

Any more stones to turn on PAC's 1MDB report?

MalaysiaKini.com

Apr 13th, 2016

Saleh Mohammed

COMMENT With a show of hands, who has read the 'Laporan Jawatankuasa Kira-Kira Wang Negara Parlimen Ketiga Belas' dated April 7, 2016?

Before discussing on the report and thereafter attempting to propose some points for improvements, let us go back to 2015.

A mainstream newspaper headlined, 'PM: No stone left unturned in AG audit of 1MDB'. "The auditor-general will investigate all claims and allegations on how 1Malaysia Development Bhd's (1MDB) funds were spent as part of his thorough audit... I do not want to defend anything as it involves my family. I want the AG to confirm. "I will not accept any abuse of power in 1MDB. I want people to know... if there is an abuse of power, we will not defend anybody".

In March 2015, the inspector-general of police said that the special task force to probe 1MDB comprises the police, Attorney-General's Chambers and Malaysian Anti-Corruption Commission (MACC). The task force will get to the bottom of allegations of discrepancies and misappropriation involving 1MDB.

"Investigations have begun as a report has been lodged. Asked if Najib, who is 1MDB's advisory board chairperson, will also be investigated as part of the probe, he said: "Yes." The case has been classified as one of cheating under Section 420 of the Penal Code.

Now, let us come back to April 2016.

Najib noted that the "comprehensive, conclusive and definitive" report had found no evidence of RM42 billion being missing from 1MDB.

BN leaders immediately claimed that it exonerated the PM of any wrongdoing.

A local Malay daily questioned whether the PM's critics are willing to publicly apologise now that he has been cleared of any involvement with issues surrounding 1MDB. Bernama reported PAC chairperson Hasan Arifin as saying Najib was not mentioned in their report tabled in Parliament as the committee did not find any evidence of wrongdoing or abuse of power.

The PAC report

The report urged the authorities to investigate former 1MDB CEO Shahrol Azral Ibrahim Halmi over weaknesses in the company's management. It said 1MDB's board of directors failed in their responsibilities to the company and its shareholders by allowing its management to make decisions that were not in line with good accounting practices.

Shahrol, however, had stressed that there was no wrongdoing or illegal activity at the company under his watch.

The report also urged that the advisory board of the fund - chaired by the PM - be abolished and any reference to the PM be changed to finance minister in the company's memorandum and articles of association. The Treasury secretary-general had told PAC, 1MDB's board of advisers had never held a meeting.

There is a clause in the Memorandum and Articles of Association (MAA) (Article 117) of the company, which clearly points to ultimate decisions is the prerogative of the PM. It places the sitting PM in direct control over "any financial commitment in (including investment), restructuring or any other matter which is likely to affect the guarantee given by the federal government of Malaysia".

It requires all investments to have written authorisation from the PM. In short, 1MDB's sole shareholder had no knowledge of any of the company's transactions. The Hansard of the PAC hearings on 1MDB shows all decisions and approvals regarding 1MDB went directly to the cabinet and/or the prime minister himself, completely bypassing the MoF. MoF

treasury secretary general made it clear that MOF as the shareholder had no authority over 1MDB.

Instead, Article 117 conferred all authority to the cabinet and the prime minister. The only other company to receive this special treatment is SRC International Sdn Bhd.

Article 117 was cited by Shahrol as one of the reasons he was able to undertake certain actions without board approval. In another instance, on March 28, 2012, MOF advised the chairperson of 1MDB what needed to be done according to the rules. In fact, the PAC was told that 1MDB's chairperson never responded to the letter.

The auditor-general's review

PAC sent a letter on Feb 27, 2015 to Jabatan Audit Negara (JAN) requesting it to carry out an audit on 1MDB focusing on five areas. This is totally different from what was instructed by the PM who wanted the auditor-general to investigate all claims and allegations on how 1MDB funds were spent.

JAN found during a board meeting on Oct 10, 2009, Shahrol inform the RM5 billion IMTNs hastened issue was on request from the special adviser with a view to developing Pulau Bidong in collaboration with Mubadala. AmBank (who was also present at the meeting) had confirmed TIA's special adviser has requested a bond issue be expedited. Mubadala had earlier denied its involvement in Malaysia in addition to the project in the Iskandar Development Region in Johor .

JAN found out TIA special advisers appointed on April 8, 2009, are Abdul Aziz Mohd Akhir and Low Taek Jho.

JAN confirmed that they have not received the foreign bank account statements of 1MDB and its subsidiaries after repeated requests. Therefore, JAN cannot account for US\$5.5 billion of 1MDB's overseas cash flow. The excuse given by 1MDB is because they have been confiscated by the authorities and purportedly said the audit findings is totally wrong.

The auditor-general found it necessary to defend his office for the insinuation that they were not “detailed” in their questions. “In fact, right up to the very last minute in March, there were still repeated requests to the Finance Ministry and 1MDB to make available all the missing documents, including all the foreign bank statements, payments transaction confirmations, as well as certain key missing agreements. However, these requests fell on deaf ears”.

On Sept 28, 2009, a joint venture agreement was signed between 1MDB, Petrosaudi Holdings (Cayman) Ltd. and 1MDB Petrosaudi Ltd. in Kuala Lumpur . Petrosaudi Holdings (Cayman) Ltd. and 1MDB Petrosaudi Ltd was represented by Tarek Obaid , while 1MDB represented by Shahrol. The ceremony was also witnessed by the PM and Prince Turki. The draft joint venture agreement was not given to JAN.

Privileges and indulgence towards 1MDB

1MDB has been given special privileges and indulgence not common with other government companies under Menteri Kewangan Diperbadankan (MKD).

Among them are as follows:

- a. No representative of shareholders in 1MDB board .
- b. Corporate tax exemption on all income for a period of 10 years starting Oct 23, 2010.
- c. Exemption on some government regulations in areas of management of earnings (pengurusan perolehan), remuneration and bonus payments to board members and management.
- d. Government guarantees and letters of support and standby credit to finance the company’s operations.

In short, the operations and investments are actually not regulated by MKD.

The former PAC chairperson reportedly said, “1MDB has their own source of authority not from the MOF but directly from the PM and the PM is also the finance minister. So they bypassed the government’s due process framework lah”.

Others

On May 15, 2009, an agreement was signed between TIA and AmInvestment Bank Berhad. However, the agreement was opposed by MBI Terengganu who also wrote a warning letter dated May 29, 2009 to the bank’s alleged misconduct and the issue of non-conformity during IMTNs issuance.

For investment in Segregated Portfolio Company (SPC), 1MDB took high risk investing about US\$2.318 billion. This was made through Bridge Global Absolute Return Fund SPC (Bridge Global SPC), a new company established barely a month, with no licence as fund managers and without experience to manage huge funds.

1MDB failed to present its financial statements within six months after the financial year end for 2010 , 2012, 2013 and 2014. It also failed to comply with Section 143 (1) and Section 169 (1) of the Companies Act 1965 for the financial year ended 31/3/14. For the year ended 31/3/15, the account has not been audited. SSM has approved an extension until 31/3/16 in a letter dated Aug 21, 2015 .

The federal government total risk exposure on 1MDB up to October 2015, is estimated at RM20.31 billion excluding interest payments.

Proposals for improvements/stones to unturn...

A. PAC to call:

1. The prime minister to understand the implications of Article 117 as discussed above.
2. Abdul Aziz Mohd Akhir and Low Taek Jho (special advisers) to clarify why they made the request to hasten the RM5 billion IMTN issuance.

3. MBI Terengganu to check on the warning letter sent to AmInvestment Bank.
 4. Tarek Obaid to get his side of the story on the JV agreement with Petrosaudi Holdings (Cayman) Ltd. and 1MDB Petrosaudi Ltd.
 5. Mubadala to confirm its participation in Pulau Bidong.
 6. Edward L Morse (valuer appointed by 1MDB and 1MDB Petrosaudi Ltd) to perform independent evaluation of the hydrocarbon assets of Petrosaudi International Ltd and its subsidiaries and verify the reports.
 7. The Companies Commission (SSM) to check on what actions have SSM taken on 1MDB on its failure to comply with Section 143 (1) and Section 169 (1) of the Companies Act 1965.
- B. The special task force to probe 1MDB comprising the police, Attorney-General's Chambers and Malaysian Anti-Corruption Commission (MACC) to complete its investigations and to call all relevant parties including the PM.
- C. The auditor-general's audit report to be declassified since PAC has submitted its report to the Parliament.
- D. Some people may have thought that the PAC report is "comprehensive, conclusive and definitive". Based on the above discussions there are still a number of stones to unturn.
- E. I would recommend those who claimed that the PAC report exonerated the PM to read the full report.
- F. PAC chairperson to produce the Hansard to indicate where the committee said they did not find any evidence of wrongdoing or abuse of power by the PM.
- G. Why the report singled out Shahrol Azral Ibrahim Halmi only to be investigated? The report also said the board of directors failed in their responsibilities to the company and its shareholders.

Now, the BOMBSHELL... I just checked the 1MDB website and Shahrol is a director? The PAC report shows Shahrol has been a director since 2010 (Jadual 4).

The PAC report shows 19 incidences of actions by the management conflicting with instructions of the board/shareholders and 13 incidences of inaccurate information providedd to the board. There were also 3 instances of wrong or inaccurate information given to the auditors. (please refer to Jadual 15, 16 and 17).

Why is he a board member now? It seems the board may have either forgiven him or condone his actions and given him a promotion.

A brotherly suggestion for Shahrol. If you think you are being made a scapegoat, do speak up. For whatever we do now will be accounted for in the Hereafter.

As for the other board members, based on PAC's findings, my brotherly advise is to just resign rather than making an offer.

And for those who wants to move on, my brotherly advise is to wait first because the PM wanted no stones left unturned, and here we still have a few more to turn.

Copyright © 1999-2012 Mkini Dotcom Sdn. Bhd
Source: <https://www.malaysiakini.com/news/337672>