE OF ETHICS FOR **SMEs**

**MACC TRANSFORMATION AND
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THE ACA INDEX : AN EFFECTIVE 'REPORT CARD' FOR ANTI-CORRUPTION AGENCIES

By Mohd Azhar Ibrahim (co-editor, Nurirdzuana Ismail)

Assessing the performance and effectiveness of anti-corruption agencies (ACAs) is ineluctably the subject of much conjecture. The public often paint with a broad brush that the ACAs have failed to produce the results expected of them. In turn the much maligned agencies dispute the validity of such unsubstantiated accusations. They retort that expecting them to meet lofty expectations when other governance structures and mechanisms are non-existent, underdeveloped or underperforming and, in some instances, when the agencies themselves are hampered by bureaucracy, is simply asking for the impossible.

Whilst opinions about the ACAs' performance are many and divided, the actual evidence to back these arguments are hard to come by. An ACA's performance cannot be measured with any certainty until and unless an evidence-based evaluation and assessment is conducted. This process requires an in-depth analysis and a marked distinction – and acknowledgement – between what is expected of the agency and what is actually doable. The ACAs have to have the tools they need to do the job properly before we can pass any judgment on their performance and effectiveness.

A 2011 survey under the auspices of the United Nations Development Programme (UNDP) found that compared to other

sectors of government, the monitoring and evaluation of anti-corruption activities is generally neglected. The mapping exercise of ACA evaluations showed that very few evaluations have been conducted, and that the quality of these evaluations is generally very low. There is a dearth of data on the evaluation and measurement of the actual outcomes and impacts of the ACAs. Evidence on what works and why is equally sparse.

The survey found that anti-corruption initiatives failed mostly because there is a mismatch between the expectations built into their design as compared to on-the-ground realities in the context of their deployment. In other words, the ACAs are expected to bite off more than they could chew. Mindful of the need for an effective 'report card' of sorts, Transparency International Asia Pacific (TIAP) embarked on a project to develop an Anti-Corruption Agency (ACA) Index in order to assess the performance of ACAs in the region. When Malaysian Anti-Corruption Commission (MACC) Chief Commissioner Tan Sri Abu Kassim got wind of the initiative, he volunteered to host TIAP's index development and methodology workshop in Malaysia.

Subsequently twenty seven anti-corruption experts from 12 countries in Asia and Europe convened in the Kuala Lumpur on June 18th to June 19th,

2013 to participate in TIAP's inaugural 'Expert Workshop on Methodology Development for the ACA Index'. The experts deliberated on determining the assessment framework and indicators, including the research methodology and benchmarks that would help ACAs determine how high they have scaled up the performance ladder and pinpoint where they want to be in terms of benchmarks. They took cognizance of the fact that for any assessment and evaluation to be true to the mark,

"The various legal provisions and continuous improvement of the MACC, including the recent appointment of the former Transparency International Malaysia (TI-M) the cabinet Minister In Charge Of Good Governance, Integrity and Human Rights, are evidence of the government's unbridled determination to tackle corruption,"

it should not be confined to the ACAs' performance alone but must also take into consideration the environment in which they operate – whether the civil society is active in their support at fighting corruption, whether sufficient fund and resources are available to do the job, and whether the ACAs' mandates are inclusive and enabling. Workshop participants also deliberated on identifying indicators to help the ACAs set up benchmarks on corruption prevention initiatives.

TIAP regional director Srirak Plipat notes that Malaysia has successfully put in place a clear set of indicators and introduced various anti-corruption programmes to achieve the desired objectives. "Organisations like Pemandu and the NKRA Against Corruption has

played an important role in identifying specific goals and charting out the milestones on how to go about achieving them," Plipat said.

To get everybody on board the anti-corruption train the MACC regularly liaise with other government and non-government agencies to articulate what it wants to see happen in terms of result. By hosting the workshop, the MACC has again demonstrated that it means business when it comes to delivering results. "Malaysia is in a position to contribute substantially in terms of developing indicators. Many of her anti-corruption policies have been adopted as good practices in a number of countries," Plipat added.

Corruption is a borderless crime. To apprehend the corrupt and recover their ill-gotten gains ACAs must be able to carry out cross-country investigations. Towards this end, the MACC has established bi-lateral agreements with both the National Anti-Corruption Commission of Thailand (NACC) and the Anti-Corruption Bureau of Brunei (ACB). Plipat suggests that these agreements should be expanded to the multi-lateral as well as sub-regional level to eventually include all the 10 Asean member states. The Malaysian government recognised that corruption,

if left unchecked, would jeopardise the government transformation programme (GTP). "The various legal provisions and continuous improvement of the MACC, including the recent appointment of the former Transparency International Malaysia (TI-M) the cabinet Minister in charge of National Integrity, are evidence of the government's unbridled determination to tackle corruption," Plipat said.

The legal provisions against corruption have expanded over time, the types of offences defined by law have been expanded, punishments have been made harsher, and the power of investigation given to the MACC has been broadened. To combat grand corruption in Malaysia, the GTP aims to complete all corruption court cases within one year. The target set is to have 85%, 90% and 95% of all corruption cases tried over each year between 2013 and 2016. Ultimately, effective prevention of corruption is the responsibility of not just the ACAs and leaders of the country, the people needs to be on board too. They need to be part of the solution. For this to happen governments need to enact legislation to acknowledge the public's right to information. "Freedom of Information is a crucial component of a national system for integrity, transparency and accountability," Plipat said.



Dr Srirak Plipat
Regional Director Asia Pacific,
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MACC-APEC COLLABORATION TO FOSTER CODE OF ETHICS FOR SMEs

By Mohd Azhar Ibrahim (co-editor, Nurirdzuana Ismail)



Numerous studies show that small and medium enterprises (SMEs) are the primary engine of economic growth in a country's economy. A robust SME sector could propel economic growth, generate job creation, and promote an equitable income distribution among the nation's people. According to the Asia-Pacific Economic Cooperation (APEC), which is a forum of 21 Pacific Rim countries, SMEs in the region account for around 90 percent of all businesses and employ as much as 60 percent of the work force. Clearly SMEs are the key driver in global economic recovery – as long as there is no corruption and they are able to operate and innovate in an open, ethical business environment.

Corruption has a debilitating effect on a nation's economy. At the macro level it gives rise to a litany of ills: inflation, diminishing gross domestic product (GDP), currency depreciation, dwindling foreign direct investments (FDIs), and

corrodes the country's health system. At the company level, bribes and 'under-the-table commissions' increases the costs of doing business, dampens sales growth, impedes productivity, hinders market penetration and restricts access to capital. In the long run, graft and unethical practices stunts the company's financial growth. According to the World Bank Institute an astounding USD one trillion or 3 percent of the world's GDP is siphoned off from the global economy in the form of bribes every year.

To stop this 'bleeding' of their economies APEC leaders decided to put fighting corruption on their agenda in their 2003 Ministerial Meeting in Bangkok. Following this expressed commitment, the Malaysian Anti-Corruption Commission (MACC) played a prominent role at the APEC Anti-Corruption Experts Meeting in Santiago, in September 2004, to formulate the APEC Course of Action on Fighting Corruption and Ensuring

Transparency. The following year, APEC senior officials, which included those from the MACC, established the APEC Anti-Corruption and Transparency Working Group (ACT) in 2005.

The ACT encouraged APEC members to adopt Voluntary Codes of Business Ethics that would benefit their respective economies by providing a platform for effective industry self-regulation and enforcement. With the help and guidance from this working group APEC member-countries began to implement measures to effectively fight corruption and ensure transparency, deny safe haven to corruption offenders, promote public-private partnership in fighting corruption and ensuring transparency, and encourage cooperation among APEC member-economies to combat corruption and encourage transparency in the region.

Typically, voluntary codes of ethics for

businesses are a set of benchmarks that influence, shape and control the company's behaviour in the marketplace. These codes encourage companies to conduct themselves in ways that benefit both their businesses and the community. They support government anti-corruption and enforcement efforts and also serve as a sign to consumers that the company's product, service or activity meets certain standards. With this understanding in mind, APEC Expert Working Groups convened in Kuala Lumpur, Mexico City and Hanoi in April, September and October 2011 respectively, to draft out three sets of APEC Principles for Voluntary Codes of Ethics for SMEs in the medical device sector (The KL Principles), the

we need to ensure company employees do not resort to bribery and corruption to generate business. The MACC urges APEC member-countries to also focus on beefing-up their existing anti-corruption laws and enforcement to complement these initiatives," Sutinah said.

Towards this end, the MACC was given the honour of hosting the 'APEC SME Train-the-trainer Workshop for Voluntary Codes of Business Ethics in the Medical Device, Biopharmaceutical and Construction Sectors' from August 26 – 30 recently. The 5-day workshop which was held at the Malaysia Anti-Corruption Academy (MACA) was attended by some 150 ethics trainers from 24 APEC and ASEAN countries. It

code of ethics adoption – in alignment with the APEC Principles – among industry members, including the conducting of at least two localized trainings by each workshop attendee before August 2014, with at least one held in 2013. This effort aims to significantly expand the number of ethics practitioners across the 24 APEC and ASEAN economies. The Business Ethics for APEC SMEs Initiative will conduct monitoring to measure progress.

• Form APEC's largest network of ethics compliance practitioners and champions – nearly 150 at the workshop's conclusion, spanning

“The Codes of Ethics is just one of the anti-corruption tools we need to ensure company employees do not resort to bribery and corruption to generate business. The MACC urges APEC member-countries to also focus on beefing-up their existing anti-corruption laws and enforcement to complement these initiatives,” Sutinah said.

biopharmaceutical sector (The Mexico City Principles), and the construction and engineering sector (The Hanoi Principles). All three Principles were unanimously endorsed by foreign and trade ministers from APEC member-countries at the APEC Ministerial Meeting in Honolulu in November 2011.

MACC Deputy Commissioner (Prevention) Dato Sutinah Sutan presented her paper titled 'Review of the KL Principles – A Voluntary Regional Approach Designed to Ensure Successful Code Adoption' at the APEC Ministerial Meeting in Vladivostok, Russia in 2012. With the Declaration of Support made by the APEC leaders at this meeting, efforts are now underway to implement all three Principles across the APEC region. “The Codes of Ethics is just one of the anti-corruption tools

is the largest Business Ethics for APEC SMEs Initiative programme to-date and has the following objectives:

• Build common, region wide awareness of anti-corruption trends applicable to the medical device, biopharmaceutical, and construction and engineering industry as well as greater understanding of each sector's top compliance challenges.

• Build technical skills necessary to organise, manage, and drive effective and sustainable compliance programs for the region's industry associations and companies within the three sectors.

• Develop action plans to increase

three sectors – committed to regular best practices exchange, code of ethics alignment with the APEC Principles, and compliance excellence.

By allowing the MACC to host such an important event, the APEC has demonstrated its recognition and acknowledgement of the MACC's tireless effort to fight corruption and promote transparency and good governance at the international level. It also highlights the MACC's role and contribution in enhancing cooperation, sustaining good governance and nurturing corporate integrity among APEC member-countries.

Tan Sri Abu Kassim Mohamed
MACC Chief Commissioner



When Tan Sri Abu Kassim Mohamed took over the reins of the Malaysian Anti-Corruption Commission (MACC) in 2010, he inherited an anti-graft body that was plagued with the negativity attached to its predecessor the Anti-Corruption Agency (ACA). The MACC was also hampered by legal jurisdictions, bias and prejudice over outstanding inquests, and mired with disparagement in the media. To take stock of the situation, the new chief commissioner immediately carried out an appraisal exercise to gauge public perception of the MACC. It was as he had feared, public confidence towards the MACC was low – people did not feel the MACC's actions were effective enough. To rub salt to the wound, political parties looking to score some cheap points harped on issues of corruption and frequently cast aspersions on MACC investigations.

With the onset of the Government Transformation Process (GTP), the MACC set about to restore its image and reassure Malaysians that it is indeed aboveboard. It introduced the

MACC Aspirations 2010 to improve public confidence and perception by demonstrating that the MACC is Independent, Transparent and Professional in carrying out its investigations and corruption prevention efforts. The MACC Aspirations was complemented by the MACC Strategic Plan 2011-2013 which focuses on transformation in four strategic areas: effective management of investigations; comprehensive prevention and public education programmes; sustaining public confidence towards the MACC; and capacity and capability building.

In July 2011, the MACC set up an Executive Transformation Committee (ETC). Helmed by none other than the Chief Commissioner himself, the ETC detects weaknesses and take immediate corrective measures towards improving the quality of MACC operations. It also examines and advises the management on the implementation of the MACC Strategic Plan. The MACC Deputy Chief Commissioners of Operations, Management and Professionalism, and

Prevention Divisions; a representative each from the Corruption Prevention Advisory Board, the Operation Evaluation Panel, the Corruption Prevention Panel and Consultative Panel; and two legal experts sit in the ETC. The Commission also adopted the Effective Investigation Management (EIM) approach which employs both proactive and intelligence-based investigation methods. Under the EIM, MACC investigating officers share information with those from other enforcement agencies such as the Attorney-General's Chamber, the Inland Revenue Board, Bank Negara Malaysia, the Royal Malaysian Customs Department, the Companies Commission of Malaysia and Cyber Security Malaysia. When pursuing a case, all these officers congregate in the Investigations Operations Room or BGOS (Bilik Gerakan Operasi Siasatan) to formulate, coordinate, execute and monitor their plans of action, starting from the moment an official complaint is filed, right up to the submission of the Investigation Papers to the Deputy Public Prosecutor. Officers of different

backgrounds, expertise and skill work together as a cohesive team by sharing opinions, knowledge and skills in investigation techniques and evidence gathering. This method enables the team to submit a comprehensive investigation paper that could withstand

(GCB) for Malaysia revealed that 39% of the respondents believed the level of corruption had increased as opposed to 37% in 2011. The GCB 2013 results indicate that although petty corruption remain at low levels, incidences of 'grand corruption' continues to be a

Force; Team-based Investigation; Proactive Investigation; Private Sector Investigation; Complaints Management; Legal; and Forensic Accounting. It has been given one year to achieve these objectives.

MACC TRANSFORMATION AND ASPIRATIONS

– TURNING THE MACC INTO A WORLD-CLASS ANTI-CORRUPTION AGENCY

By Mohd Azhar Ibrahim (co-editor, Nurirdzuana Ismail)

the scrupulous examination of the courts. The team-based investigation method have produced better quality investigations and shorten the overall investigation period. As could be expected, the continuous, integrated and well planned enforcement actions have resulted in a number of grand corruption arrests and high profile cases being brought to book. The collaboration also builds up rapport amongst officers from different enforcement agencies.

Despite these successes, public opinion on the effectiveness of the MACC continues to be divided. On the one hand, a study conducted by the Universiti Kebangsaan Malaysia (UKM) in 2011 found that 64% of the respondents believe MACC's graft-busting efforts were effective. The MACC's efforts have also managed to improve Malaysia's Corruption Perception Index (CPI) score from 60th placing in 2011 to 54th placing in 2012. But on the other hand, the 2013 Global Corruption Barometer

cause for concern. To further develop and enhance its preventive measures, the MACC has established a Project Management Office (PMO) to manage the MACC transformation process. The PMO Operations and PMO Human Capital was established first before moving on to PMO on Prevention on April 1, 2013. These PMOs reports to the ETC. The PMO is tasked with benchmarking of best practices for the Investigation and Consultancy, Community Education, and Strategic Communication Divisions. The enhancement process will be carried out through seven service lines that includes a Royal Commission of Enquiry (RCI) Recommendations Task

There can be no denying that correct preparation is the key to success in fighting corruption. Tan Sri Abu Kassim is steadfast in having his officers well-grounded in all aspects of graft-busting, impeccable in character and integrity, and exercise their powers with an even hand, a steady eye and an unswerving allegiance in upholding justice. Only then can ordinary officers be transformed into efficient graft busters.

“ The transformation should start with every individual in the MACC giving their full commitment to change for the better, including the Chief Commissioner himself ”

Tan Sri Abu Kassim Mohamed,
MACC Chief Commissioner