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Topic / Area	Sections 16(a)(A) and 50 of the MACC Act 2009
Case Details	**WA-45-9-03/2019 & WA-45-19-07/2019** **Public Prosecutor** **and** **Rosmah Binti Mansor** **(Accused)**
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Introduction

1. This is the written note in respect of the close of the trial and whether the defence had successfully rebutted the presumption raised against the accused pursuant to **section 50 of the Malaysian Anti-Corruption Commission Malaysia Act 2009 (MACC Act 2009)**.

Factual Background

2. The accused was preferred with three charges for the offences under **section 16(a)(A) of the MACC Act 2009** in respect of a solar hybrid project for 369 rural schools in Sarawak, Malaysia.

3. On 18 February 2021, the Court had given the prosecution's case the maximum evaluation and found that the prosecution had succeeded in proving a *prima facie* case against the accused in respect of all three charges.

4. It was also the Court's finding that presumption under **section 50 of the MACC Act 2009** had raised against the accused and the prosecution had adduced credible evidence to prove every element of offence under all three charges under **section 16(a)(A) of the MACC Act 2009**, which if rebutted, would warrant a conviction.

5. The Court had ordered the accused to enter her defence on all three counts of corruption charges. The accused and Datuk Seri Siti Azizah binti Sheikh Abod (SD2) gave evidence for the defence. On 23 February 2022, the defence closed its case.

Applicable Principle of Law at the Conclusion of a Trial

(i) Presumption

6. It is important to note that presumption under **section 50 of the MACC Act 2009** was raised with effect that the prosecution had adduced credible evidence to prove **every element of offence** under all three charges under **section 16(a)(A) of the MACC Act 2009**, which if rebutted, would warrant the accused to be convicted.

7. The provision of **section 50 of the MACC Act 2009** is as follows:

"EVIDENCE

Presumption in certain offences

*50. (1) Where in any proceedings against any person for an offence under **section 16**, 17, 18, 20, 21, 22 or 23 it is proved that **any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an***

inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

(2) ...

(3) ...

(4) ..."

(emphasis is ours)

(ii) Accused to Rebut Presumption on Balance of Probabilities

8. It has been decided by the Privy Council in ***Public Prosecutor v Yuvaraj***[1] that failure to rebut a statutory presumption will have the consequence of a conviction for the offence charged. Lord Diplock in delivering the judgment stated the followings:

> *"Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constitute the offence with which he is charged are "not proved". **But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist "unless the contrary is proved". In such a case the consequence of finding that that particular fact is "disproved" will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction.** Where this is the consequence of a fact's being "disproved" there can be no grounds in public policy for requiring that exceptional degree of certainty as excludes all reasonable doubt that that fact does not exist. In their Lordships' opinion **the general rule applies in such a case and it is sufficient if the court***

[1] [1969] 2 MLJ 89 – Privy Council

considers that upon the evidence before it it is more likely than not that the fact does not exist. The test is the same as that applied in civil proceedings: <u>the balance of probabilities</u> ...

In the result upon the ***true construction of the Evidence Ordinance and the Prevention of Corruption Act 1961****, there is, in their Lordships' view, no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question reserved for the consideration of the Federal Court, if the expression in the first part of the question: "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning* ***"the burden of rebutting such presumption is discharged if the court considers that on the balance of probabilities the gratification was not paid or given land received corruptly as an inducement or reward as mentioned in section 3 or 4 of the Prevention of Corruption Act, 1961."***

In their Lordships' understanding it is in this sense that the Federal Court intended to answer the question for they purported to follow the decision in the English case of Carr-Briant.

Their Lordships will accordingly report to the Head of Malaysia their opinion that this appeal should be dismissed."

(Emphasis added)

(iii) Statutory Definition of Disproved

9. The definition of *"disproved"* is under in **section 3 of the Evidence Act 1950** as follows:

""disproved": a fact is said to be "disproved" when, after considering the matters before it, the court ***either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist;"***

(Emphasis added)

(iv) Assessment of Defence and Error of Law to Revisit Earlier Findings after Maximum Evaluation

10. In ***Duis Akim & Ors v Public Prosecutor***[2], Richard Malanjum CJ (Saban and Sarawak) decided that when assessing the defence, it is contrary to the principle of maximum evaluation of the evidence adduced at the close of the prosecution's case for a trial judge to revisit earlier findings upon which he called for the defence.

11. His Lordship at paragraphs 38 to 41 stated the followings:

"THE DEFENCE

[38] ***We note that when assessing the defence the learned trial judge surprisingly revisited his earlier findings upon which he called for the defence. Such approach is quite contrary to the principle of maximum evaluation of the evidence adduced at the close of the prosecution's case. Indeed in his judgment the learned trial judge made it very clear that he had conducted a maximum evaluation of the evidence adduced by the prosecution before calling for the defence.***

[39] In Public Prosecutor v Khong Soh [1966] 2 MLJ 137 MacIntyre J said this at p 139:

Having held that a prima facie case had been made out against the respondent, the learned president should have given his reasons for holding why the respondent's evidence had created a reasonable doubt in his mind.

[40] Thus, in the present case the learned trial judge, having given the evidence before him the maximum evaluation before calling for the defence, ***should***

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[2] [2014] 1 MLJ 49 – Federal Court

have therefore focused on whether the defence had cast a reasonable doubt in the prosecution's case and even if it did not, whether as a whole the prosecution had proved its case beyond reasonable doubt before finding the appellants innocent or guilty for the offence as charged.

[41] In the instant case the ***first and second appellants relied on the defence of alibi*** *while the* ***third appellant denied committing the offence as charged*** *and argued that the prosecution had failed to establish the identity of any of the appellants. In fact in their petitions of appeal and in the submissions of their learned counsel before us, the same issues were canvassed."*

(Emphasis added)

12. The decision of both ***Yuvaraj*** and ***Akim*** was recently re-affirmed by the Federal Court in ***Ariff Arhannan bin Che Udin v Public Prosecutor***[3]. Abdul Rahman Sebli FCJ in paragraphs 32 and 33 referred to both cases and stated the followings:

"[32] It has been decided by the Privy Council in Public Prosecutor v Yuvaraj [1969] 2 MLJ 89; [1968] 1 LNS 116, albeit by way of obiter that failure to rebut a statutory presumption (in this case the presumption of trafficking) will have the consequence of a conviction for the offence charged. This is what Lord Diplock said delivering the judgment of the board:

Generally speaking, no onus lies upon a defendant in criminal proceedings to prove or disprove any fact: it is sufficient for his acquittal if any of the facts which if they existed would constitute the offence with which he is charged are 'not proved'. But exceptionally, as in the present case, an enactment creating an offence expressly provides that if other facts are proved, a particular fact, the existence of which is a necessary factual ingredient of the offence, shall be presumed or deemed to exist 'unless the contrary is proved'. In such a case the consequence of

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[3] [2022] 3 MLJ 157 – Federal Court

finding that that particular fact is 'disproved' will be an acquittal, whereas the absence of such a finding will have the consequence of a conviction. (Emphasis added.)

[33] The appellant could only escape liability if he succeeded in raising a reasonable doubt in the prosecution case on any other essential element of the charge such as the nature of the drug, the weight of the drug or the identity of the drug. He could even raise a reasonable doubt on his identification. The trial court must however be mindful not to 'revisit' its earlier findings at the close of the prosecution case (see Duis Akim & Ors v Public Prosecutor [2014] 1 MLJ) ..."

13. In ***Md Zainudin bin Raujan v Public Prosecutor***[4], the Federal Court was agreeable to the findings of the trial judge and the Court of Appeal that **mere denial is insufficient to cast a reasonable doubt on the prosecution's case.** Hasan Lah FCJ in paragraph 62 stated this:

"[62] The Court of Appeal agreed with the learned trial judge that the totality of ***the evidence put forth by the appellant was a mere denial and was insufficient to cast a reasonable doubt on the prosecution's case.*** *The appellant also failed to rebut the statutory presumption of trafficking invoked against him. On the evidence before us we are in agreement with the findings of the learned trial judge and the Court of Appeal judges that the defence has failed to cast a reasonable doubt on the prosecution's case."*

14. In ***Losali v Public Prosecutor***[5], the Court of Appeal quoted a few case laws on how the Court would deal with evidence which is deemed as bare denial. Abdul Malik Ishak JCA held as follows:

"[54] The learned trial judge rightly held that the defence of the appellant was a bare denial. ***It is trite law that the defence of bare denial is no defence.***

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[4] [2013] 3 MLJ 773 – Federal Court
[5] [2011] 4 MLJ 694 – Court of Appeal

What this amounts to is this. That the appellant did not offer any explanation to the two charges and merely denied the evidence advanced by the prosecution. That was indeed a perilous course to undertake.

[55] ***The bare denial cannot in law raise a reasonable doubt and the appellant must be convicted for both the charges.*** *Raja Azlan Shah CJ (Malaya) (as His Majesty then was) in DA Duncan v Public Prosecutor [1980] 2 MLJ 195, had this to say in regard to the defence of simple denial:*

> *The defence was, in effect, a simple denial of the evidence connecting the appellant with the four boxes. We cannot see any plausible ground for saying that the four boxes were not his. In the circumstances of the prosecution evidence, the High Court came, in our view, to the correct conclusion that this denial did not cast a doubt on the prosecution case against the appellant.*

[56] In Public Prosecutor v Nur Hassan bin Salip Hashim & Anor [1993] 2 CLJ 551, Ian HC Chin JC had this to say at p 556 of the report:

> ***The evidence of the second accused was only one of denial; denial of having ever seen the orange plastic bag containing the cannabis, denial of having been together with the first accused, denial of sitting on the same chair together with the first accused and denial of being found immediately next to the orange plastic bag containing the cannabis. All these evidence of the second accused were offered in contradiction to the evidence of the prosecution. The denials have not in any way created any doubt, on a balance of probabilities, in the case of the prosecution.*** *Neither were the presumptions of possession or knowledge rebutted. Nothing was offered by the evidence of the second accused by way of rebutting the presumption of trafficking arising from the fact that the cannabis weighed 311.4g. The second accused had also therefore failed to rebut the presumption of trafficking.*

[57] This court speaking through Shaik Daud JCA in Andy bin Bagindah v Public Prosecutor [2000] 3 MLJ 644, (CA), made adverse comments about the efficacy of the defence of mere denial in these erudite terms (see p 647):

> *In the present case, the appellant's defence was a mere denial and nothing more. In Mohamad Radhi's case the qualifying factor was that, 'unless the evidence in a particular case does not obviously so warrant '. The defence was not a mere denial but that he was in possession of the bag in which the offending drug was found but that he was an innocent and a momentary carrier and called several witnesses in support of that defence. The trial judge simply brushed aside all these and held that since the accused had failed to rebut the presumption of possession under s 37(d) of the Act, the presumption under s 37(da) of the Act had also not been rebutted. As can be seen in the light of the defence therein, the trial judge failed to carry out a separate exercise to consider whether the defence had also rebutted the presumption of trafficking.*
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> *In the present case, the appellant had denied possession and the learned judge found that after considering the whole evidence, including that of the appellant, he was satisfied that the prosecution had proved their case beyond a reasonable doubt and the appellant had failed to raise any doubt, we find no reason to disagree with the learned judge. Therefore, the circumstances in the present case did not warrant the learned judge to undertake a separate exercise.*

[58] Kamalanathan Ratnam J in Public Prosecutor v Low Soo Song [2004] 3 AMR 320, at p 333 ***had to reckon with the defence of mere denial and he did not give much mileage to such a defence."***

15. In ***PP v Mohd Farid bin Mohd Sukis***[6], Augustine Paul J ruled that in a case where statutory presumption was raised, the legal burden is on the accused the rebut

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[6] [2002] 3 MLJ 401 – High Court

statutory presumption. The defence has to call material witnesses to negate the presumed fact and failure to do so warrant the drawing of an adverse inference. Augustine J said the followings:

> *"Generally, in a criminal trial, there is no burden on an accused to call witnesses (see Goh Ah Yew v PP [1949] MLJ 150; Abu Bakar v R [1963] MLJ 288; Tan Foo Su v PP [1967] 2 MLJ 19). Thus, no adverse inference can be drawn against the defence for a failure to call witnesses.* ***However, such an inference may be drawn where there is an onus on the accused to prove an issue (see Baharom v PP [1960] MLJ 249). An onus may be placed on the accused in certain instances by statutory presumptions. The legal burden is then on the accused to negate the presumed fact. In order to discharge the burden, there will be an onus on the defence to call material witnesses (see Liew Siew & Anor v PP [1969] 2 MLJ 232). Failure to do so will warrant the drawing of an adverse inference. In this case, a presumption of trafficking has been drawn against the first accused. The onus is on him to prove, on the balance of probabilities, that he was not trafficking in the drugs. An adverse inference would be drawn against him for failure to call material witnesses on this issue."***
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> (Emphasis added)

16. Therefore, the duty of the Court at the conclusion of the trial is to determine whether the evidence given by the defence had cast a **reasonable doubt** on the prosecution's case.

Three Charges under section 16(a)(A) of the MACC Act 2009

17. To recap, the accused was preferred with three (3) charges under **section 16(a)(A) of the MACC Act 2009** as follows:

Amended Charge No.1

Bahawa kamu, di antara bulan Januari dan April 2016, di Lygon Café, G-24, Ground Floor, Sunway Putra Mall, 100, Jalan Putra, Chow Kit, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu melalui Rizal Bin Mansor (No. K/P: 740809-06-5065) suatu suapan, iaitu, wang sejumlah RM187,500,000.00 yang merupakan 15% daripada nilai kontrak daripada Saidi Bin Abang Samsudin (No. K/P: 590503-13-5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn. Bhd. (No. Syarikat: 138865-H), sebagai dorongan untuk melakukan suatu perkara yang dicadangkan, iaitu, membantu Jepak Holdings Sdn. Bhd. mendapatkan "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel Bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Amended Charge No.2

Bahawa kamu, pada 07 September 2017, di No. 11, Jalan Langgak Duta, Taman Duta, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang berjumlah RM 1,500,000.00 daripada Saidi Bin Abang Samsudin yang merupakan Pengarah Urusan Jepak Holdings Sdn. Bhd., sebagai suatu upah bagi diri kamu kerana telah melakukan suatu perkara, iaitu, membantu Jepak Holdings Sdn. Bhd. mendapatkan "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel Bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM 1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah perenggan 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah subseksyen 24(1) Akta yang sama.

Amended Charge No.3 in Criminal Case No. WA-45-19-07/2019

"Bahawa kamu, pada 20 Disember 2016, bertempat di kediaman Seri Perdana, Persiaran Seri Perdana, Presint 10, 62250 Putrajaya, dalam Wilayah Persekutuan Putrajaya, telah secara rasuah menerima suatu suapan untuk diri kamu, iaitu wang tunai berjumlah RM5,000,000.00 daripada Saidi Bin Abang Samsuddin (No K/P: 590503-13-5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn Bhd (No Syarikat: 138865-H) melalui Rizal Bin Mansor (No K/P: 740809-06-5065) sebagai upah kerana telah membantu Jepak Holdings Sdn Bhd mendapatkan projek yang dikenali sebagai "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/ Diesel bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama"

The Prosecution's Case

18. It is the prosecution's case that the accused being the wife of the former Prime Minister and having no official position in the public sector, wielded considerable influence because of her overbearing nature. This placed the accused in a position where she was able to influence the decisions in the Ministry of Education.

19. JEPAK Holdings Sdn Bhd is a private limited company and it is the prosecution's case that at all material time, Saidi Abang Samsudin (PW17) was the Managing Director and the majority shareholder of Jepak Holdings Sdn Bhd. Saidi Abang PW17 wanted to obtain work from the Federal Government for his company. Specifically, he wanted an award of contract to carry out a solar project purportedly to benefit some 369 rural areas from the Ministry of Education with his partner Rayyan Radzwill Abdullah (PW16).

20. According to the prosecution, both PW16 and PW17 approached Mahdzir Khalid (PW5), the Minister of Education for the Federation of Malaysia at that material time where meeting took place between them. This was unfruitful and unsuccessful to PW17 which have led to both PW16 and PW17 approaching Aazmey Abu Talib, whom they perceived as close to the accused's husband to obtain support for their request for the said contract. This has led PW17 to obtain a minute from the accused's husband on his letter of application supporting it but this did not expedite the matters with the Ministry of Education. This then led both PW16 and PW17 to approach the accused through her special officer, Rizal Mansor (PW21).

21. PW21 arranged a meeting between PW16, PW17 and the accused. The meeting took place between January and April 2016 at the accused's private residence at Jalan Langgak Duta, Kuala Lumpur. In requiring the accused's assurance that the accused would help JEPAK Holdings, PW17 was prepared to offer the accused a large sum of money in return.

22. During the prosecution's case, the prosecution had adduced credible documentary evidence as well as the testimonies of 23 prosecution witnesses which led to the evidence that the accused solicited bribe and received gratification as alleged in the charges preferred against her.

23. The Court had treated the evidence of PW5, PW16, PW17 and PW21 with caution. At the close of the prosecution's case the Court, on 18 February 2021, the Court had given the prosecution's case the maximum evaluation and found that the prosecution had succeeded in proving a *prima facie* case against the accused in respect of all three charges.

The Elements of Offence to be Proven under Section 16(a)(A) of the MACC Act 2009

24. The provision of under **section 16(a)(A) of the MACC Act 2009** is as follows:

> *"Offence of accepting gratification*
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> *16. Any person who by himself, or by or in conjunction with any other person—*
> *(a) corruptly solicits or receives or agrees to receive for himself or for any other person; or*
> *...*
> *any gratification as an inducement to or a reward for, or otherwise on account of—*
> *(A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place;*
> *...*
> *commits an offence."*

25. Under **section 16(a)(A) of the MACC Act 2009**, the elements of offence are first corrupt solicitation of gratification on the part of the accused; secondly, the receipt of gratification by the accused as a reward for helping Jepak Holdings Sdn Bhd to get the solar project by direct negotiation was for herself or any other person; and thirdly, corrupt intention.

First & Second Elements: Corrupt Solicitation of Gratification to Help Jepak in Getting the Solar Project

26. The term *"corrupt"* is not defined under the **MACC Act 2009** as well as its predecessor the **Anti-Corruption Act 1997** and the **Prevention of Corruption Act 1961**. As such, we would resort to definition established in case laws.

27. The late Royal Highness in the case of ***Public Prosecutor v Datuk Haji Harun Bin Haji Idris (No.2)***[7] at page 22 explained the term *"corrupt"* as follows:

> ***"Corrupt" means "doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions."*** *(see Lim Kheng Kooi v Reg [1957] MLJ 199);* ***"purposely doing an act which the law forbids"*** *(see R v Smith [1960] 1 All ER 256).*
>
> ***"Corrupt" is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section.*** *The real point is whether there is soliciting a political donation with a corrupt intention.*
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> ***The manner in which the payments were made is a relevant consideration in the present case. It is in evidence that the bank was asked to make them in cash.*** *Smorthwaite said that he asked Peter Lim to find out how such payment should be made, and his answer was in cash, no receipt. That is substantiated by the evidence of payments in cash. The bank could, and it is very much in their power, make the payment by way of cheque, or for that matter in one lump sum in cash. But they were coerced to make it in cash, and strangely enough, in two payments. This strange behaviour necessitated the bank in opening the New Building — Property Suspense Account for their accounting purposes.*
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> ***Then, the "request" for the so-called donation.*** *That is another telling point against the accused.* ***In ordinary circumstances, the presentation of a donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses; not in some "back alley". I am quite sure that the donor wants to be present to show that he is participating in whatever worthy cause***

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[7] [1977] 1 MLJ 15 – High Court

the donee is undertaking, be it politics, charity, education or welfare. The donation is then properly presented and properly acknowledged. In the present case, the donation was "presented" in a very strange way." *It was made in two substantial payments, one at the airport on the eve of the accused's departure overseas, and the other, literally from a locked tin-box kept at the bank at the accused's disposal. Granted that the accused could receive a cash donation, the question arises as to why did he not take the whole lot at one time and have it deposited in the Special Fund Account at the Mercantile Bank? Why on two separate occasions, and an interval of 7 months?* ***Is not such conduct contrary to human instinct and human nature, unless there is the overwhelming stimulus of guilt? It does appear somewhat curious and not a little disquieting that a donation should be demanded and accepted in this manner; it is incomprehensible in its motivation, unless there is a consciousness of guilt.*** *The manner how the donation was demanded and received, in my view, lends credence to the prosecution story that it was being solicited with a corrupt mind. If the defence wish to say that the two payments were innocently demanded and received, it is for the accused to explain them.* ***It is not the law that the prosecution has to eliminate all possible defences or circumstances which may exonerate the accused. Of course I am not unmindful of the onus on the prosecution to establish a prima facie case in the first instance, and that it is not enough for them to establish the facts and then to throw the onus on the accused to prove his innocence.***

The substratum of the prosecution case is galling; it discloses a trail of surreptitious cash payments demanded and received, long and wide enough to sustain an inference that the donation was solicited with a corrupt mind."

28. Reference is also made to the Court of Appeal case of ***PP v Dato' Saidin Thamby***[8], where the Justice of the Court of Appeal, Abdul Malik Ishak, held as follows:

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[8] [2012] 3 MLJ 476 – Court of Appeal

"[59] The word "corruptly" is not defined in the PCA. Shepherd J in Lim Kheng Kooi & Anor v. Reg [1957] 23 MLJ 199, a case that was decided under the Prevention of Corruption Ordinance 1950, quoted with approval the definition of the word "corruptly" from the case of Bradford Election Petition 19 L. T. 723 (see Lim Kheng Kooi & Anor v. Reg (supra) at p 205):

"But if the money is given after the man has voted, you must show that that was done corruptly. Now, what is the exact meaning of that word 'corruptly'. It is difficult to tell; but I am satisfied ***it means a thing done with an evil mind - done with an evil intention; and except there be an evil mind or an evil intention accompanying the act it is not corruptly done****. And thus when the word* ***'corruptly'*** *is used it means* ***an act done by a man knowing that he is doing what is wrong, and doing so with evil feelings and evil intentions.*** *I think it may be safely said that that is the meaning of the word 'corruptly'."*

[60] Now, whether a gratification is being received corruptly is purely a question of intention. To a question whether the receipt was corrupt?, Shankar J in Public Prosecutor v. You Kong Lai [1984] 1 MLRH 274;[1985] 1 MLJ 298; [1984] 2 CLJ 429 at 301 answered it in this way: "Yes, since its avowed purpose was for bribery".

[61] Edgar Joseph Jr J (later SCJ) in Choong Oi Choo v. Public Prosecutor; Public Prosecutor v. Choong Oi Choo[1986] 1 MLRH 46; [1986] 2 CLJ 231 when faced with the question of whether a bag of fruits containing five apples and six oranges given by the accused to the complainant's wife at the complainant's house when the complainant was not at ome, was given corruptly or innocently held that the fruits were not offered with a corrupt intention since they might well be intended for the complainant's children (as the accused had said all along). His Lordship also held that it was a form of socially accepted conduct even though the complainant perceived it as an inducement. At p 240, his Lordship had this to say:

"46. We recognise a corrupt gift by examining its purpose. It is the intended function of a gift which determines whether it is corrupt or innocent. This is the reason why what may be given as a bribe may be accepted as an innocent present and vice versa: Regina v. Andrews-Weatherfoil Limited [1972] 1 WLR 118."

[62] According to the case of ***Public Prosecutor v. Mohamed Ali bin Mohamed Amin & Anor [1979] 2 MLJ 57****, it is solely a question of fact to determine whether or not an acceptance of a gratification amounts to a "corrupt" acceptance punishable under the PCA.* ***Everything falls to be decided by looking at the proved facts and the circumstances of the case.***

...

[65] Mohamed Azmi J (later SCJ) in ***Ahmad Shah bin Hashim v. Public Prosecutor[1979] 1 MLRA 213; [1980]*** *1 MLJ 77, at p 80 also considered* ***the manner in which the gratification was to be paid as a crucial factor to infer corrupt intention on the part of the wrong doer: "...*** *the facts that the soliciting and subsequent agreement to accept for himself the 1 percent commission were done corruptly are supported by the* ***manner in which the gratification was to be paid".***"

29. Besides, reference is made to the case of ***Public Prosecutor v Jamil bin Mahmod & Anor***[9] where the Learned High Court Judge, Jeffrey Tan held at page 689-691 as follows:

"The key word in both ss 3 and 4 is 'corruptly'. 'When used in a statute, this term, generally imports a wrongful design to acquire some pecuniary or other advantage' (Black's Law Dictionary (6th Ed)). **'The word "corruptly" ... sounds the keynote to the conduct ... the giving of a gift or consideration, not bona fide but mala fide, and designedly, wholly or partially, for the**

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[9] [1998] 4 MLJ 681 – High Court

purpose of bringing about the effect forbidden by the section': R v Gross [1946] OR 1 at p 9, per Roach JA. **... it means an act by one man knowing that he is doing what is wrong, and knowing so with evil feelings and evil intentions** (Lim Kheng Kooi & Anor v R [1957] MLJ 199 at p 205, per Shepherd J), an act which the law forbids as tending to corrupt (Wellburn (1979) 69 Cr App R 254). **But what is or is not 'corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section:** PP v Datuk Haji Harun bin Haji Idris (No 2) [1977] 1 MLJ 15 at p 22, per Raja Azlan Shah FJ (as HRH then was)."

30. The term *"gratification"* is defined under **section 3 of the MACC Act 2009** as follows:

> *"3. Interpretation*
>
> *"gratification" means —*
>
> *(a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;*
>
> *(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;*
>
> *(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;*
>
> *(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;*
>
> *(e) any forbearance to demand any money or money's worth or valuable thing;*

(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f);"

31. Gratification was also explained by the Court of Appeal, Abdul Malik Ishak JCA in the case of ***Dato' Saidin Thamby***[10] at paragraph 79 as follows:

"[79] In any corruption trial, the word "gratification" is considered a bad word. A distasteful word. The "New Oxford English-Malay Dictionary" at p 351 defines the word "gratifying" as "memuaskan hati". While "Oxford Fajar Advanced Learner's English-Malay Dictionary by AS Hornby" defines the word "gratification" at p 805 to mean "gratifying or being gratified; state of being pleased or satisfied; puas hati/gembira atau dibuat menjadi puas hati/gembira; keadaan gembira atau puas hati, the gratification of knowing one's plans have succeded, rasa puas hati mengetahui bahawa rancangan telah berjaya, sexual gratification, kepuasan seks, thing that gives one pleasure or satisfaction: benda yang memberi kegembiraan atau kepuasan hati kepada, one of the few gratifications of an otherwise boring job: salah satu daripada kepuasan dari pekerjaan yang jika tidak membosankan". It must be noted that these two dictionaries do not state that the word "gratification" to mean "bribe".

32. Reference is also made to the case of ***Jamil bin Mahmod & Anor***[11] where the Jeffrey Tan J held at page 689-691 as follows:

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[10] Supra
[11] Supra

"The Act does not define the word 'solicit' or 'corruptly'. The ordinary dictionary meaning of 'solicit' is 'ask repeatedly or earnestly for or seek or invite' (The Concise Oxford Dictionary (9th Ed)). Indeed, in PP v You Kong Lai [1985] 1 MLJ 298, Shankar J (as he then was) likened 'solicit' in s 3 to 'invite'. When used in the context of solicitation of a bribe, it means 'asking, enticing, or requesting'. It is a word which implies a serious request, but 'requires no particular degree of importunity, entreaty, imploration or supplication' (Black's Law Dictionary (6th Ed), citing People v Phillips 70 Cal App 2d 449).

...

In a trial of a s 3(a) offence, it is not necessary for the prosecution to prove that the gratification in fact induced the act or forbearance (PP v You Kong Lai), or that the accused had the power to perform the act or forbearance stipulated in the charge (Abd Khalid bin Abd Hamid v PP [1995] 1 MLJ 692). But it was necessary for the prosecution to prove that the first respondent on 11 April 1996 corruptly solicited for himself a gratification of RM300 as an inducement or reward for or on account of him not issuing a summons to SP5 for the erection of an awning without municipal approval."

33. In the case of ***Datuk Haji Harun Bin Haji Idris (No.2)***[12], Raja Azlan Shah (as the late Royal Highness then was) held at paragraph 20 as follows:

"The word "solicit" is a common English word, and it means, in its simplified form, "to ask". In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as "to call for", "to make request", "to petition", "to entreat", "to persuade", "to prefer a request". — see Sweeney v Astle [1923] NZLR 1198 1202. Thus when a businessman advertises his goods, we say he is soliciting customers. He wants to sell his goods, and he solicits people to buy them. Again, such a businessman goes to a person whom he selects to try to induce him to buy, we say he is soliciting orders. To solicit then, means to ask for or invite offers. Thus to solicit an order for goods means merely to ask for or invite offers for the purchase of those goods. A statement therefore, the real and operative purpose

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[12] [1977] 1 MLJ 15-High Court

of which is to induce somebody to make such offers, amounts to asking for or inviting such offers. But to constitute soliciting, the request or invitation must reach the person solicited. Now, coming to our point, when a politician makes a statement to someone in an appropriate circumstance, to the effect "what are your views on political donations to party funds?", the real and operative purpose of which is to induce that person to ask for or invite offers for making a political donation to party funds, we say he is soliciting a political donation.

Soliciting does not cease to be soliciting if it is received by the person solicited not from the person who solicits, but by other means of transmission or communication, such as a letter, circular, newspaper advertisement, telephone or a message. To take the illustration further, if the politician enlists the services of his subordinate or some third person or persons to do the act of soliciting for political donation, that is nonetheless soliciting for the same by him. It is by the instrumentality of his subordinate or the third person that the act was done for him."

(emphasis added)

34. Applying the above case laws to the present case, we are of the humble view that in determining whether such solicitation and receipt of the sum of money from PW17 would amount to an act done corruptly, reference has to be made to the facts and circumstances of the present case as corruptly would mean a thing done with an evil mind or evil intention accompanying the said act.

35. It is the prosecution's case that PW17 made an offer of political donation to the accused's husband as a gesture of gratitude for supporting the application for the solar project. Of particular importance is the fact that the accused does not have any position nor responsibility in any political party at that material time.

36. It is the prosecution's case that the accused knew that the so-called *'political donation'* was meant as a bribe for herself in contingent with her using her influence leading to Jepak Holdings Sdn Bhd being awarded with the contract by the Ministry of Education.

37. The manner of payment should be taken into consideration. On the present case, no clean and clear transactions took place to prove political donation was made in favour of the accused's husband.

38. There was not any evidence that money was taken by PW21 nor were there any documentary evidence such as receipts suggesting that the said money was meant as a political donation for the accused's husband. One would be inclined to identify such transaction as a *"back alley"* transaction.

39. Looking at the circumstances of the case, it would be suspicious to pass large sum of cash in large bags to the accused for her husband when PW17 could have met with the accused's husband to pass the said money if it was actually to serve as a political donation.

40. Furthermore, evidence suggests that the said sum of RM187.5 million was a 15% from the value of the said Solar and Genset contract that was awarded by the Ministry of Education as a result of the accused's overbearing influence in the work of the government sector.

41. In addition, it is the prosecution's case that one Lawrence Tee prepared a sham agreement between the accused and PW17 to this effect but the said agreement could not be retrieved nor found till to this present day.

42. Besides, it is to be noted that the accused's version that the sum of money passed to her as political donations made for the benefit of the accused's husband is also uncorroborated on the grounds that DW2 had testified having no knowledge of the same.

[Please refer to paragraphs 28 and 29 of the witness statement].

43. it is the defence of the accused that the gratification was *'political donation'* derived from the idea of both PW16 and PW17. According to the accused, it was the testimonies of both PW16 and PW17 that the said political donation was meant for the accused's husband, Dato' Sri Mohd Najib Tun Hj Abdul Razak, as a

'gesture of gratitude' for supporting the application by Jepak, and to ensure the victory of Barisan Nasional (BN) during the General Election (GE-14).

[Please refer to paragraph 16 of the witness statement (**D174**); Notes of Proceedings date 14 September 2020; and the Prosecution's Opening Statement (**P5**)].

44. The defence submitted that it was the testimony of PW17 that the purpose and idea to make the purported political donation to the accused where PW17 consistently affirmed that it was for UMNO and Barisan Nasional. This was the collective idea of both PW16 and PW17. Cross examination of PW21 would also shed light to the fact that the reason he communicated with both PW16 and PW17 was only to get the accused involved since her husband is very busy. It is the position of the defence that there are no elements of *"corrupt intention"* involved.

45. The defence argued that this was political donation for the accused's husband for his political career. No evidence was put forward by the defence to support the fact that this was only political donation that was meant to her husband. The accused had relied on the evidences and the testimonies of both PW16 and PW17 to argue that there was no solicitation on the part of the accused. However, it is the prosecution's evidence that the payment was contingent to the accused using her influence to obtain the solar hybrid contract for Jepak and the money was meant as a bribe to the accused.

46. Furthermore, the accused's evidence was not corroborated with that of her husband, who was supposed to be the beneficiary of the said sum of money being the so-called political donations.

47. Considering all the facts and circumstances of the case, we are of the humble opinion that the said sum of monies as per the three charges preferred against the accused was solicited and received with corrupt intent. Political donation was just a guise used by PW17 when in reality it was the payment of gratification done for the purposes of benefiting the accused.

48. The prosecution had proved that PW16 and PW17 met the accused at her private residence. The meeting was arranged through her special officer PW21. At the meeting, PW17 offered the accused to pay a "political fnd: for the good work done by the accused's husband as the Prime Minister. The accused responded that nowadays politics requires a lot of money. The meeting was a short one. After PW16 and PW17 left the residence, the accused sent PW21 post haste after them to convey the price that to be paid for her to use her influence to assist Jepak to obtain the solar project.

49. On the other hand, the prosecution had proved that PW21 implicated the accused in the solicitation of the money. *"Donation"*, whether with the prefix *"political"* or whatsoever other prefix, falls clearly within the definition of "gratification" under **section 3 of the MACC Act 2009**. The Court had treated the evidence of PW21 with caution. The Court had taken note that PW21 was acquitted and discharged of all the offences with which he was charged. There is no sword of Damocles hanging over his head. It would have been very different if the prosecution had obtained a discharge not amounting to an acquittal against him. In that event, he would have a purpose in giving evidence to exculpate himself and to inculpate the accused. But it is not the case here. His evidence was corroborated in material particulars which are as follows:

(i) PW3, Maybank cashier, confirmed that PW7 withdrew RM5 million in cash on 20th December 2016. PW8, Razak Othman (PW17's friend) supported this;

(ii) PW9, Dato' Ahmed Farriq, confirmed that PW21 delivered two bags to Seri Perdana on the same day 20th December 2016;

(iii) PW3 from Maybank testified that PW17 withdew RM1.5 million in cash on 7th September 2017.

(iv) PW17 and PW4 (PW17's driver) delivered the money to the accused private residence at Jalan Langgak Duta. The two bags in which the cash was kept could be seen in a photograph of the accused's residence at Jalan Langgak Duta.

(v) The RM5 million was paid a short while after the Letter of Award was issued by the Ministry of Education. The RM1.5 million was paid after the Ministry of Education released a series of progress payments, totalling RM63 million to Jepak. Exhibit P59A Whatsapp exchanges between PW21 and PS 16 supported this.

(vi) PW20 Lawrence Tee was tasked with the preparation of a consultancy agreement. The consultancy agreement was a sham or cloak to disguise the payment of the gratification to the accused. According to PW20, the amount of consultancy fee payable was more than 10% of the RM1.25 billion. This tallies with the 12% agreed to between the accused and PW17.

(vii) The payments of RM5 million and RM1.5 million is an irresistible inference that these payments would not have been made by PW17 unless there had been a demand for gratification.

(viii) PW6, Tan Sri Madinah, confirmed that the accused instructed her to expedite Jepak's solar project application. The instruction came at a time when PW16 and PW17 were having trouble persuading PW5 to approve the solar project application. Her evidence corroborates PW21 that the accused showed a special interest in Jepak's contract and she used her influence to assist Jepak.

(ix) PW5 testified that the accused spoke to him on two occasions to expedite the award of the solar project o Jepak. The accused asked PW5 not to delay the matter and to comply with the instructions of Dato' Sri Najid in respect of the solar project.

(x) The prosecution had also proved that the accused displayed an interest in the Jepak's contract. The accused had the propensity to deal with senior members of the executive and the accused was aware of the approvals given by her husband.

(xi) PW12, Dato' Seri Alias, was asked by the accused to expedite matters relating to execution of solar project with Jepak. This was done at the time when Jepak was having trouble securing payments from the Ministry of Education. The

irresistible inference is that the accused's interest was spurred by her expectation of receiving gratification from PW17.

(xii) The Whatsapp messages between PW21 and PW16 which confirmed the facts that PW17 delivered RM5 million cash to PW20 at Pavilion; PW21 delivered the money to the accused because PW20 refused to accept it;

(xiii) Circumstances and corroborative evidence that the accused agreed to meet PW17; the accused did not eject PW16 and PW17 upon being informed that the sum of RM1.5 million was being delivered; the accused uttered the sound *"Hmm"* which is consonant with acceptance of gratification that was delivered to her.

Third Element: Corrupt Intention

50. The corrupt intention of this case had been established with inference from all the factual circumstances of the case, including the conduct of the accused at the material time.

51. The prosecution had successful proved several facts that the accused had a corrupt intention. First was the evidence of her conversations with PW5, PW6 and PW12 to show her personal interest.

52. Secondly, the evidence of PW21 that she made him call PW6 to follow up on the progress of the solar project. At times, she made PW21 placed the call on speaker so that she could listen to the conversation. There is an irresistible inference that her conduct in this instance is consistent with the accused being the beneficiary of the percentage solicited from PW16 and PW17 and the RM6.5 million received by her.

53. Thirdly, if it was a genuine political donation, it would be reasonable to expect the ultimate beneficiary to either provide a receipt for the payments made or at least a letter thanking Jepak for its generosity.

54. Fourthly, it is improbable that the offer to pay was an offer of a political donation as it is inconsistent with a donation being forming a percentage of a contract sum.

55. Fifthly, the evidence of PW16 negates there being any question of a political donation. PW16 testified that the purpose of the so-called political donation was to obtain the solar project.

56. Lastly, the conduct of the accused in taking steps to have an agreement drawn up to disguise the transaction of receiving gratification for herself in helping Jepak to secure the solar project.

57. The prosecution had successfully all the elements of the charges against accused.

58. To recap the very important point, the prosecution's case is that the accused solicited gratification through PW21 and presumption under ***section 50 of the MACC Act 2009*** had been successfully raised.

Defence

59. The accused had failed to adduce CCTV footage to prove her version of story nor did she call any alibi to support her defence. Merely denying the allegations raised against the accused does not avail her of her burden to rebut the presumption raised against the accused nor cast a reasonable doubt on the prosecution's case.

60. There is no evidence nor explanation provided by the accused to rebut the presumption raised against her. This is clearly a bare denial on the part of the accused as it defies logic to pass her large sum of cash only to be passed to her husband who was busy. The defence also have reiterated that as the wife of the then Prime Minister she was never involved in her husband's work. The defence had also not denied being involved for the purpose of obtaining the *"political donation"* for her husband.

61. The defence presented of a bare story of innocence on part of the accused. The accused merely denied her involvement nor knowledge in respect of the

preparation of the said agreement. This is insufficient to rebut the presumption invoked against the accused. Though the accused does not bear the burden to prove her innocence by adducing evidence to the same, the onus still lies on her to rebut the said presumption on a balance of probabilities, failing which the conviction would be upheld.

62. The accused also did not testify on whether her husband was informed of the said donation that was to be meant for him and not for her benefit. In the event the accused informed or notified her husband that the said sum was left by PW17 for his political career then it would not lead to the evidence that it was done corruptly. The husband did not testify in Court to prove nor explain this fact and the case in respect of the political donation was based solely on the explanation of the accused. As such, we are of the humble opinion that her uncorroborated evidence did not discharge her the burden of rebutting the presumption invoked against her.

63. In addition, the accused have also failed to produce any receipt obtained from the political organizations to prove that the said sum of money has been donated into their account. This lack of explanation on the part of the accused added with the fact that this was uncorroborated by the testimony of her husband and other evidences would amount to mere denial. This is not sufficient to rebut the presumption invoked against her nor cast a real and reasonable doubt on the prosecution's case.

64. The evidence of DW2 is of less assistance to the defence's case as it was more on attacking the character of PW21 whose evidence had already been treated with caution by this Court.

Conclusion

65. In ***Md Zainudin bin Raujan***[13], the Federal Court was agreeable to the findings of the trial judge and the Court of Appeal that **mere denial is insufficient to cast a reasonable doubt on the prosecution's case.**

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[13] Supra

66. There are cogent evidences, both direct and circumstantial evidences showing that PW21 was used for the purposes of soliciting money for her benefit. Besides, her allegation of PW21 using her name and position is also baseless as discussed earlier.

67. As such, we are of the humble opinion that the accused has failed to cast a reasonable doubt nor rebut the presumption invoked against her.

For YA's considerations and further instructions, please.

Prepared by:

Research Unit

Kuala Lumpur High Court

Date of task given	**24 June 2022**
Date of submission	**29 June 2022**
Topic / Area	**Section 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009.**
Case Details	**1.WA-45-9-03/2019** **2.WA-45-19-07/2019** **Public Prosecutor** **v.** **Rosmah Binti Mansor** [NRIC No.: 511210055558] **(Accused)**
Prepared for	YA Tuan Mohamed Zaini Bin Mazlan

Introduction

1. This write up is prepared in respect of the elements for the offences under **section 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009** (hereinafter referred to as the "**MACC Act 2009**") which the accused is currently being preferred against.

2. It is to be noted that this juncture that both parties have concluded their case and this case is currently fixed for decision before this Honourable Court on 7 July 2022.

Factual Background

3. In the present case, the accused, the wife of the former Prime Minister, Dato' Sri Haji Mohd Najib bin Tun Haji Abdul Razak is preferred with three (3)

charges for the offences under **section 16(a)(A) of the Malaysian Anti-Corruption Commission Act 2009** (hereinafter referred to as the **MACC Act 2009**) in respect of the solar hybrid project for 369 rural schools in Sarawak, Malaysia.

4. The accused was charged in the Kuala Lumpur Sessions Court vide **Criminal Case No. WA-62R-54-11/2018** on 15 November 2018 which was then transferred to the Kuala Lumpur High Court vide Criminal Case No. **WA-45-9-03/2019** which was heard together with **WA-45-19-07/2019 ("Solar case")** before this Honourable Court.

Three Charges under section 16(a)(A) of the MACC Act 2009

5. The charges read as follows:

Amended Charge No.1 (Exhibit No.P2A)

Bahawa kamu, di antara bulan Januari dan April 2016, di Lygon Café, G-24, Ground Floor, Sunway Putra Mall, 100, Jalan Putra, Chow Kit, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah meminta bagi diri kamu melalui Rizal Bin Mansor (No. K/P: 740809-06-5065) suatu suapan, iaitu, wang sejumlah RM187,500,000.00 yang merupakan 15% daripada nilai kontrak daripada Saidi Bin Abang Samsudin (No. K/P: 590503-13-5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn. Bhd. (No. Syarikat: 138865-H), sebagai dorongan untuk melakukan suatu perkara yang dicadangkan, iaitu, membantu Jepak Holdings Sdn. Bhd. mendapatkan "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel Bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama.

Amended Charge No.2 (Exhibit No.P2B)

Bahawa kamu, pada 07 September 2017, di No. 11, Jalan Langgak Duta, Taman Duta, di dalam Wilayah Persekutuan Kuala Lumpur, telah secara rasuah menerima bagi diri kamu suatu suapan, iaitu, wang berjumlah RM 1,500,000.00 daripada Saidi Bin Abang Samsudin yang merupakan Pengarah Urusan Jepak Holdings Sdn. Bhd., sebagai suatu upah bagi diri kamu kerana telah melakukan suatu perkara, iaitu, membantu Jepak Holdings Sdn. Bhd. mendapatkan "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/Diesel Bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM 1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah perenggan 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah subseksyen 24(1) Akta yang sama.

Amended Charge No.3 in Criminal Case No. WA-45-19-07/2019 (Exhibit No. P4)

"Bahawa kamu, pada 20 Disember 2016, bertempat di kediaman Seri Perdana, Persiaran Seri Perdana, Presint 10, 62250 Putrajaya, dalam Wilayah Persekutuan Putrajaya, telah secara rasuah menerima suatu suapan untuk diri kamu, iaitu wang tunai berjumlah RM5,000,000.00 daripada Saidi Bin Abang Samsuddin (No K/P: 590503-13-5445) yang merupakan Pengarah Urusan Jepak Holdings Sdn Bhd (No Syarikat: 138865-H) melalui Rizal Bin Mansor (No K/P: 740809-06-5065) sebagai upah kerana telah membantu Jepak Holdings Sdn Bhd mendapatkan projek yang dikenali sebagai "Projek Bersepadu Sistem Solar Photovoltaic (PV) Hibrid dan Penyelenggaraan dan Operasi Genset/ Diesel bagi 369 Sekolah Luar Bandar Sarawak" bernilai RM1,250,000,000.00 secara rundingan terus daripada Kementerian Pendidikan Malaysia, dan oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 16(a)(A) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] yang boleh dihukum di bawah seksyen 24(1) Akta yang sama"

The prosecution case

6. It is the prosecution's case that the accused being the wife of the former Prime Minister and having no official position in the public sector, wielded considerable influence because of her overbearing nature. This placed the accused in a position where she was able to influence the decisions in the public sector, Ministry of Education.

7. JEPAK Holdings Sdn Bhd is a private limited company and it is the prosecution's case that at all material time, Saidi Abang Samsudin (**PW 17**) was the Managing Director and the majority shareholder of Jepak Holdings Sdn Bhd. Saidi Abang Samsudin (**PW 17**) wanted to obtain work from the Federal Government for his company. Specifically, he wanted an award of contract to carry out a Solar project purportedly to benefit some 369 rural areas from the Ministry of Education with his partner Rayyan Radzwill Abdullah (**PW 16**).

8. According to the prosecution, both Rayyan (**PW16**) and Saidi (**PW17**) approached Mahdzir Khalid (**PW5**), the Minister of Education for the Federation of Malaysia at that material time where meeting took place between them. This was unfruitful and unsuccessful to Saidi (**PW17**) which have led to both Rayyan (**PW16**) and Saidi (**PW17**) approaching Aazmey Abu Talib, whom they perceived as close to the accused's husband to obtain support for their request for the said contract.

9. This has led Saidi (**PW17**) to obtain a minute from the accused's husband on his letter of application supporting it but this did not expedite the matters with the Ministry of Education. This has led both Rayyan (**PW16**) and Saidi (**PW17**) to approach the accused through Rizal Mansor (**PW21**).

10. The accused arranged the meeting between Rayyan (**PW16**) and Saidi (**PW17**) and herself which took place between January and April 2016 at the accused's private residence at Jalan Langgak Duta, Kuala Lumpur. In requiring the accused's assurance that the accused would help JEPAK Holdings, Saidi (**PW17**) was prepared to offer the accused a large sum of money in return.

11. 23 witnesses were called to testify for the prosecution. They were as follows:

No.	Name
PW1	Huzairi Bin Zainal Abidin
PW2	Mohd Redzuan Bin Othaman
PW3	Azimah Binti Aziz
PW4	Shamsul Rizal Bin Sharbini
PW5	Dato Seri Mahdzir Khalid
PW6	Tan Sri Madinah Binti Mohamed
PW7	Dato' Othman Bin Semail
PW8	Razak Bin Othman
PW9	Ahmed Farriq Bin Zainul Abidin
PW10	Kamarudin Bin Abdullah
PW11	Low Ai Lin
PW12	Alias Bin Ahmad
PW13	Wong Ping
PW14	Muhammad Na'im Bin Mahmod
PW15	Rekhraj Sigh A/L Jaswant Singh
PW16	Rayyan Radzwill Bin Abdullah
PW17	Saidi Bin Abang Samsudin
PW18	Rafidah Binti Yahaya

PW19	Moses Anak Lawrence
PW20	Lawrence Tee Kien Moon
PW21	Rizal Bin Mansor
PW22	Noryusran Bin Sairan
PW23	Noornabilah Binti Mohd Aziman

12. During the prosecution's case, the prosecution has adduced credible documentary evidences as well as the testimonies of the 23 prosecution witnesses which led to the evidence that the accused solicited bribe and received gratification as alleged in the charges preferred against her.

13. Evidences from the prosecution would show that the accused played an active role to obtain the project for JEPAK Holdings and how the accused solicited and obtained the bribe in return. The prosecution's case against the accused concluded on 11 December 2020.

14. After conducting a maximum evaluation on all the prosecution's evidences against the accused, this Honourable Court had on 18 February 2021, found that there is a prima facie case against the accused where she was then asked to defend her case.

15. This Honourable Court is of the finding that the prosecution had succeeded in proving prima facie case against the accused in respect of the first amended charge **(Exhibit No. P2A)** that the accused had between January and April 2016, solicited from Saidi Abang Samsuddin **(PW 17)** through Rizal Mansor **(PW 21)**, a sum of RM187,500,000.00 as an inducement to assist Jepak Holdings Sdn Bhd to obtain what is known as the Solar and Genset project from the Education Ministry through direct negotiations; the second charge **(Exhibit No. P2B)** that the accused had on 7 September 2017, corruptly received RM 1.5 million in cash from Saidi Abang Samsuddin **(PW 17)**, as a reward for Jepak Holdings Sdn Bhd to

obtain the Solar and Genset project from the Education Ministry through direct negotiations; and in respect of the third charge **(Exhibit No. P4)** where the accused had on the 20 December 2016, corruptly received RM5 million cash from Saidi Abang Samsudin **(PW 17)**, as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations.

16. This Honourable Court is also of the findings that the prosecution has adduced credible evidences to prove each and every element of the offences under all the three charges preferred against her. The presumption under **section 50 of the MACC Act 2009** was also invoked against the accused in respect of all the three charges preferred against her.

The Defence case

17. The accused was then called to enter her defence pursuant to **section 181(1) of the Criminal Procedure Code** and she elected to give sworn statements in the witness box. Initially, the accused intends to call two witnesses; one Datuk Seri Siti Azizah Binti Sheikh Abod **(DW2)** and her husband, Dato' Sri Haji Mohammad Najib bin Tun Haji Abdul Razak (who is also the husband of the accused) **(DW3)**.

18. The accused **(DW1)** testified in Court and was subject to cross-examination by the prosecution. This Honourable Court had also marked page 130 (pdf page 7) of the statement given by the accused to the MACC dated 26 September 2018 as **P177**. It is pertinent to note at this point that this Honourable Court had expressly provided that only a particular paragraph highlighted on page 130 (pdf page 7) of **P177** could be used by the prosecution to impeach her under **sections 145** and **155(c) of the Criminal Procedure Code**.

19. The second defence witness, Datuk Seri Siti Azizah Binti Sheikh Abod **(DW2)** was then called before this Honourable Court on 24 December 2021 to give testimony in open Court.

20. The defence then closed their case on 23 February 2022, after calling two (2) witnesses, i.e. the accused, and **DW2**. This Honourable Court then fixed the oral hearing for this case on 5 April 2022 which was then postponed to 12 May 2022.

Section 182A of the Criminal Procedure Code

21. It is pertinent to note that it is a well-established principle of the Malaysian criminal law that the general burden of proof lies on the prosecution to prove the guilt of the accused on a standard beyond reasonable doubt throughout the case as the accused is presumed innocent until proven guilty. The defence only has to cast reasonable doubt in the prosecution case. *[Please refer to paragraphs 11-12 of the Supreme Court case of* ***Mohamad Radhi Bin Yaakob v PP***[1]*].*

22. At the close of the defence case, it is important to refer to the provision under **section 182A of the Criminal Procedure Code** which is reiterated below as follows:

> ***"182A.Procedure at the conclusion of the trial.***
>
> *(1) At the conclusion of the trial, the Court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.*
>
> *(2) If the Court finds that the prosecution has proved its case beyond reasonable doubt, the Court shall find the accused guilty and he may be convicted on it.*
>
> *(3) If the Court finds that the prosecution has not proved its case beyond reasonable doubt, the Court shall record an order of acquittal"*

23. Reference is made to the case of ***Balachandran v PP [2004]*** where Justice of the Court of Appeal, Augustine Paul sitting in the Federal Court held as follows:

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[1] [1991] 3 MLJ 169 – Supreme Court of Malaysia

*"[24] As the accused can be convicted on the prima facie evidence it must have reached a standard which is capable of supporting a conviction beyond reasonable doubt. However it must be observed that it cannot, at that stage, be properly described as a case that has been proved beyond reasonable doubt. Proof beyond reasonable doubt involves two aspects. **While one is the legal burden on the prosecution to prove its case beyond reasonable doubt the other is the evidential burden on the accused to raise a reasonable doubt. Both these burdens can only be fully discharged at the end of the whole case when the defence has closed its case. Therefore a case can be said to have been proved beyond reasonable doubt only at the conclusion of the trial upon a consideration of all the evidence adduced as provided by s 182A(1) of the Criminal Procedure Code (cpc)**. That would normally be the position where the accused has given evidence. However, where the accused remains silent there will be no necessity to re-evaluate the evidence in order to determine whether there is a reasonable doubt in the absence of any further evidence for such a consideration. The prima facie evidence which was capable of supporting a conviction beyond reasonable doubt will constitute proof beyond reasonable doubt."*

24. Reference is also made to the case of ***PP v Mohd Amin Mohd Razali & Ors [2002]*** where the learned High Court Judge, Justice Zulkefli Ahmad Makinuddin held as follows:

"Case For The Defence

[134] *Before dealing with the defence of each of the accused persons it would be appropriate for me to refer to the provision of the law as regard what the court would have to consider at the end of the defence case or at the conclusion of the trial.* ***Section 182A Criminal Procedure Code*** *reads as follows:*

(1) At the conclusion of the trial, the court shall consider all the evidence adduced before it and shall decide whether the prosecution has proved its case beyond reasonable doubt.

(2) If the court finds that the prosecution has proved its case beyond reasonable doubt, the court shall find the accused guilty and he may be convicted thereon.

(3) If the court finds that the prosecution has not proved its case beyond reasonable doubt the court shall record an order of acquittal.

[135] It is clear that at the end of the trial the court will have to weigh all the evidence that had been adduced and to make a ruling whether the prosecution has proved its case beyond reasonable doubt or otherwise.

[136] *Having weighed the evidence if the court is satisfied that the prosecution has proved the charge beyond reasonable doubt, the court will have to find the accused guilty of the charge and thereafter convict him. On the other hand if the court rules that the prosecution has not proved the charge on the evidence adduced against the accused, then the accused will be acquitted and discharged.* ***In other words, at the end of the trial the court will have to rule whether the defence has raised a reasonable doubt as to the truth of the prosecution's case or the guilt of the accused****. This is because a case which has been proved beyond reasonable doubt in itself involves the absence of a reasonable doubt. In support of the said proposition reference may be made to the case of* ***Mah Kok Cheong v. R [1953] 1 MLRH 541****; [1953] 1 MLJ 46 where his Lordship Spencer Wilkinson J at p 47 stated the following:*

... in ordinary Criminal cases... all discussions as to what might reasonably be true or what is consistent with innocence are both irrelevant and misleading. Almost every defence put forward by an accused is consistent with innocence or it would not be put forward or would it be a very good defence if it could not be reasonably be true. But whatever may be the defence to a criminal charge the sole question which a subordinate has to ask itself at the conclusion of the trial is Does the defence raise a reasonable doubt as to the truth of the prosecution case or as to the accused's guilt? I say "the sole question" advisedly because in this country

the accused will not have been called on for a defence at all unless the prosecution have first proved a case...

[137] *What is "reasonable doubt" has been discussed by his Lordship Sharma J in the case of* ***Public Prosecutor v. Saimin & Ors [1971] 1 MLRH 91****; [1971] 2 MLJ 16 where his Lordship at p 17 stated the following:*

It is not mere possible doubt, because everything relating to human affairs and depending upon moral evidence is open to some possible or imaginary doubt. It is that state of the case which after the entire comparison and consideration of all the evidence leaves the minds of the jurors in that condition that they cannot say they feel an abiding conviction to a moral certainty of the truth of the change.

[138] *In the case of* ***Liew Kaling v. Public Prosecutor [1960] 1 MLRA 318****; [1960] 1 MLJ 306b his Lordship Thomson CJ in delivering the judgment of the Court of Appeal in reference to the quantum of proof "beyond reasonable doubt" adopted the passage from the judgment of Denning J (as he then was) in the case of Milter v. Minister of Pensions [1947] 2 All ER 373 and had this to say:*

That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible, but not in the least probable' the case is proved beyond reasonable doubt but nothing of that will suffice

.

[139] *As to the meaning of the burden of proof by the accused in cases where it is necessary for him to rebut the prosecution case against him and how the law is to be applied I need only refer to the celebrated case of* ***Mat v. Public Prosecutor [1963] 1 MLRH 400****; [1963] 1 MLJ 263 wherein his Lordship Suffian J (as he then was) inter alia held that if the court accepts*

the explanation given by or on behalf of the accused, it must acquit. But this does not entitle the court to convict if it does not believe that explanation, for he is entitled to an acquittal if the explanation raises a reasonable doubt as to his guilt, as the onus of proving his guilt lies throughout on the prosecution. If upon the whole evidence the court is left in a real state of doubt, the prosecution has failed to satisfy the onus of proof which lies upon it."

25. The prosecution also referred to paragraphs 30-31 of the Court of Appeal case of ***PP v Chou Mau***[2] which provides for the duty of this Honourable Court at this stage to merely determine whether the explanation provided by the accused has cast a real and reasonable doubt on the prosecution's case and not to determine whether the prosecution witnesses are credible. [*Please refer to pages 1-3 of the prosecution's written submission (Enclosure No. 228)].*

26. The defence in their written submission have also referred to paragraphs 143-146 of the High Court case of ***PP v Tengku Adnan Tengku Mansor***[3]; paragraph 33 of the case of High Court case of **Jaafar *Bin Ali v Public Prosecutor***[4] and the Supreme Court case of ***Nagappan A/L Kuppusamy v Public Prosecutor***[5] on the statutory duty of this Honourable Court to consider all the evidence adduced by both the prosecution and the defence and the satisfaction that the case has been proved by the prosecution beyond reasonable doubt. [*Please refer to pages 12-14 of the defence's written submission (Enclosure No. 233)].*

27. From the abovementioned cases, we are of the humble opinion that at the close of this defence case, this Honourable Court is duty bound under **section 182A of the Criminal Procedure Code** to consider and weigh all the pieces of evidence adduced before this Honourable Court and make a finding whether the prosecution has proved their case in respect of the three charges preferred against the accused on a standard beyond reasonable doubt. This is similar to **section**

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[2] [2019] 1 LNS 805- Court of Appeal
[3] [2021] 4 CLJ 668 – High Court
[4] [1998] 4 MLJ 406 – High Court
[5] [1988] 2 MLJ 53 – Supreme Court

173(m) of the Criminal Procedure Code which governs the procedure at the conclusion of the trial in the subordinate courts.

28. However, it is important to note that at the end of the prosecution case, this Honourable Court has invoked the statutory presumption under **section 50(1) of the Malaysian Anti-Corruption Act 2009.**

29. For ease of reference, **section 50(1) of the Malaysian Anti-Corruption Act 2009** is reiterated below as follows:

> ***"50. Presumption in certain offences.***
>
> *(1) Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved."*

30. As such, given that the prosecution has successfully invoked the statutory presumption under **section 50(1) of the Malaysian Anti-Corruption Act 2009**, the burden then shifts to the accused to rebut the said presumption on a balance of probabilities. Reference is made to the case of ***Mohamad Radhi [supra]***, where the Supreme Court Justice, Mohd Azmi held at paragraphs 11 as follows:

> ***"[11]*** *It is a well established principle of Malaysian criminal law that the general burden of proof lies throughout the trial on the prosecution to prove beyond reasonable doubt the guilt of the accused for the offence with which he is charged. There is no similar burden placed on the accused to prove his innocence. He is presumed innocent until proven guilty. To earn an acquittal,*

his duty is merely to cast a reasonable doubt in the prosecution case. In the course of the prosecution case, ***the prosecution may of course rely on available statutory presumptions to prove one or more of the essential ingredients of the charge. When that occurs, the particular burden of proof as opposed to the general burden, shifts to the defence to rebut such presumptions on the balance of probabilities which from the defence point of view is heavier than the burden of casting a reasonable doubt, but it is certainly lighter than the burden of the prosecution to prove beyond reasonable doubt****. To earn an acquittal at the close of the case for the prosecution under* ***s 173(f)*** *or* ***s 180 of the Criminal Procedure Code****,* ***the Court must be satisfied that no case against the accused has been made out which if unrebutted would warrant his conviction (Munusamy v. PP [1986] 1 MLRA 292****; [1987] 1 MLJ 492; [1987] CLJ (Rep) 221. If defence is called, the duty of the accused is only to cast a reasonable doubt in the prosecution case. He is not required to prove his innocence beyond reasonable doubt."*

31. Furthermore, reference is made to the case of ***Public Prosecutor v Yuvaraj***[6] where Lord Diplock from the Privy Council held as follows:

"In the result upon the true construction of the Evidence Ordinance and ***the Prevention of Corruption Act 1961,*** *there is, in their Lordships' view, no relevant difference between the two descriptions of the burden of rebutting the presumption of corruption which are contained in the question reserved for the consideration of the Federal Court, if the expression in the first part of the question: "the burden of rebutting this presumption can be said to be discharged by a defence as being reasonable and probable" is understood as meaning* ***"the burden of rebutting such presumption is discharged if the Court considers that on the balance of probabilities the gratification was not paid or given and received corruptly as an inducement or reward as mentioned in s. 3*** *or* ***4 of the Prevention of Corruption Act, 1961."***

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[6] [1969] 2 MLJ 89-Privy Council

32. As such, based on the abovementioned cases, we are of the humble opinion that given the presumption under **section 50 of the MACC Act 2009** was invoked against the accused, it is incumbent on the accused to rebut that said presumption on a balance of probabilities.

33. The gist of the defence's case is that the prosecution had failed to prove their case on all the three (3) charges preferred against her on a standard beyond reasonable doubt. It is the accused's defence that she did not solicit the said sum provided in the three charges preferred against her. The defence raised doubt on the evidences in respect of the consultancy agreement which they submit as hearsay on the grounds that the said oral testimony given by witnesses on the contents of the said agreement was not produced before this Honourable Court. *[Pease refer to the case of **Harjit Singh v Regina**[7]].*

34. Besides, the defence denied the knowledge of the existence of the said sum of money contained in the two bags placed in the accused's residence. It was the accused's defence that **PW16** (Rayyan), **PW17** (Saidi) and **PW21** (Rizal Mansor) conspired to fix up the accused. *[Please refer to the defence statement (**D173**)]*.

35. In determining whether the defence has successfully cast real and reasonable doubt on the prosecution's case and rebutted the presumption invoked against her, each element of the offence under **section 16(a)(A) of the MACC Act 2009** ought to be considered.

<u>The Law under section 16(a)(A) of the MACC Act 2009</u>

36. The accused is currently preferred with three (3) charges under **section 16(a)(A) of the MACC Act 2009**. This provision provides as follows:

"16. Offence of accepting gratification.

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[7] [1963] 1 MLJ 287-High Court

Any person who by himself, or by or in conjunction with any other person-

(a) ***corruptly solicits or receives or agrees to receive for himself or for any other person****; or*

(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or a reward for, or otherwise on account of-

(A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place*; or*

(B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned,

commits an offence."

37. If the accused is found guilty under **section 16 of the MACC Act 2009**, the accused would be subject to penalty provided under **section 24(1) of the MACC Act 2009** as follows:

"24. Penalty for offences under sections 16, 17, 18, 20, 21, 22 and 23.

(1) Any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to-

(a) imprisonment for a term not exceeding twenty years; and

(b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher."

38. It is also pertinent to note that **section 16(a)(A) of the MACC Act 2009** is similar to its predecessor, **section 3(a)(i) of the Prevention of Corruption Act 1961** (repealed by the **Anti-Corruption Act 1997**) which states as follows:

"3. Punishment of corruption.

Any person who shall by himself or by or in conjunction with any other person: -

*(a) **corruptly solicit or receive or agree to receive for himself or for any other person**; or*

(b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of:-

(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place;

(ii) any member, officer, or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed or likely to take place, in which the public body is concerned,

shall be guilty of an offence and shall, on Conviction, be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding five years or to both."

39. **Section 16(a)(A) of the MACC Act 2009** is also similar to its predecessor **section 10(a)(aa) of the Anti-Corruption Act 1997** which is reiterated below for ease of reference:

"10. Offence of accepting gratification.

Any person who by himself, or by or in conjunction with any other person:

***(a) corruptly solicits or receives or agrees to receive for himself or for any other person**; or*

(b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or a reward for, or otherwise on account of:

(aa) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place;

or

(bb) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned,

shall be guilty of an offence."

40. Reference is made to the Court of Appeal case of ***PP v Dato' Saidin Thamby***[8] where Justice of the Court of Appeal, Abdul Malik Ishak at paragraph 58 noted on the elements under **section 3(a)(i) of the Prevention of Corruption Act 1961.** His Lordship held as follows:

"[58] The ingredients for an offence under s 3(a)(i) of the PCA, in the context of the amended charge against the respondent, are as follows:

(1) that the respondent received for himself a gratification of RM1 million from SP1;

(2) that the gratification was received corruptly by the respondent;

(3) that the respondent received the gratification as a reward for himself for assisting Nusantara to obtain the approval of the Selangor State Exco for Nusantara's application for the land; and

(4) that on 4 October 1995, the Selangor State Exco approved Nusantara's application for the land.

41. At this juncture, it is important to appreciate that the provisions under **section 16(a)(A) of the MACC Act 2009** and **section 3(a)(i) of the Prevention of Corruption Act 1961** are similar.

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[8] [2012] 3 MLJ 476 – Court of Appeal

42. As such, applying those elements established in the case of ***Dato' Saidin [supra]*** to the present case, we are of the humble opinion that the elements that the prosecution has to prove on a standard of beyond reasonable doubt against the accused in the three (3) amended charges are as follows:

a. That the accused solicited for herself a gratification of RM 187,500,000.00 or 15% from the value of the said Solar and Genset contract from Saidi Abang Samsuddin **(PW 17)** and his partner Rayyan Radzwil Abdullah **(PW 16)** through her private secretary, Rizal Mansor **(PW 21)** as an inducement (in respect of the Amended Charge No. 1);

b. That the accused corruptly received for herself a gratification of RM1.5 million in cash from Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** through her private secretary, Rizal Mansor **(PW 21)** as a reward for Jepak Holdings Sdn Bhd in obtaining the Solar and Genset contract (in respect of Amended Charge No. 2);

c. That the accused received for herself gratification of RM5 million in cash from Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** through her private secretary, Rizal Mansor **(PW 21)** as a reward for Jepak Holdings Sdn Bhd in obtaining the Solar and Genset contract (in respect of Amended Charge No. 3).

d. That the said gratifications were received corruptly by the accused herself;

e. That the accused solicited and received the said gratification as a reward for herself in using her influence that led Jepak Holdings Sdn Bhd to obtain the award of contract for the Solar Genset project purportedly to benefit some 369 rural area in Sarawak from the Ministry of Education; and

f. That on 20 June 2017, the Education Ministry approved and awarded Jepak Holdings Sdn Bhd owned by Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** the said contract for the Solar and Genset project.

43. As such, this Honourable Court has to look into several elements under **section 16(a)(A) of the MACC Act 2009** in order to convict the accused. These elements will be discussed in the following paragraphs in respect of the charges preferred against her.

The First Element: Solicit Money

44. It is the prosecution's case in respect of the amended Charge No. 1 that the accused had between January and April 2016, corruptly solicited from Saidi Abang Samsuddin **(PW 17)** through Rizal Mansor **(PW 21)**, a sum of RM187,500,000.00 as an inducement to assist Jepak Holdings Sdn Bhd to obtain what is known as the Solar and Genset project from the Education Ministry.

45. However, the **MACC Act 2009** did not provide the definition of 'solicit'. As such, reference is made to the plain and natural meaning of the word 'solicit'. At this juncture, it is pertinent to refer to the explanation given by Anandan Krishnan in his book, ***'Words, Phrases and Maxims' Volume 13*** at page 728 where he referred to page 689 of the case of ***Public Prosecutor v Jamil Bin Mahmod & Anor***[9] where the Learned High Court Judge, Justice Jeffrey Tan held as follows:

"The Act does not define the word 'solicit' or 'corruptly'. The ordinary dictionary meaning of 'solicit' is 'ask repeatedly or earnestly' for or to seek or invite' (The Concise Oxford Dictionary (9th Ed)). Indeed, in PP v You Kong Lai [1985] 1 MLJ 298, Shankar J (as he then was) likened 'solicit' in s 3 to 'invite'. When used in the context of solicitation of a bribe, it means 'asking, enticing, or requesting'. It is a

[9] [1998] 4 MLJ 681- High Court

word which implies a serious request, but 'requires no particular degree of importunity, entreaty, imploration or supplication' (Black's Law Dictionary (6th Ed), citing People v Phillips 70 Cal App 2d 449)."

46. Reference is also made to the case of ***PP v You Kong Lai***[10] where the learned High Court Judge, Justice Shankar (as his Lordship then was) likened 'solicit' in **section 3 of the Prevention of Corruption Act 1961** as follows:

"I hold that upon a proper construction of section 3(a)(ii) of the Prevention of Corruption Act as applied to the facts of this case it is not necessary for the prosecution to prove that the D.O. was in fact induced to renew the licences by reason of the payment of the gratification.

The key words in section 3 of the Act in the context of the present case are: -

"Any person who shall ...

(a) corruptly solicit or receive, ... for himself or for any other person any gratification as an inducement to any member of a public body doing ... anything ... in which such public body is concerned shall be guilty of an offence under this act."

The presence of the word "solicit" in the section, to my mind, clearly shows that if a person invites the payment of monies so that he may allegedly use the same to bribe a member of a public body, he has already committed an offence. The fact ***that the corrupt purpose was not carried out does not matter****. Furthermore, the section draws a distinction between a receipt by any person for himself or for any other person."*

The evidence led by the Prosecution went to show not only that the accused solicited the payments in question but also that he had actually received the monies."

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[10] [1985] 1 MLJ 298 – High Court

47. Reference is also made to the case of ***Public Prosecutor v Datuk Haji Harun Bin Haji Idris (No. 2)***[11] at page 20 where the Learned High Court Judge, Justice Raja Azlan Shah (as the late Royal Highness then was) explained the term 'solicit' for the offence of gratification as follows:

> *"The word "solicit" is a common English word, and it means, in its simplified form, "to ask". In various English dictionaries this simple meaning is given, but other similar words are also used to explain other meanings it possesses, such as "to call for", "to make request", "to petition", "to entreat", "to persuade", "to prefer a request". — see Sweeney v Astle [1923] NZLR 1198 1202. Thus, when a businessman advertises his goods, we say he is soliciting customers. He wants to sell his goods, and he solicits people to buy them. Again, such a businessman goes to a person whom he selects to try to induce him to buy, we say he is soliciting orders. To solicit then, means to ask for or invite offers. Thus, to solicit an order for goods means merely to ask for or invite offers for the purchase of those goods. A statement therefore, the real and operative purpose of which is to induce somebody to make such offers, amounts to asking for or inviting such offers.* ***But to constitute soliciting, the request or invitation must reach the person solicited****. Now, coming to our point, when a politician makes a statement to someone in an appropriate circumstance, to the effect "what are your views on political donations to party funds?", the real and operative purpose of which is to induce that person to ask for or invite offers for making a political donation to party funds, we say he is soliciting a political donation.*
>
> *Soliciting does not cease to be soliciting if it is received by the person solicited not from the person who solicits, but by other means of transmission or communication, such as a letter, circular, newspaper advertisement, telephone or a message. To take the illustration further, if the politician enlists the services of his subordinate or some third person or persons to do the act of soliciting for political donation, that is nonetheless soliciting for the same by him. It is by the*

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[11] [1977] 1 MLJ 15 – High Court

instrumentality of his subordinate or the third person that the act was done for him."

48. It is important to note at this juncture that **section 3 of the Prevention of Corruption Act 1961** is similar to **section 16(a)(A) of the MACC Act 2009** as well as to the provisions under **section 10(a)(aa) of the Anti-Corruption Act 1997.**

49. As such, applying the case of ***You Kong Lai [supra]*** to the present case, we are of the humble view that, irrespective of whether the corrupt purpose was carried out or not, the burden was still on the prosecution to prove that the accused not only solicited the payments, but also the fact that she had actually received the said sum of monies.

50. The learned High Court Judge was of the findings that it had been proven on a standard of beyond reasonable doubt that the accused solicited the sum of RM 187,500,000.00 or 15% from the value of the said Solar contract from Saidi Abang Samsuddin (**PW17**) through Rizal Mansor (**PW21**). Evidences from the prosecution witnesses would go to prove the extent of influence the accused have in the execution of the duties of public officers despite herself not holding any official position in the government sector.

51. It is the defence of the accused that Rizal Mansor (**PW21**) solicited the sum of money without the knowledge of the accused herself. However, this defence does not raise doubt in the prosecution's case nor does it rebut the statutory presumption invoked against her. Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) in her witness statement has also stated that she does not have any knowledge that Rizal Mansor (**PW21**) has solicited and received the said sum of money from Saidi (**PW17**) which was beyond his duties as *"Penolong Pegawai Tugas-Tugas Khas"* or media officer. *[Please refer to paragraphs 26 and 27 of the witness statement].*

52. The defence further denied having any influence over the public officers but instead placed the blame on few prosecution witnesses including one Tan Sri Madinah (**PW6**) whom she testified to have given testimony to implicate Dato' Sri

Mohd Najib in the said solar project in order to pave the way to the involvement of the accused in the project.

53. We are of the humble opinion that the defence has failed to adduce any conclusive evidence to support her allegation of the same. If at all the accused's husband was not called as a witness to testify in order to corroborate her allegation made above. Thus, as it stands, it remains as a mere and baseless allegation.

54. The defence also submitted that at paragraph 78 of Tan Sri Madinah (**PW6**)'s Witness Statement (**P60**), Tan Sri Madinah (**PW6**) stated that after the PERMATA's event, the Accused informed Tan Sri Madinah (**PW6**) 'you tengok sikit projek solar Jepak. Cepatkan sikit'. Tan Sri Madinah (**PW6**) also stated that it gave her a 'sense of urgency'. *[Please refer to paragraph 81 of the witness statement].*

55. It is the defence's submission that there is no conclusive evidence to prove that the Accused did utter such phrase to Tan Sri Madinah (**PW6**), nor did the Accused instruct Rizal Mansor (**PW21**) or Rayyan (**PW16**) to communicate with Tan Sri Madinah (**PW6**), and to push Tan Sri Madinah (**PW6**) to expedite the said solar project, as alleged by Tan Sri Madinah (**PW6**) in her Witness Statement (**P60**).

56. It is the submission of the defence that the Accused had never spoken to Tan Sri Madinah (**PW6**) with regards to the said solar project, and never instructed Rizal Mansor (**PW21**) or Rayyan (**PW16**) to act on behalf of the Accused as her agent. As the wife of the then Prime Minister, the Accused had no executive power in the administration of the Government. The Accused's name and position had been misused by Rizal Mansor (**PW21**) for his own agenda and benefits.

57. However, as explained earlier, this is a mere denial and a presentation of a bare story of innocence on the part of the accused to evade liability. There are cogent evidences, both direct and circumstantial evidences showing that Rizal Mansor (**PW21**) was used for the purposes of soliciting money for her benefit. Besides, her allegation of Rizal Mansor (**PW21**) using her name and position is also baseless.

58. It is the defence's submission that it was patently clear that Tan Sri Madinah (**PW6**) has breached her official duties as a 'Pegawai Pengawal' at the Ministry of Education, where Tan Sri Madinah (**PW6**) should inter alia ensure the compliance to financial and procurement regulations, and directives by the Ministry of Finance, and to act reasonably, before issuing Letter of Intent dated 29 August 2016 (**IDD 38**) to Jepak, and letter to Ministry of Finance on her retirement day, 2 September 2016 (**P25**) for asking additional fund and SST to be issued to Jepak, due to the apparent weaknesses of Jepak to carry out the said solar project. Tan Sri Madinah (**PW6**)'s negative and appalling attributions to the Accused and Dato' Sri Mohd Najib, whom she puts her blames on, as the reason for her to issue **IDD 38** and **P25**, is unacceptable and illogical.

59. During Cross-Examination, Tan Sri Madinah (**PW6**) agreed that she had never clarified with the Accused on the issue whether it was the Accused who instructed Rizal Mansor (**PW21**) or Rayyan (**PW16**) to communicate with Tan Sri Madinah (**PW6**), with regards to the said project.

60. We are of the humble opinion that this is a mere denial. It is the failure of the accused to call her husband to testify on this material issue that has led to her evidence being uncorroborated and unreliable especially in respect of the accused's allegation that Tan Sri Madinah (**PW6**)'s negative and appalling attributions to the Accused and her husband, whom she puts her blames on, as the reason for her to issue **IDD 38** and **P25**. *[Please refer to paragraph 10 of the case of* ***Balachandran v. PP***[12]*].*

61. The accused's evidence in this respect does not raise doubt in the prosecution's case on the grounds that her oral testimony remains uncorroborated. Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) in her witness statement stated that she does not have any knowledge on the communications and discussions between Rizal Mansor (**PW21**), Rayyan (**PW16**) and Saidi (**PW17**) and the use of Rizal (**PW21**)'s

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[12] [2005] 2 MLJ 301 – Federal Court

influence as government officer to obtain the projects. *[Please refer to paragraph 20 of the witness statement]*.

62. It is also to be noted that in respect of the allegation on the perception that the accused has the overbearing and demanding attitude, Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) has stated in her witness statement that such perception was baseless as she felt comfortable working with the accused added with the fact that she has known the accused since 1971 when they were in University Malaya.

63. She has also testified that the accused is perfectionist in terms of her objective and the outcome of her work and the accused also does not interfere with the working of her officers in FLOM department. She has also testified that she has not heard of any instances where the accused has directly dealt with any public officer as this would be handled by **DW2** herself.

64. However, this testimony of the Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) itself does not rebut the allegation of the prosecution on the accused's overbearing influence in the work of the government sector. *[Please refer to paragraph 7 of her witness statement]*.

Receiving

65. On the facts of the case, the accused was preferred with the amended Charge Nos. 2 and 3 for receiving a sum of RM 1.5 million and RM 5 million respectively from Saidi Abang Samsuddin **(PW 17)**, as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations.

66. Similarly, the evidences from the circumstances of the case as well as the testimony of the prosecution witnesses equally prove that the accused corruptly received the said sum of money from Saidi Abang Samsuddin **(PW 17)** as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations. This Honourable Court is also of

the opinion that the presumption under **section 50 of the MACC Act 2009** has been invoked against the accused.

67. However, the accused denied such allegation and placed the blame on Rizal Mansor (**PW21**) for soliciting and receiving the said sum of money for Saidi (**PW17**). As mentioned in the earlier paragraph, the accused did not raise doubt in the prosecution's case nor does it rebut the statutory presumption invoked against her.

68. Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) in her witness statement has also stated that she does not have any knowledge that Rizal Mansor (**PW21**) has solicited and received the said sum of money from Saidi (**PW17**) which was beyond his duties as *"Penolong Pegawai Tugas-Tugas Khas"* or media officer. *[Please refer to paragraphs 26 and 27 of the witness statement].*

The definition of gratification

69. The first element of 'solicit' and 'receive' has been established. Now reference should be made to the definition of the word 'gratification'.

70. Gratification was explained by Justice of the Court of Appeal, Abdul Malik Ishak in the case of ***PP v Dato' Saidin Thamby [supra]*** at paragraph 79 as follows:

> *"**[79]** In any corruption trial, the word "gratification" is considered a bad word. A distasteful word. The "New Oxford English-Malay Dictionary" at p 351 defines the word "gratifying" as "memuaskan ati". While "Oxford Fajar Advanced Learner's English-Malay Dictionary by AS Hornby" defines the word "gratification" at p 805 to mean "gratifying or being gratified; state of being pleased or satisfied; puas hati/gembira atau dibuat menjadi puas hati/gembira; keadaan gembira atau puas hati, the gratification of knowing one's plans have succeded, rasa puas hati mengetahui bahawa rancangan telah berjaya, sexual gratification, kepuasan seks, thing that gives one pleasure or satisfaction: benda yang memberi kegembiraan atau kepuasan ati kepada, one of the few gratifications of an otherwise boring job: salah*

satu daripada kepuasan dari pekerjaan yang jika tidak membosankan". It must be noted that these two dictionaries do not state that the word "gratification" to mean "bribe"."

71. Besides, **section 3** of the present **MACC Act 2009** provides the definition of 'gratification' as follows:

"gratification" means—

*(a) **money**, donation, gift, loan, fee, **reward**, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;*

(b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;

(e) any forbearance to demand any money or money's worth or valuable thing;

(f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f)"

72. On the present case, both 'money' and 'reward' are two terms that would be relevant to prove the gratification as provided under **section 3 of the MACC Act 2009** as the accused is currently preferred with a charge of soliciting cash and two charges of receiving cash from Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)**, as a reward for Jepak Holdings Sdn Bhd to obtain the Solar and Genset project from the Education Ministry through direct negotiations.

The second element: Gratifications received corruptly

73. The second element the prosecution has to prove is the fact that the said gratifications were received corruptly by the accused.

74. The term 'corrupt' or 'corruptly' were not defined under the old **Prevention of Corruption Act 1961, Anti-Corruption Act 1997** nor in the present **MACC Act 2009**. As such reference is made to the definition provided by case law.

75. Reference is made to the Court of Appeal case of ***Dato' Saidin [supra]***, where the Justice of the Court of Appeal, Abdul Malik Ishak, held as follows:

> ***"[59]*** *The word "corruptly" is not defined in the PCA. Shepherd J in Lim Kheng Kooi & Anor v. Reg [1957] 23 MLJ 199, a case that was decided under the Prevention of Corruption Ordinance 1950, quoted with approval the definition of the word "corruptly" from the case of Bradford Election Petition 19 L. T. 723 (see Lim Kheng Kooi & Anor v. Reg (supra) at p 205):*
>
> *"But if the money is given after the man has voted, you must show that that was done corruptly. Now, what is the exact meaning of that word 'corruptly'. It is difficult to tell; but I am satisfied* ***it means a thing done with an evil mind - done with an evil intention; and except there be an evil mind or an evil intention accompanying the act it is not corruptly done****. And thus when the word* ***'corruptly'*** *is used it means* ***an act done by a man knowing that he is doing what is wrong, and doing so with evil feelings and evil***

intentions. *I think it may be safely said that that is the meaning of the word 'corruptly'."*

[60] *Now, whether a gratification is being received corruptly is purely a question of intention. To a question whether the receipt was corrupt?, Shankar J in* ***Public Prosecutor v. You Kong Lai [1984] 1 MLRH 274;[1985] 1 MLJ 298****; [1984] 2 CLJ 429 at 301 answered it in this way: "Yes, since its avowed purpose was for bribery".*

[61] *Edgar Joseph Jr J (later SCJ) in Choong Oi Choo v. Public Prosecutor;* ***Public Prosecutor v. Choong Oi Choo[1986] 1 MLRH 46****; [1986] 2 CLJ 231 when faced with the question of whether a bag of fruits containing five apples and six oranges given by the accused to the complainant's wife at the complainant's house when the complainant was not at ome, was given corruptly or innocently held that the fruits were not offered with a corrupt intention since they might well be intended for the complainant's children (as the accused had said all along). His Lordship also held that it was a form of socially accepted conduct even though the complainant perceived it as an inducement. At p 240, his Lordship had this to say:*

"46. We recognise a corrupt gift by examining its purpose. It is the intended function of a gift which determines whether it is corrupt or innocent. This is the reason why what may be given as a bribe may be accepted as an innocent present and vice versa: Regina v. Andrews-Weatherfoil Limited [1972] 1 WLR 118."

[62] *According to the case of Public Prosecutor v. Mohamed Ali bin Mohamed Amin & Anor [1979] 2 MLJ 57, it is solely a question of fact to determine whether or not an acceptance of a gratification amounts to a "corrupt" acceptance punishable under the PCA. Everything falls to be decided by looking at the proved facts and the circumstances of the case.*

[63] Raja Azlan Shah FJ (as His Royal Highness then was) in ***Public Prosecutor v. Datuk Haji Harun bin Haji Idris (No 2)[1976] 1 MLRH 562****; [1977] 1 MLJ 15 at p 22 defined the meaning of the word "corrupt" in this way:*

"'Corrupt' means 'doing an act knowing that the act done is wrong, doing so with evil feelings and evil intentions. ' (see Lim Kheng Kooi v. Reg [1957] 23 MLJ 199); 'purposely doing an act which the law forbids' (see R v. Smith [1960] 1 All ER 256).

'Corrupt' is a question of intention. If the circumstances show that what a person has done or has omitted to do was moved by an evil intention or a guilty mind, then he is liable under the section. Thus if the accused used his position to solicit gratification with a guilty mind, he is caught within the ambit of the section. The real point is whether there is soliciting a political donation with a corrupt intention."

[64] According to His Royal Highness in Public Prosecutor v. Datuk Haji Harun bin Haji Idris (No:2) (supra), even the manner of payment should be taken into consideration (see p 23 of the report):

"The manner in which the payments were made is a relevant consideration in the present case. It is in evidence that the bank was asked to make them in cash. Smorthwaite said that he asked Peter Lim to find out how such payment should be made, and his answer was in cash, no receipt. That is substantiated by the evidence of payments in cash. The bank could, and it is very much in their power, make the payment by way of cheque, or for that matter in one lump sum in cash. But they were coerced to make it in cash, and strangely enough, in two payments. This strange behaviour necessitated the bank in opening the New Building - Property Suspense Account for their accounting purposes.

Then, the 'request' for the so-called donation. That is another telling point against the accused. In ordinary circumstances, the presentation of a

donation, be it by way of cheque or otherwise, is preceded by certain formalities, for example, a representative of the donor firm would personally hand it to the donee at a proper place and in the presence of witnesses; not in some 'back alley'."

[65] *Mohamed Azmi J (later SCJ) in* ***Ahmad Shah bin Hashim v. Public Prosecutor[1979] 1 MLRA 213****; [1980] 1 MLJ 77, at p 80 also considered the manner in which the gratification was to be paid as a crucial factor to infer corrupt intention on the part of the wrong doer: "... the facts that the soliciting and subsequent agreement to accept for himself the 1 percent commission were done corruptly are supported by the manner in which the gratification was to be paid"."*

76. Applying the case of ***Dato' Saidin [supra]*** to the present case, we are of the humble view that in determining whether such solicitation and receipt of the sum of money from Saidi (**PW21**) would amount to an act done corruptly, reference has to be made to the facts and circumstances of the present case as corruptly would mean a thing done with an evil mind or evil intention accompanying the said act.

77. It is the prosecution's case that Saidi Abang Samsuddin **(PW 17)** made an offer of political donation to the accused's husband as a gesture of gratitude for supporting the application for the solar and genset project. Of particular importance is the fact that the accused does not have any position nor responsibility in any political party at that material time.

78. It is the prosecution's case that the accused knew that the so-called "political donation" was meant as a bribe for herself in contingent with her using her influence leading to Jepak Holdings Sdn Bhd being awarded with the contract by the Education Ministry.

79. Reference is made to the case of ***Public Prosecutor v. Datuk Haji Harun bin Haji Idris (No.2) [supra]*** which was referred in the case of ***Dato' Saidin [supra]*** where the Federal Court Justice Raja Azlan Shah (as his late Royal Highness then

was) held that the manner of payment should be taken into consideration. On the present case, no clean and clear transactions took place to prove political donation was made in favour of the accused's husband.

80. There were no evidences that money was taken by Rizal Mansor **(PW 21)** nor were there any documentary evidence such as receipts suggesting that the said money was meant as a political donation for the accused's husband. One would be inclined to identify such transaction as a "back alley" transaction.

81. Looking at the circumstances of the case, it would be suspicious to pass large sum of cash in large bags to the accused for her husband when Saidi Abang **(PW 17)** could have met with the accused's husband to pass the said money if it was actually to serve as a political donation.

82. Furthermore, evidences suggest that the said sum of RM187.5 million was a 15% from the value of the said Solar and Genset contract that was awarded by the Education Ministry as a result of the accused's overbearing influence in the work of the government sector.

83. In addition, it is the prosecution's case that one Lawrence Tee prepared a sham agreement between the accused and Saidi Abang **(PW 17)** to this effect but the said agreement could not be retrieved nor found till to this present day.

84. Besides, it is to be noted that the accused's version that the sum of money passed to her as political donations made for the benefit of the accused's husband is also uncorroborated on the grounds that Datuk Seri Siti Azizah Binti Sheikh Abod **(DW2)** has testified having no knowledge of the same. *[Please refer to paragraphs 28 and 29 of the witness statement].*

85. it is the defence of the accused that the money / gratification was 'political donation' derived from the idea of both Rayyan **(PW16)** and Saidi **(PW17)**. According to the accused, it was the testimonies of both Rayyan **(PW16)** and Saidi **(PW17)** that the said political donation was meant for the accused's husband, Dato' Sri Mohd Najib Tun Hj Abdul Razak , (the then Prime Minister and a

politician in both UMNO and Barisan Nasional (BN)) as a "gesture of gratitude" for supporting the application by Jepak, and to ensure the victory of Barisan Nasional (BN) during the Gerenal Election (GE-14). *[Please refer to paragraph 16 of the witness statement (**D174**); Notes of Proceedings date 14 September 2020; and the Prosecution's Opening Statement (**P5**)]*.

86. The defence submitted that it was the testimony of Saidi (**PW17**) that the purpose and idea to make the purported political donation to the accused where Saidi (**PW17**) consistently affirmed that it was for UMNO and Barisan Nasional. This was the collective idea of both Rayyan (**PW16**) and Saidi (**PW17**). Cross examination of Rizal Mansor (**PW21**) would also shed light to the fact that the reason he communicated with both Rayyan (**PW16**) and Saidi (**PW17**) was only to get the accused involved since her husband is very busy. It is the position of the defence that there are no elements of "corrupt intention" involved.

87. It is the defence's argument that there was no evidence to suggest that the said "political donation" was meant for the accused nor did the accused solicited the percentage from the contract values of the solar genset projects awarded by the Ministry of Education to Jepak Holdings during the meeting between Rizal Mansor (PW21), Rayyan (**PW16**) and Saidi (**PW17**).

88. The defence argued that this was political donation for the accused's husband for his political career. No evidences were put forward by the defence to support the fact that this was only political donation that was meant to her husband. The accused had relied on the evidences and the testimonies of both Rayyan (**PW16**) and Saidi (**PW17**) to argue that there was no solicitation on the part of the accused. However, it is the prosecution's evidence that the payment was contingent to the accused using her influence to obtain the solar hybrid contract for Jepak Holdings and the money was meant as a bribe to the accused.

89. Furthermore, her evidences were not corroborated with that of her husband, who was supposed to be the beneficiary of the said sum of money being the so-called political donations. *[Please refer to paragraph 10 of the case of Balachandran (supra)]*.

90. Considering all the facts and circumstances of the case, we are of the humble opinion that the said sum of monies as per the three (3) charges preferred against the accused was solicited and received with corrupt intent. Political donation was just a guise used by Saidi Abang (**PW 17**) when in reality it was the payment of gratification done for the purposes of benefiting the accused.

Soliciting the said sum of money as inducement

91. On the present case, the amended Charge No. 1 was in respect of the solicitation of money as inducement. The expression "inducement" is not defined under the **MACC Act 2009**.

92. As such, one would look at the definition provided by the Learned High Court Judge, Raja Azlan Shah (as the late Royal Highness then was) in the case of ***Public Prosecutor v Datuk Haji Harun Bin Haji Idris (No. 2) [supra]***, where his Royal Highness held as follows:

> *"The word "inducement" evidently refers to a future act. What is forbidden, generally speaking, is soliciting a gratification as an inducement to do any matter or transaction in which the State Government is, concerned. The gravamen of the offence is soliciting a gratification as an inducement to do any official act or conduct.* ***This need not be proved by explicit evidence but may be inferred from surrounding circumstances****.*
>
> *Just as "corruptly solicit" may be inferred from all the surrounding circumstances, such as evidence of payments received in response to the request made in April 1972, so can "inducement" be inferred from acts or conduct from the relevant circumstances. As this element of "inducement" is common to all the three charges, I will deal with it under the second and third charges."*

93. Thus, applying the abovementioned case to the present case, we are of the humble opinion that taking into account the surrounding circumstances such as the knowledge of the accused about the solar and genset project; the fact that the accused did talk to Dato Seri Mahdzhir Khalid (**PW 5**) and Tan Sri Dr. Madinah Binti Mohamad (**PW 6**) to look into the issue involving the Solar and Genset project requested by Jepak Holdings Sdn Bhd leading to the contract being awarded in favour of Jepak Holdings Sdn Bhd as well as the discovery of two bags of cash found in the accused's house, solicitation as inducement can be inferred in the present case.

94. This is further fortified by the fact that Jepak Holdings Sdn Bhd had later executed the said solar project on 20 June 2017 which would clearly prove that the accused solicited from Saidi Abang Samsuddin **(PW 17)** through Rizal Mansor (**PW 21**), a sum of RM187,500,000.00 as an inducement to assist Jepak Holdings Sdn Bhd to obtain what is known as the Solar and Genset project from the Education Ministry through direct negotiations.

Receiving money of gratification as reward

95. On the present case, the prosecution has invoked the presumption against the accused to prove that inferences were drawn from the circumstances of the case that the accused solicited and received the said sum of money for her own personal benefit.

Element: Approval and the award of Contract to Jepak Holdings Sdn Bhd

96. On the present case, this Honourable Court has to determine whether the said solar project was awarded to Jepak Holdings as a result of the accused's influence and conduct.

97. It is to be noted that on 20 June 2017, the Education Ministry approved and awarded Jepak Holdings Sdn Bhd owned by Saidi Abang Samsuddin (**PW 17**) and his partner, Rayyan Radzwil Abdullah **(PW 16)** the said contract for the Solar and Genset project.

98. As reiterated in the earlier paragraphs above, the said project was awarded as a result from the influence of the accused despite not having any official position in the government sector. The accused had an influence in the decision-making process of the officials in the Education Ministry leading to the contract being awarded in favour of Jepak Holdings Sdn Bhd owned by Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** despite documentary evidences by the Education Ministry as well are their testimonies suggesting for an alternative genset project to take place instead of this solar project.

99. It was based on the minutes of the husband that has led to the Education Ministry in finally awarding Jepak Holdings Sdn Bhd the contract despite clearly stating their objection to the said solar project.

100. Her knowledge about the solar project led her to communicating with the officials from the Education Ministry. She had knowledge of the team of officials handling the said project which has led her to easily influence them to approve the contract in favour of Jepak Holdings Sdn Bhd.

101. Her influence over the project was easily made from the fact that she held the position as the First Lady of Malaysia and not just an ordinary person. Evidences from the whatsapp messages by Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** would also clearly indicate that the accused had knowledge and influence over the Education Ministry.

102. As such, we are of the humble opinion that taking into account the surrounding circumstances as well as the proximity of time between the messages as well as requests made by Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16),** and the minutes sent by the accused's husband leading to the approval of the Education Ministry, an inference could be drawn that this was based on the ideas *("buah fikiran")* as well as the influence of the accused.

Bare Denial of the accused

103. It is to be noted that the said accused merely denied such allegation against her and no evidences were adduced to support her defence.

104. Furthermore, when cross-examined about this money, the accused just denied and no evidences were submitted to that effect nor were there any witnesses called to rebut the presumption that the accused solicited and the said sum of money that she is currently being charged with.

105. One would refer to the case of ***DA Duncan v PP***[13] involving the possession of drugs under **section 37(d) Dangerous Drugs Act 1952**, where Federal Court Justice, Raja Azlan Shah (as the late Royal Highness then was) opined the issue of simple denial as follows:

> *"Now this evidence, if accepted and believed, is clearly sufficient to establish a prima facie case against the appellant. The High Court at Alor Star accepted it and called on the defence. The defence was, in effect, a simple denial of the evidence connecting the appellant with the four boxes. We cannot see any plausible ground for saying that the four boxes were not his. In the circumstances of the prosecution evidence, the High Court came,* ***in our view, to the correct conclusion that this denial did not cast a doubt on the prosecution case against the appellant.***"

106. Reference could also be made to the case of ***Wan Amirul Mubin Wan Kamaruddin v PP [2017]*** where Justice of the Court of Appeal, Idrus Harun at paragraph 49 held as follows:

> *[49]* ***A defence of bare denial envisages the situation where the accused offers no explanation to the prosecution's case and merely denies the evidence piled up against him****. This was the line of defence adopted by the appellant. It was a perilous course of action to take (****DA Duncan v. Public***

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[13] [1980] 2 MLJ 195 – Federal Court

***Prosecutor [1980] 1 MLRA 55**; [1980] 2 MLJ 195, FC; **Public Prosecutor v. Nur Hassan Salip Hashim & Anor [1993] 1 MLRH 517**; [1993] 2 CLJ 551; [1993] 4 AMR 406; **Andy Bagindah v. PP [2000] 1 MLRA 299**; [2000] 3 MLJ 644; [2000] 3 CLJ 289; [2000] 3 AMR 2611, CA; **Public Prosecutor v. Low Soo Song [2004] 5 MLRH 868**; [2004] 3 AMR 320; and **PP v. Abdul Manaf Muhamad Hassan [2006] 1 MLRA 319**; [2006] 3 MLJ 193; [2006] 2 CLJ 129; [2006] 4 AMR 477, FC).*

[50] It must be emphasised that both SP4 and SP9 had no bad motives to frame up the appellant. The appellant also agreed that the police had no reason to put the appellant in trouble especially when the offence carried with it the death penalty Consequently, there was no reason not to believe the evidence of SP4 and SP9.

[51] The High Court Judge rightly took judicial notice that "ganja" emitted a strong smell and even if what the appellant said was true that the drugs were located in the boot of the Proton Wira motorcar (which was strenuously denied by the prosecution), it cannot be overlooked that the appellant could still smell the "ganja". The strong smell of "ganja" was even detected by SP4.

*[52] At the end of the day, the defence of mere denial cannot rebut, on the balance of probabilities, the presumptions of trafficking under **s 37(da) of the DDA**. It was a forgone conclusion for the appellant."*

107. It was the accused's version that though she was in KL, she was not specifically in Langgak Duta at the material time the said bags were placed in the living room of the accused's residence. However, we are of the humble opinion that it is a clear case of bare denial unsupported by any evidence to persuade this Honourable Court to believe her version of events that she did not receive the bags of cash as well as the fact that she was not at her residence at the material time.

108. Though the case of ***Wan Amirul [supra]*** concerns the issue of possession of drugs, the legal principles and reasoning is relevant to this present case. It could be seen that the accused merely deny the allegation that she solicited and

received the sum of money even though there were evidences piling up against her. The defence consists of bare denial of the accused with no explanation given to cast doubt in the prosecution's case against her.

109. These bare denials do not assist her in anyway whatsoever. All the prosecution evidences adduced before this Honourable Court support the inferences that the said accused did solicit and received large sum of cash from Saidi Abang Samsuddin **(PW 17)** and his partner, Rayyan Radzwil Abdullah **(PW 16)** through the accused's private secretary, Rizal Mansor (**PW 21**) as an inducement and reward for obtaining the contract for Solar and Genset in favour of Jepak Holdings Sdn Bhd.

Conclusion

110. Based on the abovementioned cases and legal principles, we are of the humble opinion that the elements clearly stated out in the old case of ***Dato' Saidin [supra]*** have been fulfilled by the prosecution on a standard beyond reasonable doubt. The accused had made bare denials unsupported by any evidences and these bare denials are insufficient to rebut the presumption raised by the prosecution pursuant to **section 50 of the MACC Act 2009**.

111. The evidences and the testimonies given by Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) does not provide a corroborated evidence to rebut the presumption nor raise doubt in the prosecution's case as most of the events or incidents as alleged by the accused was not within the knowledge of the witness. If at all the evidence of Datuk Seri Siti Azizah Binti Sheikh Abod (**DW2**) assist only to the extent of identifying the job scope of Rizal Mansor (**PW21**) in the Prime Minister's Office.

For YA's considerations and further instructions please.

Prepared by:

Research Unit

Kuala Lumpur High Court.