

Malaysia: The Najib Razak 1MDB Trial. The Prosecutor's Opening Statement

Sri Ram's Opening Statement at Najib's 1MDB Trial

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The following is appointed prosecutor Datuk Seri Gopal Sri Ram's opening statement at Najib's 1MDB trial, reproduced in full.

1. This case concerns the monies of a company called 1Malaysia Development Berhad, widely known as 1MDB. It was originally called Terengganu Investment Authority or TIA. The accused was instrumental in changing its name to 1MDB. He also caused amendments to be made to the articles of the company to place himself in sole control of important matters concerning the business and affairs of the company. In short, he was its plenipotentiary. Additionally, he was the chairman of the company's board of advisers. He used that position and that of Prime Minister and Minister of Finance to do certain acts and to exert influence over the board of 1MDB to carry out certain abnormal transactions with undue haste. The ultimate aim of the accused was to obtain gratification for himself. He succeeded in achieving that aim.
2. An elaborate charade was employed. It was acted out in four phases in which several characters played a part. But it was the accused who played the pivotal role. His objective was to enrich himself.
3. Although this case concerns four phases, the events in respect of them are to be considered as part of a consecutive story because of the pre-arranged plan by the accused to enrich himself.
4. An important character in the charade is a man called Low Taek Jho or Jho Low. He is a fugitive from justice. He was involved in TIA and later in 1MDB. The prosecution will prove that the accused by his words and conduct made it clear to 1MDB's officers, its board and others that Jho Low was his alter ego. In truth, Jho Low was the accused's mirror image. The prosecution will establish facts which will give rise to an irresistible inference that Jho Low and the accused acted as one at all material times.
5. The four charges under section 23 of the MACC Act are in respect of each of the four phases. In respect of these charges the prosecution will prove, through direct and circumstantial evidence that the accused, first in his capacity as the Deputy Prime Minister and Minister of Finance, and later as Prime Minister of Malaysia and Minister of Finance took several steps that led to part of 1MDB's funds being channelled into his account through a circuitous route to prevent detection of its source. The accused thereby used his position for gratification. In each of the phases the accused acted as one with Jho Low.

6. The first phase concerns the scenario of a so-called joint venture created by the accused (acting through Jho Low and one Tarik Obaid, a close associate of Jho Low). It was a false scenario of a joint venture between 1MDB and a company called PetroSaudi International Ltd or PSI. It was called Project Aria. In the first phase the scheme worked in the following way.

7. 1MDB borrowed USD1 billion purportedly to invest in a joint venture company called 1MDB Petro Saudi Ltd. The money was to be paid into the account of the joint venture company. Petro Saudi International was to take up 60 percent of the shares in the alleged joint venture by injecting certain assets of dubious value. The USD1 billion was to represent 1MDB's contribution for its 40 percent shareholding. But the so-called Joint Venture Agreement was entered into not with PSI but with a company called Petro Saudi Holdings (Cayman) Ltd. And it was Tarik Obaid who executed the agreement on behalf of PetroSaudi Holdings (Cayman) Ltd. Evidence will be led to show the abnormality of the so-called joint venture which close scrutiny will reveal to be a mere device to siphon 1MDB's money for the accused's benefit.

8. The prosecution will, through oral and documentary evidence, prove that USD700 million of the USD1 billion, instead of being paid into the joint venture company's account was diverted into the account of a company called Good Star Ltd which in truth had nothing whatsoever to do with the joint venture. It was incorporated in the Seychelles on 18 May 2009 that is to say 5 months before the joint venture agreement was entered into. It was a company owned and controlled by Jho Low.

9. The payment to Good Star was made in great haste and without approval from 1MDB's board of directors and in defiance of its directions. Good Star was falsely described as the wholly owned subsidiary of PSI. The payment to Good Star, was vouched for by the accused through Jho Low as monies owed by the joint venture to PetroSaudi International (PSI). The joint venture agreement referred to a loan payable by the joint venture company to PetroSaudi Holdings (Cayman). The prosecution will through documents show that the so-called loan was a sham employed to justify the payment to Good Star.

10. In March 2010, 1MDB entered into a so-called Murabaha financing agreement under the terms of which alleged USD 1 billion equity in the joint venture company was converted into useless Murabaha notes and 1MDB was required to make available to the joint venture company a sum of USD1.5 billion. In September 2010, a sum of USD500 million was sent to the joint venture company. This money has gone missing. Then in May 2011, a further sum of USD 330 million which was supposed to be the second tranche of the investment into the Murabaha financing, was diverted to Good Star. The accused took positive steps to put through this transaction.

11. From the original sum of USD700 million sums of money were disbursed by Good Star to several persons including one Prince Faisal, a close associate of the accused, Jho Low and one Prince Turki. Prince Turki, the accused and Jho Low were so close that they holidayed together on a yacht in the south of France. Prince Faisal received USD12,500,000 from Good Star on 18 February 2011. He received a further sum of USD 12 million from Good Star on 10 June 2011 which came from the Murabaha scam. From these sums he transmitted USD20 million to the accused's personal account in two tranches of USD10 million each. The first tranche was received by the accused on 24 February 2011, that is to say, six days after Faisal received the money. The accused received the second tranche on 14 June 2011, that is to say, four days after Faisal received the money. The USD 20 million amounts to an

equivalent of RM60,629,839.43. This forms the subject matter of the first charge.

12. The first phase came to an end in 2012 with 1MDB holding worthless pieces of paper. The scam having been achieved, Good Star was wound up on 2 May 2014 and PetroSaudi International was wound up on 8 April 2015.

13. The second phase concerns the acquisition of assets of dubious value by 1MDB. The accused using his position and acting through his mirror image, Jho Low took positive steps and caused 1MDB to enter into two transactions as a result of which the accused obtained a sum of RM90,899,927.28 as gratification. This forms the subject matter of the second charge.

14. These two transactions concerned the acquisition of two independent power producers namely, Tanjong Energy Holdings Sdn Bhd and Mastika Lagenda Sdn Bhd. Mastika owned 75% shares in Genting Sanyen Sdn Bhd. To make the purchase, 1MDB acted through its subsidiaries 1MDB Energy Holdings Ltd, 1MDB Energy Ltd and 1MDB Energy (Langat) Ltd (all Labuan companies) as well as through Malaysian registered companies, namely, 1MDB Energy Sdn Bhd and 1MDB Energy (Langat). These companies were used to raise finance for both acquisitions.

15. I now take each acquisition separately. A local bridging loan of RM 6.17 billion was raised for the acquisition of Tanjong Energy. An additional sum of USD1.75 billion was raised through the issue of 10 year structured loan notes. Goldman Sachs were appointed as lead arranger for the issuance of these Notes.

16. Of the USD 1.75 billion, USD 786 million went to Tanjong Energy. Of the balance, a sum of USD907 million was paid into the account of 1MDB Energy Ltd with Falcon Bank in Hong Kong. Of this sum approximately USD 577 million in round figures went to Aabar Investments PJS Ltd (BVI). This payment was purportedly as a security deposit for Aabar's holding company IPIC issuing a guarantee guaranteeing the Notes. In addition to the security deposit Aabar was also given an option to take up 49% shares owned by 1MDB Energy Ltd in 1MDB Energy Sdn Bhd. On 22 May 2012 USD 295 million was paid by Aabar to a company called Blackstone Asia. Blackstone is a company controlled by Jho Low through his associate Tan Kim Loong also known as Eric Tan. He is also a fugitive from justice. Additionally, on 25 July 2012 a further sum of USD 133 million was transferred by Aabar to Blackstone. These monies remained with Blackstone until October 2012. Goldman Sachs were paid USD 192.5 million as arranger's fee for this bond issuance.

17. For the Mastika acquisition, the alleged purchase price was RM 2.75 billion. The money for this came from two sources. First, another 10 year structured loan Notes of USD1.75 billion. For this 1MDB paid Goldman Sachs USD 110 million as arrangers' fee. So, 1MDB got a nett sum of USD 1.64 billion. This sum was paid into 1MDB Energy (Langat) Ltd's account with Falcon Bank, Hong Kong. The second was a local loan of RM700 million. The total loan raised from these two sources was about RM 6.16 billion. There was therefore available an excess of RM3 billion. This excess was almost wiped out by a payment on 23 October 2012 to Aabar Investment PJS (BVI) of a sum of approximately USD 790 million in round figures as security deposit for Aabar's holding company IPIC for allegedly guaranteeing the repayment of the notes. As additional security Aabar was given an option to take up 49% shares owned by 1MDB Energy (Langat) Ltd in 1MDB Energy (Langat) Sdn Bhd. For the Mastika acquisition, Genting Power was paid USD 710 million. The loan raised through the Notes for the Mastika

purchase came into 1MDB Energy (Langkat) Ltd's account on 19 October 2012

18. On 23 October 2012, Aabar paid a sum of approximately USD 291 million in round figures to Cistenique Investment Fund or CIF. On the same day Aabar paid USD 76 million to Enterprise Emerging Markets Fund (EEMF). On 23 October 2012 Aabar paid USD 75 million to Blackstone. This was part of the USD 790 million paid to Aabar. Later, on 5 November 2012 Aabar paid a further sum of USD 96 million to EEMF. Soon after CIF and EEMF received the monies in question they paid it over to Blackstone. These monies were then channelled by Blackstone into the accused's account as follows.

19. On 30 October 2012, a sum of USD 5 million was paid into the accused's account at AmPrivate Bank. Then, on 19 November a sum of USD 25 million was paid into the accused's account. The total sum received by the accused in the second phase is set out in the amended second charge. Evidence will be led to show how financial layering took place to provide a false justification for the movement of the monies. So much for the second phase.

20. The third phase concerns another purported joint venture between 1MDB and Aabar in equal shares. The joint venture company was called ADMIC. This forms the subject matter of the third charge. The purpose of this alleged joint venture was to develop TRX or the Tun Razak Exchange in Kuala Lumpur. IPIC was to guarantee Aabar's investment. The Ministry of Finance of which the accused was Minister guaranteed 1MDB's investment by way of a letter of support. A loan of USD 3 billion was raised for this alleged purpose. Goldman Sachs acted as the arranger of the loan.

21. On 14 March 2013 the accused signed a letter of support to raise a loan through the issue of bonds by 1MDB from the Bank of New York Mellon Group in the sum of USD 3 billion. On 19 March 2013 a sum of USD 2.721 billion was disbursed into the account of 1MDB Global Investment Limited with BSI Bank at Lugano in Switzerland. The balance went to pay the fee of Goldman Sachs.

22. From the USD 2.721 billion, a sum of USD 1,060,606,065 was paid into account of two fiduciary funds, namely, Devonshire Funds Ltd and EEMF. Devonshire received USD 646,464,649 in five tranches over two days, that is to say, on 20 and 21 March 2013. EEMF received USD 414,141,416 in three tranches, also within two days, that is, on 20 and 21 March 2013.

23. On 21 March 2013, Devonshire transferred USD 430 million to Granton Property Holding Ltd which is a company controlled by Eric Tan, Jho Low's shadow. On the same day Granton transferred the whole of that sum to Tanore Finance also a company controlled by Eric Tan. Also, on the same day, that is to say, 21 March 2013, Devonshire transferred a sum of USD 210 million to Tanore Finance Corporation. Then, between 22 March 2013 and 25 March 2013, EEMF transferred USD 250 million to Tanore which therefore by that date had USD 890 million in its hands.

24. Between 21 March 2013 and 10 April 2013 Tanore transferred USD 681 million to the accused's account. In terms of our currency this amounted to RM2,081,476,926. This sum forms the subject matter of the amended third charge.

25. Based on the evidence that the prosecution will adduce, the so-called joint venture never took off. There was no investment and there was no true joint venture. It was all a sham. This concludes the third phase.

26. The fourth phase concerns the purchase of the Aabar options by 1MDB. These are the options that were given to Aabar in 2012 as alleged part consideration for IPIC's guarantee for the notes that raised USD 3.5 billion forming part of the second phase.

27. In May and August 2014, 1MDB through its subsidiary 1MDB Energy Holdings Ltd obtained two loans totalling USD 1.225 billion from Deutsche Bank Singapore. The accused approved this transaction. The loans were secured by guarantees provided by 1MDB Energy and 1MDB Langat. There was a bridging loan of USD 250 million and a facility loan of USD 975 million. The first loan of USD 250 million was made available on 26 May 2014. From this amount a sum of USD 239,939,970 was paid into 1MDB Energy Holdings Ltd's account with Falcon Bank Hong Kong on 28 May 2014. Of this sum, Energy Holdings paid Aabar Investments PJS Ltd BVI USD 175 million to its account in BSI Lugano, Switzerland allegedly to part redeem the option given as additional security that was mentioned earlier when dealing with the second phase.

28. From the sum of USD 175 million a sum of USD 19 million was paid by Aabar to the account of a company called Affinity Equity International Partners Ltd. The payment was made on 18 June 2014. The account was held at DBS Bank Ltd Singapore. Affinity Equity is controlled by Eric Tan. Of the USD 19 million, a sum of USD 1.89 million was transferred to a company called Blackrock Commodities (Global) Ltd at its account held in DBS. Blackrock is a company controlled by Eric Tan. On 23 June 2014, a sum of GBP 750,000 was transferred to the accused's account. This works out to RM 4,093,500.

29. I now turn to the second loan of USD 975 million which was made available on 1 September 2014. Of this sum USD 250 million was utilised to discharge the bridging loan. That left USD 725 million. On 3 September a sum of USD 223,333,000 was transferred to Aabar Investments PJS Ltd (incorporated in Seychelles) at its account with UBS Singapore. Then, on 30 September 2014, USD 457,984,607 was paid to Aabar Investments PJS Ltd (incorporated in Seychelles) at its account with UBS Singapore. Between 16 October 2014 and 17 November 2014 Aabar transferred a sum of USD 226 million to Aabar International Investment PJS Ltd to its account in Barbados. Between 16 October 2014 and 17 November 2014, Aabar Barbados transferred USD 225,500,000 to Vista Equity International Partners Ltd (Barbados), a company owned and controlled by Eric Tan. Between 23 October 2014 and 19 December 2014 Vista Equity through five tranches in sterling currency transferred a sum equivalent to RM 45,837,485.70 to the accused's account. This sum together with the RM 4,093,500 earlier mentioned forms the subject of the fourth charge. It follows that part of the sum alleged to be used to redeem the option ended up in the accused's account. So much for the fourth phase.

30. I now turn to the twenty-one charges for money laundering offences. These are the AMLA charges. The first nine charges relate to receiving of the RM2,081,476,926 which forms the subject matter of the amended third charge. The monies fell into the accused's account ending 9694 with AmIslamic Bank. Between 2 August 2013 and 23 August 2013, the accused transferred a sum of RM2,034,350,000 to Tanore Singapore. Simultaneously, the accused used the balance of RM22,649,000 to pay four entities and one individual. The prosecution's case is that all these payments benefitted the accused.

31. After making these payments, the accused transferred the balance into a new account ending 1880 with AmBank through two transfers amounting RM162,436,711.87. He closed his account ending 9694.

32. The tenth charge and charges sixteen to nineteen relate to the transfers made by the accused to Tanore involving RM2,034,350,000.

33. Charges eleven to fifteen concern the use by the accused of the funds earlier referred to through payments to the four entities and one individual. All these payments were made by cheques signed by the accused.

34. Charges twenty and twenty-one concern the transfer of funds from the 9694 account to the 1880 account.

35. In this latter part of the case, the prosecution will establish the AMLA charges through direct and circumstantial evidence. It will be proved that in all the circumstances of the case, the accused committed the offence of money laundering contrary to Section 4(1)(a) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (“AMLATFA”).

36. After the 1MDB scandal broke in early July 2015, the accused with his mirror image Jho Low took steps to cover his tracks. Sham documents were produced to pretend a donation from an Arab Prince. Among these were letters and four cheques each for a sum of USD 25 million purportedly written out by a person said to be the Arab donor. But these cheques were never meant to be encashed and were never encashed.

37. The prosecution will also produce evidence to show that the accused took active steps to evade justice. He interfered with the course of investigation of this case which has come to be known as the 1MDB Scandal. He took active steps to effect a cover up of his criminal acts. The prosecution will rely on all this evidence to show that the accused had the requisite *mens rea* when the offences with which he is charged were committed.

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