



PRESS RELEASE

DECISION TO NOLLE PROSEQUI CHARGES AGAINST LIM GUAN ENG AND PHANG LI KOON

1. I would like to clarify that the Hon. Attorney General had no hand in the decision to enter *nolle prosequi* (where Public Prosecutor does not propose further to prosecute the accused) on the charges against Lim Guan Eng and Phang Li Koon. This is clearly stated in the joint press release dated 2nd August 2018 by the Solicitor General Datuk Engku Nor Faizah binti Engku Atek and the then Solicitor General II Datin Paduka Zauyah Be binti T. Loth Khan that the Hon. Attorney General has recused himself in all deliberations regarding the above said case, and will not be involved in any decision the AGC will decide in the above said case.
2. AGC has adopted the 'fresh eye' technique, and I was tasked to decide on the representations made by both Lim Guan Eng and Phang Li Koon's case as I had not participated in any way with the

case earlier. Accordingly I was able to consider the matter with a fresh perspective.

3. Having given the said task, I have perused the evidence that has been investigated by MACC and the evidence that have been adduced and tested under cross examination thus far, I concluded that as a result of the cross-examination of the prosecution witnesses who has testified so far, the evidence supporting the first charge under Section 23 of the MACC Act and under Section 165 of the Penal Code has been substantially weakened. This conclusion was arrived in light of fresh evidence that have arisen during the cross-examination of prosecution witnesses.

4. Having made the above findings, I opined that I would not be fulfilling my duties as Deputy Public Prosecutor to let the case continue knowing full well that that the case against both Lim Guan Eng and Phang Li Koon would not succeed at the end of the prosecution case. Hence, I decided for the prosecution to enter *nolle prosequi* against both Lim Guan Eng and Phang Li Koon in accordance with Section 254 of the Criminal Procedure Code.

5. Yesterday at 7.18 a.m., I communicated my decision to Dato' Masri Mohd Daud, who is the Director of Legal and Prosecution Division of MACC and a Deputy Public Prosecutor, who was at that time in Penang. In spite of the Prosecution request for the Court to order a "discharge not amounting to acquittal", the Court made an order for a discharge and acquittal. This was upon the application of the Counsel for the accused and was in accordance to section 254(3) of the CPC.
6. I wish to reiterate that the practise to enter *nolle prosequi* is not something out of the ordinary. This practise has been exercised in many other cases upon representation by counsel and upon discovery of fresh evidence or that the evidence has weakened under cross examination. Similarly, in the case against Lim Guan Eng and Phang Li Koon, there was fresh evidence that has not been previously considered.
7. It ought to be emphasised that the decision in respect of initiating prosecution or discontinuing it is a matter within the prerogative and powers of the Public Prosecutor. In this case, I kept confidential my decision until the very last minute and did not consult the investigative agency fearing it might leak and cause unnecessary alarm. In fact,

my decision was so confidential that I only informed the AG personally at 9.44 am yesterday.

8. I wish to stress that I have decided the representations without any influence from any quarters. In fact, there was a letter from a legal firm representing the complainant in the above said case objecting to any idea of withdrawing the charges against Lim Guan Eng and Phang Li Koon. I have responded to the letter that I will decide the case based on available evidence and governing law, which I did, without fear or favour.

9. My utmost priority is justice.

DATO' MOHAMAD HANAFIAH BIN ZAKARIA

Head of Appellate & Trial Division/

Deputy Public Prosecutor

Attorney General's Chambers

4th September 2018