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Journal of Economic Crime Management

Institute of Crime and Criminology
HELP University

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Message from the Chancellor and Co-Founder of HELP University

HELP University will mark its 39th anniversary in 2025, commemorating nearly four decades of academic excellence. The University's Institute of Crime and Criminology (ICC), established 18 years ago, continues to contribute significantly to education and research in the field of criminology.

I am proud that under the able leadership of Dato' Sri Professor Dr Akhbar Satar, the Director and Professorial Fellow and Chief Trainer of the Institute of Crime and Criminology, the ICC has achieved global recognition as a pioneer in crime and criminology education and research. Professor Akhbar has also initiated collaboration with various Malaysian Government institutions, including the Malaysian Anti-Corruption Commission (MACC) and the Malaysian Institute of Integrity – Institut Integriti Malaysia (IIM).

Dato Sri Dr Akhbar Satar is widely recognized for his expertise and influential perspectives on governance and best practices in both the public and private sectors. His published works have significantly shaped policy discourse in Malaysia and are frequently referenced by corporate leaders and decision-makers. A regular presence on television networks and in print media, Dr Akhbar's insights are respected and widely followed.

The Institute of Crime and Criminology (ICC) at HELP University offers the Master of Science in Economic Crime Management—a pioneering program and the first of its kind in Asia. Since its inception, the program has successfully graduated several hundred professionals, including senior executives from the banking and financial sectors, government agencies, law enforcement bodies, government-linked corporations, and regulatory institutions. The program's international student body reflects its relevance, academic rigor, and appeal to senior decision-makers globally.

In this way, the ICC has a wide impact on good governance in managing government ministries or corporations. In view of the need to improve ethical practices and good governance at the government and corporate level, the role of ICC is thus an impactful one. Good procedures and protocols do not always ensure an absence of corruption or malpractice. A culture of good governance comes from personal moral leadership and ethical principles being practiced in all institutions and industries.

The Master of Science in Economic Crime Management has full accreditation from the Finance Accreditation Agency (FAA). FAA is an independent quality assurance and accreditation body supported by Bank Negara Malaysia (Central Bank of Malaysia) and Securities Commission Malaysia and is executed by a committee of technical experts, industry professionals and leading academics from the international financial services industry. This recognition of the Master of Economic Crime degree affirms its quality and professional status.

As part of this innovative learning, ICC is recognized for its pioneering effort in introducing the Master of Economic Crime Management under the APEL.Q framework. This means that anyone with the relevant practical experience of 20 years can be admitted into the MSc in Economic Crime Management. The Malaysian Government has a financial scheme to support civil servants to enroll in this programme.

The Journal of Economic Crime Management (JECM) was initiated by Dato' Sri Akhbar and is the only major journal focusing on economic crimes. The present publication, Volume 9, contains a wide range of issues that have interest for the academic community and all the practitioners who are involved in fighting economic crimes. The first issue of JECM was published in 2012. The current one has four articles. During this period the types and perspectives of crime have changed. Cybercrimes, supported by sophisticated technologies, are becoming a central issue. Various types of commercial and economic crimes have also emerged at the global level. This demands more efforts by various governing bodies to preempt and prevent them from growing. It requires a total effort from all stakeholders.

The quality of depth and breadth of the articles reflect the high research standards of the ICC programme. The findings are useful and relevant for policy consideration and further research. In particular, with the widespread failures in moral leadership and ethical practices in all industries and governments such research is more than timely. The common message among the articles is the sense of urgency that unless we arrest this moral decline many societies and institutions will degenerate and decay.

Here is a crisp summary of the four research articles.

The first paper is "Recovery of Stolen Assets: Strategies to Effectively Adopt Illicit Enrichment Laws in Malaysia." It examines the challenges of recovering assets linked to corruption and explores the potential of illicit enrichment laws as a strategic tool. The study includes a review of legal frameworks in the UK and Hong Kong, supported by interviews with practitioners in Malaysia. It offers practical recommendations for implementing such laws locally, including strengthening whistleblower protections, enhancing MACC's independence and capacity, and enacting an Asset Declaration Act to support more effective enforcement and asset recovery.

The second paper is on "Examining the Phenomenon of Insider Trading Involving Pharmaceutical Stocks: Securities Exchange Commission Cases in the U.S." It investigates insider trading practices specifically within the pharmaceutical sector. By analyzing several SEC enforcement cases in the U.S, the paper uncovers common patterns, motivations, and regulatory challenges in identifying and prosecuting insider trading. The study highlights the need for stronger compliance frameworks, timely disclosures, and vigilant oversight, especially in industries dealing with sensitive, market-moving information such as clinical trial results and drug approvals.

The third paper is “Board Governance: The Role of Effective Internal Audit.” This article provides a concise introduction to the strategic role of Internal Audit in enhancing board governance and accountability. It includes relevant theories, practical approaches, and an in-depth discussion on aligning audit work with organizational goals, managing emerging risks, and strengthening internal control and governance systems.

The fourth paper is “Nexus – A Brief History of Information Networks from the Stone Age to AI” provides a sweeping exploration of the evolution of information networks and their transformative impact on societies. Tracing the journey from early human communication systems to the rise of artificial intelligence, the paper reflects on how information exchange has shaped human development, governance, and security. It also touches on the ethical considerations and vulnerabilities introduced by modern interconnected systems, particularly in the context of economic crime and cyber threats.

I congratulate Dato’ Sri Akhbar and his faculty and students for their commitment consistently producing high quality research in the area of crime and criminology. This demonstrates the exemplary effort of HELP University in pioneering our education and training agenda in areas that have business and social impacts.

Professor Datuk Dr. Paul Chan Tuck Hoong
Chancellor and Co-Founder
HELP University

Foreword

It is my pleasure to introduce the ninth issue of the ICC Journal published by the *Institute of Crime and Criminology at HELP University*. This edition reflects a growing interest in economic crime, featuring four compelling articles that examine various aspects of this increasingly significant field.

The papers in this issue offer valuable insights and serve as important resources for researchers, academicians, students, and practitioners engaged in the study of economic crime. The topics explored include asset recovery, insider trading, and broader themes of corporate governance and cybersecurity-highlighting the diverse and evolving nature of this domain.

ICC remains committed to advancing knowledge and discourse in this field. Our flagship *Master of Science in Economic Crime Management* program continues to evolve, maintaining a strong foundation in key subjects such as forensic accounting, corruption and corporate crime, terrorism financing, money laundering, and fraud.

On behalf of the ICC, I would like to express sincere appreciation to Professor Datuk Dr Paul Chan, Chancellor and Co-Founder of HELP University, for his guidance and continued support. I also extend my gratitude to the editorial committee, led by Dr Ramanan Malini and supported by Ms Hasfatira Binti Abdul Rahman, for their dedication and contributions toward the successful publication of this journal.

We look forward to presenting more thought-provoking and impactful work in future editions, as we remain steadfast in our mission to support research that makes a difference in both academia and practice.

Dato' Sri Dr Akhbar Satar, CFE,
Director
Institute of Crime & Criminology
HELP University

Recovery Of Stolen Assets: Strategies to Effectively Adopt Illicit Enrichment Laws in Malaysia

Chan Hwei Ling, Vivian

Abstract

Corruption is a global phenomenon and has seen an estimated of USD2.6 trillion, approximately 5 per cent of global GDP stolen annually. Such large amounts of monies stolen deprive developing nations of critical funds that could be used in nation building. Corruption as a crime is difficult to detect and investigate as it occurs between two parties, where both are not willing to lodge complaints. Hence, significant amounts of corruption remain undetected while criminals continue to enjoy their corrupt proceeds. Therefore, more effective ways are required to tackle this issue, and illicit enrichment law is one such area that is being explored. Illicit enrichment basically does not require the prosecution to establish guilt for an underlying criminal offence but to proof that the accused has assets exceeding his lawful sources of income. In Malaysia, currently illicit enrichment is not an offence, and calls have been made to expand Section 36 of the MACC Act to introduce this as a criminal offence which have been agreed by all the interviewees. However, to ensure that it can be effectively implemented in Malaysia, the literature reviews and interviews have brought out several strategies required such as the introduction of the Asset Declaration Act, amendments to the Whistleblower Protection Act and ensuring MACC is well resourced and independent to conduct its investigations effectively to bring about convictions for illicit enrichment which will then assist to curb corruption in the country.

Keyword: Corruption, illicit enrichment, Section 36 MACC Act, effective implementation of illicit enrichment.

1.0 Introduction

The World Bank defines corruption as "abuse of public office for private gain", and it covers offences from bribery to theft of public funds (World Bank, 2020); while Transparency International defines corruption as "abuse of entrusted power for private gain" (Transparency International, 2024). Global cost of corruption currently stands at around USD1 trillion annually with more than USD20 billion to USD40 billion of these coming from developing countries (Lord et al, 2022). Corruption slows economic growth and development as it diverts resources that could be used for a country's development (Gray et al., 2014).

Corruption as a crime is challenging to ascertain and probe, as in most instances, it occurs as part of a scheme between two or more willing parties and thus, no one is willing to lodge a complaint (Dornbierer, 2021). Due to this challenge, discrepancy between amounts stolen and recovery rate is concerning (Brun et al., 2023). To address this, many jurisdictions are looking to establish laws

allowing the corrupt assets to be recovered without proving the act of corruption that gave rise to these proceeds to either a criminal or civil standard of proof (Raof et al., 2021). Hence, illicit enrichment legislation that focuses on the outcome of corruption, instead of the original criminal action itself has been introduced. Illicit enrichment is defined in Article 20 of the United Nations Convention against Corruption (UNCAC) as "significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income" (UNCAC, 2004).

Illicit enrichment is an outcome from corruption and to fight corruption and enhance the rate of stolen asset recovery, there have been calls by the international community on countries to criminalize this through illicit enrichment laws (Meskele, 2012 as cited in Muhammad Azman Ng, 2022). Illicit enrichment law is a contentious area of law as it deviates from common legal principles, where a person can be sanctioned for obtaining or enjoying wealth which is not explainable based on lawful sources of income, and the court does not need to be satisfied that a criminal activity has taken place to either a civil or criminal standard of proof (Dorn Bierer, 2021).

Some countries have also introduced the Unexplained Wealth Order (UWO) as a tool to improve asset recovery. UWO is a type of illicit enrichment provision. The difference between UWO and illicit enrichment is that UWO is an investigation and confiscation procedure where the accused will need to explain how he has obtained certain property once the authorities have established that it does not commensurate with the person's lawful income. UWO is a civil measure whereas illicit enrichment is often a criminal offense. Although some jurisdictions could adopt a non-criminal basis of illicit enrichment system, wherein then the difference between UWO and illicit enrichment becomes blurred (Brun et al., 2023).

Malaysia is also not exempted from challenges in investigating corruption. It was noted by Director of Anti-Money Laundering Division, Malaysian Anti-Corruption Commission (MACC) Mohamad Zamri Zainul Abidin that recovery of stolen assets is increasingly difficult as the corrupt monies could be laundered through complex cross border financial transactions. Criminals also would now operate in syndicates and establish companies fronted by proxies or nominees to hide their wealth (The Edge, 2021). Recovering stolen assets is challenging due to lengthy court processes which may or may not end up in conviction (Zainul Abidin, 2023).

In Malaysia, several high-ranking public officials have been identified to have wealth that are beyond their means. Most notable one is our former Prime Minister, Dato Seri Najib Razak and his wife Rosmah Mansor from the 1MDB case. It was reported that the total value of items seized from Dato Seri Najib Razak was at RM1.1 billion (Azman, 2018).

With regards to illicit enrichment, currently there are no specific provisions for illicit enrichment in the MACC Act (Muhammad Azman Ng, 2022). Section 36 of the MACC Act, which is the only section in relation to this matter, is currently limited as it did not specify illicit enrichment as an offence, instead it only authorizes MACC officers to request a person currently being investigated for an offence under the Act to declare all his assets on oath.

Although there) andbeen proposals submitted to amend the current Section 36 of the MACC Act to include living beyond ones known source of income as an investigation trigger without the need for presumption that a corrupt offence was committed (Malaysian Bar, 2015; Bernama, 2019; Centre to Combat Corruption and Cronyism, 2021), and exploring possibility to introduce the Unexplained Wealth Order (UWO) regime similar to the United Kingdom (The Edge, 2018).
There were studies conducted that analyzed the existing legal framework in Malaysia pertaining to illicit enrichment with recommendations to criminalize this such as practiced in Hong Kong (Muhammad Azman Ng, 2022); analysis of forfeitures under anti-money laundering laws (A.Rahman, 2022); comparison of forfeiture of criminal proceeds under anti-money laundering laws in Malaysia and UK (A.Rahman & Aurasu, 2018); civil forfeiture and money laundering from a Malaysian perspective (A.Rahman & Aurasu, 2016) and doctrinal study of applicability of UWO in Malaysia through comparing with the UK (Raof et al., 2021). However, there is a research gap in outlining the broader challenges faced in asset recovery procedures in Malaysia, examination of how illicit enrichment laws have been adopted in other countries, their successes, failures, and lessons learned, and the factors that would facilitate effective adoption of illicit enrichment laws if implemented in Malaysia, which this research aims to study.

Thus, the specific research objectives of this study are:

i. To examine the challenges in existing asset recovery procedures in Malaysia,
ii. To provide an overview of the illicit enrichment laws and lessons learnt in the United Kingdom (UK) and Hong Kong (HK) in addressing unexplained wealth accumulation,
iii. To identify strategies that could be employed to effectively implement illicit enrichment laws in Malaysia to combat corruption and enhance asset recovery effort.

To achieve the objectives, the following research questions are examined:

i. What are the challenges in the existing asset recovery procedures in Malaysia?
ii. How do countries such as United Kingdom (UK) and Hong Kong (HK) implement illicit enrichment laws to address unexplained wealth accumulation?
iii. What strategies can be employed to effectively implement illicit enrichment laws in Malaysia to combat corruption and enhance asset recovery effort?

The rest of this paper presents the literature review, sets out the methodology, develops the findings and recommendations.

2.0 Literature Review

2.1 Global cost and impact of corruption

Corruption could be in the form of bribery, embezzlement, cronyism, and abuse of position (GIACC, 2023). United Nations Secretary-General António Guterres mentioned that the yearly cost of global corruption through bribes and embezzlement total to $3.6 trillion (Johnson, 2018; Transparency International UK, n.d.). In the context of Malaysia, in research conducted by EMIR Research, Malaysia's total economic cost of corruption stands at RM2.3 trillion over the last 26 years (Business Today, 2023). And in the same Business Today article (2023), it is estimated by Transparency International Malaysia (TI-M) and World Bank that Malaysia has been losing nearly 4% of its GDP yearly since 2013 to corrupt practices. Thus, it is imperative to combat corruption and recover these illicit assets as much as possible which could be channeled back into the country for economic development.

2.2 Definition and importance of asset recovery

Asset recovery is the process to trace, freeze, forfeit and return funds that have been obtained through illegal means (UNCAC Coalition, 2024; UNODC, 2024). Asset recovery is a current and strategic issue in both domestic and international fight against corruption and organized crime (UNODC, 2024). It is covered in Goal 16.4 of the UN's Sustainable Development Goals and in the Addis Ababa Action Agenda on Financing for Development (Transparency International, 2024). Despite the avenues and legal framework available, stolen asset recovery remains complex in practice, especially when involving cross border. It requires heavy coordination and collaboration amongst domestic and international agencies and ministries across various legal systems and procedures as well as special investigation knowledge and skills is required to "follow the money" (Brun et al., 2011). Recovery of stolen assets is important as these funds could be channeled back to the country for economic developments in critical areas, such as the healthcare and education sectors and to help deter corruption.

2.3 Challenges to recover assets from corruption cases

Although there has been significant global focus on corruption, recovering the value of assets from corruption remain challenging, time consuming and full of legal and practical issues (Brun et al., 2023). This is because although countries could enact criminal laws prohibiting corruption, effectiveness of these laws depends on the political will by the governments to investigate and prosecute corruption (Boles, 2013; Jones, 2022).

The most major obstacle in fighting corruption is the detection of the corrupt act itself and to establish that the accused in question committed the corruption offence. Law enforcement officers often find it challenging to detect and investigate corrupt activity as the giver and receiver have strong interests to conceal their actions, where the witnesses could be participants of the corrupt act (Boles, 2013; Vaissiere, 2012).

The assets would also need to be proven by the prosecuting authorities that they were obtained from the criminal offence for which the conviction was obtained. In general, the only assets subject to criminal confiscation are the proceeds of the criminal offence for which the offender was convicted. If the accused can prove that the assets were not derived from this criminal act, it could not be confiscated (Vaissiere, 2012).

Further, detection of the assets is another challenge. When criminals obtain illegal funds, especially from developing countries, they would find ways to mask the illegal source of the funds and attempt to divert them elsewhere (OECD, 2014). This is usually done through the financial system where such funds are laundered through investment products, properties, luxury goods etc. Such criminals will choose countries where the risk of detection is low due to weak anti-money laundering enforcement and has a stable and predictable financial system.

Thus, the challenge of recovering such assets is further amplified when funds are laundered into offshore bank accounts or properties outside of the country of origin, as strong political will and inter-governmental cooperation is required to work through the complexities in cross border asset recovery (Camarda and Oldfield, 2019).

2.4 Asset recovery under existing forfeiture laws

Generally, there are two categories of forfeiture i.e., criminal and civil (non-conviction based) forfeiture (Greenberg et al., 2009; Aurasu and A.Rahman, 2016). Criminal forfeiture, also known as conviction-based forfeiture is tied to a conviction of the accused, where the prosecutor needs to proof beyond a reasonable doubt that the accused is guilty of the crime. Criminal forfeiture is an *in personam* proceeding where confiscation is only possible upon conviction of the property owner (Hamin et al., 2017).

Whereas civil forfeiture, also known as non-conviction-based forfeiture is an *in-rem* proceeding, there is no requirement for conviction or criminal trial, and the property or asset in question will be the defendant in the case (Hamin et al., 2017). The standard of proof is on the balance of probabilities which is lower than the standard of proof in criminal forfeiture. Further, unlike criminal forfeiture, civil forfeiture is filed against a possession regardless of its owner's guilt or innocence providing an alternative procedure from the criminal procedure. The UNCAC also included in Article 54(1)(c) that countries should establish a civil forfeiture regime in their anti-corruption laws to facilitate asset recovery (Greenberg, 2009).

In Malaysia, both criminal and civil forfeiture for recovery of corrupt assets is available. Under the Malaysian Anti-Corruption Commission Act 2009 (MACC Act) and the Anti Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLA Act), assets could be recovered through criminal and civil forfeiture, respectively called "Forfeiture of property upon prosecution of an offence" and "Forfeiture of property where there is no prosecution for an offence" under Section 40 and 41 of the MACC Act, and Section 55 and 56 of the AMLA Act respectively.

Although civil forfeitures do not require the accused to have been prosecuted or convicted of an offence for the assets to be forfeited, it is still required to prove the asset has been obtained as a result of or in connection with the commission of the unlawful activity. Due to the inability to prove the link, there were instances in case laws where such forfeitures were unsuccessful, such as in the case of Pendakwa Raya v Habib Jewels Sdn Bhd [2020] and Public Prosecutor v Sim Sai Hoon [2020] (A.Rahman, 2022).

Hence alternative measures such as illicit enrichment laws are being looked at in addition to existing criminal and civil forfeiture regimes to combat corruption and increase asset recovery rates.

2.5 Definition of illicit enrichment laws and comparison with existing forfeiture laws

According to Article 20 of the United Nations Convention Against Corruption (UNCAC), illicit enrichment is described as an offense characterized by a significant rise in a public official's wealth that cannot be reasonably explained by referencing his legitimate income, and is carried out deliberately (UNODC, 2004). Fundamentally, the act of illicit enrichment is the enjoyment of an amount of wealth that is not justifiable through a person's lawful income. The main feature of illicit enrichment laws that differ them from other forfeiture regimes is that once the courts are satisfied that illicit enrichment has taken place, they could impose a criminal or civil sanction, and it does not require the prosecution to establish a separate or underlying criminal activity has taken place (Dorn Bierer, 2021).

As can be seen, existing legislation often requires prosecutors to establish an offence that has occurred before confiscating the assets (Fagan, 2012; Brun et al., 2023). The benefit of illicit enrichment laws is that it removes this challenge. In the case of government officials, prosecutors do not need to establish guilt for a criminal offence but only need to prove that the person has assets exceeding his lawful sources of income.

2.6 Concerns in implementation of illicit enrichment laws

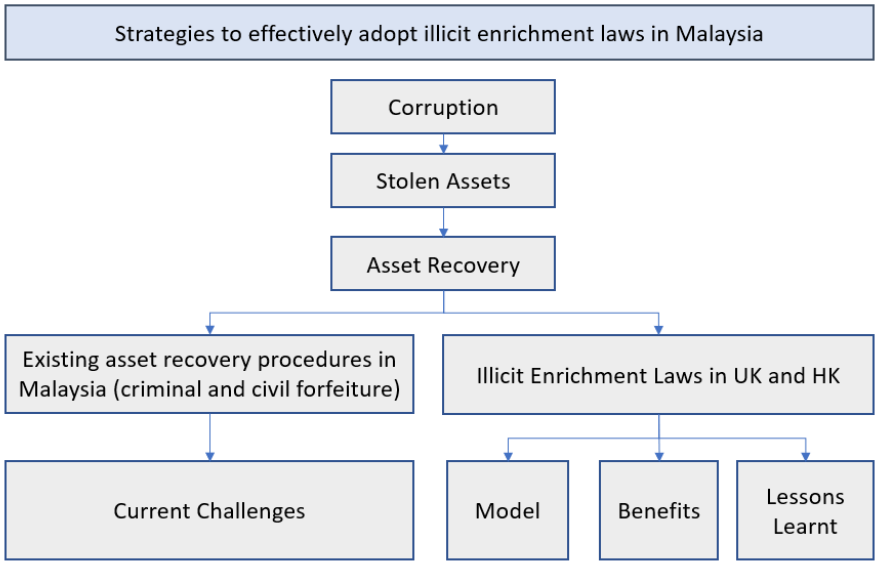
There are two main concerns or challenges raised when implementing illicit enrichment laws in a country. The first one is conceptual, and the second one is operational (Yapa and Yuan, 2022). Conceptual challenges are around the area of law, where concern arises that illicit enrichment is going against common legal principles around burden of proof, wherein the burden of proof is transferred from the prosecution to the accused to explain how such wealth that are beyond his lawful sources of income can be accumulated. There is also concern that such laws violate fundamental human legal rights on presumption of innocence, the right not to incriminate oneself and to remain silent (Boles, 2013).

In some common law jurisdictions, illicit enrichment has been found to be without prejudice to the fundamental principles of criminal law or human rights. For example, in Hong Kong, the validity of Section 10 of the Prevention of Bribery Ordinance of Hong Kong which criminalizes illicit enrichment has been challenged on the grounds of inconsistency with the presumption of innocence and that burden of proof should be on the prosecution. The Hong Kong Court of Appeal held in the case of Attorney General v. Hui Kin Hong that Section 10 places the burden on the defendant to prove the absence of corruption, but before the accused is called upon to do so, the prosecution must prove beyond a reasonable doubt that the public servant could not have afford those assets from his total official income during that timeframe in question (Jayawickrama, 2002, Muzila et al., 2012, Stephenson, 2021).

In addition, the European Court of Human Rights (ECHR) has agreed that in principle the evidentiary burden of proof can be shifted to the accused if this would be in the interest of the public, considering facts of the case while respecting the rights of the defense (Transparency International UK, 2015).

While on the second operational concern, developing countries face operational challenges in implementing illicit enrichment laws that have been criminalized in their countries due to poor enforcement or due to deficiencies in the laws enacted (Yapa and Yuan, 2022).

2.7 Conceptual Framework



The above diagram illustrates the conceptual framework for this research. Corruption in the government involves theft or misuse of public funds for personal gain. This could be in the form of public officials misappropriating public funds and/or receiving benefits in the performance of their duties (Interpol, n.d.).

Such funds would then be laundered into various forms of assets be it domestically or internationally, and these are called the stolen assets. These stolen assets need to be recovered as these could be channeled into the country for its economic development. Stolen assets from corruption could be recovered through existing criminal and civil forfeiture laws, although there are challenges faced currently.

Hence, illicit enrichment laws are being explored in many jurisdictions as an alternative tool to address the challenges under the existing asset recovery procedures, broadly criminal and civil procedures. Illicit enrichment is adopted in various forms in different countries. Countries that have implemented illicit enrichment laws have found benefits, although they are not without certain challenges. Illicit enrichment laws have been considered for implementation in Malaysia; hence this research aims to study how the UK and HK has adopted it and identify the factors or strategies to effectively implement such laws in Malaysia.

3.0 Research Methodology

This research utilizes a qualitative research methodology to explore and understand the challenges in asset recovery from corruption under existing legislation, and capture the knowledge, and experiences from interviews regarding illicit enrichment laws to recommend strategies for effective implementation of such laws in Malaysia.

The data for this research is collected through document reviews and semi-structured interviews. Semi-structured interview combines asking the interviewees a set of pre-determined questions while still providing opportunity to the interviewees to expand on any themes (Barclay, 2018). Semi-structured interviews are a flexible method as it allows the researcher to prompt or encourage the interviewees to expand on areas of interest or focus on the questions, while allowing them the flexibility to express their opinion in their own terms.

The interviews involved 5 participants:

i. Participant A from MACC
ii. Participant B from a civil society organization (CSO)
iii. Participant C from a non-profit apolitical business organization championing business integrity and anti-corruption
iv. Participant D – a practicing lawyer,
v. Participant E – founder of a anti bribery and anti-corruption advisory company

The interviews seek to draw out practical issues in the current asset recovery and forfeiture in Malaysia, knowledge and views regarding the following but not limited to:

- Benefits of illicit enrichment laws and implementation challenges
- Potential concerns to adopt illicit enrichment laws in Malaysia,
- What form of illicit enrichment model that should be proposed for adoption in Malaysia,
- Opinion regarding the proposal to amend Section 36 of the MACC Act to criminalize illicit enrichment in Malaysia,
- Factors and/or considerations to enable an effective implementation of illicit enrichment laws in Malaysia.

The researcher also reviewed various documents, e.g., existing regulations such the MACC and AMLA Acts, existing legal procedures around asset recovery and forfeiture, journals, articles and publications pertaining to asset recovery and forfeiture procedures to obtain information around challenges faced on asset recovery and forfeiture in Malaysia. Journals, articles and publications about how the illicit enrichment laws are adopted in the UK and HK, were also reviewed to identify how these countries have adopted illicit enrichment into their legal framework and its successes, failures as well as lessons learned in addressing unexplained wealth accumulation.

Upon collecting the data, the researcher used the thematic analysis to analyze the data. Thematic analysis is frequently used among qualitative researchers to analyze qualitative data, and it often brings new insights and understanding (Naeem, 2023). Thematic analysis enables the researcher to delve into the nuances and complexities of the data captured from interviews, and document reviews.

4.0 Research Findings

4.1 Asset Recovery Challenges under Criminal and Civil Forfeiture

In Malaysia, as provided under the AMLA Act and MACC Act, forfeitures can be made through criminal or civil procedures. Forfeiture of property upon prosecution of the accused is known as criminal forfeiture, this is stipulated under Section 55 of the AMLA Act or section 40 of the MACC Act. Forfeiture of property where there is no prosecution initiated against the accused for an offence is known as civil forfeiture, this is as stipulated under Section 56 of the AMLA Act or Section 41 of the MACC Act (Hamim et.al., 2017).

Thus, in Malaysia there are laws and procedures in place to investigate and prosecute for corruption and/or money laundering and to forfeit the stolen assets. The issues or challenges in asset recovery from corruption as noted from the interviews are as follows:

4.1.1 Gathering Sufficient Evidence

Due to the nature of corruption crime, gathering evidence for prosecution is challenging (Tsegaye, 2015), the two parties are motivated to conceal their actions, and corruption often occurs without the presence of a victim who might want to report to the authorities (Boles, 2013, Tsegaye, 2015).

Participant A mentioned that the ability to build a strong case for corruption investigation will require credible evidence and the right information being given by the whistleblower and it must not be allegations. The whistleblower will need to specify the assets and amounts in his report. Participant A also mentioned that there are many procedures to follow and court affidavits will have to be reviewed by the prosecution before it can be tabled in court thus the process takes time.

Criminals also now use increasingly complex modus operandi and techniques to transact and hide bribe monies. Therefore, Participant D also added that the investigation officers will need to know how to follow the money trail to trace, collect and consolidate the evidence, thus they will need to be highly skilled and trained in this regard.

The findings show that investigating corruption is not simple due to the need for credible evidence, right and detailed information being given by the whistleblower. In addition, following the money trail to gather evidence of

corruption is challenging due to the increasingly varied and complex modus operandi and techniques used by criminals to mask the sources of funds.

4.1.2 Challenges of Cross Border Investigations

In this age of technology, corrupt monies can be easily laundered to countries outside of its origin. Participant B mentioned that corruption activities are no longer confined to domestic laws or issues, it is now cross border, with 1 Malaysia Development Berhad (1MDB) being the prime case of stolen assets being all over the world.

Thus, it is important to look into forfeiture of assets that are cross border, where the issue is on how to forfeit assets that belong to another country. Although there are avenues such as G2G agreements via Mutual Legal Assistance (MLA), there are still criteria to be met to utilize such MLA, and different procedures that need to be followed across different countries when it comes to such matters.

Zinkernagel and Roth (2012) noted several technical obstacles for cross border asset recovery.

i. Firstly, there is inadequate capacity in requesting countries. Law enforcement and judicial bodies in countries that are highly corrupt often may not be sufficiently functioning to carry out effective necessary preliminary investigations. The key skills lacking in the experience of the International Centre for Asset Recovery (ICAR) is on asset tracing, and financial data analysis.
ii. Secondly there is a lack of resources. Asset recovery proceedings are sometimes extremely lengthy from the preliminary investigation stage to the repatriation of the stolen and recovered assets, therefore potentially costly. It is also more expensive to prepare for court proceedings abroad than in the requested countries.
iii. The third point is formal requirements for MLA requests. Each country has their own specific requirements regarding how such requests are filed and the criteria to be fulfilled. For example, in Switzerland, such foreign requests and enclosures must be submitted in writing in German, French or Italian language, or otherwise be supported with an officially certified translation into any of these languages. The request must also include a summary of the relevant facts and the regulations applicable at the origin country. Finally, the request should be attached with the original or an officially certified copy of an enforceable judgment and arrest warrant issued in accordance with the regulations of the requesting country.

The findings show that investigating cross border financial crimes such as corruption and money laundering is challenging due to the various processes and procedures to be followed for different countries which can be cumbersome, costly and time consuming. The success of the investigation is also heavily dependent on the capacity and cooperation of the foreign country.

4.1.3 Political Will to Investigate Corruption

Zinkernagel and Roth (2012) noted that the single, largest obstacle to asset recovery efforts is lack of political will. If key political people at the top lack the will to curb corruption and recover stolen assets, often this translates into a lack of effort to create and maintain the required legal and institutional structures.

In the context of Malaysia, Participant C has mentioned that 1MDB is the prime example of how investigating corruption is all dependent on political will of the ruling party in charge whether to pursue the investigation or not. Investigations into 1MDB were often halted and Najib Razak was managed to be charged and sentenced to jail when he was removed from power. Lack of political will is one of the challenges to ensure efficacy of anti-corruption measures as identified in the National Anti-Corruption Strategy (2024 to 2028) (SPRM, 2024).

Zinkernagel and Roth (2012) also pointed out that the ruling government may also alternatively announce broad anti-corruption reforms to be implemented, but when the scope of these reforms is reviewed closely, strategic areas such as procurement or other corrupt prone activities; political party financing, regulations on conflict of interest have been willfully excluded from reform, pointing to a lack of political will to really make meaningful changes.

Participant B stated that their civil society has been pushing for some time on reforms across several areas as highlighted above and noted that all such reforms really require political will to make it happen. Participant E also concurred that strong political will is a key factor for any successful reforms or amendments to the law.

The findings show that successful investigation and prosecution of corruption and illicit enrichment cases will require strong political will from the top politicians, for investigations to be performed without fear or favor. Strong political will is also required to push through required reforms, amendments or improvements to the laws or procedures that will support and enable effective enforcements and investigations.

4.2 Overview of Illicit Enrichment Laws in United Kingdom and Hong Kong

4.2.1 Unexplained Wealth Order (UWO) in United Kingdom (UK)

Civil Recovery Orders (CRO) was introduced in the UK's Proceeds of Crime Act 2002 (POCA) to allow properties to be confiscated without needing to prove an underlying criminal offence occurred. This is to supplement the provisions of the Criminal Justice Act 1988 where forfeiting criminal property will require a conviction, and the criminal offence needs to be proven to a standard of beyond reasonable doubt. To execute a CRO, prosecutors only need to prove to a civil

standard of proof that the property was obtained through unlawful means. However, usage of CROs was limited to exceptional cases e.g., criminal prosecution was not available or not desirable.

Therefore, UWOs were introduced through the Criminal Finances Act 2017 and inserted into the POCA Sections 362A to 362T, it came into force on 31 January 2018 (Shalchi, 2022). The UWO is an investigation order placed on a respondent to explain the sources of their wealth if his assets appear disproportionate to his income. The criteria that need to be met are (Ingham, 2022):

i. The property is held by the respondent,
ii. The property is worth at least £50,000,
iii. The respondent's official income would have been inadequate to obtain the asset; and
iv. Respondent is either a politically exposed person (PEP) from outside the European Economic Area (EEA) or their family member, close associate or otherwise connected to someone involved in, or is involved in serious crime.

The UWO requires the respondent to explain within a fixed period on how he can acquire such assets. Failure to respond without "reasonable excuse" will result in the property being presumed as "recoverable property" where the court could forfeit the property on the basis that it constitutes the proceeds of crime through the CRO. Thus, UWO is intended to make it easier for a CRO to be obtained as it reverses the burden of proof (Shalchi, 2022).

4.2.2 Illicit Enrichment Law in Hong Kong (HK)

The illicit enrichment provisions are outlined in Section 10 (1) of the Prevention of Bribery Ordinance (POBO) 1971 which states that any individual who, either currently or in the past, holds the position of Chief Executive or a designated officer and (a) maintains standard of living that is above their past or present official income level or (b) has control over money or assets disproportionate to their past or present official income shall unless a satisfactory explanation is given in court on how he was able to maintain such standard or living or have such assets shall be guilty of an offense.

The accused could be fined HKD1 million or imprisoned for 10 years upon conviction. The court may also confiscate the properties up to an amount of no more than the value of the properties whereby the acquisition was not explained to the satisfaction of the court.

4.2.3 Lessons Learnt from UK and HK in Addressing Unexplained Wealth Accumulation.

In the UK, since the introduction of the UWO in January 2018, its usage has been limited. By February 2022 15 UWOs had been issued, relating to four cases with an estimated value of £143.2mil. And even in these cases, it had mixed success,

with one successful and one failed UWO application (Shalchi, 2022; Dornbierer, 2022).

Two reasons were noted for the UWOs not having as much impact as it was envisioned. Firstly, are the costs charged against a law enforcement authority when the accused manage to challenge the UWO. The second issue is the comparative lack of resources to allow the NCA to thoroughly investigate the sources of an individual's wealth and collect the extensive evidence required for a successful UWO application (ICAEW, 2022).

Thus, the Economic Crime (Transparency and Enforcement) Act 2022 introduced reforms to the UWO regime (Dornbierer, 2022; Shalchi and Browning, 2022) covering firstly:

i. Introduction of responsible officers (such as directors) where UWOs can be issued, this is to enable enforcement agencies to obtain information from the companies' officers who may not own the property but control it.
ii. Broadening the test where previously, the court must be satisfied there are reasonable grounds for suspecting that the known sources of the accused's lawful income would be insufficient to acquire the property. The alternative is reasonable grounds for suspecting that the property has been acquired through illegal conduct.
iii. Extending the review where the court could now grant additional 126 days from 60 days to allow enforcement authorities time to evaluate and act on the UWO response, before expiry of the interim freezing order.
iv. Cap the liability of enforcement agencies to legal costs on UWO proceedings (or interim freezing orders) provided they have acted reasonably.

While for Hong Kong, it was one of the most corrupt places in the world in the 1960s and 70s. However, it has managed to turn this around and is now ranked consistently as one of the least corrupt places in the world (ICAC, 2024). Hong Kong is ranked the 14th least corrupt place among 180 countries/territories in the Corruption Perceptions Index 2023 (Transparency International, 2024).

Hong Kong was able to achieve this feat due to several factors (Kwok, n.d.). One of them is an effective legal framework and anti-corruption law. Further, it adopted a three-pronged strategy of deterrence, prevention, and education. 70% of its resources are dedicated to the Operations Department which enforces and investigates corruption. The Independent Commission Against Corruption (ICAC) also ensures that their staff possesses the necessary expertise and professionalism in their various roles.

In terms of prevention strategies, practices to reduce corruption opportunities in public service such as enhancement of staff supervision through surprise checks, enhancing internal audit, job rotation policy etc. are put in place. The ICAC also conducts public education strategies to enlist the whole of society support to fight corruption, including media publicity of enforcement cases, media

education to encourage public to report corruption, school ethics program from kindergarten to universities etc.

From the interviews conducted, all interviewees agree that illicit enrichment should be made a criminal offence in Section 36 of the MACC Act rather than the UK's UWO, firstly as it will be much more effective as an offence, and secondly, to introduce the UWO will require more time and effort by legislators to work out the legal framework and procedures. Participant B also stated that although the UWO is a good provision, expanding Section 36 of the MACC Act to enable MACC to seek clarification on an individual suspected of living beyond means without prerequisite of corruption offence is a low hanging fruit that will be more achievable.

4.3 Strategies to Effectively Implement Illicit Enrichment Laws

Although it is acknowledged that illicit enrichment laws should be implemented, all the interviewees are also in agreement that to make it effective, several strategies or reforms need to be made.

4.3.1 Asset Declaration Act

In the context of illicit enrichment laws, asset declaration law is pivotal in establishing disproportionate wealth when investigating unexplained wealth. Many asset declaration provisions exist alongside illicit enrichment provisions (Dornbierer, 2021).

Both Participant A and B in the interviews have emphasized the importance for Malaysia to enact an Asset Declaration Act as currently this is not in place, and the current system for asset declaration is not comprehensive. The current asset declaration framework in Malaysia is only applied to civil servant as specified in government regulations. All civil servants are required to declare their assets through the Public Service Human Resource Management Information System (HRMIS), there is consequence for non-compliance however it is not a criminal provision thus rendering it not effective (Hong, 2016).

The Dewan Rakyat approved a motion in 2019 to compel all Members of Parliament to declare their assets including those of their spouse, children and trustees, and a copy is then lodged with the MACC. However, MACC only acts as the "custodian" (guardian) of the information, and this will be displayed within three months of receiving it into the Assets Declaration Portal (Astro Awani, 2021).

As there is no dedicated law on asset declaration, MACC could not verify the declaration documents received and not all Members of Parliament, members of administration and senators had declared their assets. MACC also could not take any action against those who did not declare their assets (Malay Mail, 2021). Further, the mechanism of verification is weak as there is no centralized body to oversee the

implementation of asset declaration and merely becomes window dressing exercise (Hong, 2016).

Although there is a new asset declaration format to be introduced which will be tabled in Cabinet for consideration (New Straits Times, 2024), Centre to Combat Corruption and Cronyism (C4) founder Cynthia Gabriel said that an assets declaration law is required otherwise similarly as the past, this would not be taken seriously (Ibrahim, 2024).

The findings show that there are gaps in the current Asset Declaration process in Malaysia wherein there is insufficient enforcement, monitoring and reviewing of the assets being declared or not declared. Thus, to ensure that asset declaration is taken seriously by civil servants and politicians, an Asset Declaration Act should be introduced.

4.3.2 Skilled and Sufficient Resources

Having appropriate and highly skilled investigation officers is required to be able to perform adequate and thorough investigations into corruption reports, and to follow the complex money trail. Participant A mentioned that to be able to identify stolen assets and recover those assets will require highly competent staff that have knowledge of the latest technological trends such as cryptocurrency. Therefore, strategies to attract and retain talented and qualified staff need to be focused much more than before. He also highlighted that there needs to be sufficient resources, especially the prosecutors as they are the ones that will need to review the cases and give the green light if to go ahead or not with investigation and seizure of the assets. Participant A also noted that compensation of prosecutors in civil service is not as competitive compared to private sector, thus it is challenging to retain good prosecutors in civil service.

Participant C and E also highlighted this aspect and emphasized the importance of ensuring people of integrity is hired into MACC, and that the investigators are people who can connect the dots when looking into financial crime to bring out the evidence to prosecute for corruption or illicit enrichment.

Financial crimes are getting increasingly complex. The findings show the importance of attracting, hiring, and retaining skilled and talented resources in enforcement agencies such as MACC who can perform adequate and detailed investigations on corruption and illicit enrichment reports. The investigators need to be skilled in financial investigation techniques, interview techniques, search, surveillance, and undercover operations (Kwok, n.d.). In addition to enforcement agencies, highly skilled prosecutors are also required to be retained and trained as they will be the one building the charges for corruption and illicit enrichment. Attractive compensation could assist in attracting and retaining such skilled individuals in public service.

4.3.3 Reform of Whistleblower Act

All the interviewees highlighted the need to reform the current Whistleblower Protection Act (WPA) 2010 as it currently has gaps and weaknesses in its existing framework. There are two main issues in the WPA pertaining to the disclosure of wrongdoings; firstly, is the limited channels of disclosure, and secondly conflicts with other legislation whereby an act of disclosing information should not be an offence under other laws. This current limitation results in vulnerability to whistleblowers (Che Abu Bakar & Mohamad Mangsor, 2022) as they will not be conferred protection.

Section 6 (1) of the WPA provides that a person may disclose improper conduct to the specified enforcement agencies based on reasonable belief that there has been improper conduct by a person, provided that this disclosure is not prohibited under any written law. Section 7 provides for the protection of such whistleblowers if the criteria in Section 6(1) is fulfilled. The limitation here is that protection will not be conferred to the whistleblower if it was not reported via the official channels of complaints.

This is unduly restrictive as disclosing improper conduct to other bodies besides enforcement agency should be made available as whistleblowers may lack confidence in the enforcement agency to address the improper conduct (Christopher & Lee Ong, 2021). In addition, the prohibition for the disclosure to not be specifically prohibited by any written law should be revoked as individuals who whistle blow should be protected regardless of highly confidential information that may be protected in for example the Official Secrets Act (OSA) 1972. A good example of such a case is when Mohd Rafizi Ramli was sentenced by the Sessions Court to 18 months imprisonment for violating Section 8(1)(c)(iii) of the OSA 1972 for unauthorized possession of the 1MDB report and revealing page 98 of the report at a press conference (Che Abu Bakar & Mohamad Mangsor, 2022).

As Participant A has pointed out, MACC investigation commences with accurate information being provided by whistleblowers. These whistleblowers are risking their life in providing information to the enforcement agencies.

The findings show the gap in the current WPA 2010 whereby the whistleblower will only be protected under the WPA if improper conduct is disclosed to the specified enforcement agencies such as the Police, MACC, Immigration Department etc.; and information disclosed should not be prohibited under any written law. This needs to change as these provisions will not encourage whistleblowers from making any disclosure as there is possibility of corruption in enforcement agencies; further it will be inevitable that revelation of some secret information will be required especially to prove corruption occurring in an organization (Che Abu Bakar & Mohamad Mangsor, 2022).

4.3.4 Public Education and Awareness

Participant C emphasized the importance of public education and awareness as one of the key strategies to combat corruption and illicit enrichment. He mentioned that it is important for the ordinary rakyat to say no to corruption and to take a firm stand against taking or offering bribes, starting through something simple as not paying bribes to the traffic police if really at fault. In addition, the younger generation need to be taught to uphold integrity.

Johor MACC Deputy Director, Senior Assistant Commissioner Sheikh Hamadi Sheikh Abdul Hamid, stresses the significance of early education and awareness to prevent a culture of corruption among youths. He highlights the necessity of instilling integrity in students to nurture a generation that rejects corruption. Additionally, he mentioned that efforts to combat corruption should be extended to various platforms and media, allowing the public to report corruption crimes (New Straits Times, 2023)

Participant A also mentioned that combating corruption is a collective effort between the public and law enforcement agencies. The public need to come forward with honest and accurate information for the law enforcement to commence investigations and without such information, it would not be possible to do so.

Participant E also mentioned that the public is generally aware of corruption, however in the aspect of illicit enrichment, more needs to be done to make real examples and stories with narrative to show the impact and value of such stolen funds. As per Kwok (n.d.), an effective education and awareness strategy is important to enlist the support of the entire community in partnership to fight corruption and to promote the need for a fair, clean, and just society. The findings from the interviews iterated this factor as well.

4.3.5 Independence of MACC

Reforms to increase independence of MACC has long been one area championed by the CSOs. This is pointed out by Participant B, who mentioned that the MACC should be taken out of the Prime Minister's office and be reported directly to Parliament. In addition, the appointment of the Chief Commissioner should also be independent of the Prime Minister. Currently he is appointed by the King on the advice of the Prime Minister, and this has grave implications as it prevents the person from acting without fear or favor as he does not have security of tenure.

Dato Seri Akhbar Satar also noted that MACC will not be effective in investigating corruption and related offences so long as it is not independent (Transparency International Malaysia, 2016). Thus, any changes to the law to introduce illicit enrichment may not bring about its intended outcome as often illicit enrichment involves high ranking politicians.

The findings show that it is key to ensure anti-corruption agencies such as MACC has the ability and empowerment to investigate corruption and illicit enrichment cases without political interference, otherwise the investigations will not be effective.

In conclusion, the findings from the interviews and document reviews highlight the challenges in stolen asset recovery, and necessary strategies for effective implementation of illicit enrichment law in Malaysia to combat corruption and enhance stolen asset recovery, drawing lessons from UK and HK to inform future policy and practice.

5.0 Conclusion

Corruption has been around for a long time and is not an easy crime to curb due to its clandestine nature. Enforcement agencies have typically investigated corruption through the traditional route of proving that the offence has occurred and then forfeiting the connected assets. However, it is a well-known fact that it is exceptionally difficult to obtain clear evidence of the actual payment of a bribe. Although evidence of corrupt acts may be lacking, circumstantial evidence is often available, which is through accumulation of wealth (Jayawickrama & Pope, 2002). Therefore, illicit enrichment provisions which focus on the results of corruption rather than on the corrupt act itself provide an alternative avenue to curb corrupt practices and is increasingly adopted globally.

In the context of Malaysia, based on the interviews conducted with the participants, it is agreed that illicit enrichment laws should be implemented in Malaysia to fight corruption more effectively in the country. As to the model to be implemented, based on the comparison between two jurisdictions of the UK (civil order and not a criminal offence) vs. HK (a criminal offence), criminalizing unexplained wealth seems to be the effective way to go and all the interviewees also concurred with this.

However, to ensure it can be effectively implemented, emphasis is laid on the need for:

1. Strong political will

Strong political will to eradicate corruption is the most important factor as without this, there will not be a strong push to make the necessary reforms and to enforce them. As unexplained wealth is very likely to involve high ranking public officials, without strong political will to eradicate corruption in the system, illicit enrichment law will just be on paper without strong enforcement.

2. Clear and comprehensive law

As mentioned by Kwok (n.d.), one of the reasons for Hong Kong's success in curbing corruption is its comprehensive legislation. In the researcher's view, clear provisions of illicit enrichment in the Hong Kong law did not allow room for ambiguity and this should also be adopted in Malaysia.

3. Adequate resources – people and financial resources

To effectively implement, investigate and convict for illicit enrichment, the government will need to ensure the MACC is well resourced from both the people and financial aspects. The people need to be well trained and skilled to fight against knowledgeable, intelligent, and powerful criminals. Further, corruption investigation could be very costly and time consuming, especially if it involves cross jurisdiction, thus it needs to be sufficiently funded.

4. Effective reporting system whistleblower protection and access to information

No anti-corruption agency could uncover all corrupt activities by itself. It relies heavily on an effective reporting system and availability of information. Therefore, the reporting system needs to be able to encourage members of the public to raise quality complaints, and at the same time, identify false complaints or allegations by providing assurance of confidentiality and protection to whistleblowers.

5. Collaborative effort between enforcement agencies and the community

The support of the entire community in partnership with enforcement agencies is required to fight corruption and unexplained wealth. Society plays a crucial role by monitoring and reporting corrupt practices and fostering a culture of integrity by not participating in corrupt practices in personal and business settings. By collectively rejecting corrupt practices and supporting reforms, society will help to promote good governance and sustainable development.

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Examining The Phenomenon of Insider Trading Involving Pharmaceutical Stocks: Securities Exchange Commission Cases In U.S.

Sarah Marie Alicia Anthony

Abstract

This research outlines what is insider trading and the laws in place for insider trading in the United States. It focuses on SEC insider trading cases within the last 5 years from 2018 to 2023. It also looks at the influence that the pharmaceutical industry has in the business world. This research examines how insider trading involving pharmaceutical stocks happens. Therefore, this research focuses on cases where insider trading took place involving pharmaceutical companies in the United States. It also dives into analyzing if the environmental factor; covid-19 plays a role in contributing to the occurrence of insider trading when it involves pharmaceutical stocks. Furthermore, the factors that contribute to insider trading involving pharmaceutical stocks are examined. The profile and work status of the perpetrators are analyzed to outline factors that contribute to the prevalence of insider trading. In addition, the consequences of insider trading on pharmaceutical stocks are identified to bring awareness of the impact it has on the financial market and provide policymakers insights on what changes should be made. The impact insider trading has on the stock market, investors and the law are the areas this research focuses on to highlight the consequences that insider trading causes.

Keywords: insider trading, pharmaceutical, stock market, covid-19

1.0 Introduction

1.1 Background of Study

The American Bar Association defines insider trading as "The purchase or sale of a security of any issuer, on the basis of material non-public information about that security or issuer, in breach of a duty of trust or confidence that is owed directly, indirectly, or derivatively, to the issuer of that security or the shareholders of that issuer, or to any other person who is the source of the material non-public information" (Reed, 2023). Insider trading is when an individual gains from a stock trade even though they were not the ones who carried out the illegal trading but tipped another who did the prohibited act, both the tipper and the insider trader (tippee) are committing insider trading. Mens rea must also be present in the perpetrator where they traded with conscious, knowing that they should not trade using inside information but due to the benefit they can attain from the information, which is not available to the public, they are influenced to proceed with the trade to avoid any loss or to gain profit (Reed, 2023).

A tipper is someone who breaks the trust given to them by their company when they, with conscience, reveal confidential material. A tippee, on the other hand, utilizes the private information they received from the tipper with knowledge that the information is non-public material but carries on making transactions in the stock market (Heakal, 2022).

"SEC Charges Police Chief,….. in Connection with Insider Trading Before Pharmaceutical Merger" (SEC, 2023). The former quote sheds light on the current phenomenon of insider trading. Insider trading is viewed as a perpetual attribute to the global capital market even though it is criminalized ubiquitously. In addition, insider trading can bring about a reduction in the flexibility to transact and surge the pricemovements in the market (Ali & Gregoriou, 2009).

Recent research by UTS Business School found that the amount of insider trading cases occurring in America's stock market is at a bare minimum fourfold more times than what the authorities currently detect and charge (UTS, 2021). It is estimated that insider trading happens for every 1 out of 5 merger deals and for every 1 out of 20 company's profitability public declaration (Patel & Putnins, 2020). Nevertheless, the U.S. Securities andExchange Commission (SEC) makes it explicit that they take litigating insider trading as a primary issue which they have allocated extra resources to monitor any illegal trading in the financial market. In 2007, during the U.S. Congress, SEC president Christopher Cox testified that insider trading is among the three main threats that are impacting the financial markets of the United States (Ali & Gregoriou, 2009).

The annual reports from the Division of Enforcement in the SEC, records 51 insider trading cases in 2018, 30 cases in 2019, 33 cases in 2020, 28 cases in 2021, and 43 cases in 2022 (SEC, 2018; SEC, 2019; SEC, 2020; SEC, 2021; SEC, 2022).

In the United States, the law that deems insider trading as illegal can be found in the Securities Exchange Act of 1934 in Section 10(b) and Rule 10b-5 (Bainbridge, 2000). Rule 10b-5 targets fraud involving securities. Rule 10b5-1 and Rule 10b5-2 were enacted in the year 2000 by the SEC to expand the definition of matters pertaining to securities fraud (Dolon, 2023). Rule 14e-3 in Section 14(e) of the Exchange Act was adopted by the SEC to forbid insider trading connected to materials about tender deals (Bainbridge, 2000). The SEC made some changes to Rule 10b5-1(c)(1) which was made effective from 27th February 2023. They added a cool-off time of 90 days for executives, prior to them being able to trade using the 10b5-1 plan. This is to deter the possibility of insider trading (Dolan, 2023). Furthermore, the SEC can prosecute illegal insider trading using the Insider Trading Sanctions Act 1984 which consists of civil penalties. The maximum fine was changed from 10,000 dollars to 100,000 dollars under this act to shift the focus to penalizing the perpetrator rather than just compensating the victims (Mitchell, 2022).

The Pharmaceutical sector is made up of producers of drugs, companies in the Biotech field, and companies that distribute the products manufactured.

Corporations that produce vitamins, supplements for health, and materials for diagnosing are also part of the Pharma industry (MSU, n.d.). The ongoing development of technology and science are pivotal causes for the advanced evolution of the Pharma industry (Palencia et al., 2021). It is worth trillions of dollars, and it manufactures products that help to ameliorate the standard of many people's lives (Lakerveld, 2018). In 2022, the global Pharmaceutical market had a worth of 1,287,736 million dollars, in which, America and Canada were the leading countries with the biggest market holding 52.3% of the share (EFPIA, 2023).

Statista said, in 2023, the Pharmaceutical sector is targeted to grow 5.8% every year and by 2028 it is aimed to have 1.48 trillion dollars in revenue. Stocks of Pharmaceutical companies are seen as outstanding investments even during an unstable economy. Dividends from Pharmaceutical stocks can equal a stable salary as well as fight against inflation (Duggan, 2023). The SEC highlighted that the healthcare sector faces exceptional insider trading threats when the market knows that the Pharmaceutical company is coming up with new products (Fischer et al., 2021).

1.2 Problem Statement

An ex-FBI, who was in training, was charged for profiting 82,000 dollars from insider trading which he committed in 2021. He not only committed insider trading but tipped his friend who made 1.3 million dollars of illegal profit (Masson, 2022). The acuteness of insider trading is very much prevalent with explicit evidence that even an individual who was supposed to be a law enforcer ended up committing it. On top of that, in just one month (June 2023), four insider trading cases involving 13 accused were charged by SEC. Two out of the four cases involved Pharmaceutical stocks. In 2022, the SEC charged 93 people for insider trading. Out of all the cases that the SEC prosecuted in 2022, 9% of the cases were insider trading crimes. In 2022 itself, around 4,995 dollars to 49 million dollars were the amount made via insider trading. 11% of insider trading cases stemmed from private information regarding results from drug trials (Raissi, 2023). This gives an idea of the minimum number of insider trading cases that involve Pharmaceutical stocks. Detecting and indicting insider trading is a challenge because of the laws obscure contrast in defining the terms of what is and is not illegal (Balogh, 2023).

The director of the Enforcement Division in the SEC highlighted that insider trading by public corporation executives is a grave matter that the SEC is committed to combatting. The SEC is dedicated to ensuring that offenders are held accountable and are committed to maintaining a capital market that can be trusted (Conner et al., 2023). Although major attempts have been endeavored to deter insider trading, this crime still permeates today. It is gripping to understand insider trading, what contributes to its prevalent existence, and the consequences it brings (Patel & Putnins, 2020).

During the Coronavirus pandemic, law enforcement agencies like the SEC and European Security and Markets Authority alerted public corporations to abide by insider trading laws (Insider trading risk in the wake of COVID-19: An alert to boards and audit committees, 2020). The stocks of certain companies in the Pharmaceutical industry rose even during the peak times of the Coronavirus (Esparcia, 2022). The demand of the Pharma industry during COVID-19 and the stability this industry had in the financial market during a worldwide economic battle gave rise to the thought of the possibility that the Pharmaceutical industry was a good target for insider trading during the pandemic.

Insider trading cases take a long time to reach their final verdict and the large profit that insider trading brings makes it appealing to take the chance to commit this crime to attain greater wealth (Yao, 2021). These are some reasons that could be contributing to the continuous prevalence of insider trading. It is vital to know the factors that chip towards insider trading so that it can be prevented, and the consequences of insider trading can be avoided. Abuse of the stock market through insider trading abrades confidence in the market, threatens the integrity of the trading market, and is a basis for the victimization of stockholders (SEC, 2022).

There is a scarcity of research on the factors that play a part in boosting insider trading cases involving Pharmaceutical companies stocks especially on cases in recent years and there is a gap in literature on how environmental factors like COVID-19 impact the occurrence of crimes like insider trading (Hoang, 2023). Hence, more research in these areas are needed, which this paper will contribute towards.

This research focuses on insider trading of Pharmaceutical stocks in the U.S. market within the last 5 years because the recent COVID-19 caused the economy to become unpredictable, especially during the peak times of the pandemic. This also increased the demand for the Pharmaceutical industry. The U.S. stock market like NASDAQ has had significant cases of insider trading even amidst economic uncertainty like during the recession in 2007 to 2008 (Mele, 2014). Hence, looking into the insider trading cases involving Pharmaceutical stocks in the U.S. market will be a good example to comprehend how such cases can be prevented as it is carried out by offenders even during extraordinary circumstances.

1.3 Research Objectives

The following are the research objectives for this research.

1. To understand the phenomenon of insider trading involving Pharmaceutical companies from 2018 to 2023.
2. To examine the factors that contribute to the prevalence of insider trading.
3. To analyze the consequences of insider trading towards investors, the stock market, and the law.

1.4 Research Questions

This research aims to answer the succeeding research questions.

1. What is the extent of insider trading in the United States involving pharmaceutical companies from 2018 to 2023?
2. Why is insider trading still prevalent today?
3. How has insider trading impacted investors, the stock market, and the law?

1.5 Conceptual Framework

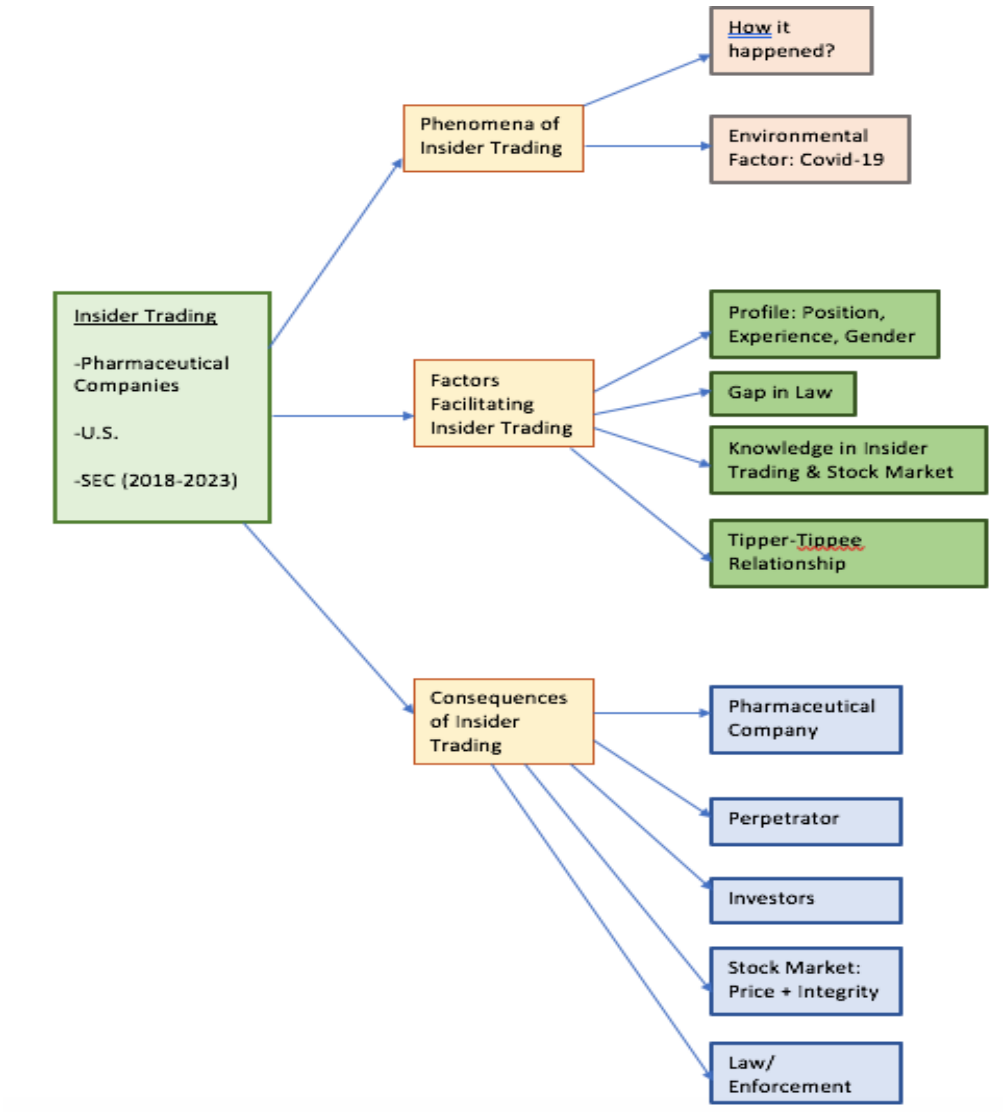

Figure 1.2: Conceptual framework on the phenomenon of insider trading involving pharmaceutical stocks found in SEC case

2.0 Literature Review

2.1 Overview/Phenomena of Insider Trading

Figure 2.1 shows a spike in cases between the years 2001 and 2007, where during this timeframe, global recessions occurred. This data establishes that special and extraordinary circumstances impact the number of insider trading cases (Mele, 2014).

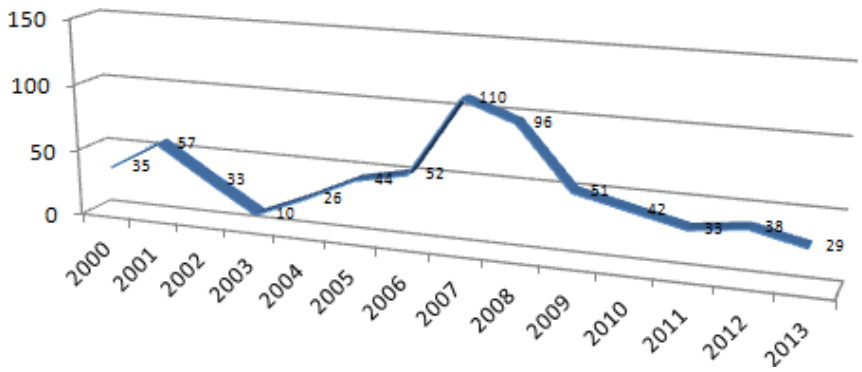

Figure 2.1: Insider Trading Worldwide Trend between 2000 to 2013 (Mele, 2014).

Figure 2.2 shows the breakdown of percentage for the number of insider trading cases in nine countries. The United States is the leading country with the most insider trading cases (Mele, 2014).

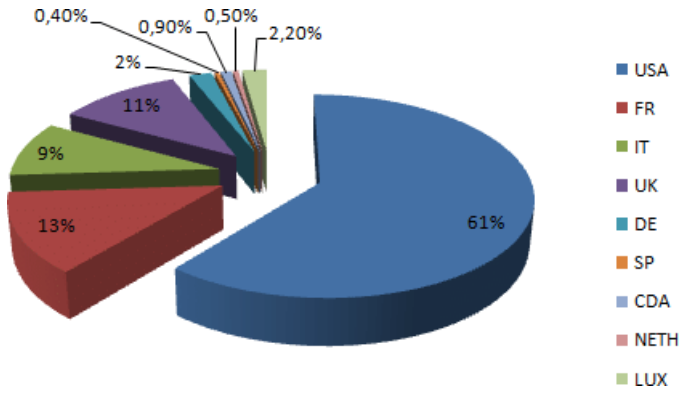

Figure 2.2: Percentage of insider trading cases in 9 countries (Mele, 2014).

Interestingly, between the years 2000 and 2013, the highest insider trading profit was made through the NASDAQ market from 2007 to 2008.

This highlights a connection between insider trading and the extraordinary global recession period (Mele, 2014).

COVID-19, played a big role in impacting the economy and financial market worldwide. During COVID-19, the market volatility went up by at least seven times and the prices of securities and commodities declined tremendously due to the unpredictability in the rate of the disease that the pandemic brought. In March 2020, executives of public companies in the United States invested in noteworthy amounts of stocks. Three years before the Coronavirus, insiders' companies were buying 16% of stocks but when the pandemic hit the percentage increased to 56% in March 2020. In January and February of 2020, a higher number of shares were sold by executives in the healthcare industry. This proves that there has been insider trading taking place among healthcare executives who have insider knowledge about the impact of the pandemic, economically and scientifically, before the public gets access to such information (Anginer et al., 2020). This highlights that COVID-19 could be an environmental factor that contributed to the occurrence of insider trading during the Coronavirus pandemic. Despite the rise in the unstable market price during the pandemic, where even S&P 500 stocks dropped to 34% within a month from the highest percentage it had ever been at, but the Pharma industry was growing amidst the high market volatility.

In 1909, the Supreme Court established the law that executives or staff cannot trade using non-public information or they have to publish confidential news before they can make a trade involving the stocks of the company related to the news (NY Times, 2016). The Securities Exchange Act of 1934 in section Rule 10b-5 outlines the banning of insider trading (SEC, 2015). In 1934, Congress passed the Securities Exchange Act which has provisions for fraud pertaining to stocks in Section 10. The SEC in 1942, added Rule 10b-5 in the Act, qualifying the buying and selling of any security to be sanctioned under the stock fraud provision. These laws assist in prosecuting insider trading, but they do not define what insider trading is. Rule 10b-5 can be seen indicted in the Texas Gulf Case (NY Times, 2016).

Failing to abide by Rule 10b-5 will result in either or all of the following consequences. The defendants cannot participate any longer in the stock market, they have to return the money they illegally gained, an investor of the company where the stocks were obtained illegally by the insider trader can sue the insider trader if they bought or sold stocks to an insider or have stocks in the company. SEC can charge the insider trader a monetary fine which can amount up to triple the total profit attained or losses evaded. SEC can also enforce a cease and desist order or give a decree that the insider shall be barred from being able to serve as a director or officer in all public companies. In addition, the perpetrator can be prosecuted for criminal felony (SEC, 2015).

Section 10(b) and Rule 10b-5 outline that a tipper commits insider trading when they breach their fiduciary duty and share private material with a tippee or

third party. Additionally, these laws state that private information is shared when tippers gain, directly or indirectly from disclosing the information at hand. The law is not clear when it comes to determining if it is deemed as insider trading for special particular circumstances. For instance, when a tipper gives a tip to a stranger and does not benefit monetarily or does not gain reputation from their tip, but the insider chooses to share the confidential information to help the stranger (tippee) who is financially struggling. The gap in the law does not bluntly define the criteria for being liable for sharing with a tippee who is a stranger that does not give any gift in exchange for the tip (Heminway, 2018). In Dirks v. SEC, 463 U.S. 646 (1983), it was decided that liability for a tippee is present when the tipper receives a gift from the tippee. In United States v. Newman, it expands the explanation that the tipper and tippee must have close-knit ties for the tipper to be held liable. The Supreme Court used Dirks case to expound and clarify that the tipper benefits even if the tippee does not give the tipper anything in return as the tipper is still guilty because they gave the tip expecting that the tippee will make a transaction (*U.S. Supreme Court Clarifies Standards for "Tippee" Insider Trading Liability*, 2016). This shows that mens rea is present which is a main criterion for it to be a crime. Nevertheless, questions still arise on what are the criterias for a tippee to be deemed as a friend of the tipper and how exactly the intangible benefits the tipper (*U.S. Supreme Court Clarifies Standards for "Tippee" Insider Trading Liability*, 2016). Hence, the law has areas to improve on ensuring that it is effective in deterring insider trading.

Martha Stewart and Peter Bacanovic's insider trading case is a classic example of insider trading. Both faced charges by the SEC where 2 of the charges were violations of Section 10(b) in the Securities Exchange Act of 1934 and Rule 10b-5. This caseinvolved Stewart who sold her stocks (after Bacanovic tipped her) of a Pharmaceutical company called ImClone Systems in 2001 before a public announcement that the Federal Drug Association has rejected giving ImClone the greenlight to use a new oncology drug (Sec, 2006).

Section 14e-3 of the Securities Exchange Act of 1934 also deems it unlawful to make any security transaction connected to a tender offer where one knows classified information about the acquisition but still proceeds to invest in the stock of the company that is involved with the tender (Deloitte, 2023). The prohibiting of insider trading and the sanctions that are imposed when one is guilty of insider trading are morally justified for several reasons. Firstly, insider trading is seen as unjust because information that impacts the decision to trade should be based on public information if the trade is done within the public market. It is not fair for certain individuals with insider information to profit or avoid losses illegally while other investors who do not know about the insider tip lose the chance to profit or end up with huge losses. Furthermore, if insider trading goes persistent without prevention or enforcement, there will be an abrasion to the credence in the stock market. This will result in the backing out of capitalists from the stock market which will cause an unfavorable effect on the rate of return from a security (Ali & Gregoriou, 2009).

2.2 Factors Facilitating Insider Trading

Several factors contribute to the culmination of insider trading. Executives have a fiduciary duty to safeguard the company from breaches of governance, risk, and compliance. Nevertheless, white-collar offenders are mostly those with an executive position in their company (Soneji, 2022). Insider traders have greater means of obtaining meaningful insider information about a company, drug trial, business deal, and private information which impacts the stock price. For instance, they hold executive-level positions, are educated, and work for companies with weak governance. Insiders are mostly male, and have years of experience in their role as executives. They do not trade during the period when SEC heightens their enforcement against insider trading. They pay attention to the number of cases being investigated at a particular period to understand the current focus of SEC's enforcement (Akbas et al., 2016).

A related theory that explains the contributing factors to why insider trading happens is the fraud diamond theory. When there is an opportunity it creates a path for insider trading. Incentives lure individuals to commit it and rationalization is the driving factor or push for one to pursue the crime. Capability is the final element that allows an offender to use their skills and privilege upon recognizing the chance they have to make easy money or protect their finances and use that to their benefit by committing insider trading (Ruankaew, 2016).

2.3 Consequences of Insider Trading

Insider trading is a criminal act that has victims. The victims are the corroding confidence in the financial market, the integrity of the stock market which ends up being questioned, the distortion of shareholders' worth, and investors who do not commit insider trading who end up facing losses.

In 2022, SEC reformed their Rule 10b5-1to protect investors and boost trust in the capital market. The amendment to the provision now does not allow insiders to submit several 10b5-1 plans. This is to minimize insider trading when insiders choose to cancel any of the plans (when more than one plan was allowed to be submitted) for their financial benefit upon receiving confidential information that will impact their finances (Lizarraga, 2022). The SEC uses several methods to track insider trading. They use tools that act as market surveillance, they use any complaints and tips submitted to the SEC, the divisions in the SEC help each other out when they spot valuable leads, the media and self-regulated organizations indirectly help SEC's investigation through their reports and findings (Picardo, 2022).

3.0 Research Methodology

This research uses a qualitative approach. Qualitative approach can address the research questions of this paper that are subjective in nature. It allows this

research to be more extensive in expounding on the occurrence of insider trading involving Pharma companies, the factors that cause it, and the impact it brings (Cleland, 2017).

This research utilizes document review as the data to support the study. The documents that this research analyzed are SEC's reports, SEC's complaints, stock prices, news articles, journals, articles, and university websites. 14 SEC insider trading cases related to Pharmaceutical companies are used to understand the recent phenomenon of insider trading, factors that are contributing to its prevalence, and the effect that it has brought.

Document review is a useful method, allowing the careful selection of suitable documents needed and maintaining the focus of the research. Document review can advance the research by providing new valuable findings and analysis which are currently a gap in the literature within this research topic. This method of analysis will allow the comparison of any similarities and differences in findings that other studies have established (*Document Analysis Guide: Definition and How To Perform It*, 2023)

The unit of analysis for this descriptive study will have a focus on the company (Pharmaceutical).

4.0 Research Findings

4.1 The 14 SEC Insider Trading Cases between 2018 to 2023, examined for this research

Table 4.1: Case number reference and names of the 14 SEC insider trading cases examined in this research

Case No.	Case Name
1.	SEC against Dupont, Cronin, Kaplan, Feldman, and Mendoza (SEC Complaint, 2023).
2.	SEC against Catenacci (SEC Complaint, 2021).
3.	SEC against Malik and Wood (SEC Complaint, 2021).
4.	SEC against Calice and Hand (SEC Complaint, 2021).
5.	SEC against Panuwat (SEC Complaint, 2021).
6.	SEC against Dagar and Bhiwapurkar (SEC Complaint, 2023).
7.	SEC against Glassner (SEC Complaint, 2022).
8.	SEC against Joublin (SEC Complaint, 2022).
9.	SEC against Fishoff, Govender, Tang, Featherwood and JSF (SEC Complaint, 2018).
10.	SEC against Rayapureddy (SEC Complaint, 2022).
11.	SEC against Jagota (SEC Order, 2023).
12.	SEC against Erne (SEC Order, 2019).
13.	SEC against Markin and Wong (SEC Complaint, 2022).
14.	SEC against Matuizek (SEC Complaint, 2023).

4.2 Discussion

4.2.1 Impact of Covid-19 on insider trading

According to SEC's Enforcement Division co-directors, COVID-19 played a role in impacting the stock market. In March 2020, the division released a pronouncement that due to COVID-19, all Rule 10b5-1 disclosure filing plans could be submitted to SEC on a later date than the initial stipulated date. This opened more opportunities for corporate insiders to misuse information not yet disclosed to the public as disclosed information holds higher value during extraordinary circumstances. Insiders will take advantage of the permitted delay in filing the disclosure, which created a loophole for more individuals to gain access to the confidential information. This is because now there is a longer period where corporate insiders can share classified information with more of their friends before the public is made aware (Avakian & Peikin, 2020). During COVID-19, between 1st February to 19th March 2020, 1.9 billion dollars was saved when high-ranking executives sold their shares in their company. This attracted SEC's attention and therefore, SEC released a statement reminding companies not to engage in transactions using non-public information and to administer preventive steps to ensure their employees who have access to disclosed information refrain from trading illegally (Deloitte, 2020).

Amidst COVID-19, decisions to invest in Pharmaceutical stocks were heavily impacted by the development of the COVID-19 vaccinations. This is observed when right before a positive COVID-19 vaccine progress was shared with the public, the returns for Pfizer's stocks rose notably, and volume volatility for Moderna, S&P 500 and Pfizer stocks also shot up. Hence, this highlights the possibility that details about the results of the vaccine's trial could have been misused which indicates that some investors could have benefitted by trading using inside information. A huge number of trades for the mentioned Pharma stocks was seen to have taken place before the public was made aware of the vaccine's result but the transactions were done nearer to the public news release date to diminish the façade that insider trading happened as it will be hidden in the shadows of a huge number of transactions upon the news becoming public. The rise in movements for Pfizer's stocks before the public announcement about its approved vaccine by the U.S. Food and Drug Administration (FDA), highlights that COVID-19 impacted the securities market and contributed to the lucrativeness to commit insider trading. Pharmaceutical stocks receive the greatest attention from investors based on whose product reaches the market first. In this case, corporate insiders knew Pfizer's vaccine would be the first to be approved. This advantage of knowing that Pfizer's stock would be the most lucrative once the news is made public encouraged insider trading and hence why its stock returns and volumes rose tremendously (Mason, 2022).

When the market is not at its optimum performance due to economic instability like during COVID-19, insider information tends to possess more value and corporate insiders take advantage of the confidential information they possess. Having prior public information on top of knowledge about how the stock market works is a bonus to strategically profit from the insider trade. A thorough examination between the connection of the impact of COVID-19 on insider trading is still an ongoing research and research for this area is still scarce (Hoang, et.al., 2023).

4.2.2 Extent of Insider Trading involving Pharmaceutical Companies from 2018 to 2023

The following discusses the profile of the insider trading perpetrators in the 14 SEC cases examined in this research and how the perpetrators carried out the insider trading. First, let us look at the gender of the offenders. Of the 14 cases, there are 26 defendants involved, of which 2 are corporations. 21 of the insider trading offenders are males and only 3 are females.

The majority of the offenders are males. According to the U.S. Bureau of Labor Statistics, 44.4% of women are working in the Pharmaceutical and medicine industry (Statistics, 2023). Hence, there is a higher percentage of males working in the Pharma industry. McKinsey & Company in their 2021 report highlighted that when 100 men get promoted to a manager role only 86 women get to jump the ladder as managers (University, 2023). The disparity in the number between the genders when it comes to being promoted to an executive level explains that there are more males in top-level positions. During COVID-19, more than 4% of females left their jobs to take care of their children as schools were closed but only 3.4% of men quit their jobs for this reason. Females only hold 14% of the executive-level roles (University, 2023). These reasons explain why the number of male perpetrators is remarkably higher than the number of female offenders for insider trading as more males hold positions that have access to inside information.

Regardless of whether they were the tipper or the tippee, all the defendants in the cases analyzed committed the crime with awareness that they were unlawfully using or sharing non-public information to profit or avoid losses in the stock market which goes against the policy of the company they are working for and against the law. The tippers were either given a copy of the company's policy, asked to sign the company's policy, or knew that the confidential information was not meant to be used for trading as it is a breach of duty and against the company's policy.

13 of the defendants obtained non-public material through their work position breaching their fiduciary duty, 7 defendants received the inside information from their friend, 3 defendants received private information from their romantic partner and 1 received the inside information from an employee.

Insider trading for 8 of the cases stemmed from information about a merger/acquisition that was going to take place between 2 companies, 4 inside information was pertaining the success of clinical trials, 2 trades were done from information about upcoming business deals between 2 companies, 1 was about a drug that has been approved by the FDA, 1 was about the findings of a company's fiscal revenue report, and another was about a company that was going to announce a stock offering. From the cases examined, it highlights that majority of the insider trading stemmed from access to information about a merger deal between 2 companies. This aligns with the findings of Patel & Putnins which state that insider trading happens in 1 out of 5 merger deals (2020).

More than half of the insider trading from the cases analyzed were committed for their own financial benefit and slightly less than half of the cases were carried out to gift valuable information to their friends, partners or relatives. In either circumstance, there was the incentive of personal benefit, even though they did not carry out the trade, they received a portion of the profit which is still deemed as committing insider trading (Reed, 2023).

Majority of the defendants in the cases analyzed in this research are in their 40's. The defendant's age range in the 14 cases is from their 30's to 60's. The perpetrators are mostly in this age range because they have the monetary means to buy and own stocks as well as gaining the experience over the years to climb the ladder to a higher-level position that has access to inside information.

4.2.3 Contributing Factors to the Prevalence of Insider Trading

The SEC cases show that having access to inside information is a factor that prevents insider trading from happening. This is because the opportunity is present to carry out crimes which will reap personal benefits. In most cases, their workplace position was a factor that made it possible for them to have access to non-public information. In all cases, the company's policy was breached when the employee did not abide by the company's code of ethics, and hence, breaching their duty of trust to safeguard any disclosed information. The perpetrators knew the value of the non-public information at hand and willingly used the information for personal benefit.

The financial incentive that comes from profiting or avoiding losses when insider trading is done is another reason why insider trading cases happen. The cases in this research are seen to have obtained a lucrative profit or avoided hefty losses. Insider trading is a fast way of making a huge sum of money or it can save a person from going bankrupt or losing a lot of money. As seen in case 1, the defendants profited more than 4 million dollars (highest profit made out of the 14 cases) and in case 10 the losses avoided amounted to 703,337 thousand dollars which is the highest loss avoided among the 14 cases (SEC, 2022 & SEC, 2023).

The relationship between tipper and tippee is also a driving factor on why people conduct insider trading. From the cases, it is seen that when the tipper can

help the tippee who they care about financially or if the tipper can benefit from the tippee who they trust will work with them to illegally trade and share the gains, it is a form of obtaining an incentive from the situation. For instance, in case 3, the defendant Malik was willing to conduct insider trading for his partner and relatives. Due to the personal relationship, he had with them, he was willing to let them benefit from the inside information he had. In case 4, Hand was willing to breach her confidentiality agreement with her company so that her partner would not lose money. Cause once the public knows that the clinical trial has negative results the stock price that Hand's partner owns will be impacted. Helping out friends and relatives to profit from insider trading is also a high contributing factor as seen in the cases charged. The second most common source (tipper) for confidential information came from the tippee's friend. All tippers and tippees are connected, either because they are partners, family, or friends. Tippers are seen to release confidential information to people they know and care about. This could be because they care for them and trust that these people would not turn them into the authorities. Hence, the cases show that the tippee has a relationship with the tipper and this is a contributing factor to the connection of who commits insider trading.

In the cases examined, the companies from where the inside information was obtained by their employee had good regulations in place. The employees were aware of the accountability that came with their role in the company which was outlined to them in the company's code of conduct, stating that staff who had access to privileged information must keep the information confidential and cannot trade using the non-public information. Nevertheless, the lack of governance in ensuring that the employees abide by the code of ethics is a contributing factor to insider trading. For example, in case 5 the defendant Panuwat bought shares using his work laptop. Panuwat's company's governance and compliance team could have mitigated risks like this by barring the work laptop from being able to access brokerage accounts. Such a simple step like limiting the access of the work laptop to certain websites or even implementing an alert system to the company's governance team when a worker accesses a brokerage website was not in practice. Weak governance as seen in this case is a loophole that contributes to the occurrence of insider trading. The internal controls of the company need to be revamped to ensure their governance is strong enough to prevent insider trading.

Moreover, tippers have substantial knowledge of how the stock market works. They understand the profit they can gain or the loss they can avoid when they use non-public information to trade. They are skilled in analyzing the value of the confidential information at hand and know how to use it for their gain as they can predict the impact the information has on the stock price when the news is made public. The tippee, on the other hand, some of them have a good understanding about the financial market. However, if they do not, the tipper usually teaches them what transactions to make. In case 1, the tippee carried out investments based on what the tipper told him. In the same case, another tipper provided advice to his relative on how to illegally trade for a good investment.

It shows that if the tippee does not know the stock market, at least the tipper needs to know how the financial market works for insider trading to successfully happen.

A related theory that explains the factors mentioned above for the occurrence of insider trading in the 14 cases is the fraud diamond theory. The four aspects of the fraud diamond theory are shown in Figure 4.2.

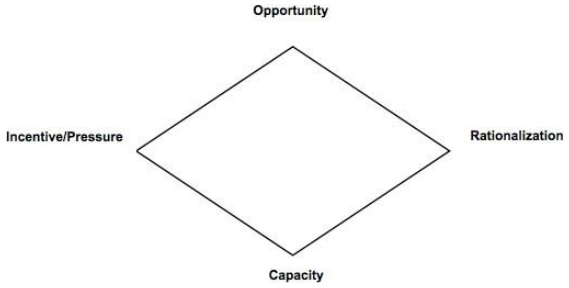

Figure 4.2: Fraud Diamond Elements (Ruankaew, 2016).

The cases showed that the insider traders had an incentive. They either profited or avoided losses which gave them financial incentives. Furthermore, the defendants had access to non-public information which provided an opportunity to use the information to their advantage. Rationalization was also present, either the defendant knew they could make easy money or avoid losses. Moreover, insider trading cases take a long time to get charged and many cases do not get detected which drives one to rationalize that committing the crime is not so risky and the benefit is lucrative enough to take the minimal risk. Capacity is another element that is present in the cases. For insider trading to be successful, at least one defendant must have the knowledge of how the stock market works, to know what transactions should be made for profit or to avoid losses. The tipper usually is the one who has the knowledge. Furthermore, offenders know how to get rid of evidence and cover their tracks. They delete evidence from their handphones such as messages between tipper and tippee to try to hide as much as they can to avoid being caught with evidence against them. Also, the tipper usually tips the information to a friend who does the illegal trading, and then they share the profit so that it would not be easy to detect and link the insider trading to the corporate insider who had access to confidential information. The defendants know how to time when to commit the insider trade, it is usually done just before public announcements as seen in the cases examined. This is to make their illegal transaction less alerting to the SEC as once the announcement is public, the traffic of transactions will be high and the illegal transaction will be lost among many other transactions.

4.2.4 Impact of Insider Trading on the Stock Market, Investors & the Law

From the cases analyzed, the Pharma's stock price was either impacted by the insider trading slightly, not impacted at all or because of certain circumstances the impact of the stock price cannot be clearly seen. For instance, in case 1, the stock

price for Portola's securities increased by 130% when Portola Pharmaceuticals merged with Alexion Pharmaceuticals. The insider trading took place between January 31st and May 5th of 2020. Defendants who committed the insider trading in this case were charged on 29th June of 2023 (SEC Complaint, 2023). When the merger between Portola and Alexion happened, Portola no longer existed as a company and its shares were delisted in 2020 (SEC, 2020). Alexion was bought by AstraZeneca on 21st July 2021. This means that Alexion's shares were removed from the NASDAQ Stock Market and the company which was registered under the U.S Securities Exchange Act of 1934 was terminated in 2021 (Kemp, 2021). Hence, when SEC charged the defendants in 2023, the impact of the insider trading charge on the stock price could not be seen through Portola or Alexion's stock price because their stocks had been delisted when they were bought over. In September 2023, the defendant Dupont pleaded guilty on the 15th and Kaplan pleaded guilty on the 19th. The stock price of AstraZeneca which had bought over Alexion (who merged with Portola) dropped from $70.85 on 29th June 2023 (stock price on the day the insider trading charge was made public) to $65.25 within just 3 days after the charge was announced (Watch, 2023).

Nevertheless, the price drop was said to be connected to a lung cancer drug trial byAstraZeneca which had an effectiveness rate below expectations of what was expected (Fick & Burger, 2023). The drug trial news came out on 3rd July 2023 which is around the same time when the insider trading charge news was released. No correlation has been made between the drop in price and the insider trading case. This is an area that needs to be further analyzed on whether the drug trial news was released 3 days after the charge was made to act as a cover to reduce the traction on the insider trading news. When the defendants pleaded guilty in September 2023, the stock price also dropped from $68.27 (the day the 1st defendant admitted guilt) to $66.67 on the day the other defendant pleaded guilty. However, it is unclear if the price drop could have also been affected by the rumor which came out on September 11, 2023 that AstraZeneca's CEO might be resigning (Fick, 2023).

Another example is seen in case 2, Five Prime was bought by Amgen on 16th April 2021 (Amgen, 2021). This means that Five Prime's stocks are no longer on NASDAQ's market. When the charge was made public on 17th December 2021 about the insider trading that occurred involving Five Prime stocks, Amgen (who bought Five Prime) did not see a decline in the stock price. Before the charge was made the price was $222.5 and after the charge became public the price was $223.79. This indicates that the insider trading news did not impact Amgen's stock price negatively. However, this could be the case because when the insider trading charges were made public, the public did not know the history of Amgen buying over Five Prime. This could be a contributing factor that there was no negative impact on the stock price as seen in figure 4.3. It is difficult to see the actual impact of insider trading on the stock price as other contributing factors are in place which distorts the clear linkage if insider trading impacts the price of the Pharma's stock.

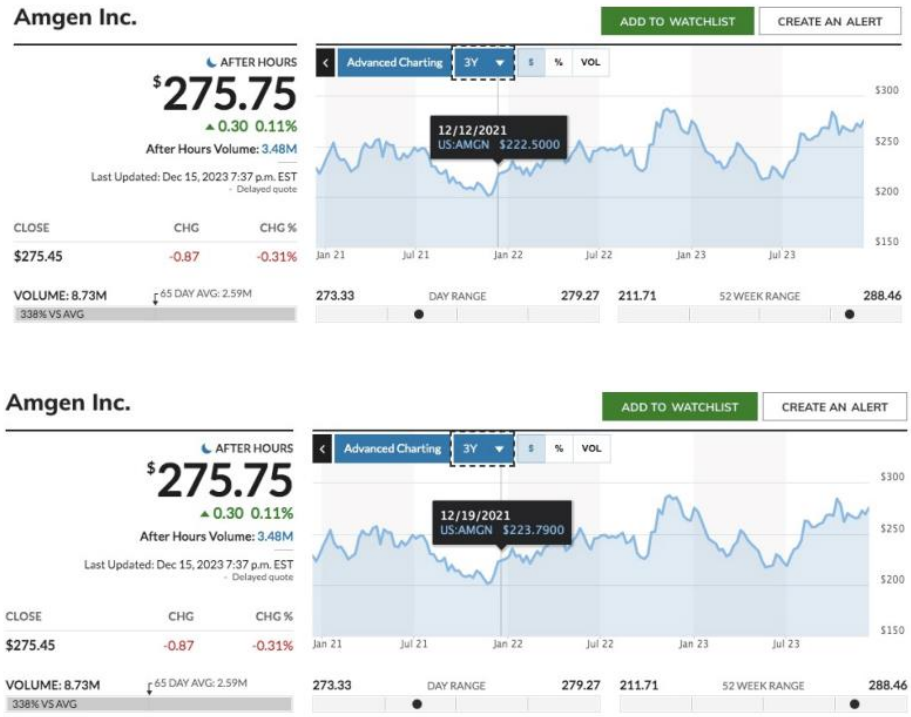

Figure 4.3: Amgen's stock price on 12th and 19th December 2021 (Watch, 2023).

Among the 14 cases, the fastest case that SEC charged took 6 months after the insider trading happened in 2019 and the longest case took about 5 years after the insider trading happened in 2016. The timeline to detect and charge is improving over the years. SEC's director of the Enforcement Division said they are focusing on identifying important aspects to protect investors such as looking into what is new in the financial market and implementing changes that will enable the SEC to be more efficient and effective in prosecuting and deterring insider trading. The SEC directors agree that enforcing the law vigorously can help prevent crime, compensate impacted investors, and ensure a fair market is maintained (Avakian, 2020). The long duration between when the insider trading took place and when the charge happens impacts the accuracy of analyzing the impact of insider trading on the pharmaceutical stock because a lot of other factors could have distorted the impact on the stock price like a merger with another company or other concurrent news that comes out the same time when the charge becomes public. Furthermore, when mergers happen, people tend to forget about the company that has been delisted which could also distort the accuracy of the finding when no movement in the stock price takes place after a charge is made public.

From the 14 cases, all the defendants were prohibited from participating in the financial market and they had to pay a civil penalty which either amounted to the amount of profit gained or loss avoided (or up to 3 times of this amount). Nevertheless, defendants in only 6 out of the 14 cases were prohibited from serving

as an officer or director in public companies. None of the cases were charged as a criminal case which means the defendants did not face jail time. Only 10 out of the 14 cases were ordered to return the ill-gotten gains on top of paying a monetary penalty. 4 of the cases had to pay monetary penalties without the additional disgorgement of ill-gotten gains. For example, in cases 11 and 14 the penalty that the defendants paid was the same amount that they profited from the insider trading. The gap in maximizing the penalty as seen in the cases examined can be a factor that is contributing to more insider trading from happening in the future. It could be a motivating factor that there is no jail time, the monetary penalty that need to be paid in most cases is the same amount as the ill-gotten gains or loss avoided and not 3 times the amount which means the defendant does not have to pay more than the illegal gain or loss avoided. Sometimes just the penalty is given without the requirement of returning the money illegally obtained. This means the defendant does not have to fork out additional money as a punishment. Therefore, they do not lose anything. This will make future offenders rationalize that taking the risk of committing insider trading is worth it as the penalty is not severe if they get caught. The lucrative fast profit that can be made outweighs the punishment that is not so detrimental and the chances of getting caught are also slim.

Insider trading impacts the financial market. It corrodes the trust that investors have on the market and it causes the market to be seen as having less integrity. The gap in the law is another contributing factor to insider trading. It has also allowed corporate insiders to conduct insider trading without repercussions when done in a slick way. This makes daily investors question the transparency of the market. Investors of the stock market found it unjust that corporate insiders can manipulate the law to their advantage. This results in investors losing confidence and interest in the market as they have to put in so much effort to study about a company before investing in it to maximize their profit, but insiders just use the inside information they have conveniently at hand to get a good investment (Lizaragga, 2022).

Hence, the SEC adopted reforms to cover the gap in the law. In December 2022, the SEC made amends to the 20-year-old Rule 10b5-1 of the Securities Exchange Act of 1934. The update to the rule was done to protect investors and prevent insider trading. Before the amendment, the rule allowed corporate insiders to trade stocks on the day a rule 10b5-1 plan was in effect provided they traded without non-public information. This act of good faith has been compromised over the years as insiders will trade using disclosed information as soon as the plan was made public to make it seem they traded fairly. The new updated rule effective February 2023 covers this gap in the law which will also grow the economy as this amended law will increase the trust of investors because the tightened law brings about a fairer market (SEC, 2022). The updated rule has a cooling-off period where directors and officers cannot trade immediately when a new plan is adopted. This is to prevent inside information from being used to trade. Directors and officers must declare in written form that they do not possess any non-public information and will follow the

plan with goodwill when they adopt a new plan. Overlap of plans are also restricted to avoid misconduct of modifying or removing a plan so that the insider can profit or avoid loss when inside information is obtained. This can be avoided through the new amendment. Individuals will have to follow one plan for a span of 1 year to avoid insider trading. These new changes will close the gaps in the law and fortify the trust of investors as corporate insiders cannot easily manipulate the law now (SEC, 2022).

5.0 Conclusion

Insider trading is still prevalent today even though there are laws in place. There are several factors that enable insider trading from occurring as highlighted in this research. Furthermore, the implications that insider trading causes are detrimental to the financial market. The economy will be impacted if investors choose not to trade in the stock market because of the lack of integrity that the financial market has if insider trading is not controlled and stopped. This research significantly highlights profiles of those who have been contributing to the phenomenon of insider trading involving Pharmaceutical companies in recent years. Furthermore, the factors and red flags of insider trading mentioned here hopefully will be looked into by policymakers and law enforcement agencies to further combat insider trading which is still a challenging crime to prosecute due to the unclear definition of insider trading. Finally, the consequences of insider trading outlined in this research will provide investors with awareness of what insider trading can cause to the financial market. Further research in the area of insider trading involving Pharmaceutical stocks is encouraged as literature in this area is still scarce. Additional research will be helpful to further combat insider trading involving Pharmaceutical stocks (Horwich & Brawley, 2023). The COVID-19 cases are rising again, and the economy could be impacted further, greater attention in research should be given to the correlation between insider trading and its impact on Pharmaceutical stocks to avoid more insider trading cases involving Pharma stocks which hold a good value even amidst economic instability.

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Board Governance: The Role of Effective Internal Audit

Datuk Petrus Gimbard

1.0 Introduction

In today's complex and dynamic operating environment, robust governance mechanisms are essential for ensuring organizational accountability, transparency, and long-term sustainability. Central to this governance framework is the Board of Directors, whose fiduciary duty of care compels them to act in the best interests of the organization and its stakeholders. Stakeholder expectations differ across sectors: in for-profit entities, the emphasis is on revenue growth and shareholder returns; in government organizations, it is on the responsible use of public funds; and in civil society organizations, the focus lies in achieving measurable impact aligned with donor objectives.

To meet these diverse expectations, organizations must establish and maintain a sound system of internal control and governance (ICG). This system enables effective oversight and risk management through a structured model commonly referred to as the "Three Lines of Defence." The first line comprises business operations, directly engaging with risks; the second consists of risk management functions that support and monitor the frontline; and the third line is Internal Audit, which provides independent assurance on the effectiveness of ICG systems.

Internal Audit, reporting functionally to the Audit Committee and administratively to senior management, plays a critical role in evaluating whether governance practices are not only in place but also adaptive to evolving risks and organizational change. By identifying control weaknesses, recommending corrective measures, and ensuring compliance, Internal Audit serves as a cornerstone of effective board governance. This paper explores the strategic role of Internal Audit in supporting the Board's oversight responsibilities and enhancing the integrity and resilience of organizational governance systems.

2.0 Effectiveness of Internal Audit on Board Governance

The internal audit of the functioning of ICG provides critical assurance for the Board's oversight responsibilities and overall performance. Given the diverse and evolving expectations of stakeholders, Internal Audit should strategically align its work to assist the Board in addressing these expectations effectively. This alignment can be achieved through the following key approaches outlined below.

1. *The scope of assurance audit must be aligned with the strategic direction of the organization*.

Before beginning the audit, Internal Audit should enquire from the CEO and top management about the Board and Stakeholders' expectations. This should include discussions about the business environment and trends on foreseeable changes in the next 3-5 year. The organisation's strategic direction should have been documented in the

Strategic Plan. This should be updated yearly and whenever there is significant change in circumstances. This plan should contain the vision, mission and targeted objectives of where the organisation intends to be in future. It should show the critical milestones including financial and other targets and outcomes by targeted dateline and the key activities that must happen. Internal Audit should use such information as baseline to develop the Annual Audit Plan. By aligning the Audit Plan with the organisation's Strategic Plan, the audit work and feedback on corrective actions that follow will have relevance to the Board's quest to deliver Stakeholders' expectations.

2. *The auditable areas in the Audit Plan must focus on Risks that Matter to the organisation.*

The most critical part of the Audit Plan is to justify the audit areas to be covered. This should be based on key risks that matters for organisation to be able implement its strategy and achieve targeted outcomes laid out in the Strategic Plan. Discussion of the Strategic Plan with management should give ideas on the likely risks that Board should be concerned about. Using a Risk Heat Map (RH Map) will help Internal Audit to plot where each risk is located. This will provide the justification for why certain risks must be audited and the manner how it should be audited.

The RH Map is a 2-axis map which typically uses a five (5) level risk-scoring system, where 1 is 'Low' risk and 5 is 'Catastrophic' risk. Using 'Impact' on the vertical axis and 'Likelihood' on the horizontal axis, the coordinates of the location of the risk will establish the level of seriousness of the risk. Risks in level 4 and 5 must be audited regularly while those below these levels can be on rotational or subject to limited review. To ensure alignment, the RH Map and the audit focus should be presented to the Board.

3. *The audit program must be relevant and the work steps adequate to achieve the audit objectives.*

Understanding the audit program sounds micro-managing. This is not the intent – a basic understanding of the audit steps to make sense how these will achieve the audit objectives is sufficient. The outcome of the audit should be to provide assurance on the state of the ICG. One concern to flag out is when the audit program appears to be a repeat of previous years. This will require the audit program to be reassessed for relevance and updated. Another red flag is when the audit program is a copycat version of the ISO standards adopted by the organisation – both are connected but has separate objectives.

A 'Yes' to the above should provide Board comfort to relying on Internal Audit assurance role. The following below further should improve the comfort level.

- *Internal Audit team should have certified audit and risk practitioners*.

Staffing of Internal Audit with experienced audit professionals goes a long way for quality delivery. Internal Audit can be strengthened by having those certified by The Institute of Internal Audit (IIA). The diversity of the team can be augmented by having

Certified Information Systems Auditor (CISA) and The Association of Certified Fraud Examiners (ACFE) certified staff to carry out specialised work in information technology and fraud and bribery cases. Given the increasing concern on enterprise-wide risk, staff should consider accreditation with The Institute of Risk Management (IRM). The guidelines, materials and training provided by these international bodies will help to put structure and consistency in the audit programs, workflow and delivery in line with international standards and practices. In the case of IIA, independent audit quality review (AQR) every five years by outside practitioners is mandated to be carried out on Internal Audit. The AQR is holistic and the report will cover delivery and administrative gaps and improvements. This report is provided to the Audit Committee. AQR may be done internally every year as follow up and for continuous enhancement. This AQR will provide added assurance to the Board.

- *Internal Audit should only be reporting to the Audit Committee.*

Being part of internal and management staff, Internal Audit will somehow be pressured by top management's influence. Conducting audit on management's is therefore highly sensitive. Internal Audit must take care how to navigate this yet remain firm to ensure independence is not compromised. The support of Audit Committee and the Board are therefore critical for Internal Audit to be able to carry out its work independently with no interference from management. A dotted line report to management should be allowed for urgent matters to be acted upon promptly with Audit Committee's consultation.

3.0 Dealing with the VUCA world

Enabled by rapid advancements in Information and Communication Technology (ICT) and Artificial Intelligence (AI), and driven by global forces such as geopolitical tensions, terrorism, de-globalisation, protectionism, the rise of digital currencies, and growing concerns over climate change, the world is experiencing significant shifts. These changes are prompting powerful nations to introduce new policies and regulatory frameworks—ostensibly to manage global risks, but potentially also as mechanisms to assert greater control over international finance. As a result, the global environment is becoming increasingly VUCA: Volatile, Uncertain, Complex, and Ambiguous. In this interconnected landscape, where national challenges are deeply entwined, Boards of organisations will face mounting pressure and complexity in fulfilling their governance responsibilities.

How will Internal Audit be relevant to the Board in this world? How do you manage the emerging risks? One way to make sense of the risk is to adapt the Cynefin framework developed by David Snowden so that each risk can be categorised by its state into Simple, Complicated, Complex, Chaotic and Disorder. Internal Audit's assurance work can be adapted according to the category of the risk as follows:

(a) Where risk is simple or complicated, Internal Audit assurance role is fairly standard and routine.
(b) Where risk is complex, the issues are systemic. This should be Risk Management's role to lead through joined up thinking with board and management working together

with experts, using systems and scenarios to develop plausible future scenarios and to develop plan to manage plausible risks.

(c) In the chaotic state, this would be an unexpected disaster. This should be Risk Management's role to lead through joined up thinking to develop plausible disaster scenario and to develop a Disaster Recovery and Emergency Response Plan.

Where risks are complex and chaotic, Internal Audit role is to assess whether there is a plan to address emerging risks and to test whether the plan is robust enough to manage the risk.

4.0 Conclusion

To a large extent, Internal Audit's assurance on the effectiveness of the ICG system of the organisation matters to Board performance. This is possible if Internal Audit's assurance work is aligned with the Board's need to deliver Stakeholders' strategic and operational expectations.

The changing business environment will affect how Internal Audit conducts assurance work. In a simple or complicated environment, Internal Audit assurance role can be standardized and routine. In the emerging VUCA world, where change can be lightning fast and issues complex and inter-connected, Risk Management plays a key role in managing emerging risks. Internal Audit will have to be collaborative amidst balancing the oversight role.

An effective Internal Audit will significantly help the Board in meeting Stakeholders' expectations. However, wholly relying on Internal Audit will not absolve the Board from responsibility and fiduciary duty of care. The Board as a whole and members individually are still responsible and therefore must always exercise diligence and prudence when discharging their duties.

Book Review

Nexus - A Brief History of Information Networks from the Stone Age to AI
by Yuval Noah Harari; Random House, 2024. 512 pages. ISBN 9781911717096

Jeyaganesh Visvanathan

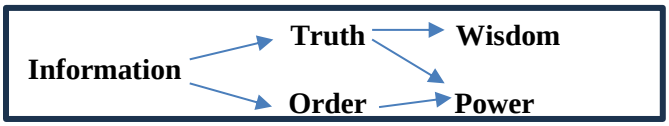
Yuval Noah Harari famous for his book "Sapiens", recently added to the literature on AI and technology with his thought-provoking book "Nexus" delving into the hard questions of the extent and expanse AI holds for the us, Sapiens. Harari quotes Saint Augustine, "*To err is human, to persist in error is diabolical*".

True to its title "Nexus", this book has managed to seamlessly connect the dots between things, persons, and events throughout history that have shaped mankind, especially matters that have become wholly or is part of a chain of causation. It traces humanity's information networks evolution from primitive tools to the age of AI. As each chapter unfolds, one is faced with intrigue - "What is the feeling of having the presence of God in this world"? "Wouldn't it be nice if humans could walk and talk with God on Earth?" "What is mankind's ultimate goal and how rational can AI be in achieving this?" "Have the dark ages passed us or will AI in fact bring about a whole different meaning to "dark age"? While one might argue that a book in itself is incapable of converting one's beliefs, "Nexus" very well takes you on a journey towards questioning the very foundation of those beliefs, the "his-stories" mankind was fed and the infallibility of human beings. Arguments are presented with information and perspectives that challenge all we have ever been taught to know. To top it off he analyses how all this fits in the AI race.

It is undeniable that we live in a world where information is crucial, if not essential. Where then does knowledge come into the picture? Can one have knowledge without information? Or does one require knowledge to obtain information? Although knowledge would appear as the cornerstone to everything we do, information has become the powerhouse for certain individuals, groups, institutions and organisations to live and adapt to this new world of AI. The individual wields the power to use the information that he or she has, either for good or bad. Throughout history, information came in many forms. It evolved, from symbols, patterns, animals, objects and perspective (art of representations). Information came in the form of distress signals during the war. For navigators, the North Star was information that indicated which way was North. In espionage when spies needed to communicate information in secret or using an intersubjective entity such as stories.

We can observe that politicians use information as propaganda (a built-up story made up of many data fields or huge data which transforms into a piece of information), as a representation or a noble lie to gain popularity and to achieve totalitarianism. Harari suggests that there are two ways of looking at information. The *'Naive View'* and the '*Perennial Dilemma View'*. The naive view of information would take us along a straight path where 'information' leads to 'truth' which leads to 'wisdom and power':

The *Perennial Dilemma* perspective, on the other hand, offers a more comprehensive historical view of information—one that emphasizes the pursuit of *order*. Within this framework, using information to uncover *truth* becomes a complex and often compromised process. This is because the pursuit of order and power can distort or manipulate truth, making it difficult to separate genuine knowledge from constructed narratives.



It was humans who created the concept of information, and this innovation laid the groundwork for large-scale cooperation, ultimately making us the most dominant species on Earth. If we break down the word "in-formation," it suggests a structured arrangement or movement, where individuals or elements align in a specific, organized manner. This alignment allows for the emergence of new ideas and coordinated action. As Yuval Noah Harari insightfully remarked, "Information doesn't necessarily inform us — it puts things in-formation."

A simple example can be seen in football, where team formations are strategic arrangements that dictate how players position themselves on the field. A winning formation often leads to consistent success. This concept of formation applies not just in sports, but across business and other domains. A formation creates a pattern; pattern recognition leads to the development of systems, and systems eventually give rise to bureaucracy.

Bureaucracy, whether formed naturally or imposed, often introduces rules, regulations, and procedures — what we commonly refer to as Red Tape. While often seen as obstructive or inefficient, Red Tape serves a functional purpose. It creates structure and accountability, particularly in large institutions. Though it is frequently associated with government systems, it also exists within private organizations. Ultimately, those who design or control bureaucratic processes wield significant influence and authority over others.

Since the internet promised infinite knowledge, Artificial Intelligence (AI) or Alien Intelligence as how Harari refers to AI, is supposed to break through these Red Tapes. AI is a system or machine that learns, reasons, solve problems, and make decisions, with the use of "big data" or information that helps to perform these advanced tasks. For now, AI heavily relies on big data, these massive, diverse datasets became the fuel of AI's ability to learn and analyse, and to make predictions. AI's ability and power lies at the very nexus where these information channels merge. On another level, 'Nexus' has captured how AI could also be the "Achilles Heel" of humankind, or a tool for human disaster if it is not manoeuvred or navigated diligently. This is because the AI program

itself is initially written by humans, and as Harari puts it, humans are not infallible. While AI presents significant economic and social benefits, it must be approached with careful consideration and caution.

With AI's self-learning capabilities, there is a growing risk that governments, politicians, and profit-driven organizations may become overly reliant on AI systems—essentially turning into "AI-puppets" where every critical decision is made by the 'machine'. An algorithmic takeover is not a distant possibility. While AI undeniably holds the potential to dramatically boost economic productivity—accelerating processes with unparalleled speed and efficiency—it also operates beyond human emotional constraints or ethical hesitation. This makes it both powerful and potentially perilous. Therefore, while embracing AI's benefits, we must also remain vigilant, particularly regarding its self-correcting or "self-healing" mechanisms, which may allow it to adapt and evolve in ways that evade human oversight.

How does the AI system react when its being attacked or threatened by other systems or by humans? Potentially, it may override humans' instructions and act on its own algorithm devised from "self-healing". In the economic realm, the growing dominance of AI could introduce significant volatility in market trends and trade patterns. As automation increasingly replaces human involvement, the human influence on economic dynamics may diminish. Consequently, organizational structures could face heightened vulnerability and systemic risk.

In the race for AI, we encounter the rise of the machine - Democracies fear the new rise of digital dictatorships, emergence of digital bureaucrats, machines that do not sleep, and monitors all. Through all this, AI has become the sum of all fears for human, rather than a help tool. We are told that if we are not careful, AI will just grab power for itself. Imagine for a moment, AI could destabilise a county by undermining its political, military and economic power. Here, Harari addresses the very pertinent question - would humans be able to hold a conversation with machines to negotiate?

Guidelines need to be set. The 'Silicon Curtains' have become the border-control in this borderless internet world. The virtual Berlin Wall or the Great Wall of China that protects the country's digital sovereignty and prevents so called cyberwarfare. With strict boundaries and guidelines, AI can contribute to humankind. It is possible to prevent, reduce and even eliminate economic crime, financial or corporate fraud by an AI system. Malicious actors as per the term often described in the cybersecurity world, that compromises computer systems, steals information or monies should be impenetrable and can be made impenetrable with the rise of AI.

An economist who prefers clear insights and analysis would fall in love with AI. AI will effortlessly provide one with the economic growth of global GDP projection within seconds. AI could also sense or predict new industries and opportunities which would invariably be an asset for budding entrepreneurs. All in all, the ethical and societal aspects of AI depend on how it is designed, implemented, and regulated. The quality of the output determined by the quality of the input, or else GIGO (Garbage-in, garbage-out) is inevitable. It is entirely dependent on human intervention rather than machines since we humans are the ones who coded the system or the machine to self-learn. We must

remember that it takes more human intelligence to make artificial intelligence.

The last two chapters of ‘Nexus’ touch on how an algorithm would learn human secrets and then turn us against each other, possibly if we didn’t nurture it well. Nevertheless, what will AI do? World domination? Modern human is still a primitive creature where the law of the jungle is predominantly and intrinsically programmed in their genes, either to play the part of predator or prey. Most humans fear technology, afraid of starting new things, we fear change. This same fear leads to determine that in the era of AI, the alpha predator is likely to be AI. Humans are no longer significant; they could become slaves to AI. Whether or not this is where AI will lead us to, is left to be seen. Then again, we must remember that every old thing was once new. As Harari sums it, the race of AI is just another race to the moon.

In summary, ‘Nexus’ has broached the subject of how throughout history, information has been used by societies and political systems across the world to achieve their goals, be it for for good or bad. And now, how Alien intelligence can enhance our human capabilities, but in the same breath AI could also threaten human intelligence and humankind’s existence. Thus, Harari warns to guide AI with care, or risk being made ‘puppets’ of AI.

CONTRIBUTORS' PROFILES

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Vivian Chan graduated with first class honors in Accounting and Finance from Sheffield Hallam University in 2011 and she is a fellow member of the Association of Chartered Certified Accountants (ACCA). She started off her career in financial audit in a mid-tier firm before moving to Ernst & Young's Consulting department and is currently a Senior Manager in Tax department. Vivian pursued the Masters in Economic Crime Management out of pure interest for the area and although she is not currently practicing in the field of financial crime professionally, she found the program to be suitable to taken up by practitioners and non practitioners alike. The Masters' program has opened her perspective, and she has gained significant knowledge on financial crime not just from the theoretical but also the practical aspect arising from the sharing and interaction with lecturers and peers who are practitioners in this subject matter.

Sarah Marie Alicia Anthony

Sarah Marie Alicia Anthony earned a Bachelor of Theology with a major in Theology and a minor in Criminal Justice and Criminology with Honours from Loyola University Chicago in 2018. During her undergraduate studies, she served as a Mission Minister council member in her university's campus ministry, Christian Life Communities, where she played a key role in organizing and executing mission-driven initiatives.

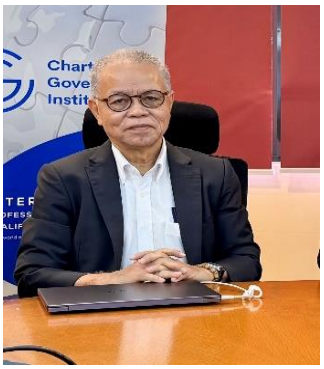
Following her graduation, Sarah worked with a non-profit organization in the United States dedicated to restorative justice, with a focus on securing safe and government-compliant housing for underprivileged communities. The organization also promotes sustainable living and facilitates immersive retreats for high school and university students, fostering engagement in justice-oriented initiatives grounded in Catholic social teachings.

In addition to her work in the non-profit sector, Sarah has experience in the field of education. She served as an educator at a private inclusion school in Malaysia, where she taught Bible, History, Mathematics, Physical Education, Reading Intervention, and Sensory Integration to students with learning differences.

Currently, Sarah is one of the founders and director of Carina Christi Creations, a faith-based enterprise that promotes interactive and experiential learning of the Christian faith while fostering spiritual, cognitive, social, and emotional development. She also holds a master's degree in Economic Crime Management from Help University, which has deepened her understanding of crime and human behaviour, equipping her with the analytical skills necessary to assess critical situations and implement effective problem-

solving strategies which is useful for her business development. This academic training not only strengthens her practical approach to justice-related issues but also provides a foundation for future contributions in the field.

Datuk Petrus Gimbard



Datuk Petrus Gimbard is an experienced board member who has served on the boards of listed and private companies, government agencies, and civil society organisations. He is a Fellow of The Chartered Association of Certified Accountants (UK) and a Chartered Accountant registered with the Malaysian Institute of Accountants. He also holds an MBA from the University of Bath, a Master's in Advanced Business Practice from the University of South Australia, and a Postgraduate Diploma in Systems Thinking in Practice from The Open University (UK). His additional certifications include Quality Assurance Review (IIA), and various development-related studies in Conflict & Development, Institutional Development, Managing Sustainability (Milton Keynes), and Scenario Planning (Oxford Saïd Business School).

Petrus began his career with Petronas. He was with Production Sharing Audit, Malaysia LNG Sdn Bhd, and Group Budget. He later joined Ernst & Whinney (now Ernst & Young), initially in assurance before transitioning to consulting. Over the years, he pioneered internal audit, risk management, and business advisory practices in Malaysia and held leadership roles across the region.

At Ernst & Young, Petrus served as Business Advisory Leader for Vietnam, covering Vietnam, Laos, and Cambodia, where he led projects funded by the World Bank and the Asian Development Bank. He also held the role of Quality Advisory Leader for the Far East, overseeing practices in Southeast Asia (Singapore, Thailand, the Philippines, Indonesia, and Malaysia) and North Asia (China, Hong Kong, South Korea, and Japan). His work extended to quality reviews for practices in Sri Lanka and India.

Throughout his career, Petrus has led diverse assignments involving risk management, internal and external audits, fraud investigations, corporate governance, executive assessment, job analysis, remuneration studies, strategy development, corporate valuation, IPO readiness, financial modelling, feasibility studies, privatization, corporatization, and economic reforms.

Following his retirement from EY, Petrus has continued to serve as a board member of listed and private companies and state-owned enterprises in industries such as beverages, plantations, property development, financial services, and waste valorization. He has also been appointed to regulatory bodies, including the Board of Lembaga Hasil Dalam Negeri (Inland Revenue Board of Malaysia) and the Energy Commission, where he chaired audit and risk committees.

In addition to his corporate engagements, Petrus contributes to civil society by serving on the board of an organisation focused on empowering underserved communities. He was previously a member of the National Economic Advisory Council (MTEN) and actively participated in strategic economic labs and advisory roles. He continues to support professional development as a panel judge for the Institute of Chartered Secretaries and Administrators (MAICSA) Young Professional Awards.

Jeyaganesh Visvanathan

Ganesh is a seasoned Telecommunications and Cybersecurity Professional, specializing in Business Development and Strategic Solutions.

With over a decade of experience supporting clients across Asia Pacific, Europe, and the USA, Ganesh brings deep expertise in delivering complex technical solutions and enhancing operational efficiency in fast-paced, high-stakes environments. His strong foundation in telecommunications and cybersecurity enables him to navigate both legacy systems and emerging technologies with ease.

Ganesh is passionate about aligning business strategy with technological innovation, driving sustainable growth and competitive advantage for organizations. His approach combines technical acumen with strategic insight, making him a valuable asset in any future-facing enterprise.

MASTER OF SCIENCE IN ECONOMIC CRIME MANAGEMENT

Fully Accredited by Malaysian Qualifications Agency
(MQA Ref: A8877)

HELP University's Institute of Crime and Criminology was established in 2006 based on a visionary idea of HELP's Vice Chancellor and President, Professor Datuk Dr. Paul Chan Tuck Hoong. It provides education and training to nurture field professionals in the areas of economic crime and fraud management.

Economic crime and fraud is an area of great concern and interest for agencies in the public and private sector throughout the world. The detection, prevention and elimination of economic crime and fraud is crucial for the economic health and well-being of corporations and nations. The HELP MSc in Economic Crime Management has been developed to train specialists to detect, prevent and eliminate economic crime in all spheres of economic and commercial activity.

This inter-disciplinary program equips candidates with a broad range of knowledge and critical and analytical skills for the effective management of economic crime.

It covers these essential aspects:

- Types of economic crime: white collar crime, corporate crime, corruption, transnational money laundering.
- Tools and techniques: forensic accounting, legal powers, legislation, inter-government protocols, polygraph and psychological tests, interview skills.
- Cyber-crime: varieties and techniques for management.
- Terrorism and subversion: funding, detection and investigation.

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