Anti-Corruption Regulation 2021

Contributing editors
James G Tillen and Leah Moushey

LEXOLOGY
Getting The Deal Through

© Law Business Research 2021

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager
Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer–client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between December 2020 and February 2021. Be advised that this is a developing area.

© Law Business Research Ltd 2021
No photocopying without a CLA licence.
First published 2007
Fifteenth edition
ISBN 978-1-83862-621-1

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Anti-Corruption Regulation 2021

Contributing editors
James G Tillen and Leah Moushey
Miller & Chevalier Chartered

Lexology Getting The Deal Through is delighted to publish the fifteenth edition of *Anti-Corruption Regulation*, which is available in print and online at www.lexology.com/gtdt.

Lexology 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 Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

Lexology 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.lexology.com/gtdt.

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.

Lexology 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 editors, James G Tillen and Leah Moushey of Miller & Chevalier Chartered, for their continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

London
February 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in February 2021
For further information please contact editorial@gettingthedealthrough.com

© Law Business Research 2021

Contents

© Law Business Research 2021

Singapore

Wilson Ang, Jeremy Lua, Ian Cheong and Marianne Chew

Norton Rose Fulbright

RELEVANT INTERNATIONAL AND DOMESTIC LAW

International anti-corruption conventions

1 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.

Foreign and domestic bribery laws

2 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. 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.

Successor liability

3 Can a successor entity be held liable for violations of foreign and domestic bribery laws 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 acts of bribery by the target entity that occurred prior to the merger or 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 target entity sought by the acquiring entity may be adversely affected in the event that the target entity is investigated, prosecuted or ultimately held liable for acts of bribery that occurred 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 owned by the acquiring entity.

© Law Business Research 2021

Civil and criminal enforcement

4 | Is there civil and criminal enforcement of your country's foreign and domestic 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.

Dispute resolution and leniency

5 | Can enforcement matters involving foreign or domestic bribery be resolved through plea agreements, settlement agreements, prosecutorial discretion or similar means without a trial? Is there a mechanism for companies to disclose violations of domestic and foreign bribery laws in exchange for lesser penalties?

In March 2013, the Attorney General's Chambers (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. The Criminal Justice Reform Act was passed by Parliament on 19 March 2018 and came into force on 31 October 2018, amending the Criminal Procedure Code (CPC) to introduce Deferred Prosecution Agreements (DPAs) into Singapore's criminal justice framework. Under a DPA, the prosecution can agree not to prosecute a corporation in exchange for strict compliance with certain conditions, which may include implementing adequate compliance procedures or remediation efforts. Self-disclosure of violations is likely a factor the public prosecutor will consider when deciding whether to enter into a DPA with a company to resolve corporate misconduct under the DPA regime.

In December 2017, a Singapore-based shipbuilding company was issued a 'conditional warning' by Singapore's Corrupt Practices Investigation Bureau (CPIB) as part of its global resolution with 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.

On the mechanism for companies to disclose violations of domestic and foreign bribery laws 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.

FOREIGN BRIBERY

Legal framework

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

There are no provisions in the Prevention of Corruption Act (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 extraterritorial 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 Singapore law.

Definition of a foreign public official

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

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.

© Law Business Research 2021

Gifts, travel and entertainment

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

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.

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).

Facilitating payments

9 Do the laws and regulations permit facilitating or 'grease' payments to foreign officials?

Neither the PCA nor the Penal Code expressly permits facilitating or 'grease' payments. This prohibition also applies to foreign officials. 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.

Payments through intermediaries or third parties

10 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'.

Individual and corporate liability

11 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' is 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 Public Prosecutor* [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 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (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, 2006 Rev Ed). A former president of a shipyard was recently prosecuted for this infraction.

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

© Law Business Research 2021

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.

Private commercial bribery

12 | To what extent do your foreign anti-bribery laws also prohibit private commercial bribery?

There are no provisions in the PCA or the Penal Code that specifically prohibit bribery of a foreign public official. The general prohibition against bribery in the PCA extends to both private commercial bribery as well as bribery involving public officials, whether domestic or foreign.

Defences

13 | What defences and exemptions are available to those accused of foreign bribery violations?

There are no specific defences and exemptions available to those accused of foreign bribery violations.

There is no statutory defence for bribery under the PCA, including for foreign bribery violations. In other words, in defending a bribery charge, the accused will be required to challenge the elements of the charge.

Agency enforcement

14 | 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. In January 2019, the Criminal Justice Division and Financial and Technology Crime Division were merged into a single Crime Division within the AGC to bring the prosecution of all criminal offences under a single division's purview. However, there remain specialist prosecution teams within the reorganised Crime Division who specialise in the enforcement, prosecution and all related appeals in respect of financial crimes and corruption cases within and outside of Singapore.

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. The 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 MAS has also forged a closer relationship with the CPIB. Enforcement actions by the MAS have resulted in nine criminal convictions and S$11.7 million in civil penalties in the 18 months leading up to June 2020. The MAS has also imposed S$3.3 million in composition penalties for money laundering-related control breaches.

Patterns in enforcement

15 | 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.

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 1 April 2019, the Serious Crimes and Counter-Terrorism (Miscellaneous Amendments) Act (the SCCT Act) came into force, which among other things, enhances the ability of Singapore authorities to share financial intelligence with financial intelligence units overseas. The SCCT Act 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, 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.

© Law Business Research 2021

In addition, the SCCT Act also introduced 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.

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. This is because it may be difficult to prove the predicate bribery offences in such cases, owing to the fact that key witnesses are often located overseas.

Prosecution of foreign companies

16 | 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. 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.

Sanctions

17 | 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. There are also civil remedies and penalties for the restitution of property pursuant to the PCA. 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, a director convicted of bribery offences may be disqualified from acting as a director.

Recent decisions and investigations

18 | 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 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' 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 addition, a former lawyer from the Singapore-based shipbuilding company drafted and approved contracts between the company and its Brazilian agent, knowing that the contracts were fraudulent and meant to conceal bribes to government party officials and members of the ruling political party. The bribes were disguised as consulting fees paid to intermediaries and helped the company secure rig-building deals. In 2017, the lawyer entered into a plea agreement with the US DOJ to assist in its probe against the company and its American unit. He pleaded guilty for conspiring to violate the anti-bribery provisions of the Foreign Corrupt Practices Act and was sentenced to a year's probation, a fine of US$75,000 and a special assessment sum of US$100 by a US District Judge. He was allowed to serve his probation in Singapore, where he resided.

In July 2018, a Singaporean woman, Sharon Rachael Gursharan Kaur, was sentenced to an imprisonment term of 33 months for her involvement in the largest bribery and fraud conspiracy in the history of the United States Navy. As a lead contract specialist employed by the US Navy, Kaur received more than SG$130,000 in cash and luxury vacations for leaking confidential information to a Malaysian defence contractor, Leonard Glenn Francis. The case – known as the 'Fat Leonard scandal' – involved Francis bribing US Navy personnel so that they would provide him with inside information enabling his company in Singapore to secure lucrative contracts and overcharge for goods and services, defrauding the US Navy of about US$35 million. Kaur leaked information linked to 16 US Navy contracts to Francis, of which 11 contracts worth a total of approximately US$48 million were awarded to his company. The information she provided included pricing strategies, price information of competitors and questions that were posed by the contracts review board to these competitors. On appeal by the Prosecution, the High Court increased Kaur's imprisonment term to 40 months. The High Court considered that such cases threaten Singapore's international reputation for incorruptibility and run contrary to Singapore's obligations and efforts to combat transnational corruption. Further, although Kaur argued that she was merely a civilian employee of the US Navy, and thus not a public official, officer or servant in the Singapore context, the High Court found nevertheless that there was the aggravating factor of corruption of a foreign public official. The High Court held that the involvement of a person in the employment of a foreign government constitutes foreign public sector corruption, and it did not matter that the person was a civilian employee, as opposed to one in uniformed service.

In October 2020, a US investment bank entered into a DPA with the US DOJ, which provided for a global resolution, involving Singapore authorities, in relation to a transnational money-laundering investigation linked to a Malaysian state investment fund. As part of the DPA, the Singapore subsidiary of the US investment bank was to pay US$122 million to the Singapore government for its role involving bond offerings related to the investment fund. This payment was to be made pursuant to a 36-month 'conditional warning', in lieu of prosecution, served on the bank's Singapore subsidiary by the CAD for three counts of corruption offences punishable under section 5(b)(i) of the PCA. The CAD had previously conducted investigations into the Singapore subsidiary and two of its former managing directors, in relation to the bond offerings underwritten by the bank for the subsidiaries of the state investment fund.

Under this 'conditional warning', the bank's Singapore subsidiary would also be required to cooperate with the CAD in its investigations related to the investment fund and comply with the terms of the DPA. The

© Law Business Research 2021

DPA further required the Singapore subsidiary to disgorge the sum of US$61 million – a fee representing what had been earned by the subsidiary from the bond offerings – to the Malaysian authorities. In a related matter, the MAS ordered the bank's Singapore subsidiary to appoint an independent external party to conduct a review of its remedial measures.

The sum of US$122 million is the largest payment made by any financial institution to the Singapore government to date to resolve matters arising out of alleged criminal conduct.

In January 2021, siblings Teo Chu Ha and Judy Teo Suya Bik were sentenced to jail for conspiring to secure tenders for two companies in China, in exchange for bribes amounting to S$ 2.3 million. The offences were committed in China between April 2007 and November 2010. Teo Chu Ha was a former senior director of logistics at Seagate Technology International (Seagate) and had used his position in the company, and also his position as a member of the committee awarding the tenders, to obtain confidential information belonging to Seagate. His sister, Judy Teo, then used the information to help two Chinese transport companies obtain tenders awarded by Seagate. In exchange, Judy Teo would receive a 10 per cent 'commission' on the revenue the Chinese transport companies earned based on payments made by Seagate. The siblings were also convicted of dealing with the benefits of criminal conduct, as Teo Chu Ha had transferred S$ 700,000 – which formed part of the bribes – from his sister's bank account to his own. The monies were later used to purchase a property in Singapore under Judy Teo's name. Teo Chu Ha was sentenced to four years and two months' imprisonment, while Judy Teo was sentenced to three years and five months' imprisonment. Judy Teo was also ordered to pay more than S$ 2 million – the amount she received – as a penalty. She will be required to serve an additional 18 months' imprisonment if she is unable to pay this penalty. Teo Chu Ha and Judy Teo were convicted of the offences under the PCA even though the offending conduct took place in China because the PCA has extraterritorial jurisdiction over Singapore citizens whose corrupt acts overseas will be prosecuted as if they were committed in Singapore. The CPIB reportedly worked closely with Chinese authorities, such as the Shanghai City Zhabei District People's Procuratorate, as part of an investigation into the offences committed overseas, and received evidentiary records such as bank statements, and assistance in interviews and statement-taking under the mutual legal assistance framework spanning several years.

FINANCIAL RECORD-KEEPING AND REPORTING

Laws and regulations

19 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.

Disclosure of violations or irregularities

20 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 Act. An individual convicted of an offence under section 39 of the CDSA will be liable to a fine of S$250,000 or a term of 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 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 pursuant to the Companies Act, Securities and Futures Act, Listing Rules, and 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

© Law Business Research 2021

revised Code has newer areas of emphasis, it is actually now streamlined with a net reduction of three 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.

Prosecution under financial record-keeping legislation

21 | 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.

Sanctions for accounting violations

22 | 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.

Tax-deductibility of domestic or foreign bribes

23 | 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

Legal framework

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

The general prohibition on bribery in the Prevention of Corruption Act (PCA) 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 probabilities. In *Public Prosecutor v Ng Boon Gay* [2013] SGDC 132 (Ng Boon Gay), 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 or her 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'. 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 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.

Scope of prohibitions

25 | 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.

Definition of a domestic public official

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

A domestic 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 *Ng Boon Gay* and *Public Prosecutor v Peter Benedict Lim Sin Pang* DAC 2106-115/2012 – 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 – where the former law professor at National University of Singapore (NUS) 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 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'.

© Law Business Research 2021

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'.

Gifts, travel and entertainment

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

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.

Facilitating payments

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

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.

Public official participation in commercial activities

29 | What are the restrictions on a domestic public official participating in commercial activities while in office?

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 Corrupt Practices Investigation Bureau (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.

Payments through intermediaries or third parties

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

Corrupt payments through intermediaries or third parties, whether such payments are made to domestic 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'.

Individual and corporate liability

31 | Can both individuals and companies be held liable for violating the domestic bribery rules?

Both individuals and companies can be held liable for domestic bribery offences. 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 Public Prosecutor* [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 Dolphin*a [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

© Law Business Research 2021

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, 2006 Rev Ed). A former president of a shipyard was recently prosecuted for this infraction.

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.

Private commercial bribery

32 To what extent does your country's domestic anti-bribery law 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.

Defences

33 What defences and exemptions are available to those accused of domestic bribery violations?

There are no specific defences and exemptions available to those accused of domestic bribery violations.

There is no statutory defence for bribery under the PCA, including for domestic bribery violations. In other words, in defending a bribery charge, the accused will be required to challenge the elements of the charge.

Agency enforcement

34 What government agencies enforce the domestic bribery laws and regulations?

The government agencies in Singapore that enforce foreign domestic bribery laws and regulations are the same as the agencies that enforce domestic bribery laws and regulations.

The main government agency that enforces bribery laws in Singapore is the 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. In January 2019, the Criminal Justice Division and Financial and Technology Crime Division were merged into a single Crime Division within the Attorney-General's Chambers to bring the prosecution of all criminal offences under a single division's purview. However, there remain specialist prosecution teams within the reorganised Crime Division who specialise in the enforcement, prosecution and all related appeals in respect of financial crimes and corruption cases within and outside Singapore.

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. The 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 MAS has also forged a closer relationship with the CPIB. Enforcement actions by the MAS have resulted in nine criminal convictions and S$11.7 million in civil penalties in the 18 months leading up to June 2020. The MAS has also imposed S$3.3 million in composition penalties for money laundering-related control breaches.

Patterns in enforcement

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

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, in 2019, made up 90 per cent of its investigations registered for action. In the release of its 2019 annual statistics, the CPIB highlighted two main areas of concern: (1) construction activities; and (2) building maintenance work. Activities in these two sectors had been previously flagged by the CPIB in 2018.

In August 2020, the AGC released a statement on how it was leveraging technology (in addition to its close partnership with CPIB and MAS) to significantly shorten the time required to bring forth prosecution of white-collar offences. Particularly in relation to cases of larger scale and complexity, law enforcement authorities will use technology to quickly process and search voluminous amounts of data, sometimes involving hundreds and thousands of files. The AGC stated that it will strive to stay abreast of cutting-edge developments after observing how technology can help to find the proverbial 'needle in the haystack' or digital evidence in some cases.

© Law Business Research 2021

Prosecution of foreign companies

36 | In what circumstances can foreign companies be prosecuted for domestic 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. 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.

Sanctions

37 | What are the sanctions for individuals and companies that violate the domestic bribery rules?

The PCA does not prescribe separate penalties for domestic and foreign bribery.

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. There are also civil remedies and penalties for the restitution of property pursuant to the PCA. 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, a director convicted of bribery offences may be disqualified from acting as a director.

Recent decisions and investigations

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

The Clarence Chang Peng Hong case

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.

The Ang Mo Kio Town Council general manager case

On 20 November 2019, the former general manager of Ang Mo Kio Town Council (AMKTC), Wong Chee Meng, was sentenced to 27 months' jail for receiving bribes of more than S$75,000 from the director of two construction companies, in exchange for furthering the interests of the companies (which were contractors of AMKTC). The director was sentenced to 21 months' jail for giving the bribes to Wong, while the director's two companies were each fined S$75,000. The companies had won tenders and contracts from AMKTC amounting to millions of dollars. The bribes paid included the following: (1) discounts on a car that the director sold to Wong; (2) money sent to Wong's mistress in China; and (3) entertainment expenses incurred by Wong and the director at various KTV lounges and massage parlours that they frequented at night. Two other charges – the free use of a mobile line that the director gave Wong and employment that the director had secured for Wong's daughter-in-law – were taken into consideration during sentencing.

Upon appeal against the sentences, the High Court increased the imprisonment terms for both Wong and the director by a year each – to 39 months and 33 months respectively. In increasing the sentences, the High Court noted that Wong had abused his position and the high degree of trust reposed in him to commit the offences. The director had received substantial benefits from Wong, who was able to provide him with inside information. The bribery had also caused harm to third parties, such as competitors for tenders, who were forced to compete on unequal terms.

The LTA director case

In July 2020, a former deputy group director of the Land Transport Authority (LTA), Henry Foo Yung Thye, was charged with accepting approximately S$1.24 million in bribes, in the form of loans, to advance the business interests of contractors and subcontractors with the LTA between 2014 and 2019. The biggest single payment allegedly sought by Foo was in the sum of S$200,000. Foo was also accused of attempting to obtain gratification of about S$30,000, by way of a loan, from a subcontractor in early 2019 to advance the subcontractor's business interests with LTA.

Six individuals and a company that allegedly provided Foo with the loans to advance their business interests were also charged.

In addition to the corruption charges, Foo was accused of cheating his LTA colleagues into giving him loans totalling approximately S$726,500 between 2008 and 2019. Foo concealed the fact that the loans were intended to service his gambling habit and debt.

The shipbuilding firm case

In October 2020, seven people linked to a Singapore shipbuilding firm were charged for multiple corruption-related offences allegedly committed between 2014 and 2017. A shipyard manager from the shipbuilding firm and two employees from other companies were charged with conspiring with one another to obtain bribes or gratification from three subcontractors, to advance the business interests of these subcontractors. The trio had allegedly worked together to obtain approximately S$879,900 in bribes from the three subcontractors, which they intended to share. The directors of these subcontractors were charged with giving bribes to the trio, as an inducement to further their business interests with the shipbuilding firm.

Bribes were also paid to the manager of a logistics company, as a reward for preparing fictitious invoices on the logistics company's letterhead. The logistics company manager is alleged to have falsified papers belonging to the logistics company on multiple occasions and to have issued these papers to two of the subcontractors to give the impression that services were requested by these subcontractors, when they were not.

© Law Business Research 2021

Technology-related cases

The IT infrastructure case

In March 2020, four individuals were charged in court in connection with an alleged corrupt scheme where employees of an IT sub-contractor bribed employees of IT main contractor service providers as a reward for recommending the IT sub-contractor to perform infrastructure works relating to various contracts. As a result, the IT sub-contractor was awarded various contracts to carry out IT infrastructure works at various public agencies on behalf of the main contractor. These offences allegedly occurred sometime in 2017. The matter is currently pending before the courts.

The NLB manager case

In October 2020, a former manager of the National Library Board (NLB), Ivan Koh Siong Wee, pleaded guilty to receiving approximately S$581,000 in bribes from a former employee, Low Poek Woen, in exchange for advancing Low's business interests with NLB. Low also pleaded guilty to charges of providing bribes to Koh.

Koh was a former manager of the NLB department set up to spearhead its move into e-books and other digital resources and shared NLB's move towards digitalisation with Low, advising him to explore this business opportunity. Low then set up three companies which provided digital content. To help advance Low's business interests with NLB, Koh shared confidential information with Low on the digital resources that NLB was interested in and how such resources were assessed for procurement or renewal. With this information, Low was able to source and supply the resources to NLB when the opportunity arose. Koh also advised Low on what prices to quote NLB.

In return, Koh asked Low for money for various personal purposes. Low then set aside about 30 per cent of all the profits earned from his three companies' contracts with NLB to be given as bribes to Koh. Low would provide Koh with amounts from this pool of money set aside whenever Koh requested money from him.

The network solutions case

In October 2020, two directors of a network solutions company were each fined S$5,400 for offences under the PCA and Penal Code. A former assistant manager of an events management company was earlier sentenced to a fine of S$3,000 and a penalty of S$2,400 for offences under the PCA in June 2020.

The former assistant manager had received a total of S$2,400 in bribes from both directors of the network solutions company in exchange for recommending the network solutions company to be the network solutions supplier for the events management company. To cover up the corrupt payments, one of the directors of the network solutions company made false entries in the company's accounting records by describing the bribes as business expenses.

The network services contracts case

In October 2020, the sole director of a company in the business of setting up and implementing network services was jailed for 12 weeks after pleading guilty to paying S$37,400 in bribes. Between 2016 and 2018, the director paid bribes to a senior technical services manager of an IT firm, to reward him for recommending the director's company as a subcontractor to the IT firm to perform infrastructure works for multiple contracts involving government agencies. At the time, the senior technical services manager was responsible for the management and monitoring of the IT firm's projects with its clients from the public sector and could also recommend the subcontractors for projects requiring them. These projects were subsequently awarded to the director's company as a result.

The director had also agreed to pay the senior technical services manager bribes for six other projects for which his company had been recommended and subsequently rewarded. He eventually did not pay those bribes due to the negative impact on his company's profit margins.

NORTON ROSE FULBRIGHT

Wilson Ang
wilson.ang@nortonrosefulbright.com

Jeremy Lua
jeremy.lua@nortonrosefulbright.com

Ian Cheong
ian.cheong@nortonrosefulbright.com

Marianne Chew
marianne.chew@nortonrosefulbright.com

9 Straits View
Marina One West Tower #09-09
Singapore 018937
Tel: +65 6223 7311
www.nortonrosefulbright.com

UPDATE AND TRENDS

Key developments of the past year

39 | Please highlight any recent significant events or trends related to your national anti-corruption laws.

Singapore is well regarded internationally for its anti-corruption work, and has gained a strong reputation as one of the world's least corrupt countries. In 2019, Transparency International ranked Singapore in joint fourth position (alongside Sweden and Switzerland) out of 180 countries and territories with a Corruption Perceptions Index score of 85, a high score which Singapore has successfully maintained from 2018. Singapore continues to be the only Asian country in the top 10 ranking.

As part of Singapore's ongoing efforts to combat corruption, it launched the Singapore Standard (SS) ISO 37001 on Anti-bribery management systems on 12 April 2017, following a public consultation from February to March 2016 on the adoption of the International Organization for Standardization's (ISO) new set of voluntary standards (designated as ISO 37001) for anti-bribery compliance. The CPIB continues to be supportive of the standard, and encourages companies to adopt the ISO 37001 standard.

In 2020, a number of individuals were prosecuted for corrupt conduct in connection with IT/technology procurement. This may suggest that it is a sector susceptible to bribery risks and law enforcement agencies are paying close attention to corruption in IT/technology procurement. Given the acceleration in technology transformation brought about by the covid-19 pandemic, the IT/technology sector may be an area of increased focus for enforcement efforts if more corruption cases involving IT/technology procurement arise.

© Law Business Research 2021

Coronavirus

40 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The operational and business pressures brought on by the pandemic have meant that some corporates are more focused on financial preservation and operational continuity at the expense of compliance.

Organisations may be tempted to temporarily defer the implementation of compliance processes and initiatives. However, this may serve to increase their vulnerability to corruption risks as it diminishes the ability of compliance controls to effectively safeguard against such risks. Organisations should keep employees attuned to the heightened corruption risks. Prompt and focused training on these risks should be provided to employees so that they are cognisant of the steps they would need to take to reduce these risks and sharpen detection and prevention of such practices. Significantly, leaders in organisations should clearly set the 'tone from the top' on the importance of these trainings and to emphasise the organisation's commitment to vigilance against corrupt acts.

Anti-corruption compliance programmes will be placed under tremendous pressure to adapt to the unprecedented business challenges created by the pandemic. Organisations should consider if its anti-corruption frameworks need to be retooled to adapt to the new circumstances. While it may be tempting to cut corners to meet demands, it is crucial that anti-corruption controls are carried out as rigorously as before. An assessment of the new risk environment and appropriately tailoring its available resources to protect its business, reputation and employees will assist organisations in circumventing exposure to bribery.

© Law Business Research 2021

Other titles available in this series

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Business & Human Rights
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
Healthcare M&A
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
Luxury & Fashion
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Partnerships
Patents
Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

lexology.com/gtdt

an LBR business

ISBN 978-1-83862-621-1

© Law Business Research 2021