Anti-Corruption Regulation

Contributing editor
Homer E Moyer Jr

2019

GETTING THE DEAL THROUGH

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Miller & Chevalier Chartered

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Anti-Corruption Regulation 2019

Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Anti-Corruption Regulation*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Armenia and Sweden.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Homer E Moyer Jr of Miller & Chevalier Chartered, for his continued assistance with this volume.

GETTING THE DEAL THROUGH

London
January 2019

Singapore

Wilson Ang and Jeremy Lua
Norton Rose Fulbright (Asia) LLP

1 International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Singapore became a signatory to the United Nations Convention against Corruption on 11 November 2005 (ratified on 6 November 2009) and to the United Nations Convention against Transnational Organized Crime on 13 December 2000 (ratified on 28 August 2007).

Singapore has been a member of the Financial Action Task Force since 1992, was one of the founding members of the Asia-Pacific Group on Money-Laundering in 1997, and was admitted as a member of the Egmont Group of Financial Intelligence Units in 2002. Singapore is also a member of the Asia Development Bank's and Organisation for Economic Cooperation and Development's joint Anti-Corruption Initiative for Asia and the Pacific, which it endorsed on 30 December 2001.

2 Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The primary Singapore statutes prohibiting bribery are the Prevention of Corruption Act (PCA) (Cap 241, 1993 Rev Ed) and the Penal Code (Cap 224, 2008 Rev Ed).

Sections 5 and 6 of the PCA prohibit bribery in general.

Section 5 makes active and passive bribery by individuals and companies in the public and private sectors an offence.

Section 6 makes it an offence for an agent to be corruptly offered or to corruptly accept gratification in relation to the performance of a principal's affairs or for the purpose of misleading a principal. The term 'gratification' is interpreted broadly (see question 5).

Sections 11 and 12 of the PCA prohibit the bribery of domestic public officials, such as members of parliament and members of a public body. A 'public body' is defined as:

> *[A]ny corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law.*

The Singapore Interpretation Act defines the term 'public officer' as 'the holder of any office of emolument in the service of the [Singapore] Government'.

The PCA does not specifically target bribery of foreign public officials, but such bribery could fall under the ambit of the general prohibitions, namely section 6 on corrupt transactions with agents.

The Penal Code also contains provisions that relate to the bribery of public officials (sections 161 to 165). Public officials are referred to in the Penal Code as 'public servants', which have been defined in the Penal Code to include mainly domestic public officials.

Sections 161 to 165 describe the following scenarios as constituting bribery:

- a public servant taking a gratification, other than legal remuneration, in respect of an official act;
- a person taking a gratification to influence a public servant by corrupt or illegal means;
- a person taking a gratification for exercising personal influence over a public servant;
- abetment by a public servant of the above offences; and
- a public servant obtaining anything of value, without consideration or with consideration the public servant knows to be inadequate, from a person concerned in any proceedings or business conducted by such public servant.

In addition to the above, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) (Cap 65A, 2000 Rev Ed) – Singapore's key anti-money laundering statute – provides for the confiscation of benefits derived from corruption and other criminal conduct.

Foreign bribery

3 Legal framework

Describe the elements of the law prohibiting bribery of a foreign public official.

As mentioned in question 2, there are no provisions in the PCA or the Penal Code that specifically prohibit bribery of a foreign public official. However, the general prohibition against bribery in the PCA, in particular on corrupt transactions with agents, read together with section 37 of the PCA, prohibits, in effect, the bribery of a foreign public official outside Singapore by a Singaporean citizen.

Section 37 of the PCA gives the anti-corruption legislation extra-territorial effect, because if the act of bribery takes place outside Singapore and the bribe is carried out by a Singaporean citizen, section 37 of the PCA states that the offender would be dealt with as if the bribe had taken place in Singapore.

Under section 5 of the PCA, it is an offence for a person (whether by himself or herself, or in conjunction with any other person) to:

- corruptly solicit, receive, or agree to receive for himself, herself or any other person; or
- corruptly give, promise, or offer to any person, whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of:
  - any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
  - any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned.

It is also an offence under section 6 of the PCA for:

- an agent to corruptly accept or obtain any gratification as an inducement or reward for doing or forbearing to do any act in relation to his or her principal's affairs;
- a person to corruptly give or offer any gratification to an agent as an inducement or reward for doing or forbearing to do any act in relation to his or her principal's affairs; or
- a person to knowingly give to an agent a false or erroneous or defective statement, or an agent to knowingly use such statement, to deceive his or her principal.

Section 4 of the Penal Code also creates extraterritorial obligations for all public servants of Singapore and states that any act or omission committed by a public servant outside of Singapore in the course of his or her employment would constitute an offence in Singapore and will be deemed to have been committed in Singapore. Accordingly, if the public servant accepted a bribe overseas, he or she would be liable under Singaporean law.

The extraterritorial effects of the PCA and Penal Code are limited in the respect that they only apply to Singapore citizens and Singapore public servants respectively. In *Public Prosecutor v Taw Cheng Kong* [1998] 2 SLR 410, a case involving a constitutional challenge to the extraterritoriality of section 37 of the PCA, the court upheld the provision and concluded that it was 'rational to draw the line at citizenship and leave out non-citizens, so as to observe international comity and the sovereignty of other nations'.

The court further observed that the language of the provision was wide and 'capable of capturing all corrupt acts by Singaporean citizens outside Singapore, irrespective of whether such corrupt acts have consequences within the borders of Singapore or not'.

As regards to non-citizens committing corruption outside Singapore that could cause harm in Singapore, the court opined that section 29 of the PCA, which deals with the abetment of a corrupt act abroad, could be wide enough to address that scenario.

The CDSA, which primarily deals with the prevention of laundering of the proceeds of corruption and other serious crimes, also has extraterritorial application. The CDSA expressly applies to property whether situated in Singapore or elsewhere. In particular, section 47 of the CDSA provides that any person who knows or has reasonable ground to believe that any property represents another person's benefits from criminal conduct is guilty of an offence if he or she conceals, disguises, converts, transfers or removes that property from the jurisdiction for the purposes of assisting any person to avoid prosecution. Criminal conduct is defined to include any act constituting a serious crime in Singapore or elsewhere.

4 Definition of a foreign public official

How does your law define a foreign public official?

As the PCA and the Penal Code do not specifically deal with the bribery of a foreign public official, the statutes do not define this term.

5 Travel and entertainment restrictions

To what extent do your anti-bribery laws restrict providing foreign officials with gifts, travel expenses, meals or entertainment?

There are no express restrictions in the PCA or Penal Code on providing foreign officials with gifts, travel expenses, meals or entertainment. However, any gift, travel expense, meal or entertainment provided with the requisite corrupt intent will fall foul of the general prohibition under the PCA, and would constitute an offence.

As noted in question 3, the PCA prohibits (among other things), the offer or provision of any 'gratification' if accompanied with the requisite corrupt intent. The term 'gratification' is broadly defined under the PCA to include:

- money;
- gifts;
- loans;
- fees;
- rewards;
- commissions;
- valuable security;
- property;
- interest in property;
- employment contract or services or any part or full payment;
- release from or discharge of any obligation or other liability; and
- any other service, favour or advantage of any description whatsoever (see *Public Prosecutor v Teo Chu Ha* [2014] SGCA 45).

Under the Penal Code, the term 'gratification' is used but not expressly defined. The explanatory notes to the relevant section stipulate that the term is not restricted to pecuniary gratifications or those with monetary value.

Singapore's courts have also held that questionable payments made pursuant to industry norms or business customs will not constitute a defence to any prosecution brought under the PCA (see *Public Prosecutor v Soh Cham Hong* [2012] SGDC 42) and any evidence pertaining to such customs will be inadmissible in any criminal or civil proceedings under section 23 of the PCA (see *Chan Wing Seng v Public Prosecutor* [1997] 1 SLR(R) 721).

6 Facilitating payments

Do the laws and regulations permit facilitating or 'grease' payments?

Neither the PCA nor the Penal Code expressly permits facilitating or 'grease' payments. Such payments would technically constitute an act of bribery under the general prohibitions of both the PCA and the Penal Code. Notably, section 12(a)(ii) of the PCA prohibits the offer of any gratification to any member of a public body as an inducement or reward for the member's 'expediting' of any official act, among other prohibited acts.

7 Payments through intermediaries or third parties

In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?

Corrupt payments through intermediaries or third parties, whether such payments are made to foreign public officials or to other persons, are prohibited. Section 5 of the PCA expressly provides that a person can commit the offence of bribery either 'by himself or by or in conjunction with any other person'.

8 Individual and corporate liability

Can both individuals and companies be held liable for bribery of a foreign official?

Both individuals and companies can be held liable for bribery offences, including bribery of a foreign official. The various provisions in the PCA and Penal Code set out certain offences that may be committed by a 'person' if such person were to engage in certain corrupt behaviour. The term 'person' has been defined in the Singapore Interpretation Act to include 'any company or association of body of persons, corporate or unincorporated'.

In addition, Singapore case law indicates that corporate liability can be imposed on companies for crimes committed by their employees, agents, etc (see *Tom Reck Security Services Pte Ltd v PP* [2001] 2 SLR 70). A test for establishing corporate liability is whether the individual who committed the crime can be regarded as the 'embodiment of the company' or whose acts 'are within the scope of the function of management properly delegated to him'. This test, known as the 'identification doctrine', was derived from English case law (*Tesco Supermarkets Ltd v Nattrass* [1971] 2 All ER 127). It was subsequently broadened in the Privy Council case of *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500, which held that the test for attributing mental intent should depend on the purpose of the provision creating the relevant offence. This broader approach has been affirmed in Singapore (*The Dolphina* [2012] 1 SLR 992) in a case involving shipping and conspiracy but not in the context of bribery offences.

However, the test for corporate liability is different in relation to money-laundering offences. Section 52 of the CDSA introduces a lower threshold of proof for corporate liability. It provides that where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged by the body corporate it shall be sufficient to show that a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, had that state of mind. Likewise, any conduct engaged in or on behalf of a body corporate by a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, or by any other person at the direction or with the consent or agreement of the above, shall be deemed, for the purposes of the CDSA, to have been engaged in by the body corporate.

Generally, individual directors and officers of a company will not be held strictly liable for offences found to have been committed by the company if they were not personally responsible for, or otherwise involved in, that particular offence. However, section 59 of the CDSA

provides that where an offence under the CDSA committed by a body corporate is proved to have been committed with the consent or connivance of an officer or to be attributable to any neglect on his or her part, the officer as well as the body corporate shall be guilty of the offence. It is also possible that an individual such as a director or officer of a company, although not personally guilty of committing a corrupt act, may be held liable for consequential offences including money-laundering or failure to report a suspicion that certain property or the transfer of assets was connected to criminal conduct. In addition, individual directors who ignore red flags of criminal misconduct committed by employees of the company may also find themselves liable for failing to use reasonable diligence in performing their duties under the Companies Act (Cap 50). A former president of a shipyard was recently prosecuted for this infraction (see question 32).

Ultimately, the decision on whether to pursue an individual or a corporate entity for criminal conduct is a matter of prosecutorial discretion. In this regard, an opinion-editorial written by Singapore's then attorney-general, Mr VK Rajah SC, in November 2015 sheds some light on Singapore's approach on such matters. In his opinion-editorial, Mr Rajah stated that in Singapore both individuals and corporate entities should expect prompt enforcement action for financial misconduct. However, he pointed out that, '[t]he emphasis, if there is one, is placed on holding accountable the individuals who perpetuated the misconduct'. In addition, he stressed that 'significant attention is also given to the culpability of corporations . . . especially if the offending conduct is institutionalised and developed into an established practice in an entity over time'.

In August 2018, the Penal Code Review Committee released its report setting out its recommendations on reforming the Penal Code. Among other things, the committee considered the current rules on corporate liability under Singapore law and recommended that the government study the adequacy of the current rules and consider reform if necessary (see 'Update and trends').

9 Successor liability

Can a successor entity be held liable for bribery of foreign officials by the target entity that occurred prior to the merger or acquisition?

In a situation where the acquiring entity purchases shares in the target entity, the acquiring entity is not legally liable for bribery of foreign officials by the target entity that occurred prior to the acquisition. This is because of the common law doctrine of separate legal personality.

Likewise, there is no change to the legal liability or otherwise of the target entity following the change of identity of its shareholder or shareholders.

Subsequent to the acquisition, the commercial value of the acquiring entity may be adversely affected in the event that the target entity is investigated, prosecuted or ultimately held liable for bribery of foreign officials occurring prior to the acquisition. The target entity may be liable for investigation costs, suffer business disruptions and loss of revenue and may have to bear financial penalties or debarment consequences. These may adversely impact the value of the shares in the target entity, which are in turn owned by the acquiring entity.

10 Civil and criminal enforcement

Is there civil and criminal enforcement of your country's foreign bribery laws?

Yes, criminal enforcement against corrupt activities is provided for in both the PCA and the Penal Code. In particular, if the court rules that there has been a violation of the general prohibitions on bribery in the PCA, a penalty of a fine, imprisonment or both will be imposed on the offender. The offender may also have to pay the quantum of the bribe received.

With regard to civil enforcement, a victim of corruption will be able to bring a civil action to recover the property of which it has been deprived. Section 14 of the PCA expressly provides that, where gratification has been given to an agent, the principal may recover, as a civil debt, the amount or the money value thereof either from the agent or the person paying the bribe. This provision is without prejudice to any other right and remedy that the principal may have to recover from his agent any money or property. The objective of imposing this additional penalty is to disgorge the offender's proceeds from the corrupt transaction.

The case *Ho Kang Peng v Scintronix Corp Ltd (formerly known as TTL Holdings Ltd)* [2014] SGCA 22 provides an example of a company successfully bringing a civil claim against its former chief executive and director, Ho Kang Peng, for engaging in corrupt activities. The Court of Appeal dismissed Ho's appeal from the High Court, holding that he had breached his fiduciary duties owed to the company by making and concealing unauthorised payments in the name of the company. The Court of Appeal found that although the payments were for the purpose of securing business for the company, Ho could not be said to be acting in the genuine interests of the company because the payments were, in effect, gratuities and thereby ran the unjustified risk of subjecting the company to possible criminal liability.

11 Agency enforcement

What government agencies enforce the foreign bribery laws and regulations?

The main government agency that enforces bribery laws in Singapore is the Corrupt Practices Investigation Bureau (CPIB). The CPIB derives its powers from the PCA and is responsible for investigating and preventing corruption in Singapore, focusing on corruption-related offences arising under the PCA and the Penal Code.

Under the PCA, the CPIB has extensive powers of investigation, which include powers to require the attendance of witnesses for interview, to investigate a suspect's financial and other records and the power to investigate any other seizable offence disclosed in the course of a corruption investigation. Seizable offences are also known as 'arrestable offences' (ie, offences where the persons committing the offences can be arrested without a warrant of arrest). Special investigative powers can be granted by the public prosecutor, such as the power to investigate any bank account, share account, purchase account, expense account or any other form of account or safe deposit box and to require the disclosure of all information, documents or articles required by the officers.

The CPIB carries out investigations into complaints of corruption but does not prosecute cases itself. It refers the cases, where appropriate, to the public prosecutor for prosecution. The PCA provides that no prosecution under the PCA shall be instituted except by or with the consent of the public prosecutor.

The Commercial Affairs Department (CAD) is the principal white-collar crime investigation agency in Singapore. CAD investigates complex fraud, white-collar crime, money laundering and terrorism financing. CAD's Financial Investigation Division is specially empowered to combat money laundering, terrorism financing and fraud involving employees of financial institutions in Singapore and works closely with financial institutions, government agencies and its foreign counterparts.

The Financial and Technology Crime Division (FTCD) was established within the Attorney-General's Chambers (AGC) in November 2014, as part of a re-designation of the Economic Crimes and Governance Division (EGD) to bring the prosecution of cybercrime under the division's purview. The EGD had been responsible for the enforcement, prosecution and all related appeals in respect of financial crimes and corruption cases within and outside of Singapore. The reorganised division focuses on financial crimes ranging from securities fraud and money laundering to corruption and criminal breach of trust, as well as a broad range of cybercrimes. It is one of two divisions in AGC's crime cluster, with the Criminal Justice Division being the other.

The Monetary Authority of Singapore (MAS) is responsible for issuing guidelines on money laundering and terrorist financing to financial institutions and conducting regulatory investigations on such matters. MAS may also refer potential criminal offences to CAD for further investigation. In this regard, in 2015, MAS and CAD embarked on an initiative to jointly investigate market misconduct offences under the Securities and Futures Act (Cap 289, 2006 Rev Ed). The first conviction of market misconduct under the joint investigations arrangement was reported in March 2017. It is possible that MAS and CAD may expand this joint investigation initiative to other financial crime offences.

12 Leniency

Is there a mechanism for companies to disclose violations in exchange for lesser penalties?

The PCA and the Penal Code do not expressly provide a formal mechanism for companies to disclose violations of bribery laws in exchange for leniency.

While there are no formal legislative mechanisms in place, an informal plea-bargaining process with the public prosecutor is available. Where charges have not yet been filed, an accused can submit letters of representation to the public prosecutor pleading for leniency and seeking issuance of a stern warning or a conditional warning instead of prosecution for the offending conduct, highlighting any merits of the case that may warrant the favourable exercise of the public prosecutor's discretion. (See question 13.)

Even after charges have been filed, an accused can still submit letters of representation to the public prosecutor to negotiate the possible withdrawal, amendment or reduction of the charges, similarly highlighting any merits of the case that may warrant the exercise of the public prosecutor's discretion to do so. At this stage, a withdrawal of the charges may be accompanied by a stern warning or a conditional warning.

It should be noted that the public prosecutor retains the sole discretion to accede to the requests in such letters of representation.

Apart from the informal plea-bargaining process set out above, Singapore's courts introduced a voluntary Criminal Case Resolution programme in 10 October 2011, where a senior district judge functions as a neutral mediator between the prosecution and defence with a view to parties reaching an agreement. Once proceedings have been initiated, the accused may, having reviewed the evidence in the prosecution's case, choose to plead guilty and enter a plea mitigation to avoid a public trial. In appropriate cases, the judge may also provide an indication of sentence. However, such indication will only be provided if requested by the accused. If the mediation is unsuccessful, the judge will not hear the case.

In October 2010, there was a court ruling involving the CEO of AEM-Evertech, a Singapore-listed company, who exposed corrupt practices by the company's top management, including himself (see *Public Prosecutor v Ang Seng Thor* [2010] SGDC 454 – the *AEM-Evertech* case). In sentencing the CEO, the district judge took into consideration the fact that his whistle-blowing helped to secure the conviction of other members of the company's management and consequently did not impose a prison sentence. However, in May 2011, the prosecution successfully appealed against this decision. It was held by the High Court that the judge in the first instance, had, on the facts, incorrectly found that the CEO's role in the matter demonstrated a low level of culpability (see *Public Prosecutor v Ang Seng Thor* [2011] 4 SLR 217). It also found that the CEO was not an archetypal whistle-blower, owing to the fact that he only admitted personal wrongdoing when placed under investigation by the CPIB in May 2007 and had failed to approach the authorities directly with evidence of unauthorised activities. The sentence imposed at first instance was therefore set aside and substituted with a sentence of six weeks' imprisonment and a fine of S$25,000 on each of the two charges, with each prison sentence to run consecutively.

Although the High Court overruled the first instance decision, the case confirms that a genuine whistle-blower would potentially be treated with a degree of leniency during sentencing. The exercise of judicial discretion will depend, in part, on the motivation of the whistle-blower and the degree of cooperation during the investigation.

In addition, in December 2017, a Singapore-based shipbuilding company was issued a 'conditional warning' by Singapore's CPIB as part of its global resolution between the US Department of Justice (US DOJ), Brazilian and Singapore authorities. In announcing the resolution, the CPIB and AGC stated that in issuing the 'conditional warning', due consideration was given to the company for self-reporting to CPIB and AGC the corrupt payments that had been made.

Self-disclosure of violations is also likely to be a significant factor in the public prosecutor's consideration of whether to enter into a deferred prosecution agreement (DPA) with a company to resolve corporate misconduct under Singapore's new DPA regime (see question 13 below).

13 Dispute resolution

Can enforcement matters be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial?

The public prosecutor has the discretion to initiate, conduct or discontinue any criminal proceedings. It may be possible for a person under investigation to convince the public prosecutor not to initiate criminal proceedings against him or her or, as described in question 12, if criminal proceedings have already been initiated, an accused person may submit letters of representation (on a 'without prejudice' basis) to the public prosecutor to negotiate the possible withdrawal, amendment or reduction of charges.

The public prosecutor has sole discretion whether to accede to such letters of representation. It may also be possible for an accused person to plead guilty to certain charges, in return for which the public prosecutor will withdraw or reduce certain other charges. The accused may also plead guilty to the charges brought against him or her so as to resolve a particular matter without a trial, and then enter a mitigation plea. The public prosecutor may also direct the enforcement agency to issue a 'stern warning' instead of prosecution.

A 'stern warning' is an exercise of prosecutorial discretion granted to the attorney-general as the public prosecutor and the use of such means is not governed by statute. Therefore, a 'stern warning' does not result in a conviction; the accused person will not have any criminal record for the infraction. In a Singapore High Court decision, *PP v Wham Kwok Han Jolovan* [2016] 1 SLR 1370, the legal effect of a 'stern warning' was considered. In that case, the High Court held that a 'stern warning' was not binding on its recipient such that it affected the legal rights, interests or liabilities, and that it is:

> *[N]o more than an expression of the relevant authority that the recipient has committed an offence . . . [i]t does not and cannot amount to a legally binding pronouncement of guilt or finding of fact.*

The public prosecutor may also direct an enforcement agency to issue a 'conditional warning' instead of prosecution, which is a variant of a 'stern warning', albeit with certain conditions or stipulations attached to it. Common conditions include an undertaking not to commit a criminal offence for a stipulated period (usually between 12 to 24 months) or an undertaking to pay a sum of money to the victim as compensation. Traditionally, 'conditional warnings' were used in minor criminal offences involving youths or in a community or domestic context as a means of diverting such cases from the criminal justice system. However, it is possible, as seen in a recent case involving a Singapore-based shipbuilding company (see question 17), for the public prosecutor to issue a 'conditional warning' to settle corporate criminal conduct in a similar manner as that of a corporate DPA in the United States or United Kingdom.

In March 2013, the AGC and the Law Society issued the Code of Practice for the Conduct of Criminal Proceedings by the prosecution and defence, which is a joint code of practice that sets out the duties of prosecutors and lawyers during criminal trials and deals with various matters including plea bargaining.

In addition to the above, on 19 March 2018, the Singapore Parliament passed the Criminal Justice Reform Bill (Criminal Justice Bill), which introduced sweeping changes to Singapore's criminal justice framework. One key change is a formal legislative framework for the public prosecutor to enter into DPAs with corporate offenders to resolve misconduct. The DPA regime introduced by the Criminal Justice Bill is broadly similar to the UK approach in the following respects:

- DPAs are only available to corporate entities and not to individuals;
- DPAs must contain a statement of facts relating to the alleged offence and may impose various conditions on the subject (eg, payment of financial penalty, disgorgement of profits, implementation of a compliance programme, imposition of a corporate monitor etc);
- all DPAs will require court approval;
- in approving a DPA, the court must be satisfied that the DPA is in the interests of justice and that the terms are fair, reasonable and proportionate;

- the terms of the DPA may be varied while the DPA is in force, subject to court approval;
- the prosecution may apply to the court for relief if it believes that the subject has failed to comply with the terms of a DPA, and must prove the alleged breach(es) on a balance of probabilities;
- there is a prescribed framework governing the use of material obtained in the course of negotiating a DPA, including how the statement of facts contained in a DPA will be treated (ie, as proof of a formal admission); and
- how money received by the prosecution under a DPA is to be dealt with is clearly specified (ie, payment into the Consolidated Fund).

However, one significant difference between the Singapore and UK approach is that under the UK framework, the director of public prosecutions and the director of the Serious Fraud Office are required to jointly issue a Code on DPAs to provide guidance on various issues, whereas the Singapore regime does not impose such a requirement. It should also be noted that Singapore's DPA regime will operate retrospectively, meaning that DPAs may be entered into in respect of offences committed prior to the enactment of the Criminal Justice Bill.

14 Patterns in enforcement

Describe any recent shifts in the patterns of enforcement of the foreign bribery rules.

Significantly, in January 2015, Singapore's prime minister announced that the capabilities and manpower of the CPIB were to be strengthened by more than 20 per cent, as corruption cases had become more complex, with some having international links. This announcement follows the reorganisation of the EGD to the FTCD (see question 11) signalled an intent by the AGC to actively enforce and prosecute complex bribery offences, including cybercrime, committed outside Singapore that may involve foreign companies and foreign public officials.

The Mutual Assistance in Criminal Matters Act was revised in July 2014 to improve Singapore's ability to provide mutual legal assistance to other countries and demonstrates a commitment to cross-border cooperation. The amendments primarily ease requirements that foreign countries would need to satisfy to make requests for legal assistance and widen the scope of mutual legal assistance that Singapore can provide. In a related development, on 5 July 2017, the CPIB joined its counterparts from Australia, Canada, New Zealand, the United Kingdom and the United States in launching the International Anti-Corruption Cooperation Centre (IACCC). The IACCC will be hosted by the UK National Crime Agency in London until 2021. The IACCC aims to coordinate law enforcement action against global grand corruption. The CPIB has announced that it will be sending an officer to serve at the IACCC. Singapore's participation in the IACCC is likely to result in Singaporean authorities taking a more proactive role in investigating foreign bribery cases with Singaporean links.

On 19 November 2018, the Singapore Parliament passed the Serious Crimes and Counter-Terrorism (Miscellaneous Amendments) Bill (the SCCT Bill), which among other things, enhances the ability of Singapore authorities to share financial intelligence with financial intelligence units overseas. The SCCT Bill amends the CDSA by allowing Singapore authorities to share information under an international arrangement (as opposed to sharing intelligence with countries with which Singapore has a bilateral arrangement), provided that there are safeguards to protect the confidentiality of information shared and control their use. Consequently, when the amendments come into force, Singapore would be able to exchange financial intelligence with more than 150 financial intelligence units of overseas jurisdictions that are members of the Egmont Group.

In addition, the SCCT Bill also introduces a new section 47AA to the CDSA that criminalises the possession or use by an accused person of property that would be suspected by a reasonable person of being benefits from criminal conduct, if the accused person cannot satisfactorily explain how he or she came by the property. This new offence would significantly bolster Singapore's ability to combat grand corruption and foreign bribery, by allowing the authorities to prosecute the laundering of criminal proceeds from such illegal conduct through Singapore.

Public sector complaints and prosecutions remain consistently low due, in part, to the aggressive enforcement stance taken by the CPIB, as well as to the high wages paid to public servants that reduce the financial benefit of taking bribes as compared to the risk of getting caught. The majority of the CPIB's investigations relate to the private sector, which for 2017 made up 92 per cent of its investigations registered for action (a 7 per cent decrease from the previous year – according to the CPIB – because of the small number of cases registered for action, this decrease is not significant). In its 2017 annual report, the CPIB stated that over the past four years, three areas continued to be of concern to the CPIB: construction; wholesale and retail business; and warehousing, transport and logistics services.

There is a trend of law enforcement agencies using anti-money laundering laws and falsification of accounts provisions (section 477A of the Penal Code) to prosecute foreign bribery cases (see question 18). This is because it is often difficult to prove the predicate bribery offences in such cases, owing to the fact that key witnesses are often located overseas. An example of this approach can be seen in the prosecution of Thomas Philip Doerhman and Lim Ai Wah (the *Questzone* case), who were sentenced to 60 and 70 months' jail respectively on 1 September 2016, for falsifying accounts under section 477A and money-laundering offences under the CDSA. Doerhman and Lim, who were both directors of Questzone Offshore Pte Ltd (Questzone), were prosecuted for conspiring with a third individual, Li Weiming, in 2010 to issue a Questzone invoice to a Chinese telecommunications company seeking payment of US$3.6 million for a fictitious subcontract on a government project in a country in the Asia-Pacific. Li was the chief representative for the Chinese company in that country. A portion of the monies paid out by the Chinese company to Questzone, pursuant to its invoice, was then subsequently redistributed by Doerhman and Lim to Li and the then prime minister of that Asia-Pacific country in 2010.

Even though no corruption charges were brought under the PCA against the parties, it is plainly conceivable that Questzone functioned as a corporate conduit for corrupt payments to be made. On the facts, some key witnesses were overseas – with Li having absconded soon after proceedings against him commenced. The use of section 477A and money-laundering charges under the CDSA allowed the prosecution to proceed against Doerhman and Lim as they only needed to prove that the invoice was false, in respect of the section 477A charge; and that the monies paid out pursuant to the invoice – which would be proceeds of crime or property used in connection with criminal conduct – were transferred to Li and the then prime minister of the Asia-Pacific country, in respect of the money-laundering offences.

The use of section 477A of the Penal Code was also employed in the case relating to a Singapore shipyard (see details at question 32), which involved senior executives of the shipyard conspiring to bribe employees of its customers to obtain business from these customers. The bribes were disguised as bogus entertainment expenses that were paid out from petty cash vouchers as approved by the senior executives. It is pertinent to note that these senior executives did not carry out the actual payment of the bribes but had approved the fraudulent petty cash vouchers, which they knew did not relate to genuine entertainment expense claims.

15 Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Under the general offences of the PCA, foreign companies can be prosecuted for the bribery of a foreign public official if the acts of bribery are committed in Singapore (see question 2). In addition, section 29 of the PCA read together with section 108A of the Penal Code allows foreign companies to be prosecuted for bribery that was substantively carried out overseas, if the aiding and abetment of such bribery took place in Singapore.

16 Sanctions

What are the sanctions for individuals and companies violating the foreign bribery rules?

The PCA provides for a fine, a custodial sentence, or both for the contravention of the general anti-corruption provisions under sections 5 and 6 (which include the bribery of foreign public officials in Singapore, and the bribery of foreign public officials overseas by a Singaporean citizen when read with section 37). The guilty individual or company may

be liable to a fine not exceeding S$100,000 or imprisonment for a term not exceeding five years, if appropriate.

Where the offence involves a government contract or bribery of a member of parliament, the maximum custodial sentence has been extended to seven years (see question 30). There are also civil remedies and penalties for the restitution of property pursuant to the PCA (see question 10). A person convicted of an offence of bribery under the Penal Code may be sentenced to a fine and a custodial sentence of up to three years.

There are other statutes imposing sanctions on the guilty individuals or companies. For example, under the CDSA, where a defendant is convicted of a 'serious offence' (which includes bribery), the court has the power, under section 4, to make a confiscation order against the defendant in respect of benefits derived by him or her from criminal conduct. Under the Companies Act (Cap 50, 2006 Rev Ed), a director convicted of bribery offences may be disqualified from acting as a director.

17 Recent decisions and investigations

Identify and summarise recent landmark decisions or investigations involving foreign bribery.

In December 2017, a Singapore-based company in the shipbuilding industry entered into a global resolution led by the US Department of Justice (US DOJ) in connection with corrupt payments made to officials of a Brazilian state-owned enterprise, Petroleo Brasileiro SA (Petrobras), and other parties, to win contracts with Petrobras or its related companies. The company concealed these corrupt payments by paying commissions to an intermediary, under the guise of legitimate consulting agreements, who then made payments for the benefit of officials of Petrobras and other parties. Under the terms of the global resolution, the company entered into a DPA with the US DOJ and agreed to pay total criminal penalties amounting to US$422.2 million to the United States, Brazil and Singapore.

In Singapore, the company received a 'conditional warning' (see question 13) from the CPIB for corruption offences under section 5(1)(b)(i) of the PCA and committed to certain undertakings under the 'conditional warning', including an undertaking to pay US$105.55 million to Singapore as part of the total criminal penalties imposed pursuant to the global resolution.

In a statement on the resolution, Singaporean authorities pointed out that in deciding to issue a 'conditional warning' to the company, due consideration had been given to the company for its substantial cooperation (including the company's self-reporting to Singaporean authorities for the corrupt payments) and the extensive remedial measures taken by the company thus far.

The issues faced by the Singapore-based shipbuilding company arose from a wider investigation by Brazilian authorities called '*Lava Jato*' or 'Operation Car Wash' (see Brazil chapter). In this connection, it has been reported that a second Singapore-based company and its affiliates may also be potentially implicated in relation to similar transactions entered into with Petrobras or its related companies. To date, there has been no further updates on the allegations concerning the second Singapore-based shipbuilding company.

In an ongoing case involving foreign bribery, two executives from Glenn Defense Marine Asia (GDMA), who were extradited from Singapore to stand trial in the US, were convicted and sentenced to imprisonment in a San Diego federal court for their role in a bribery scandal involving GDMA's CEO and chair, nicknamed 'Fat Leonard', and numerous high-ranking US Navy officials.

'Fat Leonard' is a Singapore-based Malaysian businessman who was arrested in San Diego, USA, in a sting operation while on a business trip in September 2013, for allegedly bribing US Navy officers to reveal confidential information about the movement of US Navy ships and defrauding the US Navy through numerous contracts relating to support services for US naval vessels in Asia. The US authorities claim that the US Navy has been defrauded of nearly US$35 million. The US government has barred GDMA from any new contracts and terminated nine contracts worth US$205 million that it had with the US Navy. To date, at least 20 defendants, including top US Navy officials and a US Naval Criminal Investigative Service investigator have been indicted. 'Fat Leonard' and some of the other defendants have also pleaded guilty to various charges involving bribery. In December 2015, a former US Navy employee, who was the lead contract specialist at the material time, was reportedly charged in court in Singapore with (among others) seven counts of corruptly receiving cash and paid accommodation. The allegation was that she had received more than S$130,000 in the form of cash and paid accommodation in luxury hotels from GDMA as a reward for the provision of non-public US Navy information.

In connection with the transnational money-laundering investigation linked to a Malaysian state investment fund, MAS ordered the closure of BSI and Falcon Bank for serious lapses in anti-money-laundering requirements. Several other major banks in Singapore were also censured and fined for their role in the scandal. In connection with the investigation, several individuals have been charged in court. A former BSI banker, Yak Yew Chee, pleaded guilty to four criminal charges of forgery and failing to report suspicious transactions in November 2016. He was sentenced to 18 weeks' jail and a fine of S$24,000. The trial of another former BSI banker, Yeo Jiawei, for witness tampering concluded on 22 December 2016. He was sentenced to 30 months' jail at the time. He subsequently pleaded guilty to money laundering and cheating in July 2017 and was sentenced to four-and-a-half years jail – this would run concurrently with his earlier 30-month jail sentence. During the course of the trial, details emerged as to how the banker allegedly facilitated the flow of illicit funds through Singapore's financial system. Falcon Bank's branch manager, Jens Sturzenegger, was also prosecuted and sentenced to 28 weeks' jail and a fine of S$128,000. Among other things, Sturzenegger was charged with consenting to the bank's failure to file a suspicious transaction report to MAS. A total of S$29.1 million in financial penalties have been imposed on eight banks for breaches of anti-money laundering requirements. Various individuals involved in the matter have also been sanctioned by MAS.

In June 2017, siblings Judy Teo Suya Bik and Teo Chu Ha were charged in Singapore for corruption-related offences allegedly committed in China between April 2007 and November 2010. Teo Chu Ha was a former senior director of Seagate Technology International. The siblings allegedly conspired to obtain bribes from Chinese transport companies as a reward for helping these companies secure contracts with Seagate Technology International. The siblings were also accused of one count each of an offence under the CDSA, in connection with a purchase of a condominium unit. Judy Teo and Teo Chu Ha were charged with the offences under the PCA even though the offending conduct allegedly took place in China because the PCA has extraterritorial jurisdiction over Singapore citizens (see question 3).

Financial record keeping

18 Laws and regulations

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The Companies Act is the main statute that regulates the conduct of Singapore-incorporated companies. Among other things, the Companies Act requires the keeping of proper corporate books and records that:

- sufficiently explain the transactions and financial position of the company;
- contain true and fair profit and loss accounts and balance sheets for a period of at least five years;
- allow for the appointment of external auditors; and
- include the filing of annual returns.

The Act was amended in October 2014 to reduce the regulatory burden on companies, provide for greater business flexibility and improve corporate governance. Amendments include revised requirements for audit exemptions, inclusion of a requirement that CEOs disclose conflicts of interest and the removal of the requirement that private companies keep a register of members.

Apart from the requirements set out under the Companies Act, section 477A of the Penal Code also criminalises the falsification of a company's accounts by a clerk or a servant of the company with intent to defraud.

Singapore-listed companies are also subject to stringent disclosure, auditing and compliance requirements as provided by:

- the Securities and Futures Act;
- the Singapore Exchange Limited (SGX) Listing Rules;

- the Code of Corporate Governance; and
- other relevant rules.

The SGX Listing Rules state that a company's board 'must provide an opinion on the adequacy of internal controls'. The Code of Corporate Governance provides that the board 'must comment on the adequacy and effectiveness of risk management and internal control system'.

Companies that do not comply with the laws and regulations may be investigated by CAD, the Accounting and Regulatory Authority of Singapore or other regulatory bodies.

19 Disclosure of violations or irregularities

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Section 39 of the CDSA imposes reporting obligations on persons who know or have reasonable grounds to suspect that there is property that represents the proceeds of, or that was used or was intended to be used in connection with criminal conduct. Criminal conduct includes acts of bribery (which potentially extends to acts of bribery overseas) and falsification of accounts under section 477A of the Penal Code. A breach of these reporting obligations attracts a fine of up to S$20,000. The penalties for an offence under section 39 of the CDSA have been enhanced with the SCCT Bill. Once the amendments under the SCCT Bill come into force, an individual convicted of an offence under section 39 of the CDSA will be liable to a fine of S$250,000 or imprisonment not exceeding three years if the offender is an individual, or to both, and for corporations convicted of such an offence, a fine not exceeding S$500,000.

Section 424 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) (CPC) also imposes reporting obligations on every person aware of the commission of or the intention of any other person to commit most of the corruption crimes (relating to bribery of domestic public officials) set out in the Penal Code.

Section 69 of the CPC allows the police to conduct a formal criminal discovery exercise during the course of corruption investigations, empowering them to search for documents and access computer records.

Apart from these express reporting and disclosure obligations under the CDSA and the CPC, the requirements imposed by the Companies Act, Securities and Futures Act, Listing Rules, regulations and guidelines issued by MAS may also impose obligations on a company or financial institution to disclose corrupt activities and associated accounting irregularities.

On 6 August 2018, MAS issued a revised Code of Corporate Governance, which, in conjunction with the Listing Rules, sets out a number of obligations that listed companies are expected to observe. This version of the Code retains the stringent requirements introduced in 2012, relating to the role and composition of the Board of Directors (Principles 1 and 2), risk management and internal controls (Principle 9) and the need to have an adequate whistle-blowing policy in place (Principle 10). The revised Code now places a greater emphasis on the need to have well-rounded and competent boards with diverse perspectives by imposing further conditions to strengthen director independence and to enhance board composition and diversity. The revised Code also imposes requirements to enhance shareholder engagement and to encourage transparent remuneration practices. Even though the revised Code has newer areas of emphasis, it is actually now streamlined with a net reduction of 3 Principles and 31 Provisions, and demonstrates a move towards being more concise and less prescriptive, so as to encourage thoughtful application and to move away from a box-ticking mindset. The Listing Rules require listed companies to disclose, in their annual reports, a board commentary assessing the companies' internal control and risk management systems.

On 10 May 2012, MAS issued Risk Governance Guidance for Listed Boards to provide practical guidance for board members on managing risk. On 27 February 2017, MAS announced that it has formed a Corporate Governance Council to review the Code of Corporate Governance.

20 Prosecution under financial record-keeping legislation

Are such laws used to prosecute domestic or foreign bribery?

No. The laws primarily used to prosecute domestic or foreign bribery are the PCA and the Penal Code.

21 Sanctions for accounting violations

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Falsifying accounts to facilitate the payment of bribes is a violation of section 477A of the Penal Code. The penalty for violating section 477A of the Penal Code is imprisonment for a term of up to 10 years, or a fine, or a combination of both.

Apart from section 477A, sanctions for violations of the laws and regulations relating to proper account keeping, auditing, etc, include fines and terms of imprisonment. The amount of any fine and length of imprisonment will depend on the specific violation in question. Liability may be imposed on the company, directors of the company and other officers of the company.

22 Tax-deductibility of domestic or foreign bribes

Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?

Tax deduction for bribes (whether domestic or foreign bribes) is not permitted. Bribery is an offence under the PCA and the Penal Code.

Domestic bribery

23 Legal framework

Describe the individual elements of the law prohibiting bribery of a domestic public official.

The general prohibition on bribery in the PCA (see question 2) specifically states, at section 5, that it is illegal to bribe a domestic public official.

Where it can be proved that gratification has been paid or given to a domestic public official, section 8 provides for a rebuttable presumption that such gratification was paid or given corruptly as an inducement or reward. The burden of proof in rebutting the presumption lies with the accused on a balance of probability. In *Public Prosecutor v Ng Boon Gay* [2013] SGDC 132 (*Ng Boon Gay* case), the prosecution argued that the threshold to establish the presumption was very low and ultimately any 'gratification' given to a public official by someone intending to deal with the official or government would be enough to create the rebuttable presumption. On the facts of the case, however, the defence succeeded in rebutting the presumption.

Prohibition of the bribery of a domestic public official is also set out in sections 11 and 12 of the PCA as outlined below. Section 11 relates to the bribery of a member of parliament. It is an offence for any person to offer any gratification to a member of parliament as an inducement or reward for such member's doing or forbearing to do any act in his capacity as a member of parliament. It will also be an offence for a member of parliament to solicit or accept the above gratification. Section 12 relates to the bribery of a 'member of a public body'. (For the definition of 'public body' see questions 2 and 25.) It is an offence for a person to offer any gratification to a member of such a public body as an inducement or reward for:

- the member's voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to that public body;
- the member's performing, or abstaining from performing, or aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or
- the member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person.

It will, correspondingly, be an offence for a member of a public body to solicit or accept such gratification described above.

The Penal Code also sets out a number of offences relating to domestic public officials (termed 'public servant'). The prohibited scenarios are outlined in question 2. The Singapore government also

issues the Singapore Government Instruction Manual (Instruction Manual) to all public officials. The Instruction Manual contains stringent guidelines regulating the conduct of public officials.

24 Prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. Singapore law prohibits both the paying and receiving of a bribe. In particular, sections 5, 11 and 12 of the PCA prohibit both the paying of a bribe to, and receiving of a bribe by, a domestic public official.

25 Public officials

How does your law define a public official and does that definition include employees of state-owned or state-controlled companies?

A public official is referred to as a 'member, officer or servant of a public body' in the PCA. There are also specific provisions at section 11 of the PCA in respect of members of parliament. 'Public body' has been defined in section 2 of the PCA to mean any:

> *[C]orporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law (ie, Singapore's legislation) relating to public health or to undertakings or public utility or otherwise administer money levied or raised by rates or charges in pursuance of any written law.*

In the *Ng Boon Gay* case and *Public Prosecutor v Peter Benedict Lim Sin Pang DAC* 2106-115/2012 (*Peter Lim* case) – in which the former Singapore Civil Defence Force Chief was found guilty and sentenced to six months jail for corruptly obtaining sexual favours in exchange for the awarding of contracts – both the Central Narcotics Bureau and the Singapore Civil Defence Force were unsurprisingly held by the courts to be public bodies.

In *Public Prosecutor v Tey Tsun Hang* [2013] SGDC 164 (*Tey Tsun Hang* case) – where the former law professor at National University of Singapore was convicted for obtaining sex and gifts from one of his students but was later acquitted on appeal – despite the arguments of defence counsel, the National University of Singapore (NUS) was also found to be a public body, being a 'corporation which has the power to act . . . relating to . . . public utility or otherwise to administer money levied or raised by rates or charges', as 'public utility' included the provision of public tertiary education. The receipt by the NUS of funds from the government and its function as an instrument of implementing the government's tertiary education policy further supported the finding that the NUS was a 'public body'.

The provisions in the Penal Code pertaining to domestic public officials use the term 'public servant'. This has been defined in section 21 to include:

- an officer in the Singapore Armed Forces;
- a judge;
- an officer of a court of justice;
- an assessor assisting a court of justice or public servant;
- an arbitrator;
- an office holder empowered to confine any person;
- an officer of the Singapore government;
- an officer acting on behalf of the Singapore government; and
- a member of the Public Service Commission or Legal Service Commission.

It would appear from the above definitions under the PCA and the Penal Code that an employee of a state-owned or state-controlled company may not necessarily be a domestic public official. Such employees of state-owned or state-controlled companies may be considered domestic public officials if they fall within the definitions set out in the PCA and the Penal Code.

It should also be noted that the Singapore Interpretation Act defines the term 'public officer' as 'the holder of any office of emolument in the service of the [Singapore] Government'.

26 Public official participation in commercial activities

Can a public official participate in commercial activities while serving as a public official?

The Instruction Manual, which applies to all Singapore public officials, is a comprehensive set of rules that govern how public officials should behave to avoid corruption. The Instruction Manual allows public officials to participate in commercial activities but sets out certain restrictions, such as public officials not being allowed to profit from their public position. The Instruction Manual details how public officials can prevent conflicts of interest from arising and when consent must be obtained. Consent is required for various investment activities such as holding shares in private companies, property investments and entering into financial indebtedness.

The CPIB also advises domestic public officials not to undertake any paid part-time employment or commercial enterprise without the written approval of the appropriate authorities. Subject to such safeguards and approvals, a public official is allowed to participate in commercial activities while in service.

In September 2015, Singapore's prime minister issued a letter to members of parliament (MPs) of the ruling party, the People's Action Party (PAP), on rules of prudence. Among other things, PAP MPs were told to separate their business interests from politics and not to use their parliamentary position to lobby the government on behalf of their businesses or clients. PAP MPs were also told to reject any gifts that may place them under obligations that may conflict with their public duties, and were directed to declare any gifts received other than those from close personal friends or relatives to the clerk of parliament for valuation. Like public servants, ruling party MPs are required to pay the government the valuation price of the gifts if they wish to retain such gifts.

27 Travel and entertainment

Describe any restrictions on providing domestic officials with travel expenses, meals or entertainment. Do the restrictions apply to both the providing and receiving of such benefits?

The analysis in question 5 will apply to both the giving and receiving of such benefits to and by domestic officials. It should also be noted that domestic public officials are not permitted to receive any money or gifts from people who have official dealings with them, nor are they permitted to accept any travel and entertainment, etc, that will place them under any real or apparent obligation.

28 Gifts and gratuities

Are certain types of gifts and gratuities permissible under your domestic bribery laws and, if so, what types?

There are no specific types of gifts and gratuities that are considered permissible under the PCA and the Penal Code. Any gift or gratuity is potentially caught by the PCA and the Penal Code if it meets the elements required by the statutes and is accompanied with the requisite corrupt intent.

Domestic public servants are also subject to the requirements of the Instruction Manual, which details the circumstances in which gifts and entertainment can be accepted and when they must be declared. As a matter of practice, public servants are generally not permitted to accept gifts or entertainment given to them in their capacity as public servants or in the course of their official work unless it is not practicable for them to reject the gift. Upon acceptance of the gift, the public servant is required to disclose the gift to his or her permanent secretary. Only gifts valued at less than S$50 can be kept by the public servant. Any gift valued at more than S$50 can only be kept by the public servant if it is independently valued and purchased from the government by the public servant. Alternatively, a gift that is valued at more than S$50 would have to be surrendered to the government.

By comparison, in the *Tey Tsun Hang* case, the court heard that the NUS Policy on Acceptance of Gifts by Staff requires consent to be sought for all gifts worth more than S$100.

Update and trends

On 19 March 2018, Singapore passed the Criminal Justice Bill, which introduced, among other things, a formal legislative framework for the public prosecutor to enter into DPAs with corporate offenders to resolve misconduct (see question 13).

The Criminal Justice Bill also enhanced the ability of criminal investigators (including investigators from the CPIB) to access computer data in the course of investigations, by allowing them to use any such computer in or from Singapore, or cause any such computer to be used in or from Singapore, to search any data contained in or available to such computer, and to make a copy of any such data. This means that investigators will now be able to access data held in the cloud, even if the data is physically residing in a server or computer outside Singapore.

In August 2018, the Penal Code Review Committee (PCRC) released its report setting out its recommendations on reforming the Penal Code. Among other things, the PCRC recommended that the criminal breach of trust provisions under the Penal Code be amended and updated so as to suit the modern context – in part because of the decision of the Court of Appeal in the *City Harvest* case (see question 32). The PCRC also recommended expanding the territorial jurisdiction of the Singapore courts over white-collar offences. The PCRC recommended expanding such jurisdiction in two ways: (i) by setting out a schedule of offences comprising important property and white-collar offences under which the Singapore courts will have jurisdiction where any fact element of the offence takes the form of an event that occurs in Singapore; and (ii) by specifying that for scheduled offences, the Singapore courts will have jurisdiction where the offence involved an intention to make gain or cause loss or expose another to a risk of loss or cause harm to any person in body, mind, reputation or property, and that gain, loss or harm occurred in Singapore. The PCRC also considered the adequacy of the current rules under Singapore law on corporate criminal responsibility and found that there were various areas where such rules are unsatisfactory (see question 8 for a brief discussion on some of the issues relating to corporate criminal responsibility in Singapore). While the PCRC did not make any immediate recommendations to resolve the unsatisfactory state of affairs, it recommended that the Singapore government study the adequacy of Singapore's current rules on corporate criminal responsibility and consider putting in place new rules if required.

29 Private commercial bribery

Does your country also prohibit private commercial bribery?

The PCA contains provisions that prohibit bribery in general, and these prohibitions extend to both private commercial bribery as well as bribery involving public officials.

30 Penalties and enforcement

What are the sanctions for individuals and companies violating the domestic bribery rules?

The sanctions for individuals and companies violating the domestic bribery rules are similar to those set out in question 16, apart from the following.

The penalties for bribery of domestic public officials under the PCA are more severe than those for general corruption offences. While the general bribery offences under sections 5 and 6 are punishable by a fine not exceeding S$100,000, imprisonment not exceeding five years, or both, the bribery of a member of parliament or a member of a public body under sections 11 and 12 respectively may result in a fine not exceeding S$100,000, imprisonment for a term not exceeding seven years, or both.

In addition, the domestic public official involved in corruption would be exposed to departmental disciplinary action, which could result in punishments such as:

- dismissal from service;
- reduction in rank;
- stoppage or deferment of salary increment;
- fine or reprimand; and
- involuntary retirement.

Furthermore, the Instruction Manual debars companies that are guilty of corruption involving public officials from public contract tenders. Other measures include the termination of an awarded contract and the recovery of damages from such termination.

31 Facilitating payments

Have the domestic bribery laws been enforced with respect to facilitating or 'grease' payments?

As stated in question 6, facilitating or 'grease' payments are technically not exempt under Singapore law. In particular, as regards domestic public officials, section 12 of the PCA prohibits the offering of any gratification to such officials as an inducement or reward for the official's 'performing, or . . . expediting . . . The performance' of any official act.

Accordingly, it is also an offence under section 12 of the PCA for the domestic public official to accept any gratification intended for the purposes above.

32 Recent decisions and investigations

Identify and summarise recent landmark decisions and investigations involving domestic bribery laws, including any investigations or decisions involving foreign companies.

In *Public Prosecutor v Syed Mostafa Romel* [2015] 3 SLR 1166, the Singapore High Court made clear that private sector bribery was as abhorrent as public sector bribery, tripling the jail term (from two to six months) of a marine surveyor convicted on corruption charges relating to the receipt of bribes to omit safety breaches in his reports. The case is significant for the guidance it gives on sentencing of corruption charges. More importantly, it dispels any perceived distinction between corruption in the private and public sectors.

A Singapore shipyard providing shipbuilding, conversion and repair services worldwide was embroiled in a corruption scandal in which seven senior executives, including three presidents, a senior vice president, a chief operating officer (COO) and two group financial controllers, were implicated in conspiracies to bribe agents of customers in return for contracts between 2000 and 2011. A total of at least S$24.9 million in bribes were paid out during the period.

An integral part of this scheme involved disguising the bribes as bogus entertainment expenses that were paid out from petty cash vouchers as approved by the accused persons. It should be noted that none of these executives carried out the actual bribe payments. Rather, they approved the fraudulent petty cash vouchers, which they knew were not genuine entertainment expense claims that were presented to them.

Between December 2014 and June 2015, the senior executives were charged with corruption for conspiring to pay bribes, and for conspiring to defraud the company through the falsification of accounts and the making of petty cash claims for bogus entertainment expenses.

The prosecution of the case is presently ongoing. To date, the cases against four senior executives have concluded. The former senior vice president and former COO/deputy president were both sentenced to imprisonment and a fine. The former group financial controller, who was the first to plead guilty and had committed to testifying against his co-conspirators, was handed a S$210,000 fine for his role in the conspiracy. The ex-president of the company, who was not alleged to be privy to the conspiracy, was also prosecuted. He was prosecuted under section 157 of the Companies Act for failing to use reasonable diligence to perform his duties and was sentenced to 14 days' jail under a detention order. In this case, the prosecutor alleged that he had ignored information that pointed to criminal wrongdoing in the company.

The '*IKEA* case'

In *Public Prosecutor v Leng Kah Poh* [2014] SGCA 51 (the *IKEA* case), the Court of Appeal clarified that inducement by a third party was not necessary to establish a corruption charge under the PCA. In doing so, the Court of Appeal overturned an acquittal by the High Court of Leng Kah Poh, the former IKEA food and beverage manager in Singapore, who had originally been sentenced to 98 weeks of jail for 80 corruption

charges. Leng had reportedly received a S$2.4 million kickback for giving preference to a particular product supplier. The High Court had overruled the conviction of the trial court and acquitted Leng, holding that the conduct did not amount to corruption because he had not been induced by a third party to carry out the corrupt acts. The High Court held that an action for corruption would only succeed when there are at least three parties:

- a principal incurring loss;
- an agent evincing corrupt intent; and
- a third party inducing the agent to act dishonestly or unfaithfully.

The High Court held that in this case no third party existed and therefore the conduct alleged was not considered to amount to corruption under the PCA. However, in overturning the decision of the High Court, the Court of Appeal noted that if inducement by a third party were necessary, it would lead to absurd outcomes and undermine the entire object of the PCA.

The '*Seagate* case'

In *Teo Chu Ha v Public Prosecutor* [2014] SGCA 45, a former director at Seagate Technology International (Seagate) received shares in a trucking company and subsequently assisted that company to secure contracts to provide trucking services for Seagate. The High Court held that the conduct did not amount to corruption, as the rewards were not given for the 'purpose' or 'reason' of inducement because they were not causally related to the assistance Teo had rendered. Furthermore, Teo had paid consideration for the shares. The Court of Appeal overruled the High Court decision, finding that a charge of corruption could still be made out when consideration was paid and it was not necessary to prove that consideration was inadequate or that the transaction was a sham. The Court of Appeal noted in particular that the purpose of the PCA would be undermined if it were interpreted to have such a narrow scope that could be circumvented by sophisticated schemes such as the one in the present case.

The '*City Harvest* case'

In a high-profile case involving six leaders of a mega-church in Singapore, City Harvest Church, church founder Kong Hee and five leaders were found guilty by the Singapore state courts of conspiring to misuse millions of dollars of church funds to further the music career of singer Sun Ho, who is also Kong's wife. The six had misused some S$50 million in church building funds earmarked for building-related expenses or investments.

Five of the six, including Kong, were found guilty of misusing S$24 million towards funding Ho's music career by funnelling church funds into sham investments in a company controlled by Kong. Four of the six were also found guilty of misappropriating a further S$26 million of church funds by falsifying accounts to cover up the first sum and defrauding the church's auditors. They were sentenced to jail terms ranging from 21 months to eight years. Both the prosecution and the respective accused persons have appealed against the judgment. The appeals were heard in September 2016 by a three-judge panel sitting in the High Court.

In April 2017, two out of three judges on the panel held that company directors or the equivalent such as the six accused persons, were not 'agents' within the meaning of section 409 of the Penal Code, and substituted their convictions with the lesser charge of criminal breach of trust. Consequently, the jail terms of the six accused persons were significantly reduced to jail terms of between seven months and three-and-a-half years.

Section 409 of the Penal Code is an aggravated form of criminal breach of trust, where stiffer sentences are meted out to persons who misappropriate property that have been entrusted to them in the way of their 'business as a banker, a merchant, a factor, a broker, an attorney or an agent'. The majority of the three-judge panel held that section 409 of the Penal Code only applies to 'professional' agents, meaning those who offer their services as agents or make their living as agents, and that directors, such as the accused persons, cannot be considered 'agents'. This ruling is a significant break from a legal position that has prevailed in Singapore for the past 40 years and may have an impact on the interpretation of other similar provisions in the Penal Code and the PCA.

Shortly after the ruling, the prosecution filed a Criminal Reference with the Court of Appeal to clarify the point of law decided by the High Court. The hearing was heard on 1 August 2017. On 1 February 2018, a five-judge panel of the Court of Appeal rejected the prosecution's application to reinstate the original convictions of the six individuals.

Clarence Chang Peng Hong

In March 2017, a former executive of an oil major, Clarence Chang Peng Hong, was charged with obtaining almost US$4 million in bribes from the executive director of an oil trading firm, to advance the business interest of the firm with the oil major. The bribes were allegedly obtained on 19 occasions between July 2006 and March 2010. Chang also faced charges for corruptly converting property amounting to S$3.97 million by using direct or indirect benefits of the corrupt conduct to acquire properties in Singapore.

In November 2017, a ship fuelling company and one of its directors were charged with offences involving the concealing of benefits from alleged criminal conduct. The company, that director and two others (another director and a bunker manager) were also charged with cheating. The offences related to an alleged scheme involving the company invoicing its customers for more marine fuel than that delivered. It is notable that a company has been charged for offences that involve concealing benefits accrued from alleged criminal conduct.

SMRT Trains

In December 2017, three former and current employees of SMRT Trains, a rail operator in Singapore, were charged with cheating under the Penal Code for concealing their interests in two companies, which were awarded contracts worth almost S$10 million by SMRT Trains over a five-year period. The cases against the three accused persons are still pending.

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Even though the conduct in question is more aligned to conflict of interest cases that have been prosecuted as corruption cases (see the *IKEA* case and *Seagate* case above), the *SMRT* case demonstrates that the authorities in Singapore may choose to prosecute individuals for cheating instead of corruption without having to prove that gratification had been offered, given or accepted.

'*Ang Mo Kio Town Council General Manager* case'

On 25 September 2018, the corruption trial of former general manager of Ang Mo Kio Town Council (AMKTC), Wong Chee Meng, commenced. Wong is alleged to have accepted bribes amounting to over S$107,000 from a director of two building and construction companies in order to advance the business interests of those companies. The companies had won tenders and contracts from AMKTC amounting to millions of dollars. More than half of the bribes paid were in the form of entertainment expenses incurred by Wong and the director at various KTV lounges and massage parlours that they frequented at night. Other details that emerged over the course of the trial include arrangements orchestrated by the director for Wong's benefit, such as alleged payments made to Wong's mistress in China, and employment for Wong's daughter-in-law at a company owned by a friend of the director (with her salary being paid for by the director). The trial is still ongoing.

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