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Malaysian Bar**

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**Resolution Adopted at the 76<sup>th</sup> Annual General Meeting of the Malaysian Bar  
(Held Virtually on 19 Mar 2022)**

**Resolution on the Malaysian Anti-Corruption Commission and Its Check and Balance Mechanisms**

**Whereas:**

- (1) Something is amiss in the Malaysian Anti-Corruption Commission (“MACC”), and it is not just about Tan Sri Dato’ Sri Haji Azam b Baki (“Azam Baki”), Chief Commissioner of MACC, but also the workings of the check and balance bodies created by the Malaysian Anti-Corruption Commission Act 2009 (“MACC Act”), being the Anti-Corruption Advisory Board (“ACAB”), Special Committee on Corruption (“SCC”), Complaints Committee (“CC”), Operations Review Panel (“ORP”), and Consultation and Corruption Prevention Panel (“CCPP”).

**CCPP**

- (2) When Prof Dr Edmund Terence Eric Boniface Gomez (“Terence Gomez”), a member of CCPP tried to get the Chairman of the Panel, Tan Sri Borhan Dolah, to meet despite repeated attempts, the Chairman seemed to have decided unilaterally not to call and have a meeting of the Panel. This ultimately led Terence Gomez to tender his resignation on 27 Dec 2021 in disappointment, and express the reasons for his doing so. The resignation letter was not to the Prime Minister, as required, and so the question remains as to whether Terence Gomez’s resignation was accepted or not.
- (3) This case highlights a failure of the Board / Committee / Panel by reason of its inability to function effectively, if the Chairperson seems to have absolute power to decide when to call the meetings of these respective check and balance bodies. This is very wrong, for all decision making should be by the entire membership of the Board / Committee / Panel, and not by just the Chairperson. Chairpersons should call for a meeting at the request of any member of the Board / Committee / Panel, and decide on any matter collectively.
- (4) If the Chairperson of CCPP had called for a meeting of the Panel at the behest of a Panel member, then that Panel may have moved to do the needful, including moving MACC and/or ACAB to act, including to commence an investigation. Remember, the allegation may be a crime and/or even a misconduct under the Public Officers (Conduct and Discipline) Regulations 1993 (P.U. (A) 395/1993).

## ACAB

- (5) On 5 Jan 2022, ACAB was reported to have cleared Azam Baki of any wrongdoing over his purchase of corporate shares. This was the statement of Tan Sri Abu Zahar Ujang (“Abu Zahar”), ACAB’s Chairman (*Free Malaysia Today*, 5 Jan 2022).
- (6) However, on 8 Jan 2022, six ACAB members distanced themselves from the statement made by Abu Zahar.

In a statement on Saturday (Jan 8), the six comprising Tan Sri Ismail Omar, Datuk Seri Azman Ujang, Datuk Seri Akhbar Satar, Datuk Dr Hamzah Kassim, Datuk David Chua Kok Te [*sic*] and Prof Datuk Dr Mohammad Agus Yusoff, said that board members were not satisfied with the explanation provided by Malaysian Anti-Corruption Commission chief Tan Sri Azam Baki, despite Abu Zahar saying otherwise during a recent press conference.

“Abu Zahar said that the Board was satisfied with the explanation given by Azam. He further said there was no crime committed or conflict of interest in the matter.

“We categorically wish to state that the board members at that meeting or at any time thereafter did not express such opinion as Abu Zahar attributed to,” they said.

They added that the comments were Abu Zahar’s personal view and a separate discussion was held on the matter where several proposals were given.

Among the proposals were for the issue to be brought to an independent committee, Parliamentary Special Committee on Corruption or the MACC’s complaints panel.

“However, our views and proposals were not raised at Abu Zahar’s press conference. The ACAB has no investigation power as it is established as an advisory board.” (*The Star Online*, 8 Jan 2022)

- (7) This is another problem — when the Chairperson makes a statement that is not the decision/views of the Board for which he/she is the Chairperson. The six were all ACAB’s members, besides the Chairman.
- (8) There is a problem if the Chairperson of the Board / Committee / Panel acts on his/her own, and not as the Board / Committee / Panel.

## Azam Baki, Malaysia’s Chief Graft-Buster

- (9) The highlighting of the issue began in October 2021, when it was highlighted online by *Edisi Siasat*, and thereafter again on 26 Oct 2021 when journalist and human rights defender Lalitha Kunaratnam wrote an article entitled “Business Ties Among MACC Leadership: How Deep Does It Go?” on the Independent News Service (“INS”)’s website (*Malay Mail*, 14 Jan 2022).

- (10) “On December 9, 2021, *Edisi Khas* posted a shareholding analysis of Gets Global Berhad (formerly known as KBES Berhad) that detailed the equity of its top 30 stakeholders as of March 31, 2016.

“This appeared to show Azam as the owner of over a million shares and his brother, Nasir, as that of 3.7 million more. It also posted further documents that appeared to name Azam as the owner of 2.1 million warrants in Excel Force MSC Berhad.” (*Malay Mail*, 14 Jan 2022)

- (11) “On December 14, 2021 PKR MP Sivarasa Rasiah filed an urgent motion for Parliament to discuss the allegations against Azam but this was rejected by the Speaker.

“Two weeks later, six federal lawmakers proposed an independent investigation by a parliamentary select committee into the controversy.” (*Malay Mail*, 14 Jan 2022)

- (12) “On December 27, Professor Edmund Terrence Gomez announced he was resigning from the MACC Consultation and Corruption Prevention Panel, alleging inaction over the allegations surrounding Azam.

“Gomez said his three emails to panel chairman Borhan Dollah [*sic*] and MACC Anti-Corruption Advisory Board chairman Tan Sri Abu Zahar Nika Ujang failed to elicit any response.” (*Malay Mail*, 14 Jan 2022)

- (13) “On January 5, Azam responded to the allegations at last but did not deny the stock transactions.

“Instead, he claimed the trades had been executed by his brother using Azam’s share-trading account.

“He further claimed he previously explained this to Abu Zahar, who accepted his explanation.” (*Malay Mail*, 14 Jan 2022).

The question remains whether the matter was even raised in ACAB.

- (14) “The Securities Commission clarified today that it found no evidence of proxy trading by Tan Sri Azam Baki as the Malaysian Anti-Corruption Commission chief commissioner was in full control of a share trading account he claimed he let his brother use.

“The clarification was for its statement yesterday in which it said Azam did not breach section 25(4) of the Securities Industry (Central Depositories) Act 1991.

“The commission said this conclusion was because Azam was named as the account holder and had control of the said trading account.” (*Malay Mail*, 19 Jan 2022)

- (15) Given the earlier admission of Azam Baki, the Securities Commission’s decision could give the public the perception that it is alright for third parties to use the trading account of another to buy and sell shares.

- (16) The Parliamentary Select Committee (“PSC”) overseeing agencies in the Prime Minister's Department and the PSC on Finance and Economy have started to act, when it really should have been on the move since October 2021. There is no indication in the Parliament of Malaysia website as to what these PSCs have done or are doing. Reasonably, all proceedings or inquiries of such PSCs should be telecast live and/or open to the public.
- (17) One must not forget that the MACC Act created SCC (chaired by Tan Sri Dato’ Seri Utama Dr Rais Yatim and made up entirely of Parliamentarians), and this is the Committee that advises the Prime Minister and even monitors ACAB. SCC is supposed to be advising the Prime Minister on any aspect of the problem of corruption in Malaysia. Noting that the issue came to light in October, we are unclear as to what SCC has been doing. SCC is not bound by Parliament rules and regulations.

**Public Officers (Conduct and Discipline) Regulations 1993 (P.U. (A) 395/1993)**

- (18) This is the Code of Conduct that applies to all public officers, and Azam Baki is a public officer.
- (19) Article 10 on ownership of property states (emphases added):
- (1) An officer shall, on his appointment to the public service or at any time thereafter as may be required by the Government, **declare in writing** to his Head of Department all properties owned by him or by his spouse or child or held by any person on his behalf or on behalf of his spouse or child.
- ...
- (3) Where, after making a declaration under subregulation (1), an officer or his spouse or child acquires any property, either directly or indirectly, or any property acquired by him or by his spouse or child is disposed of, that officer **shall immediately declare such acquisition or disposal of property to his Head of Department.**
- (20) On the acquisition of new property, there is a need for a **declaration in writing** to the Head of Department. Azam Baki, being the Chief Commissioner of MACC, ie head of MACC, will have to submit his declaration to the Head of Department, who reasonably must be the Prime Minister, and most unlikely to be Abu Zahar, Chairman of ACAB.
- (21) There are also other types of misconduct under section 11 (Maintaining a standard of living beyond emoluments and legitimate private means); section 12 (Borrowing money); section 13 (Serious pecuniary indebtedness); section 14 (Report of serious pecuniary indebtedness); and section 19 (Making public statement). Did Azam Baki violate any of these provisions?
- (22) To date, we have not heard about any Disciplinary Board investigation or inquiry.

- (23) Is the Public Officers (Conduct and Discipline) Regulations 1993 (P.U. (A) 395/1993) ineffective when it comes to Heads of Departments, Commissions, and Agencies of the Government, when their effective Head of Department is the Minister or Prime Minister?
- (24) No one should be above the law, and everyone should be accorded equal treatment.
- (25) The issues surrounding the Chief Commissioner of MACC, and MACC, need speedy closure. Azam Baki must be presumed innocent until proven guilty. For Malaysia, the uncertainties now are certainly unsettling, and may affect the credibility of MACC.
- (26) “Azam had argued that the committee discussions might be considered sub judice as he had filed a defamation suit against a whistleblower who wrote about his shareholdings” (*Free Malaysia Today*, 18 Jan 2022). This is not right, as this allows any alleged perpetrator to escape public inquiries, Parliamentary inquiries, investigations, and disciplinary proceedings by simply filing a suit in court, and claiming *sub judice*. This will hinder the administration of justice, or halt it for a long time, as court cases can even take 10 years to complete, including the appeals.
- (27) The issues concerning MACC, and also its Chief Commissioner are matters that concern all in Malaysia, and it is absurd to suggest that they should not be inquired into or investigated until the court case ends. This is a matter of public interest, for fighting corruption, money laundering and other violations should never be “suspended” by reason of a suit initiated by the alleged perpetrator.
- (28) Public officers and members of the Cabinet shall not be allowed, whilst they are in public office, to sue whistleblowers and human rights defenders that highlight alleged wrongdoings, misconduct and/or abuse of power. If a crime is committed, then there are adequate laws that the Public Prosecutor can use to bring any lawbreakers to justice.
- (29) The fact that Azam Baki is suing a journalist and human rights defender who highlighted possible misconduct or crimes is a bad precedent that may deter others from exposing wrongs of those in public office, including the Cabinet, which may allow criminals to go scot-free. Was this a reason why public officers or others in Malaysia have failed to highlight the wrongs of those in public office — were they worried about retaliation from their “bosses”, and even being sued for millions of ringgit by these “bosses”?

**Therefore, it is hereby resolved that:**

- (A) A Royal Commission of Inquiry (“RCI”) be set up immediately to investigate and conclude whether the allegations made — with regard to the commission of a misconduct and/or crime — against the Chief Commissioner of MACC are baseless or not. The RCI should also look at the workings of the five existing check and balance bodies in MACC;
- (B) Malaysia should investigate and act to ensure that justice is done to restore the credibility of MACC; and
- (C) Public officers, including members of the Cabinet should not be allowed to sue those who highlight alleged misconduct, crimes and/or abuse of power done whilst in public office. Such allegations should be investigated and addressed by the State.