

'Grand larceny in 1MDB'
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Tommy Thomas

COMMENT The might of the most powerful nation in the world has been brought to bear to investigate, uncover and institute legal proceedings to forfeit assets purchased through money stolen from proceeds of bonds sales by 1MDB.

The combined efforts of three US agencies, the Federal Bureau of Investigation (FBI), the Department of Justice and the Internal Revenue Service (IRS), with the assistance of law enforcement agencies in other countries, have produced the most complete, holistic picture of the great fraud perpetrated by Jho Low and his co-conspirators to defraud the people of Malaysia of billions of ringgit ultimately belonging to them.

The 136-page, 513-paragraph 'Verified Complaint for Forfeiture in Rem' is a tour de force. The people of Malaysia, suffering under a state of powerlessness and helplessness, owe an immeasurable debt to the sterling work carried out by truly independent institutions in the United States.

As a long-time critic of US domestic and foreign policies, I pay tribute to their selfless work in exposing the greatest robbery in modern times; what is the Great Train Robbery of the 1960s compared to 1MDB!

The fact that the US initiative is brought by its newly established 'Kleptocracy Asset Recovery Initiative' is significant. Thus their complaint asserts that Prime Minister Najib Abdul Razak is a kleptocrat, a term that was only coined in the late 1990s to describe African dictators like Joseph Mobutu, Sani Abacha and Robert Mugabe plundering their own countries.

More than US\$3.5 billion in funds belonging to 1MDB were stolen, and the US complaint seeks the forfeiture and recovery of more than US\$1 billion in assets purchased from that stolen money. It represents the largest single action ever brought by the Kleptocracy Initiative.

The serious allegations against Najib, his stepson, Riza Aziz and Jho Low for their corrupt dealings have shamed our nation. Through their action, Malaysia has joined the ranks of the most corrupt nations in the globe.

One could not have a more succinct description of the corrupt practices engaged by these persons than what the Complaint states in Paragraph 6:-

“6. 1MDB was ostensibly created to pursue investment and development projects for the economic benefit of Malaysia and its people, primarily relying on the issuance of various debt securities to fund these projects. However, over the course of an approximately four-year period, between approximately 2009 and at least 2013, multiple individuals, including public officials and their associates, conspired to fraudulently divert billions of dollars from 1MDB through various means, including by defrauding foreign banks and by sending foreign wire communications in furtherance of the scheme, and thereafter, to launder the proceeds of that criminal conduct, including in and through U.S. financial institutions. The funds diverted from 1MDB were used for the personal benefit of the co-conspirators and their relatives and associates, including to purchase luxury real estate in the United States, pay gambling expenses at Las Vegas casinos, acquire more than US\$200 million in artwork, invest in a major New York real estate development project, and fund the production of major Hollywood films. 1MDB maintained no interest in these assets and saw no returns on these investments.”

A close reading of the comprehensive document will indicate that the draftsmen had access to thousands of incriminating materials, hardly surprising considering the reach of the FBI and IRS when the US dollar and their banking system are used for nefarious purposes. Further, the paper trail would have been immensely damning.

From their advanced state of knowledge, as demonstrated by the exhaustive nature of the civil complaint, it is only a small step for the FBI and Department of Justice (DOJ) to next take, that is, to institute criminal proceedings against the persons referred to in the complaint. Such criminal proceedings cannot come soon enough for all right thinking persons.

The US government complaint completely vindicates the brave reporting of Clare Rewcastle-Brown and the *Sarawak Report*, *Wall Street Journal*, *New York Times*, *the Edge* led by its intrepid editor Ho Kay Tat and P Gunasegaram in *KiniBiz*. So too the public statements of Dr Mahathir Mohamad, Tony Pua, Lim Kit Siang and Ambiga Sreenevasan.

They have been unfairly demonised by the Malaysian Establishment, for speaking the truth and an apology is due to them. And Malaysia owes a great debt to Clare Rewcastle-Brown for her single-minded investigative journalism of the very highest standard.

Because the complaint is in effect a history of the fraudulent dealings undertaken by 1MDB, under the control of Najib and Jho Low from the time of its birth, it should be read carefully. No summary can do justice to its detailed narration: the primary document must be reviewed.

I propose to focus on the role played by Najib and the corrupt practice of his step-son, Riza. But before I do so, mention must be made of the Verification by Robert B Heuchling, Special Agent, FBI which appears at the last page of the complaint. He has signed the complaint, thereby confirming the veracity of its contents under the penalty of perjury, and goes on to state that he has had access to files, records and information supplied to him by law enforcement officers.

This signifies personal responsibility on the part of Heuchling, establishing that he is satisfied with the truth of the matters complained of. Thus, it would be foolhardy for anyone to simply dismiss the complaint as a political document by a foreign agency wishing to undermine the Najib administration.

Najib Abdul Razak

A minor criticism can be levelled against the complaint: its failure to actually name Najib Abdul Razak. The obvious inference is that it was a political decision not to shame a sitting prime minister most friendly to USA and its president. But the legal draftsmen, no doubt irritated by such political constraint to their freedom to plead in the manner of their choosing, make it crystal clear that Najib is “Malaysian Official 1”.

Thus, Paragraph 28 states that Malaysia Official 1 “is a high-ranking official in the Malaysian government who also held a position of authority with 1MDB”. At all material times, Najib is, and was, the prime minister, finance minister and chairperson of the advisory committee of 1MDB. No other member of the government held such triple functions, a fact expressly recognised in Paragraph 39 of the complaint.

Just in case any reader of the complaint has any difficulty in recognising Najib as Malaysian Official 1, it would be removed by reading the very next Paragraph, that is Paragraph 29 (indeed, the juxta-positioning of the 2 paragraphs is itself instructive). Riza Aziz is described as “a relative of Malaysian Official 1”. Riza is the stepson of Najib, and is not related to any other personality directly, indirectly or remotely involved in the 1MDB scandal.

In such circumstances, it is absolutely pointless for Najib and his loyal, diehard supporters to claim that because he is not named in the complaint, it does not refer to him. Indeed, the complaint cannot properly be understood in its entirety, unless one understands Najib's dominance over 1MDB, as was the political and business reality.

The first reference to wrongdoing on Najib's part appears in Paragraphs 99 to 102. Paragraph 99 states that US\$20 million was transferred between February and June 2011 into Najib's now notorious personal account with AmBank, Kuala Lumpur, from monies stolen from 1MDB. Paragraph 102 states that this was the same AmBank account which received US\$681 million in March 2013.

The second corrupt action involving Najib is referred to in Paragraphs 178 and 193, Paragraph 178 states that 1MDB bond proceeds were diverted from their intended purpose for the personal benefit of among others, Najib, which further evidences "a misappropriation of public funds". In the case of Najib, Blackstone in that transaction transferred at least US\$30 million to his Ambank account: see Paragraph 193.

The third reference to corrupt monies received by Najib can be found in Paragraph 229 which states that during a five-day period in March 2013, US\$681 million was transferred from the Tanore account to Najib's AmBank account, from which US\$620 was returned to the Tanore account in August 2013.

What happened to the difference of US\$61 million, is not mentioned in the complaint. Thus, it is clear that at least a total of US\$731 million was received by Najib in his Ambank account.

Paragraph 238 is critical. It explains why creditors were prepared to purchase bonds issued by 1MDB, which is a company with a paid-up capital of just RM1 million, but able to issue US\$3 billion worth of bonds in March 2013 (to give just one example of such a bond issue). That is because Najib, as finance minister, signed a letter of support on behalf of the government of Malaysia.

Regardless of the title of that document, effectively the government was guaranteeing repayment if 1MDB defaults. Najib was not only prepared to risk injury to Malaysia's sovereign immunity by being sued in the Courts of England, but more importantly was also undertaking to pay tax-payers monies from the Consolidated Fund, if 1MDB defaults.

In so signing the letter of support, Najib was placed in a terrible conflict of interest position: his interest as a beneficiary of corrupt monies overriding his duty as a public servant elected to protect taxpayers' money.

The complaint also focuses on the offering circular, leading to the issue of 1MDB Bonds. Paragraph 242 states that the offering circular was misleading because it failed to disclose that Najib "would receive hundreds of millions of dollars from the proceeds of the bond sale within days of its closing".

Paragraphs 259 to 264 deal with a subject familiar to Malaysia: the title to this part of the complaint reads: "US\$681 million was transferred from the Tanore Account to an Account Belonging to Malaysian Official 1". Paragraph 259 simply states:

"Shortly after proceeds of the 2013 bond sale were diverted to the Tanore Account, US\$681,000,000.00 was sent from the Tanore Account to a bank account belonging to Malaysian Official 1."

No guesses needed that this official was Najib, (and no other person). According to Paragraphs 248 and 249, Eric Tan Kim Loong, a close associate of Jho Low, was the sole authorised signatory to the Tanore Account, but in March 2013 1MDB Officer 3 was given signing authority on the Tanore Account through a Power of Attorney.

Thus, although Paragraph 262 pleads that RM620 million was returned by Najib to the Tanore Account, it does not mean that Najib could not have had access to it, thereafter, since the Tanore Account was controlled by Jho Low. What is clear is that the monies were not a gift from the Saudi royalty, but proceeds from bonds issued by 1MDB, which means 1MDB must repay them. And if 1MDB cannot, Malaysian taxpayers will.

The allegations levelled against Malaysian Official 1 in these paragraphs of the complaint are most grave, and indicate a pattern of systematic corruption, while holding the most important office in the state. Again, there is absolutely no doubt that although these paragraphs do not expressly name Najib, it is impossible to think of any other individual fitting the role.

Riza Aziz

What has so far received far less publicity is the corrupt monies received by Najib's stepson, Riza. It is a classic case of a kleptocrat in charge of the nation's treasures

plundering them for the benefit of a close relative. Again, Najib placed himself in a conflict of interest position.

Paragraph 120 of the complaint begins the case against Riza. It states there that shortly after receiving proceeds of the two 2012 bond sales from 1MDB, US\$238 million was transferred to a Singapore bank account belonging to Red Granite Capital, a BVI entity owned by Riza.

About US\$100 million of this money was used to purchase luxury real estate in the US and UK for Riza's personal benefit, and about US\$64 million to fund his movie production company, Red Granite Pictures. The scheme to defraud 1MDB of US\$238 million is explained in detail from Paragraphs 202 to 219.

Riza Aziz also transferred some US\$41 million from the sum of US\$238 million to be applied to defray gambling expenses incurred in the Venetian Casino, Las Vegas by Jho Low, Eric Tan and himself (Riza): see Paragraph 220 and 226. The final corrupt dealing by Riza was his purchase of the Qantas Townhouse in posh Belgravia, London for £23 million: see Paragraph 492.

Unprecedented, shocking, massive, brazen, blatant: one soon runs out of words to describe the scale and magnitude of the corrupt actions of the wrong-doers. How those who designed, devised and implemented these dastardly deeds thought they could escape in the modern, borderless world is itself mind-boggling.

Proceedings in Malaysia

Why were similar proceedings not instituted in Malaysia? After all, Malaysia is the natural jurisdiction since the company in question, 1MDB, is incorporated and carries on business here. Najib, Riza and Jho Low are Malaysians. So the nexus to Malaysia is greater than anywhere else.

Is it not embarrassing for the attorney-general of Malaysia to be reminded by his counter-part in the United States, under whose leadership the complaint was brought, that stealing from public funds by Najib is a criminal offence under Malaysian law. Thus, in Paragraph 499, seven separate offences under our Penal Code are listed as being violated: three provisions under the Malaysian Anti-Corruption Commission (MACC) Act are also identified in that Paragraph.

Bank fraud is a crime under at least three provisions under the Penal Code, as we are reminded in Paragraph 500. And the entire world knows about the universal application of Anti-Money Laundering Legislation (like AMLA) across the globe; a consequence of 9/11. And yet no criminal proceedings have been commenced in Malaysia!

Former deputy prime minister Muhyiddin Yassin and former attorney-general Gani Patail will testify as to what happened to them a year ago when they tried to act against Najib. Unfortunately, the late Kevin Morris' role in the 1MDB scandal has never been publicly clarified, and remains a matter of rumour and speculation.

A climate of fear has enveloped all the senior office-holders of the major institutions of the nation. MACC, the inspector-general of police (IGP) and Bank Negara have gone silent. The Public Accounts Committee (PAC) has been disbanded, and the auditor-general's report has been marked an official secret.

Because 1MDB was the company which directly suffered losses worth billions of ringgit, they should have filed civil recovery actions against persons like Jho Low and Najib, who were supposed to look after their interests but in fact were plundering it. Since the wrong-doers are still very much in control of 1MDB, it is not surprising that the company has not complained, much less resorted to litigation against anyone.

Litigation by other parties have so far been unsuccessful. I should disclose that I was part of the legal team that acted for some of the opposition parties and personalities when they sued Najib and 1MDB last July upon discovery of the US\$681 million being credited into his personal account at Ambank.

The civil suit was summarily struck out as being wholly without merit, although all the contentions therein, based principally on the Sarawak Report and Wall Street Journal, have been corroborated by the US complaint.

Najib must resign

It is now abundantly clear that Najib Abdul Razak has long forfeited his right to remain in office as our prime minister. The documentary evidence, which cannot be denied, is overwhelming. US\$731 million of corrupt money was credited into his personal account, and his stepson received US\$238 million. In the eyes of the world he is a kleptocrat, and cannot stay in office. He must resign immediately.

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