

**THE SIZE AND COSTS OF BRIBE GIVEN AND  
SOLICITED:  
ANALYSES BASED ON CONVICTED  
OFFENDERS IN MALAYSIA**

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by

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## **DEDICATION**

This thesis is dedicated to my son, Ryan Prior who has kept me going despite the ups and downs in life.

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**SAIZ DAN KOS RASUAH YANG DIBERI DAN DIMINTA: ANALISIS  
BERDASARKAN PESALAH YANG DISABITKAN DI MALAYSIA**

**ABSTRAK**

Objektif utama kajian ini adalah untuk menganggarkan kos pemberian dan permintaan rasuah, faktor-faktor yang mempengaruhi saiz rasuah yang terlibat dan untuk menilai jika penalti dikenakan setimpal dengan saiz rasuah. Data tahunan pemberi dan peminta rasuah yang telah disabitkan bagi tempoh lima tahun (2010-2014) diperolehi daripada Suruhanjaya Pencegahan Rasuah Malaysia telah digunakan. Hasil kajian menunjukkan bahawa kos pemberian dan permintaan rasuah akan menyebabkan kerajaan kehilangan hasil sekurang-kurangnya RM23.9 juta setiap tahun atau bersamaan 1.1 peratus dan 0.31 peratus daripada dana tahunan bagi peruntukan kesihatan dan peruntukan pendidikan masing-masing dalam tempoh kajian ini. Nilai minimum sumber-sumber ekonomi yang mungkin telah disalahgunakan daripada pemberian dan permintaan rasuah mengikut anggaran kasar adalah berjumlah kira-kira RM166.6 juta setahun atau 7.6 peratus dan 2.2 peratus daripada dana pembangunan tahunan yang diperuntukkan bagi peruntukan kesihatan dan peruntukan pendidikan masing-masing. Ujian fungsi pemberian dan permintaan rasuah mengesahkan hipotesis bahawa saiz pemberian dan permintaan rasuah mempunyai hubungan positif dan signifikan dengan kedua-dua saiz hukuman denda dan penjara yang dielakkan melalui pemberian dan permintaan rasuah. Sebaliknya, bercanggah dengan hubungan hipotesis, jangkaan hukuman denda ke atas kesalahan penerimaan dan permintaan rasuah mempunyai kesan yang bertentangan dengan meningkatkan saiz rasuah yang ditawarkan atau diminta kemungkinan untuk melindungi risiko ditangkap. Walaupun jangkaan hukuman penjara

ke atas kesalahan menawarkan rasuah didapati mengurangkan saiz rasuah diberikan, bagi kesalahan meminta rasuah ia didapati meningkatkan saiz rasuah. Keputusan bagi ujian pemberian dan permintaan rasuah besar juga menghasilkan keputusan yang sama. Akhir sekali, didapati tidak terdapat hubungan yang jelas dan signifikan antara hukuman denda dan tempoh penjara dengan saiz rasuah yang ditawarkan atau diminta yang mencadangkan kesan pencegahan. Hasil kajian menunjukkan bahawa kerajaan perlu memastikan penguatkuasaan yang berkesan dengan meningkatkan kebarangkalian ditangkap, pendakwaan yang cepat, dan penalti yang sepadan dengan jumlah wang rasuah yang ditawarkan dan diminta untuk membanteras rasuah dengan lebih berkesan.



**THE SIZE AND COSTS OF BRIBE GIVEN AND SOLICITED: ANALYSES  
BASED ON CONVICTED OFFENDERS IN MALAYSIA**

**ABSTRACT**

The main objectives of the study were to estimate the costs of bribe giving and soliciting, the factors affecting the size of bribes involved and to evaluate if penalties given out were correlated with bribe size. Annual data on convicted bribe givers and solicitors for a five year period (2010 to 2014) obtained from the Malaysian Anti-Corruption Commission were used. The findings suggested that bribe giving and soliciting would have cost the government a minimum revenue loss of RM23.9 million per year or the equivalent of 1.1 percent and 0.31 percent of the annual development funds allocated to health and education during this period, respectively. The minimum value of resources that might have been misallocated by bribe giving and soliciting amounted to RM166.6 million a year or about 7.6 percent and 2.2 percent of the annual development funds allocated to health and education, respectively. These are minimum estimates but not inconsequential sums. Testing of the bribe giving and soliciting functions confirmed the hypothesis that the size of bribe given and solicited varies positively and significantly with both the size of the fine and the length of imprisonment that is avoided through bribery. Contrary to the hypothesised relationship, the higher expected value of fine for bribe giving and soliciting had the opposite effect of increasing the size of the bribe offered or solicited possibly to cover the risk of being caught. And while an expectation to be jailed for offering a bribe decreases the size of bribe given, it increases the size of bribe solicited. Broadly similar results were found in the case of giving and soliciting large bribes. Finally, there was no clear and significant

relationship between fines and the length of imprisonment with the size of bribe offered or solicited to suggest significant deterrent effects. The findings suggest that effective enforcement that raises the probability of being caught, swift prosecution, and penalties that corresponds strictly to the sums of bribe offered and solicited are minimum conditions necessary to discourage bribery. More urgent attention must be paid to strengthen these areas.

# CHAPTER 1

## INTRODUCTION

### 1.1 Introduction

Corruption has been in existence as far back as the fourth century (Bardhan, 1997) or probably even further.<sup>1</sup> In recent years, specialised institutions and bodies like the Organisation for Economic Co-operation and Development (OECD), World Bank, World Economic Forum and the United Nations have joined national governments in fighting corruption due to the substantial cost it imposes on the economy. The annual worldwide cost of bribery was estimated to be about US1 trillion (Kaufmann, 2005). The cost was estimated to be 5 percent of the Gross Domestic Product (GDP) of Malawi (Yikona et al., 2011), and about Euro120 billion a year or 5 percent of the GDP of Europe (The European Commission, 2014).

Corruption was estimated to cost Malaysia approximately RM10 billion annually which is between 1 to 2 percent of Malaysian GDP (Jabatan Perdana Menteri, 2010). However, if the average of 5 percent of GDP as estimated in the case of Malawi and Europe is used, the cost of corruption in Malaysia will rise to RM53 billion in 2015.<sup>2</sup>

Corruption has been a central issue in Malaysia because it has the potential to derail the achievement of Vision 2020 that envisions Malaysia as a fully developed nation by the year 2020 (Jabatan Perdana Menteri, 2010). Compared to neighbouring

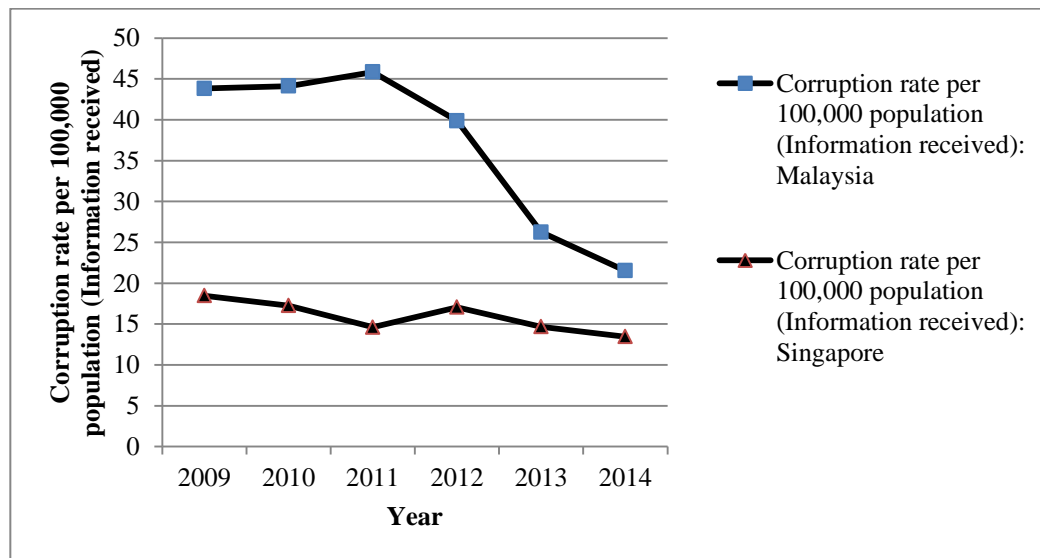
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<sup>1</sup> In a lighter vein, the Bible talks about Eve convincing Adam into taking a bite of the forbidden apple. The 'original sin' was therefore a bribe or in current parlance a gratification offered to commit a forbidden act.

<sup>2</sup> Malaysian GDP at constant prices in 2015 was RM1062.6 billion (Department of Statistics, 2016).

and more developed Singapore, the corruption rate in Malaysia is much higher. This can be seen by looking at the rate of corruption, based on the number of cases reported and investigated.

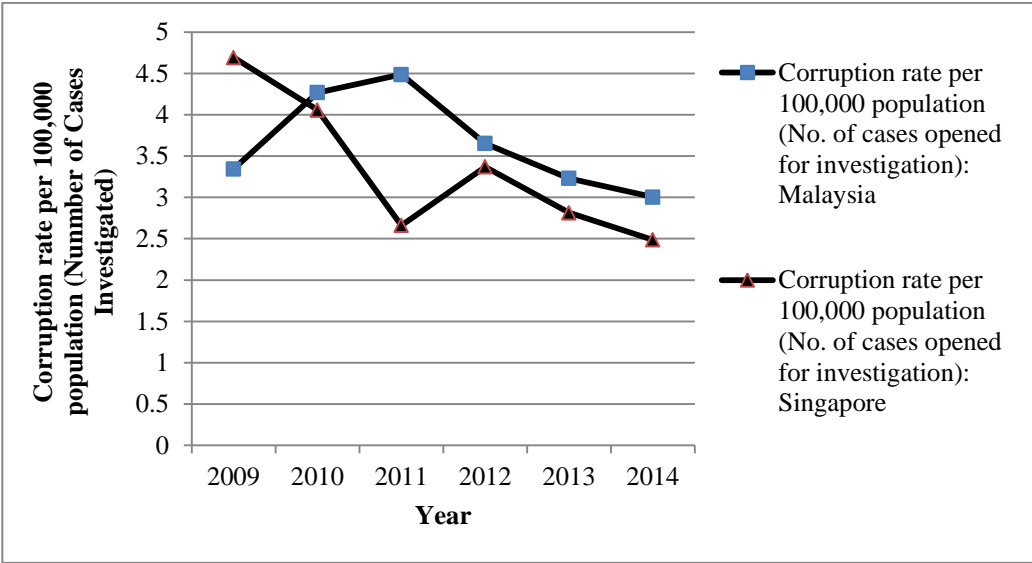
Figure 1.1 presents the corruption rate per 100,000 population<sup>3</sup> based on information received (reported) by the Malaysian Anti-Corruption Commission (MACC) and Singapore’s Corrupt Practices Investigation Bureau (CPIB) from 2009 to 2014. Between 2009 and 2014, the corruption rate was consistently higher in Malaysia relative to Singapore. In 2014, the corruption rate for Malaysia was nearly twice as high (21.5 per 100,000 population) as compared to Singapore (13.5 per 100,000 population). This was despite the fact that Malaysia had recorded an 18 percent decrease in the corruption since 2013; Singapore only saw an 8 percent decrease over the same period.



**Figure 1.1: Corruption rate based on number of complaints received in Malaysia and Singapore, 2009-2014.**

Source: Graphed by using data from MACC, various years; SPRM, 2016; IIM, 2008; CPIB, 2013 & 2014; DOS, Malaysia, 2016; DOS, Singapore, 2014 & 2015.

<sup>3</sup> The corruption rate per 100,000 population was obtained by adapting the methodology employed to compute crime rates by the United States Federal Bureau of Investigation (FBI, 2015). This is a more refined measure than mere volume figures. The corruption rate per 100,000 population was calculated as (number of complaints received/population)\*100,000.



**Figure 1.2: Corruption rate based on number of cases investigated in Malaysia and Singapore, 2009-2014.**

Source: Graphed by using MACC data, various years; SPRM, 2016; IIM, 2008; CPIB, 2013 & 2014; DOS, Malaysia, 2016; DOS, Singapore, 2014 & 2015.

Figure 1.2, on the other hand, presents the corruption cases per 100,000 population<sup>4</sup> based on the number of cases investigated by MACC and CPIB between 2009 and 2014. Between 2009 and 2011, the corruption rate in Malaysia rose steeply to overtake the rate in Singapore. By 2014, the corruption rate was higher (3.00 per 100,000 population) as compared to the Singapore figure (2.49 per 100,000 population). Again, this was after taking into consideration that corruption rate had registered a decrease of 7.02 percent after 2013. The number of cases investigated by the CPIB also fell, but by 11.68 percent after 2013. Although the corruption rate in Malaysia continues to remain above that of Singapore, the rate appears to be on a declining trend.

<sup>4</sup> The corruption rate based on cases investigated was calculated as (the number of cases investigated/population)\*100,000.

Of course, these figures should be seen as merely indicative; cases reported or investigated do not always reflect the extent of corruption accurately. The failure to report a case, for example, will reduce the numbers reported (and hence the crime rate) but not corruption.<sup>5</sup>

Apart from corruption rates, MACC has also highlighted several high profile cases involving a significant amount of money over the past few years. These include the alleged cheating of RM67 million by two former directors of Silver Bird Group, forgery cases involving RM304,650 and RM952,686 by the former MARA Education Foundation management and a former executive officer of Amanah Raya Berhad, criminal breach of trust of RM100 million by the Chief Executive Officer of the Sime Darby Group and several senior company officers, and bribes amounting to RM3 million allegedly received by a senior vice president of Iskandar Investment Berhad (cited in Lee, 2013). The latest cases in the spotlight are the accusation by U.S. Attorney General, Loretta Lynch, of the involvement of several Malaysian officials in siphoning funds off the controversial state development fund (1MDB) (Jenkins, 2016), the arrest of an official in the Youth and Sports Ministry over an embezzlement of RM100 million in procurement deals (Malay Mail Online, 2016) and the arrest of a high ranking official from Kuala Lumpur City Hall (DBKL) over a RM15 million award of project tenders (Bavani, 2016).

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<sup>5</sup> Nevertheless, it has been argued that uniform crime reports provide a valid indicator and generally suffer from only a small reporting bias as compared to data on victimisation (Gove et al., 1985; Levitt, 1998). Ivkovic (2003) contends that since measurement of actual corruption levels are virtually impossible, the practical way out is to depend on estimates. Official records are conceivably more suitable for analysing changes in the law enforcement policy on corruption but less suited for estimating police corruption.

Fighting corruption was part of former Prime Minister Abdullah Ahmad Badawi's election platform and almost certainly was a factor in his landslide victory in the general elections of 2004. The Malaysian Anti-Corruption Commission (MACC) Bill and the Judicial Appointment Commission Bill were tabled by Badawi before leaving office. The former Bill created the MACC to replace the Anti-Corruption Agency and was given limited powers of prosecution (*The Sun Daily*, 2008).<sup>6</sup> Dato' Seri Najib Abdul Razak, Badawi's successor, continues with the government's effort to address corruption and has placed it as one of the National Key Results Area (NKRA) in the Government Transformation Programme (GTP) (Yusoff et al., 2012).<sup>7</sup>

Unfortunately, these measures by the Malaysian government have not improved public confidence in the government's efforts to curb corruption. The Transparency International Malaysia's Corruption Barometer (MCB), 2014, which surveyed public perceptions on corruption, government's effectiveness in combating corruption and incidence of bribery over the past year, found that public perception of corruption had increased in 2014 relative to 2013 (Transparency International Malaysia, 2014).

The focus of this study is the magnitude of bribe-giving and bribe soliciting, which are facets of corruption. Bribe giving (soliciting) is defined in this study as the offering (soliciting) of some reward (monetary or otherwise) in order to hasten a legitimate act to favour the bribe-giver or to perform an otherwise illegal act to confer

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<sup>6</sup> See <http://www.thesundaily.my/node/160487>.

<sup>7</sup> Ironically, the Prime Minister himself became the centre of a probe when it was revealed that over US\$681 million (RM2.6 billion) was deposited into his personal bank accounts in early 2013. On January 27, 2016, the attorney general decided not to charge the Prime Minister, saying he had not committed any criminal offence because it was "a personal donation from the Saudi Royal Family given to him without consideration" (*The Sun Daily*, Thursday January 28, 2016: 3).

advantage to the bribe-giver. The MACC Act, 2009, uses the term ‘gratification’ instead of ‘bribe’ (MACC, 2014).

Bribery, is of interest to economists because it creates a misallocation of resources and decreases the welfare of society as a whole (Krueger, 1974). For example, bribes paid to avoid legal fines represent transfers between individual agents that decrease the non-tax revenues of governments. When bribery becomes endemic, it adversely affects the capacity of governments to undertake productive investments. On the other hand, if bribes are given to influence public decisions in the favour of bribe givers, bribery distorts efficient decision making and again leads to serious misallocations of economic resources and losses in economic welfare.

Any micro study on bribe giving or soliciting has to consider two aspects. First, the factors that determine whether or not a person engages in bribery. Second, the factors that might influence the size of the bribe offered or solicited. The first aspect is difficult to test empirically as it requires identifying bribe givers (both individuals who have been caught and convicted and those who escaped the arms of the law) and those who had the opportunity to bribe but did not. This has been a hurdle in the empirical testing of economic models that describe individual illicit behaviour (Cornwell and Trumbull, 1994). The few studies using individual data have relied on subjects who were released from prison after serving sentences, or had relapsed into criminal behaviour subsequently. These studies looked only at the deterrent effects of various penalties and enforcement efforts (see, for example, Witte, 1980 and Myers, 1983).



This study therefore focuses on the second aspect or the size of bribe. The size of a bribe is of importance to economists because it might be assumed to determine its impact. The larger the bribe given or solicited, the greater would be its negative impact. If bribe is seen as a waste of corporate resources, then a large bribe reflects a larger waste. If it results in sub-optimal decision-making that misallocates resources, then large bribes provide greater enticements to abdicate responsible decision-making (Salbu, 2000: 663-665) and result in greater losses in economic welfare. Finally, if bribes are paid to avoid legal fines, then large bribes represent a greater leakage of government revenue collections that might have supported productive public investments.

## **1.2 Problem statement**

Bribery, as part of the larger picture of corruption, has taken centre stage in Malaysia with the highlighting of several high profile cases over the past few years. Yet, very little is known about those who offer and solicit bribes despite the substantial costs estimated imposed on Malaysia annually. Furthermore, a recent survey done by Transparency International showed that the public were not convinced of government's efforts to combat corruption. Despite the potential impact of bribery on government revenue and the misallocation of resources, no study has been attempted to estimate the size and costs of bribes in Malaysia.

## **1.3 Research questions**

Within the confines of available data, this study attempts to address the following research questions.

- (i) What are the characteristics of convicted bribe givers and solicitors?

- (ii) What are the amounts of bribe given and solicited by convicted bribe givers and solicitors, respectively?
- (iii) What is the potential revenue that might have been lost by bribes given and solicited to avoid paying legal fines?
- (iv) What is the value of the resources that might have been diverted illegally to individuals through bribes given and bribes solicited?
- (v) What factors (if any) are likely to determine how much of bribe is offered or solicited?
- (vi) Are the punishments (fines and penalties) awarded by the courts for bribe giving and soliciting effective deterrents?

#### **1.4 Objectives of the study**

The objectives of the study are as follows:

- (i) To describe the characteristics (gender, age, ethnicity, region, profession, and institutional affiliation) of convicted bribe givers and solicitors (between 2010 and 2014)<sup>8</sup> to determine if they can be distinguished from the general population.
- (ii) To analyse size of bribes given and solicited for the stated period, based on convicted cases.
- (iii) To estimate the minimum value of potential revenue that might have been lost by bribes given and solicited to avoid paying legal fines.

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<sup>8</sup> The time period was determined by data availability.

- (iv) To estimate the minimum value of resources that might have been diverted illegally to individuals through bribe giving and bribe solicited.
- (v) To develop separate economic frameworks to analyse the factors that determine how much of bribe is offered and solicited, respectively, and to test them empirically.
- (vi) To determine econometrically the relationship between the amounts of bribe offered and solicited and the associated penalties (fines and imprisonment) imposed by the courts to determine their deterrent effects.

### **1.5 Contributions of study**

This study hopes to make at least two contributions to the literature on bribery, particularly in the Malaysian context. First, this is believed to be the only study to employ individual data on convicted bribe givers and bribe takers in Malaysia. This avoids the issue of dishonest (or socially acceptable) responses likely to be given in any study seeking to establish the tendency to engage in bribes via direct questions. Second, two theoretical frameworks are developed to explain the size of the bribe given and solicited, respectively. While there are theoretical frameworks that seek to explain why an individual might engage in crime or bribery, there are none that explain the size of the bribe given or solicited. The frameworks used in this study are general and therefore may be applicable beyond the Malaysian context.

### **1.6 Organisation of study**

Following Chapter 1 that describes the background of the study, the problem statement, research objectives and contribution of study, Chapter 2 provides a brief historical

overview of corruption in Malaysia. Chapter 3 reviews the literature on the definitions of models and correlates of bribery before drawing on these to develop the two frameworks underlying the study. Chapter 4 discusses the methodology and data used. Chapters 5 and 6 present the findings on the factors that affect the size of bribe giving and soliciting, respectively. Finally, Chapter 7 summarises the research findings, discusses the policy implications and lists the limitations of the study.

## CHAPTER 2

### CORRUPTION IN MALAYSIA: A BRIEF HISTORICAL OVERVIEW

#### 2.1 Introduction

This chapter begins by providing a historical overview of corruption in Malaysia. The discussion focuses on the three types of corruption found in democratic societies, as highlighted by Jain (2001). These are bureaucratic or petty corruption, legislative corruption and grand corruption. The chapter also discusses the efforts in setting up an anti-corruption body and the legislations that accompanied it.

#### 2.2 Bureaucratic corruption

Bureaucratic corruption or petty corruption refers to corrupt acts by appointed government officials against their superiors or the public (Jain, 2001). The formal recognition of the existence of corruption in Malaysia can be traced back to the beginning of the British colonial period and their bureaucracy in the Straits Settlements (Penang, Malacca and Singapore). During this period, bureaucratic corruption cases were said to have been handled in a discreet manner through transfers or resignations of individuals suspected of corruption. These were not publicised in order to keep up the good reputation of the British administration. Nonetheless, newspapers did report major cases of bureaucratic corruption (Quah, 2011) and highlight the seriousness of the corruption situation. For example, Crawford (1838), when calling for the abolishment of tax on gaming in Penang (Prince of Wales Island) in 1808, wrote in *The Singapore Free Press and Mercantile Advertiser* that there exists police bribery [which is] an obstacle in

attempts to suppress the gaming restriction. He also alluded to an earlier instance of corruption among the government revenue officers when trying to enforce a law that controlled the use of alcohol.

Quah (2014) highlights two commissions that reported the existence of police corruption in the Straits Settlements, particularly in Singapore and Penang. The 1879 Commission of Inquiry was appointed to investigate police inefficiency and it found that bribery prevails in the Singapore Police Force (SPF) (Brooke and Braddell, 1921; Quah, 2014). Another Commission, set up in 1886, focused mainly on investigating public gambling and public lotteries in the Straits Settlements. The Commission found the existence of open illicit gambling, along with bribery of the police force by the gambling operators in Penang and Singapore that reached the inspector class. This bribery was viewed as being more serious than illegal gambling<sup>9</sup> (*Straits Times Weekly Issue*, 1886; Jackson, 1965).

Shennan (2000), on the other hand, highlighted the existence of bribery, nepotism and kickbacks to public officials in road and rail building, the police force and the mining department during the 1920s and 1930s.<sup>10</sup> The allegations of the mining department as being the most unscrupulous department, along with strong public pressure prompted the setting up of another commission (Shennan, 2000). The 1940 Commission, under the leadership of E.D. Shearn, found that bribery was rampant in the mining industry. The inquiry resulted in action being taken against corrupted

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<sup>9</sup> Bribing the police was regarded as a more serious offence than operating a gambling house as the commission recommended deportation for cases of bribing the police. Deportation was considered to be too severe for keeping a gambling house (Jackson, 1965).

<sup>10</sup> One corruption case that was that of an army officer, Captain Loveday, who was alleged to have accepted Malayan \$169,000 for assisting building contractors to obtain contracts from the War Department (*The Straits Times*, Tuesday August 6, 1940: 10).

government officials (Marican, 1979). The effort to reduce corruption, however, was disrupted by the Japanese Occupation from 1941 to 1945.

Bureaucratic corruption intensified during the Occupation because the Japanese introduced a licensing system and price controls to regulate businesses and industry in order to repress inflation stemming from the cutting-off of Malaya's exports of raw materials (Cheah, 2012).

The reoccupation of the Malaya on 1945 by the British Military Administration (BMA) saw an increase in open corruption and crime due to the food shortage and chronic financial instability that prevailed (Harper, 2001). As the bureaucracy grew to counter the Malayan Emergency<sup>11</sup> (1948–1960), corruption flourished, particularly in the lower ranks of the police force and was predominantly related to the opium trade (Harper, 2001). Shennan quotes J.S. Potter, an executive of Guthrie & Co.'s as opining that the corruption in the BMA was due to the decline in morals arising from the 'long war of destruction and shortages.' (Shennan, 2000: 302). Similarly, Tilman (1968) attributed the flourishing corruption at the lower levels of Malaya's administration that dealt with the alienation of land to the inadequate supervisory personnel during World War II and the Emergency period (1948 to 1960).

A Commission in 1952, headed by E.N. Taylor with the assistance of Datuk Hussein Onn, was set up to look into the allegations of widespread corruption of public services that was seen as hampering the war against the Communists (Marican, 1979). Unlike the findings of the Shearn Report, this Commission found no evidence of bribery

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<sup>11</sup> The size of the Malayan police force had increased five-fold to 50,000 while the British army had swelled up to 40,000 between 1948 to 1950 (Petraeus and Amos, 2007: 160).

or other forms of corruption. Out of an estimated 4000 letters received, 700 letters were investigated and only two had that led to conviction (Federation of Malaya, 1955). The total cases of corrupt practices charged in 1953 was 365, of which 41 pertained to bribe taking and 324 was for bribe giving, with amounts offered ranging from Malayan \$0.20 to Malayan \$1000. The Commission, however, did note that although there was no evidence of actual incidents of bribery or corruption, there was clear evidence of the existence of abundant opportunities for both, in departments such as the Police and Customs.<sup>12</sup>

Bureaucratic corruption continues to persist as is evident from the growing number of cases arrested and prosecuted yearly by the Malaysian Anti-Corruption Commission (MACC).<sup>13</sup>

### **2.3 Legislative corruption**

Legislative corruption refers to corrupt acts which influence the voting behaviour of the electorate or legislators (Jain, 2001). It is also referred to as ‘money politics’ in the local media. Teh (2002) defined money politics as a form of corruption or bribery and it includes politicians receiving illicit campaign funds from business interests (bribe taking), and using money, gifts and contracts to buy supporters or votes (bribe giving). He highlighted that the susceptibility to money politics was due to the abundance of opportunities presented, particularly when politicians and political parties are not restricted from owning and operating businesses.

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<sup>12</sup> Five members of the public, in responding to the Commission, claimed that corruption exists in the Transport Department, the National Registration Department, and among the traffic police and port workers at Port Swettenham. They blamed the existence of corruption on the system rather the offenders (*The Straits Times*, Thursday, January 23, 1953:4).

<sup>13</sup> See Figure 2.2.



Malaysia's (former) Prime Minister, Tun Dr. Mahathir Mohamad claims that 'money politics' has existed since independence from British rule in 1957. It was initiated by voters selling their votes (Sipalan, 2013a). An early record in Harper (2001) described the controversial Malayan \$500,000 'gift' sponsored by Lee Rubber to the Singapore Malay Union and UMNO Kuala Pilah branch in 1952, during Dato' Onn's administration (*The Straits Times*, 1952a). The idea of the 'gift' was attributed to a suggestion by the then Commissioner-General in Southeast Asia, Malcolm MacDonald, to Tan Cheng Lock. This may well constitute an early example of a political bribe.

In 1998, Dr. Mahathir, as Prime Minister and head of United Malay National Organisation (UMNO), the leading partner of the ruling coalition in Malaysia, admitted that money politics exists in UMNO. He backed the claim up by releasing information on 'corrupted' individuals in the party (Yong, 2013). A former UMNO Supreme Councillor, and Deputy Minister of Higher Education, Datuk Saifuddin Abdullah affirmed the role of money politics in the 2013 general elections in the form of 'petrol money' given during the campaigning but was reluctant to name names (Ar, 2013). The 'Checkbook Elections' study ranked Malaysia at 50<sup>th</sup> out of 54 countries, for the integrity of election campaigns based on a set of criteria (*Malay Mail Online*, 2015a). Senator Datuk Paul Low opined that money politics existed in Malaysia due to the lack of strict laws governing political financing, or funding campaigns. Thus many opportunities exist for businesses to give to both sides of the political divide, in the hope of gaining return favours when the side they supported comes into power (Yeow, 2015). It was also alleged that in the 13<sup>th</sup> General Elections, the indelible ink was defective, the

media environment was biased, there were dubious voters, independent news portals were blocked and illegal voters had participated in the elections (Ibrahim, 2013).

## **2.4 Grand corruption**

Grand corruption is corruption that pervades the highest levels of a national government, leading to an erosion of confidence in good governance and the rule of law (Jain, 2001). Marican (1979) and Quah (1982) point to the possibility of corruption at the top leadership levels, based on allegations by the Opposition, and statements by some government leaders, since 1963. Some scholars suggest that grand corruption became ingrained in the early 1980s, during the rule of Dr. Mahathir Mohamad. He initiated the privatisation of state enterprise through a system of tendering that lacked transparency, to both the Bumiputera and non-Bumiputera interests. This provided ample opportunities for corruption (Yong, 2013). Jomo and Gomez (2000), point their fingers at the New Economic Policy that was introduced in 1970. By providing for greater government intervention in the economy, it also opened up greater opportunities for corruption and other forms of abuse (Jomo and Gomez, 2000).

In recent years, the number of corruption cases that may be considered as grand corruption has been highlighted in the media. Some of the prominent cases cited were concerning the National Feedlot Corporation (NFC), the Port Klang Free Zone (PKFZ) corruption controversy, the controversial purchase of the Scorpene submarine from France (see Gomez, 2014), the Sabah timber graft scandal (Chooi, 2012) and the unrestrained logging in Sarawak (*Sarawak Report*, 2012). More recently the high profile cases of 1Malaysia Development Berhad (1MDB) and the overpriced property

purchased by Majlis Amanah Rakyat's (MARA) in Australia has grabbed the headlines in the local media (*The Malaysian Insider*, 2015a; Ibrahim, 2015).

The most recent example of an alleged grand corruption is the case of a RM2.6 billion allegedly deposited in the personal account of the Malaysian Prime Minister from a foreign source. It was claimed to be a donation from a Middle-Eastern donor. However, not everyone was convinced. During the 16th International Anti-Corruption Conference (IACC), held in Malaysia in September, 2015, José Ugaz, the Transparency International Chair, openly declared that the alleged 'donation' had all the elements of grand corruption (Mahavera, 2015). It must be added that the Prime Minister has repeatedly denied any wrongdoing and the attorney general recently cleared him of all charges of impropriety.

## **2.5 Anti-corruption efforts**

Anti-corruption initiatives took the form of setting up a separate body to prevent and investigate corrupt practices and the strengthening of existing legislation to give added powers to the anti-graft body.

### **2.5.1 A separate anti-graft body**

The efforts to combat corruption in the post-independence period saw the government of Malaya inviting the Inspector General of Special Police in Pakistan, Shah Nazir Alam, to survey the corruption situation in Malaya. This generated the Shah Nazir Alam Report in 1958. Based on its recommendations, two distinct organisations were established. First, the Anti-Corruption Agency was formed; it reported to the Ministry of Home Affairs

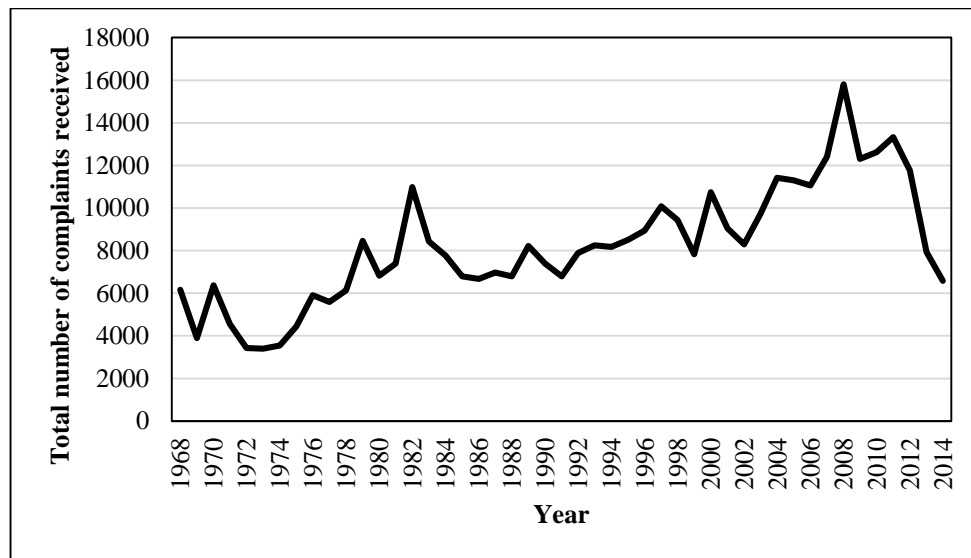
and had a preventive role. The second body that was established was the Criminal Investigation Department (Special Crimes), reporting to the Inspector General of Police. It was tasked with detection and investigation of offenders. The prosecution of corruption cases was, however, handled by the Prosecution Division of Ministry of Justice (MACC, 2012b).

The complexity of investigation procedures, the co-ordination of duties faced by the two separate agencies, and the extension of enforcement to include Sabah and Sarawak, resulted in the creation of a single body known as the Anti-Corruption Agency (ACA) in 1967. It reported directly to the Ministry of Home Affairs. The ACA was given the responsibility of preventing and eliminating all forms of corruption, misuse of power and maladministration (Siddiquee, 2010).

However, ACA personnel were faced with the problems of dual loyalty as most of the officers were seconded from customs, police and public services departments. The ACA had no power to recruit and train their own officers. Thus, seconded officers not only lacked the relevant training but were also disinclined to investigate corrupt practices in other departments because of the risk of being assigned to the very departments they investigated in the future. To meet this challenge, the National Bureau of Investigation (NBI) was established in 1973. However, it was short-lived; with the passing of the ACA Act of 1982, the NBI's name reverted to ACA to reflect its new and more focused role. The NBI had been assigned too many responsibilities that caused it to deviate from the main objective of combatting corrupt practices (Badan Pencegah Rasuah Malaysia, 1992; MACC, 2012b).

The establishment of the Malaysian Anti-Corruption Commission (MACC) in 2009 was in fulfilment of Prime Minister Abdullah Badawi’s promise to battle corruption. This promise was seen as a major factor in the Barisan National’s victory, with the largest ever majority, in the 2004 general election (Chin and Wong, 2009). The MACC was modelled after the Hong Kong’s Independent Commission Against Corruption (ICAC) and was envisaged as a single anti-corruption watchdog agency (Siddiquee, 2010). It helped to centralise information and intelligence on corruption and greatly reduced the co-ordination problems that often arise in multi-agency approaches (Meagher, 2005).

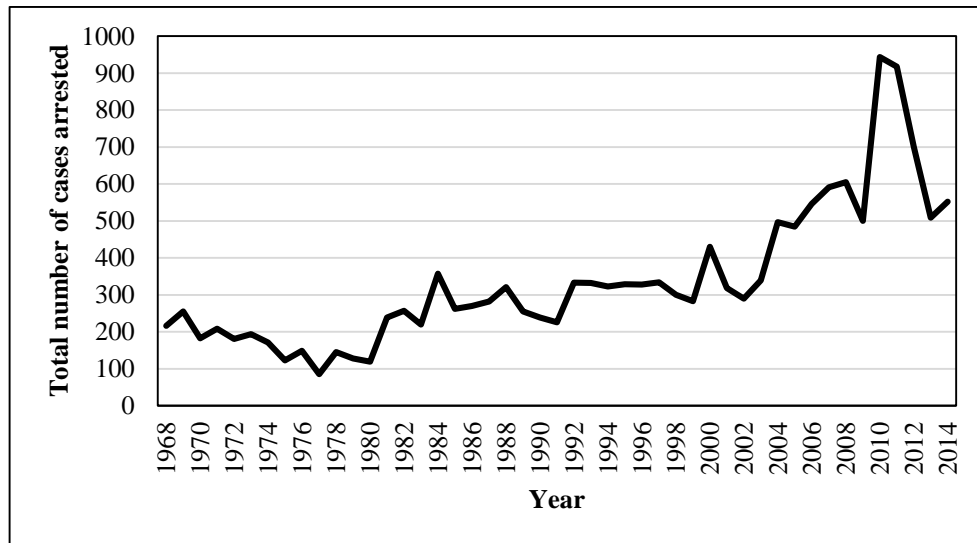
Based on the performance data among anti-corruption agencies from Argentina, Australia, Botswana, Ecuador, Hong Kong, Philippines, Tanzania and Uganda, Malaysia has been significantly more successful, as compared to others (Meagher, 2005).



**Figure 2.1: Total number of complaints received in Malaysia, 1968-2014**  
 Source: Graphed by using MACC data, various years; SPRM, 2016; IIM, 2008.

Figure 2.1 shows the increasing number of corruption complaints received from 1968 to 2014. The number of complaints spiked in 2008 and has then fallen, presumably due to the formation of the MACC in 2009 and its intervention.

Figure 2.2 shows the increasing trend of number of cases arrested by Malaysia's anti-corruption agency from 1968 to 2014. The number of cases reached a peak in 2010 but has declined since. However, 2014 has seen an increase, possibly due to the enforcement efforts of the MACC.



**Figure 2.2: Total number of cases arrested in Malaysia, 1968-2014**  
 Source: Graphed by using MACC data, various years; SPRM, 2016; IIM, 2008.

### 2.5.2 Anti-graft legislation

Corruption was initially made an offence in the Straits Settlement (Penang, Malacca and Singapore) with the enactment of the Penal Code (Straits Settlement) in 1871 (Quah,

1982).<sup>14</sup> Twenty two years later, the efforts to curb corruption were widened to cover the Federated Malay States with the enactment of the Penal Code (Federated Malay States) 1893. In 1950, the Prevention of Corruption Ordinance replaced the anti-corruption laws of the Straits Settlement, Federated Malay States and the State of Johor.

In 1961, the Prevention of Corruption Act 1961 replaced the Prevention of Corruption Ordinance 1950 and included Sabah and Sarawak (Badan Pencegah Rasuah Malaysia, 1992). The Act also widened the definition of graft and increased the prison term from 3 to 5 years. This Act was further amended in 1967 to increase the Public Prosecutor's powers and placed legal obligations on legislators and public officers to report bribery cases. In 1971, a further amendment was made to rectify flaws in the definition of corrupt offences (Marican, 1979).

The National Bureau Investigations (NBI) Act 1973 created a full-fledged department, reporting to the Ministry of Home Affairs. However, in 1982, the Act was repealed to make way for the creation of the Anti-Corruption Agency (ACA). The ACA was given greater powers to investigate corruption cases involving the national interest. The Anti-Corruption Act of 1997 provided the ACA investigation, interrogation and apprehension powers to combat corruption in both the public and private sectors (Malaysian Bar, 2015).

The most recent Malaysian Anti-Corruption Act of 2009 came into effect on 1<sup>st</sup> January 2009 (MACC, 2012b). The MACC Act of 2009 made the penalty of imprisonment for corruption related offences less severe as compared to ACA 1997. The

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<sup>14</sup> Prior to this, the power to legislate was in the hands of the Supreme Government in India and it was not until 1867 that the Straits Settlements acquired the rights to legislate for the colony fully (Cheng, 1972).

latter had specified a mandatory jail term of no less than 14 days to not more than 20 years while in the current Act, a jail sentence for corruption is no longer mandatory (Satar, 2014).

## 2.6 Effectiveness of MACC

Despite these efforts, there have only been a small number of convictions for corruption, relative to the number of cases reported, over the years. Table 2.1 shows the number of information received (cases reported), number of convicted cases and the probability of being convicted for corruption from year 2010 to 2014. The probability of being convicted is computed by dividing the number of convicted cases by the number of information received.<sup>15</sup> The overall probability of being convicted for corruption remained small, over the five-year period (0.022), as compared to the figure for Singapore (0.20).<sup>16</sup>

**Table 2.1: Number of corruption information received and number of convicted cases by MACC and probability of conviction from 2010 to 2014**

<i>Year</i>	<i>Number of information received</i>	<i>Number of convicted cases</i>	<i>Probability of conviction</i>
2010	12,614	237	0.019
2011	13,325	299	0.022
2012	11,765	212	0.018
2013	7,927	173	0.022
2014	6,548	230	0.035
Total cases	52,179	1,151	0.0221

Source: Tabulated by using data from MACC, various years; SPRM, 2016.

<sup>15</sup> This presents a problem well recognised by empirical economists working in the area of crime. As noted by Levitt and Miles (2007), the data on information received do not always correspond perfectly with the conviction data as they may occur at different times. The ratio therefore may not reflect accurately the probability of conviction in the given year. Despite this shortcoming, they argue that such data are widely used because their consistency and geographic disaggregation allows estimation of the relationships between the crime rates and crime policy variables.

<sup>16</sup> Singapore's probability of conviction was estimated to be  $179/921 = 0.200$  in 2009 (IAACA, 2012a) over the same period.



Table 2.2 exhibits the number of information received, number of convicted cases and the probability of being convicted for corruption according to the sector of employment of the accused individuals, from 2010 to 2014. The probability of conviction was highest, on average, for members of the public, followed by private sector employees and public sector employees. The probability of conviction was the lowest for politicians, as there were zero convictions after 2010.

**Table 2.2: Number of corruption information received and number of convicted cases by MACC and probability of conviction according to sector of employment from 2010 to 2014**

<i>Sector</i>	<i>Year</i>					<i>Total cases</i>
	<i>2010</i>	<i>2011</i>	<i>2012</i>	<i>2013</i>	<i>2014</i>	
<b><i>Government sector</i></b>						
Information received	9,030	9,255	8,313	4,684	3,962	35,244
Convicted cases	87	83	48	69	103	390
Probability	0.010	0.009	0.006	0.015	0.026	0.011
<b><i>Private sector</i></b>						
Information received	1,584	1,971	1,472	1,298	405	6,730
Convicted cases	39	34	3	9	32	117
Probability	0.025	0.017	0.002	0.007	0.079	0.017
<b><i>General public</i></b>						
Information received	1,985	1,934	1,750	1,669	2,048	9,386
Convicted cases	108	181	182	95	117	683
Probability	0.054	0.094	0.104	0.057	0.057	0.073
<b><i>Politician</i></b>						
Information received	15	165	230	276	169	855
Convicted cases	3	0	0	0	0	3
Probability	0.200	0	0	0	0	0.004

Source: Tabulated by using data from MACC, various years: SPRM, 2016.

## **2.7 Concluding observations**

Petty corruption appears to be in control in Malaysia, but it is still plagued with allegations of political or grand corruption. Although both MACC in Malaysia and CPIB

in Singapore come under the respective Prime Ministers' authority, Singapore's CPIB which was established in 1952 has the reputation for investigating high profile cases involving individuals with political power (Meagher, 2005). The MACC, on the other hand, suffers from the same criticism as its predecessors for the alleged failure to catch the 'big fish' or unravel multi-billion dollar scandals (*The Malaysian Insider*, 2015b). The MACC faces several constraints in its fight to stamp out corruption.

The MACC receives its funding from the Prime Minister's Office and is under his jurisdiction (Malaysian Bar, 2015). Furthermore, the appointment and tenure of the Commissioner of MACC is not presently secure under the Federal Constitution. The Commissioner also reports to the Prime Minister and is therefore not entirely free or independent with respect to the cases he investigates or the actions he intends to take against suspected corrupt persons (Navaratnam, 2015). The seeming intervention of the federal government in the investigations pertaining to the 1Malaysia Development Berhad (1MDB) through job transfers of senior MACC officers who were directly involved in investigations is a case in point (*The Malaysian Insider*, 2015a).

Currently, the MACC Chief Commissioner and his officers do not have prosecution powers which remain with the Attorney General's Chambers (AGC) under Article 145 of the Federal Constitution (Transparency International Malaysia, 2015). Tan Sri Ramon Navaratnam, Chairman of the Asli Centre for Public Policy Studies, has urged Parliament to establish a constitution-bound, independent MACC— as recommended by United Nations— to psychologically free the MACC from many constraints. Transparency International, on the other hand, has called for the MACC to be given powers of prosecution; a similar call was made twice by the Parliamentary

Select Committee (PSC) but these fell on deaf ears. Successive Ministers in the Prime Minister's Department responsible for legal matters like Datuk Seri Mohamed Nazri Aziz and Nancy Shukri, along with the 2008 Royal Commission of Inquiry (RCI) into the death of Teoh Beng Hock (an aide to an opposition politician) while in the custody of the MACC, seem unanimous in the view that the power to prosecute should stay with the Attorney-General (AG) (Anis, 2012; Sipalan, 2013b). Vohrah (2010), a retired senior judge, suggested that one way to avoid the perception of selective prosecution and interference in the prosecution of cases (particularly those involving well-connected politicians) is to revive Article 145 of the Federal Constitution which allows for an AG with Ministerial rank and answerable to parliament. Such a system was in place in the 1960s before being displaced by the current practice.

The MACC Commissioner himself has highlighted loopholes in existing laws that hamper the work of his officers. For example, the awarding of contracts to family members of heads of departments is not viewed as corrupt practice if the head discloses this interest before the contract is awarded. Similarly, officials found to be living beyond their means cannot be investigated unless there is evidence that some offence has been committed (*Malay Mail Online*, 2015b).<sup>17</sup>

In conclusion, although much progress has been made in the fight against graft by creating a separate institution to prevent and detect graft, its credibility and powers to act are under a shadow because it is housed under the Prime Minister's Office (PMO) and depends on its funds from it. Its officers too can be transferred out without apparent

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<sup>17</sup> See more at: <http://www.themalaymailonline.com/malaysia/article/monitor-ministers-glc-bosses-who-live-beyond-their-means-macc-urged#sthash.0gl55WZF.dpuf>.