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THE LEGAL ASPECT OF ILLICIT ENRICHMENT IN MALAYSIA: IS IT A CRIME TO BE RICH?

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ABSTRACT

The growth of illicit enrichment crime, or living beyond one's means is a significant challenge in combating corruption. Many countries have shown their commitment towards preventing illicit enrichment crimes by criminalising and penalising illicit enrichment in their laws, including Hong Kong and Singapore. Illicit enrichment is a crime and Malaysia has no clear provisions on illicit enrichment to prevent it. Therefore, this paper analysed the adequacy of Section 36 of the Malaysian Anti-Corruption Commission Act 2009 [Act 694] (MACC Act 2009). The legal framework on illicit enrichment in Hong Kong and Singapore were referred as sources of critique. To achieve the said objective, this study adopted a doctrinal approach using qualitative

research methodology. The scope of the paper is limited due to the inadequacy and indirectness of the law on illicit enrichment in Malaysia. This paper critically analysed the international framework of illicit enrichment and conducted a comparative analysis of the law in Hong Kong and Singapore, namely the Prevention of Bribery Ordinance and the Prevention of Corruption Act 1960, respectively. In conclusion, this paper found that the current law in Malaysia is inadequate and Malaysia can learn to adopt the said laws as provided in Hong Kong and Singapore. This study serves as a guide for legislators intending to address the current inadequacies of the law on corruption in Malaysia, equipped with better knowledge on the characteristics of illicit enrichment. Suggestions to address the issues are proposed.

Keywords: Illicit enrichment, Malaysian Anti-Corruption Commission Act 2009 [Act 694], corruption, inadequacy of the law, crime.

INTRODUCTION

Corruption has existed in the system for a long time (Othman et al., 2014) and it is a global phenomenon that raises worldwide concern. Nations suffer from many kinds of problems, including war, poverty, disease, and backwardness because of corruption (Khalaf, n.d.) It is a matter of concern whether we like it or not. The concern for corruption is obvious for both developing and underdeveloped countries (Othman et al., 2014). When Jim Young Kim was President of the World Bank in 2013, he described, *“Every dollar a corrupt officer puts in his pocket is a dollar taken from the people, who needs better education, health care and other infrastructure”* (The World Bank, 2013).

Corruption is still a main threat to the world today. Every country is exposed to the dangers that come with it (Meskele, 2012). Illicit enrichment is one of the corruption crimes and in an effort to fight corruption, the international community calls on countries to criminalise it (Meskele, 2012).

Illicit enrichment refers to the possession and the use of assets, resources and other advantages that are gained through the exercise of public office (Kofele-Kale, 2006). Money received through bribery

or embezzlement can also be included in this category (Abu-Morad et al., 2016). Besides, some scholars also define illicit enrichment (unexplained wealth) as a significant increase in the assets of a public official that he or she cannot reasonably explain about his or her legal income (Kofele-Kale, 2006). “Reasonably explain” refers to a situation when there are “reasonable grounds to suspect” that a person “maintains a standard of living above that which commensurate with their present or past known sources of income or assets” or has more property than fits their income, where the person is guilty of the crime if they do not give a satisfactory explanation about their wealth (Weylandt, 2017). Illicit enrichment also comprises conversion of such properties and money, as well as any revenue they may achieve, and applies to the transfer, or mingling of such assets. However, secretive nature is the main characteristic of this crime. Thus, it cannot be detected by traditional investigation, and only illogical changes or increases in wealth can specify an occurrence of an act that is suspicious (Abu-Morad et al., 2016).

In some other jurisdictions on illicit enrichment for example, the Malawian Corrupt Practices Act 1995 and the Argentina Criminal Code, an audit trail that shows the misuse or exploitation of public office is required, as well as a causal connection to properties (Muzila et al., 2012). Illicit enrichment is thus treated as a classic corruption offence, requiring simple and provable unlawful activities. Whereas in other jurisdictions, such as the Prevention and the Fight against Corruption in Algeria and the Prevention of Corruption Act in Brunei, the mere existence of income or properties which exceed values likely to be received from legitimate sources, are deemed illegal; thus evidence can be based solely on the increase of unexplained properties of public officers (Muzila et al., 2012).

Government and anti-corruption agencies including international treaties play an important role to fight corruption in a country because corruption is now a world-wide issue and the difficulty of offences has increased with economic development (Marquez, 1996). Different types of corruption crimes have been reported in the past 10 years, which include illicit enrichment (Meskele, 2012). In the case of a politician in Argentina, Maria J. Alsogaray was charged with an offence of illicit enrichment. In that case, the appellant argued that the illicit enrichment provision was susceptible to different interpretations

and, as such, affected the principle of legality. The Supreme Court of Justice dismissed the arguments, holding that the crime of illicit enrichment was a crime of commission, as it consisted of a significant and unjustified enrichment after taking public office. In this case, the court held that the crime of illicit enrichment did not require the public official to prove his or her innocence. Instead, the public prosecutor should bring evidence of the unjustified increase with the highest specificity and accuracy possible (Muzila et al., 2012).

Since not many countries have criminalised illicit enrichment as part of their anti-corruption laws, this paper focuses on the importance of criminalising illicit enrichment to combat corruption more broadly and effectively. The scope of this paper discusses the offence of illicit enrichment involving public officials with special reference to the position in Hong Kong and Singapore. Hong Kong and Singapore were selected as sources of reference for this paper because, unlike other Asian countries, Hong Kong and Singapore have succeeded in minimizing corruption as reflected in their top two ranking among Asian countries in the current 2020 Corruption Perceptions Index by Transparency International. In fact, these two countries have a low level of corruption and a high level of public trust of politicians because of their highly effective governments and their effective control of corruption (Quah, 2013).

This paper is divided into six sections: introduction, conceptual definitions, international legal framework on illicit enrichment, Hong Kong and Singapore's legal framework on illicit enrichment, Malaysia's legal framework on illicit enrichment, and the conclusion. The following section of this paper will discuss the conceptual definitions.

CONCEPTUAL DEFINITIONS

There are three important concepts relating to illicit enrichment that call for conceptual definitions for this paper. The concepts that will be discussed thoroughly are: corruption, illicit enrichment and public official.

Corruption

The United Nations Convention against Corruption (UNCAC) provided the definition of corruption as “a crime committed by public officials or private officials who abuse their positions to get an advantage for someone else or for themselves” (UNCAC, 2003). Corruption in the public sector includes crimes such as bribery of public officials, embezzlement, infringement of public property, nepotism and favouritism, trading in influence, sub-contracting, extortion or giving of protection money, illegal donation and illicit enrichment (Khalaf, n.d.). Transparency International (2018) defined corruption as “the abuse of entrusted power for personal benefit”. The abuse of entrusted power for personal benefit from a broad perspective is behaviour which deviates from formal duties, ethical principles, and accepted norms of public role for the purpose of attracting pecuniary or status gain (Essien, 2012). The definition of corruption was conceptualized by Sen (1999:275) as behaviour, which involves the violation of established rules for personal gain or profit in the form of financial gain (Essien, 2012).

Meanwhile, under the Prevention of Bribery Ordinance (Cap. 201) Hong Kong, the term ‘corruption’ is referred to as an advantage. The term ‘advantage’ used by the act means:

- (a) *“any gift, fee, loan, commission or reward involving money;”*
- (b) *“any contract, employment or office;”*
- (c) *“any discharge, payment, release, or liquidation of any loan, obligation or other liability”.*

Besides, the Prevention of Corruption Act (Chapter 241) Singapore defines corruption as gratification which could be: -

- (a) *“money or any reward, gift, commission, loan or other movable or immovable property;”*
- (b) *“any contract, office or employment;”*
- (c) *“any payment, discharge, liquidation or release of any loan, obligation or other liability”.*

Meanwhile, in Malaysia, corruption is also known as gratification as provided in the MACC Act 2009, which means “the act of giving or receiving of any gratification or reward in cash or in-kind of high

value for the performance of a task related to an individual's job description”.

Section 3 of the said Act further defines gratification as:

- (a) “Money, loan, fee, donation, valuable security, reward, any movable or immovable property, monetary profit;”
- (b) “Any dignity, office, contract of services or employment, employment, and consent to provide employment and services in any way;”
- (c) “Any payment, clearance of any loan, discharge, release or other responsibility;”
- (d) “Any kind of valuable consideration such as discount, rebate, commission, bonus, percentage or deduction.”

The definition of corruption or the word ‘corrupt’ is further defined by the judge in the case of **Public Prosecutor v Datuk Hj. Harun B. Hj. Idris (No 2) [1977] 1 MLJ 15** where he quoted, “corrupt is defined as an act done knowing it to be wrong, done with evil intent and with evil feelings, doing an act on purpose which is illegal, and it involves intention. A person is accountable under the law if he did something that was guided by a bad purpose or consciousness of guilt”. The judge further said that the Malaysian legal definition of gratification is consistent with the accepted definition of corruption which comprises not only financial gain but also non-financial benefit.

The definition of what constitutes corruption remains to be set in stone since there are different statements by scholars from diverse sectors regarding what defines corruption and its related activities that vary across cultural and geological bounds. Some definitions have been explained by many scholars as to what constitutes corruption such as its association with the illegitimate use of power in organisations (Francis, 2013). However, the definition stays the same, which is the giving or receiving of anything that is intended for doing things that are illegal by law or regulation in relation to everyday jobs (Mohamed Ahmad Martadha et al., 2014).

Besides, in another case, **Badrul Hisham Bin Hashim @ Ishak v Public Prosecutor (No. 2) [2020] MLJU 358**, the judge said that the corrupt act was ‘gratification’ under Section 3 of MACC Act 2009 which covers a wide range of classifications. The judge deemed

the sum of cash received by the accused in this case to fall under the classification ‘money’ in the definition of gratification. The said section even classifies an offer, undertaking, or promise for money as gratification quite distinctly as the money itself.

The term gratification under the MACC Act 2009 contains the same definition as the Prevention of Bribery Ordinance (Cap. 201) Hong Kong and the Prevention of Corruption Act (Chapter 241) Singapore because the Malaysian anti-corruption law is modelled after top anti-corruption agencies such as the Corrupt Practices Investigation Bureau (CPIB) and the Independent Commission Against Corruption (ICAC), where Hong Kong has adopted Singapore’s model of law, and Malaysia has also adopted Hong Kong’s model of law in their anti-corruption law. However, there is no universally accepted and comprehensive definition of corruption. The most common definition that has gained mutual acceptance among academics and practitioners of corruption is, “the use or abuse of public office for private gain” (Campos & Pradhan, 2007).

Based on the discussion of the definition of corruption, it can be summarized that the MACC Act 2009 [Act 694] does not provide the definition on the word ‘corruption’, however, the Act provides for the term ‘gratification’ which represents the meaning of corruption as found in the Prevention of Corruption Act (Chapter 241) Singapore. The definition of corruption in Malaysia needs to be further enhanced and the Malaysian government needs to accept that corruption or gratification is not just about bribery and receiving money, but also the abuse of entrusted power for personal profit, a definition widely used by UNCAC and Transparency International. The definition of corruption is expressed by some scholars like Huntington in 1978, as the behaviour of public officials which deviates from accepted norms with the aim of serving private ends (Essien, 2012). Moreover, corruption is a behaviour which includes the act of immorality and dishonesty and these corrupt people use their power to do immoral things in return for money and financial gain.

Illicit Enrichment

Article 20 of UNCAC states the definition of illicit enrichment as:

“A crime that shows a significant increase in the assets

of a public official, which he cannot reasonably explain in relation to his lawful income, and which is committed intentionally.”

Meanwhile, illicit enrichment is seen as an integral aspect of an anti-corruption framework by UNCAC because Article 20 of UNCAC states that:

“Each State Party must consider to adopt such legislative and other measures whenever necessary in establishing a criminal offence.”

Besides, illicit enrichment is provided under Section 10 of the Prevention of Bribery Ordinance (Cap. 201) Hong Kong (PBO) as follows:

“10. Possession of unexplained property”

“(1) Any person who, as Chief Executive or any officer (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or”

“(b) has funds or property disproportionate to his present or past official emoluments is guilty of an offence if he fails to explain satisfactorily to the court.”

Singapore does not define illicit enrichment expressly, but Section 21 of the Prevention of Corruption Act (Chapter 241) states as follows;

“21. The powers to obtain information by Public Prosecutor”

“(1) The Public Prosecutor may give notice in writing, in the manner of any investigation or proceeding with respect to any offence by any individual in the Government service or any public organisation under this Act;”

“(a) require the person concerned to make a written statement enumerating all property that is movable or immovable, owned by that person and that person’s spouse, kids, and stating the date on how the person gained the property, either by inheritance, gift, purchase or otherwise;”

“(2) Any notice sent to a person under subsection (1) and if the person fails to follow within the stipulated time,

is guilty of an offence and liable to a fine not exceeding \$10,000 or to imprisonment not exceeding one year, or both.”

Meanwhile, Malaysia has no clear and direct definition of illicit enrichment under the law but an assumption can be made of the underlying meaning of illicit enrichment under Section 36 of MACC Act as follows: -

“36. Powers to obtain information;”

“(1) Notwithstanding to any law in writing, an officer of the Commission of the rank of Commissioner and above may, if he has justifiable cause to believe on the investigation made by an officer of the Commission, that any person who possesses assets by reason or has connection with any offence under this Act, by written notice: “(a) instruct that person to make a declaration in writing on oath:”

i) “To identify movable or immovable assets within and outside Malaysia which he owns or possesses or in which he has a legal interest and to state the date on which each of the properties was acquired and how, either by trade, inheritance, gift, or otherwise.”

From the aforementioned definition of illicit enrichment, it can be argued that the main statute on corruption in Malaysia which is the MACC Act 2009 [Act 694] does not provide any clear explanation on illicit enrichment, however, the underlying meaning of illicit enrichment can be assumed from Section 36 of MACC Act 2009 [Act 694].

Public Official

The term “public official” is defined under Article 2 of UNCAC as: -

“(i) Anyone who has power on an administrative, judiciary or executive office of a State, regardless of that person’s seniority, whether elected or appointed, whether temporary or permanent, whether paid or not paid;”

“(ii) Any person who carries out duty as a public function, public enterprise or agency, or gives a service to the public.”

Section 1 of Prevention of Bribery Ordinance (PBO) (Cap. 201) Hong Kong defines “public servant” as: -

“Any authorised officer and also any public body employee.”

In Singapore, Section 2 of Prevention of Corruption Act (Chapter 241) under Interpretation defines “public body” as: -

“Any corporation, commissioners, council or other organisation which has been authorised to perform for the purposes of any written law.”

And section 4 of the said Act stated that: -

“The public servants in the meaning of the Penal Code shall be deemed as the director, deputy directors, special investigators, assistant directors of the CPIB.”

In Malaysia, “public officer” is defined under the Interpretation Act as follows:

“a person lawfully holding, acting in or exercising the functions of a public office.”

Besides, under the MACC Act 2009 [Act 694], the interpretation in Section 3 states “officer of a public body” as: -

“any person who is a member, employee, officer or worker of a public body, and includes a member of the administration, a member of Parliament, a member of the legislative assembly of a state, a judge of the High Court, Court of Appeal or Federal Court and any person who receives remuneration from public funds.”

In the case of ***PP v Dato’ Sri Mohd Najib Bin Abdul Razak [2020] MLJU 1254; [2020] 11 MLJ 808***, the term “public body officer” includes, but is not limited to, *“a member of Parliament, a member of the administration, and anyone who receives remuneration from the funds of public.”*

From the discussion on the conceptual definitions, it can be concluded that Hong Kong has the most explicit provision criminalising illicit enrichment, while Singapore and Malaysia require that there is no direct offence of illicit enrichment, however it must be an offence

suspected to be committed under the Act and that investigation is ongoing; then the Public Prosecutor may compel the suspect to disclose the origin of the suspect's wealth.

It is clear that illicit enrichment should be criminalised as an offence because it is a type of corruption crime (Meskele, 2012), and the apparent increase in wealth by public officials may be a sign that corrupt acts have taken place.

INTERNATIONAL LEGAL FRAMEWORK ON ILLICIT ENRICHMENT

Governments around the world usually face massive procedural challenges in effectively identifying and prosecuting their public servants who are involved in corrupt activities, as these wrong doings usually leave no trace (Abu-Morad et al., 2016). It is not uncommon for public officers and business partners of a private sector to be involved with secret, unlawful agreements, without third-party documentation or witnesses. The obvious reason of the increase in wealth of the public officials involved might be the only indication that corrupt acts have taken place. Public officials can buy extravagant homes, amass luxury cars and enjoy glamorous vacations. Governments around the globe have developed an aggressive legal initiative in fighting corruption due to frustration with the increasing issue of corrupt officials. The offence of illicit enrichment involves a “substantial increase in the wealth of public official that he cannot explain reasonably in reference to his legal income, while in office”, and the unexplained accumulation of substantial wealth by a public official is essentially considered as some sort of corruption. Five main components and elements of the offence are: a public officer who during a specific time, experiences a significant increase in property and assets, intentionally and knowingly and without justification (Schrotch & Bostan, 2004).

As the problem and issue of illicit enrichment worsens, countries worldwide have incorporated illicit enrichment in three important international anti-corruption conventions. This has undoubtedly improved the prevention of the offence. Illicit enrichment was first incorporated in the Inter-American Convention Against Corruption

(IACAC), adopted by the Organization of American States (OAS) in 1996, then in the African Union Convention on Preventing and Combating Corruption (AUCPCC), approved in 2003, and finally in the United Nations Convention Against Corruption (UNCAC), also approved in 2003 and entered into force in 2005 (Muzila et al., 2012). These three conventions have contributed to the accelerating pace of illicit enrichment and its global acknowledgement. In fact, UNCAC, IACAC and AUCPCC recommend illicit enrichment as one of the criminal offences. The aim of these conventions is to eliminate corruption in the public area, and they provide the definition and elements of illicit enrichment to establish stability among states. The definition of corruption has been expanded by the Conventions by classifying illicit enrichment as an “act of corruption” (Inter-American Convention against Corruption, 2014).

On 29 March 1996, the IACAC was implemented by member countries of the OAS. Then on 6 March 1997, it entered into force. The problem of corruption was first addressed by this international convention, and also the first instrument to establish an international legal framework to eliminate bribery and corruption of government officials (Nagle & Nagle, 2002). The IACAC’s purpose is to encourage, promote and strengthen the mechanisms needed to detect, prevent, punish and eliminate corruption by State parties. As of 2020, 34 State parties have ratified IACAC including Argentina, Canada, Colombia, Costa Rica, Brazil, Mexico, Peru, United States of America, and other American continents (Department of Legal Cooperation, 2011).

An aggressive measure has been adopted by the IACAC by treating illicit enrichment as an obligatory offence and thus it requires signatory states to comply with this offence. IACAC prescribed illicit enrichment as a criminal offence, therefore, in order to strengthen their capacity to fight corruption, some countries have included illicit enrichment as a criminal offence in their regulation (Inter-American Convention against Corruption, 2014).

The offence as stated in Article 20 of UNCAC on the illicit enrichment definition is thus very similar to that contained in the IACAC of the OAS. In some countries, such as the United States of America, such a provision raises constitutional questions, as it appears to shift the burden of proof in criminal proceedings to the defendant to verify

the legitimacy of the salary. The UN Convention suggests the double escape hatches of fundamental and constitutional principles of the host country's law in recognizing this (Low, 2006).

Apart from the American continent, the African Union has also adopted the African Union Convention on Preventing and Combating Corruption (AUCPCC). AUCPCC was implemented on 11 July 2003 to fight serious political corruption on the African continent. The AUCPCC goes beyond other similar conventions in calling for the elimination of corruption in the private and public sectors. It represents a regional consensus on what African states should do in the areas of criminalisation, asset recovery, prevention and international assistance. An extensive range of crime offences are covered by the Convention, including money laundering, domestic and foreign bribery, illicit enrichment, trading in influence, diversion of assets by public officials, assets misappropriation, and mainly comprises obligations that are mandatory. It also requires signatory states to initiate open and redirected investigations against corruption (Schroth, 2005). As of July 2020, 44 states have ratified the treaty and they are state parties to the Convention, namely Algeria, Egypt, Kenya, Libya, Liberia, South Africa, Sudan, Uganda, Zimbabwe, Nigeria, and other countries in the African continent.

AUCPCC prescribes illicit enrichment as an offence. However, AUCPCC treats illicit enrichment as an offence that is not mandatory. As long as the laws permit, AUCPCC directs each signatory state that has not criminalised the offence to "provide assistance and cooperation with respect to the offence" and to take consideration in criminalising the offence, but it must be subjected to their constitutional provisions (Inter-American Convention against Corruption, 2016).

Latin American countries are one of the first countries to criminalise the offence, followed by several African nations, and currently, at least forty-four countries have enacted illicit enrichment legislation (Bello, 2014). Ongoing efforts have been reported in some other countries including Tunisia, Romania and Russia to enact illicit enrichment legislation. The following common and civil law jurisdictions in most regions of the world have enacted illicit enrichment legislations such as Bangladesh, Bhutan, Argentina, Bolivia, Chile, China, Botswana, Brunei, Hong Kong, India, Algeria, Angola, Colombia, Ecuador,

Costa Rica, Cuba, Egypt (Arab Republic) and more (Muzila et al., 2012).

Apart from the American continent and the African Union, the offence of illicit enrichment has been criminalised in several international and regional anti-corruption instruments, including UNCAC (UNCAC, 2003). United Nations have adopted UNCAC, and it is a landmark, international anti-corruption treaty adopted by the UN General Assembly in October 2003 (Chr. Michelsen Institute, 2017). The basis for a truly global anti-corruption architecture was provided by UNCAC (Low, 2006) and constitutes an amazing achievement, a global response to a world problem. As of 6 February 2020, 187 countries are bound by UNCAC, and it is unique in the scope of its provisions and global coverage, recognising the importance of punitive and preventive measures. Countries or state parties that have accepted the convention are required to assist each and every state in preventing corruption via practical support (in the broadest sense of the term: financial and human resources, research and training). It is crucial to note that many of the UNCAC provisions are compulsory, while others are either strongly recommended or optional (Chr. Michelsen Institute, 2017), so their impact and effectiveness depend on national enforcement and implementation (Low, 2006). As of May 2017, three countries namely Japan, Barbados and Syria have signed but have not ratified UNCAC yet (Chr. Michelsen Institute, 2017).

However, UNCAC treats illicit enrichment as a non-mandatory crime and only directs the states to consider criminalising it, but it must be subjected to the requirements of their respective constitutions. States are not required, but encouraged, to criminalise the acceptance of bribes by international and foreign public officials, illicit enrichment, trading in influence, abuse of position, bribery and embezzlement in the private sector, money laundering and concealment of illegal assets (Chr. Michelsen Institute, 2017).

Illicit enrichment is a serious offence under IACAC. Notwithstanding that most countries agree to criminalise illicit enrichment as an offence, the USA and Canada have voiced their hesitation to criminalise illicit enrichment even though they have ratified IACAC and UNCAC. They have expressed their uncertainties regarding the criminalisation of illicit enrichment when they ratified the IACAC, stating it is not

compatible with human rights principles and constitution, specifically the presumption of innocence (Muzila et al., 2012).

However, these days, illicit enrichment legislations can be found in most countries globally. Even though Article 20 of UNCAC on illicit enrichment is controversial, and it is not compulsory for state countries to ratify the said article, some countries who choose not to criminalise illicit enrichment may have ratified other ways to deal with it, for example, an approach that makes prosecuting or confiscating illicit proceeds easier (Macmillan, 2011).

The adoption of illicit enrichment offences have been approved by many scholars, saying that they are compulsory for any anti-corruption measures and are recognized as tools in the comprehensive fight against corruption, strengthening the powers of government to regularly observe assets and improve transparency in the public sector. Courts in many countries justify the laws as a proportionate and appropriate response to the damaging issue of corruption. By tackling unexplained material gain of a public official, criminalisation of illicit enrichment will make it clear to public officials that if they get involved in corrupt conduct they will lose their office, forfeit their illegally acquired assets, and may face imprisonment (Macmillan, 2011). In fact, the purpose of the criminalisation of illicit enrichment is to prevent holders of public office from exploiting their position to obtain illegal gain or profit. The criminalisation will also require public officials to declare their assets and any unusual increase in wealth of a public officer will be presumed to have resulted from the commission of an offence unless sufficient evidence is produced to the contrary (El Sheikh, 2003).

ILLICIT ENRICHMENT LEGAL FRAMEWORK OF SINGAPORE AND HONG KONG

As a source of reference for this study, the legal framework of Singapore and Hong Kong are examined to recognise the legal gaps and to suggest the development of a comprehensive legal framework to prevent corruption.

This source reference approach is the process of evaluating information on illicit enrichment law from other countries that have succeeded in

fighting corruption in their countries. Besides, the rationale behind choosing Singapore and Hong Kong as a source of reference for this study is because these countries have already criminalised illicit enrichment under their anti-corruption legal systems (Muzila et al., 2012).

Moreover, both countries are included among the most successful countries to combat corruption (Transparency International, 2011). The Corruption Perceptions Index (CPI) has been published by Transparency International since 1995 and countries which have accomplished and consistently scored high marks for integrity are the same countries, namely Denmark, Finland, New Zealand, Australia, Netherlands, Norway, Canada, Hong Kong, Sweden, United Kingdom, Switzerland and Singapore (Transparency International, 2020).

Table 1 shows the ranking of Malaysia under CPI 2020 by Transparency International.

Table 1

Corruption Perceptions Index 2020

2020 Rank	Country	2020 Score	Region
3	Singapore	85	Asia Pacific
11	Hong Kong	77	Asia Pacific
57	Malaysia	51	Asia Pacific

The statistics show that Malaysia is ranked as one of the countries that has serious corruption issues, and it gives an indication on how bad the country is (Othman et al., 2014). The countries that score among the best in the CPI ranking are Singapore and Hong Kong with scores of 85 and 77, respectively, and they are the two most successful Asian countries that can show a significant level of high achievement in curbing corruption through administrative, legal, and institutional reforms (Hamilton, 2012).

Singapore

The Prevention of Corruption Act 1960 is the main legal framework in Singapore which allows the implementation of a self-governing or

independent body named the Corrupt Practice Investigation Bureau (CPIB) (Quah, 2014). Singapore does not define illicit enrichment expressly, but Section 21 of the Prevention of Corruption Act (Chapter 241) states the public prosecutor's powers to obtain information as mentioned under the conceptual definition of illicit enrichment.

When Singapore gained its independence in 1959, corruption was entrenched and extensive, despite the existence of CPIB. In Singapore, the Prime Minister and its counterparts not only led by example, but they also showed no tolerance for corruption. The elements and components of Singapore's long-term and broad anti-corruption strategies include: complete and thorough anti-corruption laws that equally treat both the giver and the receiver, significantly strengthened powers of the CPIB which reports directly to the Prime Minister, strict disciplinary measures such as forbidding the awarding of public contracts award to workers prosecuted for bribery, and serious penalty for errant officials, irrespective of their position (Quah, 2001).

Besides, part of the Singapore government's practice is recognition of the need for a well-paid merit-based civil service. Salaries in the civil service are equivalent to the private sector and it is evaluated yearly. In addition, other practices include upgrading working procedures and methods to reduce delays, improvement of management and administration, rotation of civil servants and unannounced inspections, combined with prohibition on use of information for private gain, mandatory declaration of assets, restrictions on financial obligations of civil servants, and firm measures to regulate conflicts of interest and gifts acceptance (Quah, 2013).

Singapore is a leading country in combating corruption in the Southeast Asian region. Based on the latest CPI 2020 by Transparency International, Singapore scored 85 out of 100 and ranked the third least corrupt nation in the world. Without a successful legal system in Singapore, corruption would lead to political, economic and social instability (Paino et al., 2016).

Hong Kong

In Hong Kong, corruption was a fact of life about three decades ago, especially among the police force. Their normal business practice

was bribery under-the-table, and half the population of Hong Kong acknowledged the corrupt act (Quah, 2013). The success of Singapore and Hong Kong's anti-corruption strategies was contributed by the same primary components in both countries (Jayawickrama, 1999).

Illicit enrichment is drafted in Chapter 201, Section 10, of the PBO, as mentioned in the conceptual definitions of illicit enrichment as possession of unexplained property. The section creates a statutory presumption of unexplained wealth placing the burden of proof on the accused public official to provide a "satisfactory explanation" of his standard of living or how he acquired his property (Jorge, 2007).

In Hong Kong, illicit enrichment penalties include imprisonment and fines, and those who are found guilty of illicit enrichment will face 10 years imprisonment and fines of up to HK\$1,000,000 (Prevention of Bribery Ordinance [Cap. 201], 2021). There are two offences that are punishable under Section 10, which are possession of disproportionate assets and living beyond means. Besides, the ICAC has the authority to force an individual with tremendous wealth, which does not commensurate with the salary of his position, to declare his assets (Mao et al., 2013).

The ICAC was established by a legislation that provides for an integrated three-branched approach to fight corruption, consisting of prevention, investigation, and education (Hamilton, 2012). In fighting corruption through education, public support and trust for the commission is built through so many ways, including inspiring the public to take action to prevent corruption and sponsoring school programmes and sports events. Towards maintaining public confidence in ICAC work, a Corruption Prevention Advisory Committee will ensure that there is public participation in formulating policy when approving a decision to close an examination (Mao et al., 2013).

Besides, in Hong Kong, the ICAC is answerable only to the leader (Hamilton, 2012). The ICAC is an independent organization, separate from the police force, free from political influence, and is not part of the public servants. Within the ICAC, corruption fighters are not only well paid, but are also subjected to a strict disciplinary code and anti-corruption checks by an internal monitoring group (Hamilton, 2012). In the Hong Kong public service, their incomes are equivalent to private sector workers, and are revised on an annual basis.

In 1974, Hong Kong public servants visited Singapore to study their anti-corruption laws and Hong Kong has learned and adopted the Prevention of Corruption Act Singapore into their Prevention of Bribery Ordinance (Quah, 2011).

ILLICIT ENRICHMENT LEGAL FRAMEWORK OF MALAYSIA

In Malaysia, the MACC Act 2009 [Act 694] provides a section on illicit enrichment, however, the term ‘illicit enrichment’ in Section 36 is not expressly stated, and the said section does not specify illicit enrichment as an offence. The section only prescribes investigation and penalty against the crime of illicit enrichment, and it authorises the MACC to obtain information in connection with any property held or gained by a person (Gabriel, 2017). However, this power is limited in its reach as it has to be connected with a crime stated in the MACC Act. Besides, Section 36 does not state any matter relating to possessing unusual or unexplained wealth as an offence as it only authorises MACC to inspect the possession of any property if it is related to any offence stated under the MACC Act. This somehow limits the power of MACC officers to completely investigate issues in connection with corruption (Gabriel, 2017). Even though the MACC was modelled after one of the top anti-corruption agencies which is the ICAC Hong Kong, the MACC does not fully follow all the provisions stated in the PBO, whereby, the MACC does not specify that it is an offence for public officials to have wealth beyond their means. Meanwhile, Section 10 of PBO Hong Kong clearly states that it is an offence to any public official who has a standard of living which is not equal to their present or past salary and it is an offence to possess unexplained property (Prevention of Bribery Ordinance [Cap. 201], 2021).

A reasonable understanding must be practised in adopting the experience of Hong Kong and Singapore before it can be adopted elsewhere. There are some suggestions and views that Malaysia can learn from Hong Kong and Singapore. One of the salient examples that can be adopted from Singapore’s comprehensive anti-corruption legislation is the PCA that handles both the giver and the receiver equally. Unlike Singapore, in Malaysia, the accused can only be

charged with one of the two offences, not both. It is very difficult to prove an offence. Common arguments will be used by offenders, for example trying to explain their wealth using excuses such as donations, gifts, assets inherited from relatives or family members or other sources of income. The criminal offences are better suited to make life more difficult for the corrupt, regardless of whether they get smarter and hide their money and assets. Nevertheless, the authorities would need to put in more effort and resources into their work (Satar, 2018).

Furthermore, based on the Country Review Report of Malaysia (2013) by UNCAC, there were no reported cases of illicit enrichment by the court. This shows the uncertainty of Section 36 of the MACC Act itself. However, nowadays, the increasing cases of illicit enrichment among public servants are reported only by the MACC, media and newspapers. The Centre to Combat Corruption and Cronyism (C4 Centre) wants the MACC Act to be revised in such a way so as to strengthen the power of the MACC to investigate corrupt activities, especially in cases involving possession of unusual or unexplained wealth (The Centre to Combat Corruption and Cronyism, 2017).

The C4 Centre together with the Bar Council and other civil society groups have insisted that the improvements to Section 36 must include the issue of possessing unusual or unexplained wealth as a cause for a probe and not make such probe rely only on committing of an offence under the MACC Act. Possessing unexplained wealth is a crime under the PBO (Cap. 201) of Hong Kong and it is clearly stated under their law (Gabriel, 2017), and the said section also places the burden of proof on the accused to provide a “reasonable clarification” of his standard of living or how he gained his financial income and assets. The proposed improvement to Section 36 of the MACC Act will further strengthen the power of the MACC to inspect corrupt activities, and this action is important to strengthen the MACC’s main responsibility to address and deal with corruption especially those in public office with high-ranking powers (Gabriel, 2017).

However, it is still questionable to the Malaysian government whether to establish a direct offence of illicit enrichment or otherwise. The main obstacle in the Malaysian legal framework in combating illicit enrichment is the insufficiency of a direct criminal offence and an

effective procedure for detecting illicit enrichment. Only Section 36 of the MACC Act in the Malaysian legal framework prevents the creation of an offence of illicit enrichment where it is presumed that the unjustified wealth was created by corrupt acts that cannot be proven. The prosecutor must then collect evidence, likely circumstantial evidence, to support the notion that the unexplained wealth came from corrupt acts (Jorge, 2007). In a way, to convict a person of illicit enrichment, the judge needs to be convinced that the unexplained portion of the wealth is due to acts of corruption.

By referring to the legislations of illicit enrichment in Hong Kong and Singapore, there is nothing in the Malaysian legal framework that can prevent Parliament from passing illicit enrichment as a crime. This is because these two developed countries have shown success in their approach in applying illicit enrichment law to their respective countries.

Although Singapore has the same illicit enrichment law as Malaysia, they are able to curb corruption including illicit enrichment to become a top leading country in combating corruption in the Southeast Asian region. They ranked as the third least corrupt nation, according to the Corruption Perceptions Index 2020. This is largely due to the effectiveness of their law enforcement.

Examples of good laws are there, all that is needed is to strengthen the current law by the legislator. The adoption of Hong Kong and Singapore's anti-corruption strategies and law will depend on two important factors, the nature of their policy reforms and whether the Malaysian government has the political will to implement the required anti-corruption reforms. Needless to say, it will be difficult for Asian countries with less favourable policy contexts to adopt Singapore-style or Hong Kong-style anti-corruption reforms if their governments lack the political will to do so (Quah, 2013).

CONCLUSION

Based on the discussion it can be concluded that Malaysia can learn to adopt the law from other countries notably Hong Kong and Singapore on illicit enrichment, but it must be in accordance with the

requirements of the constitution and the fundamental principles of the legal system. Illicit enrichment itself is a significant issue which is on the rise globally. Among the corruption offences, illicit enrichment is the most difficult to prove as it symbolises the accumulation of other corruption offences committed during the period of service in utmost secrecy (Habershon & Trapnell, 2012). Nevertheless, illicit enrichment in Malaysia must be criminalised with a clear and specific provision in the MACC Act. Government effort to prevent corruption is ineffective with the increasingly widespread cases of illicit enrichment. Therefore, more concerted effort is needed in combating corruption and illicit enrichment in the public sector.

Malaysia has some form of piecemeal law, and this is not sufficient. To fight corruption, the lessons from Hong Kong and Singapore are important and realizable to be followed because these two countries possess legal and institutional mechanisms that work effectively. It also helps that, the governance of these countries are transparent, participatory and accountable. The systems are in place, and those systems work (Nihal, 1999).

It is recommended that Malaysia amend the current provision of the MACC Act 2009 [Act 694] to add a specific provision criminalising illicit enrichment. The Malaysian government should identify and look in depth to revise section 36 of MACC Act 2009 [Act 694]. The findings of this paper shows that the law is not sufficient when compared to Hong Kong and Singapore, and that reviewing the existing law is necessary. The provision under the PBO (Cap. 201) Hong Kong may be referred to as it explicitly has that effect. The suggested provision that needs to be adopted is Section 10 of the PBO (Cap. 201) Hong Kong, *Possession of unexplained property*. The suggestion to solve this problem is recommended as follows: the modified law should include a fixed amount of unexplained wealth of which if a public official exceeds this amount, they would be required to explain how they lawfully acquired the assets. Accordingly, the official should prove a valid source of such increase, otherwise it will be considered as illicit enrichment (Weylandt, 2017).

From the discussion, it can be seen that the obvious legal gap in terms of illicit enrichment in Malaysia is that there is no specific provision to tackle this. Further, there is no statistical data on the case of illicit enrichment because currently it has not been criminalised in any law

in Malaysia. However, the legal gap has been addressed slightly by requiring public officers to declare their assets every five years for various reasons and it is obligated under the government circular. However, asset declaration itself is not enough to prevent illicit enrichment if the provision on illicit enrichment is not laid down. Besides, the process of declaring assets by public officers must be conducted in a genuine and transparent manner. A heavy punishment or penalty should be imposed by the relevant authority to public officers who make false or misleading asset declaration. This asset declaration issue basically means that the legal gap has been addressed but it is not enough when illicit enrichment has not been criminalised in a way to combat corruption in Malaysia. When there is no offence, there is no reported data on cases of illicit enrichment.

Thus, it can be concluded that corruption and illicit enrichment are indeed global problems. Efforts in criminalising and dealing with illicit enrichment through the adoption of best practices from international law have raised various questions from legislators and lawmakers. Even though further discussion and debate on the criminalisation of illicit enrichment are still needed, this effort cannot stop here and all countries need to introduce illicit enrichment as a criminal offence in their law to fight corruption. Malaysia should criminalise illicit enrichment explicitly in the fight against corruption by revising the current anti-corruption law and other relevant laws.

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