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White-Collar Crime 2021

Singapore: Law & Practice

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SINGAPORE

Law and Practice

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1. LEGAL FRAMEWORK

1.1 Classification of Criminal Offences

In Singapore, most criminal offences are contained in the Penal Code (Chapter 224) (PC). These include (i) offences against persons, (ii) sexual offences, (iii) offences against property, (iv) offences relating to the falsification of documents and records, and (v) offences against the administration of justice. An array of statutes criminalise other major offence categories, including corruption, money laundering, terrorism financing, and the unauthorised access/use of computer material.

Crimes in Singapore are not classified by broad categories of severity (eg, felonies or misdemeanours). Instead, each individual offence is prescribed a punishment range that reflects the seriousness of the prohibited act.

Save for strict/absolute liability offences, every offence must comprise both the actus reus (criminal act) and the mens rea (criminal intent). The offence-creating provision and accompanying case law (if any) will prescribe the specific act and intent elements required to make out that particular offence.

A person may be prosecuted for attempting to commit an offence, even where the offence is not ultimately carried out. A person is guilty of an attempted offence if they (i) intended to commit that offence, and (ii) took a "substantial step towards the commission of that offence" (Section 511, PC). An act is "substantial" if it is strongly corroborative of an intention to commit the offence (Section 511(2), PC).

1.2 Statute of Limitations

There is no universal limitation period applicable to criminal offences in Singapore, although there are a small number of offence-creating provisions that prescribe a limitation period for prosecution.

1.3 Extraterritorial Reach

Unless expressly provided for, most Singapore statutes do not have extraterritorial reach (Yong Vui Kong v Public Prosecutor [2012] 2 SLR 872).

Examples of legislated extraterritoriality include the following.

- Section 4B of the PC, which provides that certain offences (including cheating, criminal breach of trust, and fraud by false representation) are deemed to have been committed in Singapore where:
  - (a) a relevant act occurs wholly or partly in Singapore; and
  - (b) the offence involves an intention to make a gain, cause a loss, exposure to a risk of loss, or cause harm to any person in body/mind/reputation/property, which occurs in Singapore.
- Section 37 of the Prevention of Corruption Act (Chapter 241) (PCA), which provides that a Singapore citizen who commits any PCA offence outside Singapore may be dealt with for that offence as if it had been committed within Singapore.
- Section 339 of the Securities and Futures Act (Chapter 289) (SFA), which provides that a person who does an act partly in and partly outside Singapore which, if done wholly in Singapore, would constitute an offence under the SFA, shall be guilty of the offence as if the act were carried out by them wholly in Singapore, and may be dealt with as if the offence were committed wholly in Singapore.
- Section 3 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Chapter 65A) (CDSA), which states that the CDSA applies to any "foreign serious offence" and/or "any property, whether it is situated in Singapore and elsewhere".

- Section 34 of the Terrorism (Suppression of Financing) Act (Chapter 325) (TSOFA), which provides that every person who, whilst outside Singapore, commits an act/omission that if committed in Singapore would amount to certain offences under the TSOFA, shall be deemed to have committed those acts/omissions within Singapore and can be dealt with accordingly.

1.4 Corporate Liability and Personal Liability

Legal entities are subject to criminal liability in the same way as real persons.

Decisions to prosecute are made at the unfettered discretion of the Public Prosecutor, who is empowered via Article 35(8) of Singapore's Constitution. There are no published guidelines on when a prosecution may be brought against a legal entity or an individual.

A legal entity's criminal liability is established where the acts and intentions of the entity's board or managers are attributable to it (Prime Shipping Corp v Public Prosecutor [2021] 4 SLR 795).

Whilst there is no formal senior management liability regime in Singapore, it is often the case that charges are preferred against individuals in managerial positions who had knowledge of/involvement in the offences.

Certain statutes impose corporate liability on both a legal entity and an individual "officer" of the entity, where it is proven, amongst other things, that the offence was committed as a result of "consent or connivance" between the entity and the officer (eg, Section 236B of the SFA, Section 59 of the CDSA). Whilst there are variations depending on the offence involved, "officers" typically include senior management, directors, chief executives, or company secretaries.

In the situation of a merger and/or acquisition, presuming the principles of attribution are met, a successor entity may attract criminal liability accruing from the actions/intentions of its prior owners or officers. Entities should therefore seek the appropriate protective representations and warranties.

1.5 Damages and Compensation

Whilst Section 359 of the Criminal Procedure Code (Chapter 68) (CPC) allows a criminal court to impose compensation orders against convicted offenders, such orders are only made if they are not oppressive to the offender and/or do not require the courts to embark on complicated investigations of fact/law (Soh Meiyun v Public Prosecutor [2014] 3 SLR 299). Where complex investigations into liability or the quantum of loss is necessary, or if damages are sought, victims may seek recourse via a civil claim.

In terms of corruption offences, Section 14 of the PCA sets out a basis upon which victims may seek recourse in the civil courts: where any corrupt gratification has been given to an agent, the principal may recover this "as a civil debt" from the agent or the person who gave the gratification to the agent.

In respect of market misconduct offences, a person who has breached any provision under Part XII of the SFA, shall "if he had gained a profit or avoided a loss as a result of that contravention, whether or not he had been convicted or had a civil penalty imposed on him" be liable to pay compensation to any person who:

- had been dealing in capital market products of the same description contemporaneously with the contravention; and

- had suffered loss by reason of the difference between (i) the price at which the capital markets products were dealt in contemporaneously with the contravention, and (ii) the price that the capital market products would have likely reached (Section 234 SFA).

Civil Claims Involving Multiple Litigants

Multiple litigants may seek damages against the same parties. Such litigants may either:

- commence their claims individually, then agree to proceed with one suit with the others stayed;
- file a representative action; or
- join the parties and consolidate their actions.

(POA Recovery Pte Ltd v Yau Kwok Seng and others [2021] SGHC 41 (POA).) POA is currently under appeal.

For discussion of class action suits, see **1.6 Recent Case Law and Latest Developments**.

1.6 Recent Case Law and Latest Developments

Some key, recent developments are highlighted below.

Privilege/Seizure Regime

The High Court in Ravi s/o Madasamy v Attorney-General [2020] SGHC 221 outlined – for the first time – the procedure applicable to asserting privilege over documents seized in the course of investigations. In brief:

- a "privilege team" is to be set up within the Attorney-General's Chambers (AGC) to review the seized documents for privilege;
- this team should not be part of any subsequent prosecution decisions made in the case;
- the subject of the seizure should liaise with this team to assert privilege as needed; and
- any dispute should be resolved by application to the courts.

PC Amendments

In 2020, to target novel and complex financial crimes, the PC was amended to include, amongst other things, a new offence of fraud. An offence under the new Section 424A PC of the is made out where a person fraudulently/dishonestly:

- makes a false representation;
- fails to disclose to another person information that they are under a legal duty to disclose; or
- abuses, whether by act/omission, a position that they occupy, and in which they are expected to safeguard/not to act against the financial interests of another person.

Class Actions

Class action suits cannot be brought via a special purpose vehicle incorporated solely for the purpose of commencing proceedings on behalf of a class. In POA, the High Court held that the class' assignment to a shell company of their rights to litigate was contrary to public policy and void, and that the shell company had no standing to bring the action. POA is presently under appeal.

Corruption Sentencing Frameworks

In a move towards achieving consistency in sentencing, the High Court in Public Prosecutor v Wong Chee Meng and another appeal [2020] 5 SLR 807 (Wong Chee Meng), set out a sentencing framework for the aggravated offence of participating in a corrupt transaction with an agent. This was the first time a sentencing framework was adopted for corruption offences.

Subsequently, a further sentencing framework for private sector corruption cases was introduced in Takaaki Masui v Public Prosecutor and another appeal [2020] SGHC 265.

2. ENFORCEMENT

2.1 Enforcement Authorities

In Singapore, the Attorney-General, who is also the Public Prosecutor, has oversight of and the power to institute all criminal prosecutions. The Attorney-General appoints Deputy/Assistant Public Prosecutors to assist in carrying out these functions.

Key Investigative Authorities

These include:

- the Accounting and Corporate Regulatory Authority (ACRA): the regulator of business entities, public accountants, and corporate service providers;
- the Commercial Affairs Department (CAD) – a specialised division of the SPF responsible for investigating commercial crimes;
- the Competition and Consumer Commission of Singapore (CCCS) – the body that enforces the Competition Act (Chapter 50B) (CPA) and the Consumer Protection (Fair Trading) Act (Chapter 52A) (CPFTA), and investigates anti-competitive practices;
- the Corrupt Practices Investigations Bureau (CPIB) – an independent agency responsible for investigating corruption;
- the Inland Revenue Authority of Singapore (IRAS);
- the Monetary Authority of Singapore (MAS) – the central bank of Singapore, which also carries out enforcement actions relating to breaches of laws/regulations that it administers;
- the Personal Data Protection Commission (PDPC) – the body that conducts investigations in relation to data breach incidents;
- the Singapore Exchange Ltd (SGX) – the domestic bourse, which carries out regulatory functions (eg, investigating infractions of the Listing Rules or taking disciplinary actions via its independent subsidiary, the Singapore Exchange Regulation Pte Ltd (SGX RegCo)); and
- the Singapore Police Force (SPF).

Through a Joint Investigations Arrangement scheme, the CAD and MAS often co-operate to co-investigate market misconduct offences and complex commercial crimes. This arrangement synergises the MAS' role as a financial regulator with CAD's investigation and intelligence capabilities.

Civil Enforcement Regime

The MAS may, with the Public Prosecutor's consent, commence court proceedings to seek a civil penalty for contravention of certain SFA provisions (Section 232, SFA). In this regard, the MAS can:

- issue prohibition orders, which prevent a person from undertaking acts such as performing any regulated activity or taking part in the management of a holder of a licenced entity (Section 101A, SFA);
- reprimand a person guilty of misconduct (Section 334, SFA);
- offer composition in lieu of prosecution (Section 336, SFA) (see **Composition** under **2.7 Deferred Prosecution**); and
- remove officers from office or employment (Sections 97(1A), 123Y(2), and 292A(2), SFA).

2.2 Initiating an Investigation

White-collar investigations are usually initiated:

- when report is made by a victim/third party;
- as a result of mandatory reporting;
- in situations of self-reporting; and/or
- in situations of whistle-blowing.

Mandatory reporting obligations apply to both individuals and entities, and are imposed by statues such as the CPC, CDSA and TSOFA. As the failure to comply may attract criminal liabil-

ity, it is common for parties to seek advice on whether such obligations have been triggered (see **2.4 Internal Investigations**).

2.3 Powers of Investigation

The authorities in Singapore (see **2.1 Enforcement Authorities**) are given broad statutory powers to gather evidence, and are empowered to:

- carry out search and seizure processes on persons and/or premises;
- require the attendance or examination of witnesses;
- access computers and electronic devices; and
- order the production of documents or information.

Search and Seizure

Premises can be entered with a warrant if there are reasonable grounds to suspect that there are documents/books relevant to any investigation, inquiry or trial, that have not been produced pursuant to a prior production order, or if there is a risk that such items may be concealed, removed, tampered with, or destroyed (Section 24, CPC; Section 165, SFA; Section 22, PCA).

Investigating authorities may also enter premises without a warrant where there is reasonable cause to believe that the premises contain evidence relating to the investigations and/or the commission of an offence, and there are reasonable grounds for believing that by reason of the time required to obtain a search warrant, the object of the search is likely to be frustrated (Section 22(2), PCA; Section 32, CPC).

The authorities may seize documents/books such as accounting records, registers, etc, which may be used as evidence (Sections 35 to 40, CPC; Section 22, PCA; Section 164, SFA).

Examination of Witnesses

Any person within Singapore who is acquainted with the facts and circumstances of a case may be compelled to attend before a police officer (Section 21, CPC). The authorities are empowered to question that person, and their statement may be recorded in writing (Sections 22(1) and (3), CPC).

Power to Access Computers

The authorities may access/inspect computers suspected to have been used in connection with an offence (Section 39, CPC).

Production of Documents/Information

A person/entity may be ordered to produce documents and/or information that the authorities consider "necessary or desirable" for any investigation, inquiry, or trial (eg, Section 20, CPC; Section 163, SFA; Sections 18 and 21, PCA).

2.4 Internal Investigations

There is no universal mandatory obligation on entities to conduct internal investigations into any suspected wrongdoing. That said, financial institutions (FIs) are under a specific duty, imposed by the MAS, to conduct internal investigations and keep proper records upon discovery of certain forms of market misconduct committed by their representatives (see MAS Notices SFA04-N11 and FAA-N14).

As a matter of good practice, many entities/FIs nevertheless initiate confidential internal investigations where:

- a complaint is received from employees or customers;
- concerns are raised by directors or auditors;
- incidents of potential misconduct or suspicious activity have been uncovered; or
- mandatory reporting requirements may have been triggered (see **2.2 Initiating an Investigation**).

Where such investigations lead to an entity/FI taking positive remedial steps (eg, implementing compliance programmes), this can be used to support a request for leniency against the entity/FI or its employees if the authorities choose to investigate the matter, or if court prosecution is commenced.

2.5 Mutual Legal Assistance Treaties and Cross-Border Co-operation

Singapore is party to various international agreements and/or reciprocal arrangements.

Examples of international treaties that have been adopted into domestic law include the:

- CDSA;
- Mutual Assistance in Criminal Matters Act (Chapter 190A);
- Extradition Act (Chapter 103) (EA);
- TSOFA; and
- Income Tax Act (Chapter 134) (ITA).

These laws facilitate the cross-border:

- provision, obtaining and exchange of evidence and information;
- making of arrangements for persons to give evidence or assist in criminal investigations;
- location of persons inside and outside of Singapore;
- recovery, forfeiture or confiscation of property for asset recovery; and
- execution of requests for search and seizure.

The authorities work closely with their overseas counterparts – the SPF is a member of Interpol, and the MAS is a signatory to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information. In addition, the MAS may order any person to furnish information directly to a foreign regulatory authority where there is an ongoing investigation or enforcement by that authority (Section 172(1)(b) read with Section 172(2), SFA).

Extradition

Extradition arrangements are governed by the EA, which provides for the extradition of fugitives to and from declared Commonwealth countries and foreign states with which Singapore has an extradition treaty.

Individuals who have (or are alleged to have) committed offences within the definition of an "extradition crime" under the EA, can be extradited out of Singapore. The term "extradition crime" is widely defined and includes offences such as corruption, false accounting, and any offence in respect of property that involves fraud.

2.6 Prosecution

The Attorney-General, as the Public Prosecutor, has the unfettered discretion to institute, conduct, or discontinue proceedings for any offence.

There are no published guidelines governing the exercise of prosecutorial discretion. However, factors commonly considered by the AGC in deciding whether charges should be brought include the:

- sufficiency of the evidence secured, and whether this supports a reasonable prospect of conviction;
- nature and severity of the offence;
- harm caused;
- existence of public policy/public interest considerations; and
- any applicable personal mitigating circumstances – eg, a prior conviction record, medical or mental health issues, the level of co-operation in the investigations, and (where appropriate) any show of remorse.

2.7 Deferred Prosecution

A body corporate, limited liability partnership, partnership, or unincorporated association can enter into a deferred prosecution agreement (DPA) with the prosecution. Such arrangements are restricted to offences specified in the Sixth Schedule of the CPC, including corruption, money laundering, dealing with stolen property or proceeds of crime, and falsification of records (see **5.2 Assessment of Penalties**).

Through a DPA, the prosecution can agree not to charge an offender in exchange for latter's agreement to comply with certain requirements (eg, an admission of wrongdoing, payment of a financial penalty, implementing remedial measures, and/or assisting in investigations or the prosecution of other offenders).

This regime does not apply to individuals.

Warnings

The authorities are entitled, at their discretion, to issue offenders with a warning in lieu of prosecution. Warnings may either be unconditional, or subject to conditions (eg, a requirement to remain crime free for a specified period, and/or to co-operate with the authorities in investigations). If any condition is breached, the offender may have the original charge (for which they have already been warned) resurrected against them.

Composition

Certain offences can be compounded, either by or with the Public Prosecutor's consent (Sections 242 and 243, CPC). Composition serves as a form of settlement, where offenders may, amongst other things, make payment of a sum of money to the State or a designated person, after which no further enforcement action will be taken against them.

2.8 Plea Agreements

Once charges have been preferred, an offender may engage in a plea-bargaining process with the prosecution. As part of this process, defence counsel may submit written representations to the AGC, raising the legal/factual arguments in their clients' favour. The AGC may then offer to, amongst other things, reduce the severity or number of charges and/or come to an agreed sentencing position.

Whilst there are no published guidelines on the factors considered by the AGC in this process, matters of relevance include the:

- number of charges involved;
- nature and severity of the offence;
- harm caused;
- existence of public policy considerations; and
- personal mitigating circumstances applicable to the potential offender – eg, their prior conviction record, medical or mental health issues, level of co-operation in the investigations, and (where appropriate) show of remorse.

3. WHITE-COLLAR OFFENCES

3.1 Criminal Company Law and Corporate Fraud

There are a number of offences that can be committed by or in connection with an entity, or by an "officer" of an entity (for the definition of "officer" see **1.4 Corporate Liability and Criminal Liability**).

Some common examples are summarised below.

Dishonesty Offences Relating to Property

The offence-groups identified below are each expressed in a series of statutory provisions that

criminalise increasingly more aggravated forms of the wrongdoing concerned.

Criminal misappropriation (Section 403-404, PC)
This involves dishonestly taking possession of property belonging to another, for one's own benefit. Depending on the severity of the offence, punishment may range from imprisonment for a term of two to seven years and/or a fine.

Criminal breach of trust (Section 405-409, PC)
This involves dishonest misappropriation/conversion of property that has been entrusted to the offender. Depending on the severity of the offence, punishment may range from imprisonment for a term of seven to 20 years and/or a fine.

Cheating (Section 415-420A, PC)
This involves deception and fraudulent/dishonest inducement perpetrated to cause a person to deliver any property, or to do/omit any act that they would not otherwise have done. Depending on the severity of the offence, punishment may range from imprisonment for a term of three to ten years and/or a fine.

Offences by Officers

The following offences attract personal liability for errant officers.

- Issuing false and/or misleading statements (Sections 401–402, Companies Act (Chapter 50) (CA)) – where an officer acquiesces to publishing a false and misleading statement/report, they may face imprisonment for up to two years and/or a fine not exceeding SGD10,000 to SGD50,000.
- Declaring dividends except out of profits (Section 403, CA) – where an officer wilfully permits dividends to be paid except out of profits, they may face imprisonment for up to 12 months and/or a fine not exceeding SGD5,000.
- Frauds by officers (Section 406, CA) – where an officer fraudulently induces another to give credit, or with intent to defraud the company's creditors, transfers/removes/conceals company property, they may face imprisonment for a term up to three years and/or a fine not exceeding SGD15,000.

3.2 Bribery, Influence Peddling and Related Offences

The PCA is the primary anti-corruption/bribery legislation in Singapore, covering both private and public sector offences. While the PC contains some anti-corruption offences, these focus on acts involving public officials, and the majority of corruption prosecutions are brought under the PCA.

Under the PCA, the general elements of a corruption offence are:

- the corrupt giving/receiving of "gratification" by any person/entity;
- as an inducement/reward;
- for doing/forbearing to do;
- anything in respect of any matter or transaction (Sections 5 and 6, PCA).

"Gratification" is widely defined as including any money, gift, loan, fee, reward, commission, or any office, employment, contract or service, or any favour/advantage.

Importantly, a mere "offer, undertaking or promise" of any gratification amounts to an offence under the PCA (Section 2, PCA).

Under Section 8 of the PCA, where any gratification has been paid to/received by "a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or

seeks to have any dealing with the Government or any department thereof or any public body", that gratification shall be presumed to have been paid/received corruptly, unless the contrary is proved.

A corruption offence may also be established where an agent gives or receives any gratification on behalf of its principal (Section 6, PCA).

Sanctions

Punishment may result in a fine not exceeding SGD100,000 and/or imprisonment for a term not exceeding five years (Sections 5 and 6, PCA). Where the corrupt transaction relates to a contract with the government/a public body, the maximum term of imprisonment is enhanced to seven years (Section 7, PCA).

In line with the statutory framework, the Singapore courts have held that corruption involving public servants is especially harmful, and should typically attract a custodial sentence because it erodes public confidence in the institutions of government (Public Prosecutor v Syed Mostofa Romel [2015] 3 SLR 1166).

In addition to any sentence imposed, the courts may order a receiver of gratification to pay an additional penalty equal to the amount of gratification received (Section 13, PCA).

Extraterritoriality

There is no distinct offence of bribing foreign public officials. However, the extraterritorial effect of Section 37 of the PCA read with the prohibition against bribing a government/public body employee effectively criminalises the act of bribing foreign public officials. For Section 37(1) of the PCA, see **1.3 Extraterritorial Reach**.

3.3 Anti-bribery Regulation

While there is no statutory obligation to prevent bribery and influence peddling, or to implement any anti-corruption policy/compliance programme, there is a growing culture towards adopting compliance programmes.

In 2016, the Singapore Standard (SS) ISO 37001 on anti-bribery management systems was introduced to assist companies in establishing, implementing, maintaining, and improving their anti-corruption controls.

In 2017, the CPIB published A Practical Anti-Corruption Guide for Businesses in Singapore, which encourages companies to promote a corporate culture of compliance, have strong internal controls, and regularly review/improve existing policies.

3.4 Insider Dealing, Market Abuse and Criminal Banking Law

Most market misconduct offences are contained in the SFA. The main offence-types are summarised below.

Insider Trading

Under Section 218 of the SFA, the offence of insider trading occurs where:

- a person who is connected to a company;
- either possesses non-public information concerning that company;
- or possesses information generally available that a reasonable person would expect to have material effect on the price or value of securities of that company; and
- intends to trade using such information.

Market Misconduct

Under Section 197 of the SFA, a person is liable for false trading when they intentionally do anything that results in the creation of a false or misleading appearance of active trading, or a false market.

Under Section 198 of the SFA, a person is liable for the offence of market manipulation where they intentionally take part in two or more securities transactions that artificially alter the market.

Sanctions

The above offences may attract either civil or criminal penalties. However, if an offender has already been sanctioned under the SFA's civil penalty regime, no criminal proceedings can be instituted.

In terms of civil penalties, the court may order the offender to pay a sum not exceeding three times of the amount of profit gained/loss avoided as a result of the contravention. Where there is no resultant profit/loss, the court may order a penalty of between SGD100,000 and SGD2 million (for corporate offenders), and between SGD50,000 and SGD2 million (for individual offenders) (Section 232, SFA).

In terms of criminal penalties, offenders are liable on conviction to a fine not exceeding SGD250,000, and/or to imprisonment for a term up to seven years (Sections 204 and 221, SFA).

Failure to Prevent/Detect

It is an offence for an entity to fail to prevent/detect market misconduct contraventions by their officers/employees, where such contraventions are committed for the benefit of the entity and are attributable to its negligence. Breach may result in a civil penalty order against the entity of between SGD100,000 and SGD2 million (Section 236C, SFA).

3.5 Tax Fraud

Tax-related offences are largely dealt with under the ITA.

Tax Evasion

Under Section 96 of the ITA, tax evasion occurs under the following conditions.

- Where there is an intention to evade/assist any other person to evade tax.
- Through one of the following forms of conduct: (i) omitting income, (ii) making a false statement, (iii) giving a false answer to IRAS, or (iv) failing to notify IRAS of incorrect information.

An offender is liable upon conviction to a penalty of three times the amount of (i) tax undercharged, (ii) Productivity and Innovation Credit (PIC) bonus, or (iii) tax undercharged and PIC bonus obtained, and to a fine not exceeding SGD10,000 and/or imprisonment for a term not exceeding three years.

The PIC bonus is a tax break in the form of a cash pay-out for eligible expenses. The scheme does not apply beyond Year of Assessment 2018.

Serious Fraudulent Tax Evasion

Under Section 96A of the ITA, serious fraudulent tax evasion occurs under the following conditions.

- Where there is an intention to evade/assist any other person to evade tax.
- Through one of the following forms of conduct: (i) preparing or maintaining any false records or falsifying any records or authorising any of the aforementioned conduct; or (ii) making use of any fraud, art, or contrivance, or authorising the same.

An offender is liable upon conviction to a penalty of four times the amount of (i) tax undercharged, (ii) PIC bonus, or (iii) tax undercharged and PIC bonus obtained, and to a fine not exceeding SGD50,000 and/or imprisonment for a term not exceeding five years.

Preventing Tax Evasion
There is no statutory obligation to prevent tax evasion. However, IRAS has instituted a Voluntary Disclosure Programme that encourages taxpayers to come forward voluntarily and timeously to correct their errors. Qualifying taxpayers who come forward and voluntarily disclose cases arising from tax fraud may have their offences compounded at a reduced penalty rate, in lieu of prosecution.

3.6 Financial Record-Keeping
Companies and their officers have various duties vis-à-vis financial record-keeping.

Duty to Maintain Accurate Records
Under Section 199(1) of the CA, every company has a duty to keep proper accounting records that sufficiently explain its transactions and financial position, to enable true and fair financial statements to be prepared and the records to be conveniently and properly audited. Such records must be retained for at least five years.

The failure to comply exposes both the company and its officers to a fine not exceeding SGD5,000 or to imprisonment not exceeding 12 months, and to a default penalty.

Section 204(1A) of the CA imposes personal criminal liability on company directors who fail to take reasonable steps to secure the company's compliance with their record-keeping obligations, or who wilfully cause default of the same. Punishment may result in a fine not exceeding SGD10,000 or to imprisonment for a term not exceeding two years.

Directors also have a personal duty to ensure the company financial statements are adequately prepared. Failure to comply amounts to a criminal offence, and punishment may result in a fine not exceeding SGD50,000 (see Section 204(1), CA).

Where an officer of a company makes a false or misleading statement or report relating to the affairs of the company to a director, auditor, debenture holder (or trustee), or auditor of the holding company (where the company is a subsidiary), that officer shall be personally liable upon conviction to a fine not exceeding SGD10,000 and/or to imprisonment for a term not exceeding two years (Section 402(1), CA).

Falsifying Records
Under Section 477A of the PC, it is an offence for a relevant individual to intentionally falsify their employer's records. The intention to falsify need only be a general one, and in any prosecution for this offence there is no need for the prosecution to prove a specific intent by the offender to defraud any person/have the fraud culminate on any particular date or time. The prescribed punishment for breach is imprisonment for a term of up to ten years and/or a fine.

3.7 Cartels and Criminal Competition Law
The principal statute governing competition law in Singapore is the CPA.

Cartel Activities Prohibited
Cartel activities are prohibited under Section 34 of the CPA (Section 34 Prohibition), which disallows all agreements, decisions or concerted practices that have the object or effect of preventing, restricting or distorting competition within Singapore. Examples include:

- directly or indirectly fixing purchase/selling prices;
- limiting or controlling production, markets, technical development, or investment;
- sharing markets or sources of supply;
- applying dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or

- making the conclusion of contracts subject to acceptance (by the other party) of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Penalties and Leniency Programme

Under the CPA, the term "undertaking" refers to both individuals and corporate entities.

A breach of the Section 34 Prohibition is not a criminal offence. However, the CCCS is empowered to impose financial penalties of up to 10% of the infringing undertaking's turnover in Singapore for each year of infringement, up to a maximum of three years (Section 69(5), CPA).

In addition, the CCCS may also issue directions requiring any person to take specified actions to remedy, mitigate, or eliminate any adverse effects of an infringement and prevent a recurrence.

Furthermore, any person that suffers loss or damage directly as a result of an infringement of the Section 34 Prohibition has a statutory right of action against any undertaking that was a party to such infringement (Section 86, CPA).

In 2016, the CCCS published the Guidelines on Lenient Treatment for Undertakings Coming Forward with Information on Cartel Activity, which encourages undertakings to disclose information regarding cartel activity. Subject to satisfying certain stipulated conditions:

- if an undertaking is the first to come forward with evidence of cartel activity (even before the CCCS itself commences an investigation), it may be entitled to immunity from financial penalties;
- if an undertaking is the first to come forward but does so only after the CCCS has commenced an investigation, it may still qualify for a reduction in financial penalties of up to 100% (though it will not qualify for immunity); and
- if an undertaking is not the first to come forward, or if it initiated the cartel activity or coerced another party to join the cartel's activity, provided the undertaking comes forward before the CCCS issues notice of a proposed infringement decision, it may still be granted a reduction in financial penalties of up to 50%.

Where multiple markets are involved, undertakings that co-operate with the CCCS in cartel investigations in one market may be granted a reduction in financial penalties in the first market in addition to leniency in the second market.

Leniency granted by the CCCS does not affect the ability of third parties to seek compensation for loss or damage under the above-described statutory right of action afforded to them.

3.8 Consumer Criminal Law

The CPFTA is a targeted piece of legislation, designed to protect consumers against unfair practices and provide them with additional rights for goods that do not conform to contract. Other notable legislation concerning the sale and supply of goods and services include the Sale of Goods Act (Chapter 393) and the Supply of Goods Act (Chapter 394), both of which prescribe basic requirements on quality/fitness for purpose.

Unfair Practice

Under Section 4 of the CPFTA, it is an unfair practice for a supplier to:

- do or say anything, or omit to do/say anything, whereby a customer may be deceived or misled;
- make a false claim; and

- rake advantage of a consumer, where the consumer is not in the position to protect their interests or is not reasonably able to understand the effect of the transaction.

A consumer may commence civil court action against a supplier for engaging in any unfair practice under the CPFTA, and can claim up to SGD30,000 (Sections 6(1) and 6(6), CPFTA).

Defective Goods

Sections 12A to 12F of the CPFTA allow consumers to obtain remedies against defective goods that fail to conform to the terms of the contract at the time of delivery. A product is non-conforming if it:

- does not correspond with its description;
- is not of a satisfactory quality; or
- is not fit for any purpose communicated to the seller before the point of purchase.

The statutory remedies provided for buyers include: (i) repair of the defective product within a reasonable time, or (ii) replacement of the defective product within a reasonable time, both at the seller's cost. That said, a buyer cannot request repair or replacement if doing so would either be impossible or disproportionate in cost for the seller. In such circumstances, the buyer may ask for a reduction in price/a full refund.

The statutory time limit for such claims is six months from delivery.

3.9 Cybercrimes, Computer Fraud and Protection of Company Secrets

Cyber-offences are largely dealt with under the Computer Misuse Act (Chapter 50A) (CMA).

Unauthorised Access/Modification

It is an offence for any person to knowingly cause either of the following.

- A computer to perform any function for the purpose of securing access without authority to any program/data; breach may result in a fine not exceeding SGD5,000 and/or in imprisonment for a term not exceeding two years for a first conviction, and a fine not exceeding SGD10,000 and/or imprisonment for a term not exceeding three years for a second/subsequent conviction (Section 3(1), CMA).
- An unauthorised modification of the contents of any computer; breach may result in a fine not exceeding SGD10,000 and/or to imprisonment for a term not exceeding three years for a first conviction, and a fine not exceeding SGD20,000 and/or imprisonment for a term not exceeding five years for a second/subsequent conviction (Section 5(1), CMA).

Unauthorised Obstruction of Use

It is an offence for any person who knowingly and without authority/lawful excuse, either interferes with or interrupts/obstructs the lawful use of a computer, or impedes/prevents access to, or impairs the usefulness/effectiveness of, any program/data. Breach may result in a fine not exceeding SGD10,000 and/or to imprisonment for a term not exceeding three years for a first conviction, and a fine not exceeding SGD20,000 and/or imprisonment for a term not exceeding five years for a second/subsequent conviction (Section 7(1), CMA).

Application and Extraterritoriality

The CMA applies to any person, whether Singaporean or not, both within and outside of Singapore. Where an offence under the CMA is committed overseas, the offender may be dealt with as if the offence had been committed within Singapore if:

- the offence was committed by the offender who was in Singapore at the material time;

- the computer/program/data was in Singapore at the material time; or
- the offence caused/created significant risk of "serious harm" in Singapore, including any illness, injury or death of individuals, disruption of public confidence in essential services or in any government body, or any damage to national security/defence/foreign relations (Section 11, CMA).

Company Secrets

There is no specific legislation penalising the breach of company secrets. Companies typically rely on/seek recourse via the applicable contractual clauses or common law principles protecting confidentiality.

3.10 Financial/Trade/Customs Sanctions

The Customs Act (Chapter 70) (CSA) addresses offences relating to financial/trade/custom offences. These include:

- fraudulent evasion of customs/excise duties (Section 128D, CSA); and
- importing or exporting uncustomed/prohibited goods (Sections 128F and 128G, CSA).

Penalties include imprisonment terms and/or fines, typically calculated as a multiple of the evaded duties (Section 128L, CSA). Furthermore, all goods (including vehicles) used in the commission of such offences are subject to a mandatory order of forfeiture by the court (Section 123(2), CSA).

3.11 Concealment

There is no specific offence of concealment at Singapore law. However, the following offences each express incorporate an element of concealment.

- Section 118 of the PC penalises a person who voluntarily conceals the existence of a design of an offence punishable with death/life imprisonment; offenders may face imprisonment for a term of up to three to seven years and/or a fine.
- Section 119 of the PC penalises a public servant who voluntarily conceals the existence of a design to commit an offence which is his duty as a public servant to prevent; offenders may face imprisonment for a term of up to seven to 15 years and/or a fine.
- Section 120 of the PC penalises a person who voluntarily conceals the existence of a design of an offence punishable with imprisonment; offenders may face imprisonment for a term of up to one eighth to one quarter of the longest term provided for that offence and/or a fine.
- Section 414 of the PC penalises an individual who assists another in concealing/disposing of stolen property; offenders may face imprisonment for a term of up to five years and/or a fine.

3.12 Aiding and Abetting

A person can be criminally liable for aiding, abetting, or conspiring with another to commit any offence.

Abetment

A person "abets" an offence if they:

- instigate a person to commit an offence;
- engage with one or more other person to commit the offence (ie, conspiracy); or
- intentionally aid the commission of that offence (Sections 107 and 108 PC).

The definition of abetment therefore subsumes acts of conspiracy. In order for abetment by conspiracy to be made out, there must be a "meeting of minds" where all conspirators are aware of the general purpose of the plot (Er Joo Nguang and another v Public Prosecutor [2000] 1 SLR(R) 756).

Under Section 109 of the PC, a person who abets an offence shall, if the act abetted is committed in consequence of the abetment, be punished with the punishment provided for the abetted offence.

Criminal Conspiracy

The PC also provides for a situation where no act is committed in consequence to a conspiracy. Under Section 120A, when a person agrees with another to commit an offence/cause an offence to be committed, such an agreement is designated a criminal conspiracy. Unless provided otherwise, a party to such a conspiracy shall be punished in the same manner as if they had abetted the offence that is the subject of the conspiracy (Sections 120A-120B, PC).

3.13 Money Laundering

The CDSA governs money laundering offences, and the TSOFA governs terrorist financing-related offences.

CDSA

The main types of money laundering offences are:

- concealing/disguising any property derived from drug trafficking/criminal conduct, or converting/transferring/removing property from the jurisdiction, or acquiring/possessing/using that property (Sections 46(1) and 47(1), CDSA);
- acquiring/possessing/using another's benefits from criminal activities while knowing/having reasonable grounds to believe that any property is derived from drug trafficking/criminal conduct (Sections 46(3) and 47(3), CDSA);
- abetting a drug trafficker/criminal to either (i) conceal/disguise benefits from criminal activities; or (ii) convert/transfer/remove property from the jurisdiction, while knowing or having reasonable grounds to believe that any property is derived from drug trafficking/criminal conduct (Sections 46(2) and 47(2), CDSA); and
- assisting a drug trafficker/criminal to either (i) retain/control benefits from criminal activities, (ii) secure such funds, or (iii) invest such funds (Sections 43(1) and 44(1), CDSA).

Individual offenders are liable upon conviction to fines not exceeding SGD500,000 and/or a term of imprisonment not exceeding ten years. Corporate offenders are liable upon conviction to fines not exceeding SGD1 million or twice the value of the benefits of either the drug dealing, criminal conduct or property in respect of which the offence was committed, whichever is higher (Sections 43(5), 44(5), 46(6) and 47(6), CDSA).

Mandatory reporting obligation

Section 39(1) of the CDSA imposes a duty on individuals/entities to disclose knowledge/suspicion that any property represents the proceeds of or is linked to criminal activity. Default attracts criminal penalties. Individual offenders are liable on conviction to fines not exceeding SGD250,000 and/or to imprisonment for a term not exceeding three years, while corporate offenders are liable on conviction to fines not exceeding SGD500,000.

Tipping off

Under Section 48 of the CDSA, individuals/entities who know/have reasonable grounds to suspect that a CDSA-related investigation has commenced/is about to commence, and who disclose to any other person information likely to prejudice that investigation, may face criminal prosecution and are liable upon conviction to a fine not exceeding SGD250,000 and/or imprisonment for a term not exceeding three years.

TSOFA

The TSOFA sets out a framework of offences and reporting obligations relating to terrorist financing. These include prohibitions against:

- providing/collecting property for terrorist acts (Section 3, TSOFA);
- providing property and services for terrorist purposes (Section 4, TSOFA);
- using/possessing property for terrorist purposes (Section 5, TSOFA); and
- dealing with the property of terrorists (Section 6, TSOFA).

Individual offenders are liable upon conviction to a fine not exceeding SGD500,000 and/or a term of imprisonment not exceeding ten years, while corporate offenders are liable upon conviction to a fine not exceeding SGD1 million or twice the value of the property, services or financial transaction in respect of which the offence was committed, whichever is higher (Section 6A, TSOFA).

Mandatory reporting obligation

Section 8 of the TSOFA imposes a duty on individuals/entities to disclose whether a person has possession/custody/control of any terrorist-related property, or information about any transaction in respect of the same. Default may result in criminal prosecution. Individual offenders are liable upon conviction to fines not exceeding SGD50,000 to SGD250,000 and/or imprisonment for a term not exceeding five years. Corporate offenders are liable upon conviction to fines between SGD1 million or to twice the value of the property belonging to terrorist activity.

Tipping off

Under Section 10B of the TSOFA, individuals/entities who know/have reasonable grounds to suspect that a TSOFA-related investigation has commenced/is about to commence, and who disclose to any other person information likely to prejudice that investigation, may face criminal prosecution and shall be liable upon conviction to a fine not exceeding SGD250,000 and/or imprisonment for a term up to five years.

Regulation and Enforcement

The SPF/CAD investigate money laundering and terrorism financing cases.

FIs are subject to additional supervision and enforcement measures administered by the MAS, which has issued regulations, guidelines, and notices requiring FIs to maintain robust anti-money laundering and anti-terrorism financing controls. Non-compliant FIs may be guilty of an offence, and face fines of up to SGD1 million and, in the case of a continuing offence, a further fine of SGD100,000 for every day or part of a day during which the offence continues after conviction (Section 27B, Monetary Authority of Singapore Act (Chapter 186)).

See **Civil Enforcement** under **2.1 Enforcement Authorities** for further details.

4. DEFENCES/EXCEPTIONS

4.1 Defences

In defending white-collar offences, it is often argued that any core legal/factual element of the offence has not been established by the evidence. It is also possible defend a charge on the basis that the required criminal intent (mens rea) cannot be established.

Generally speaking, the existence of adequate compliance programmes/internal controls may be relied upon by an entity to demonstrate that the acts of an errant employee should not be attributed to it. Where the offence under Section 236C of the SFA – of failing to prevent/detect market misconduct offences – is concerned, whether an entity “has established adequate policies and procedures for the purposes of preventing and detecting market misconduct” is an express consideration for determining whether the misconduct is attributable to that entity’s negligence (Section 236C(7), SFA).

4.2 Exceptions

There is a general de minimis defence which provides that an offence is not made out where the harm caused (or intended to be caused) is "so slight that no person of ordinary sense and temper would complain of such harm" (Section 95, PC).

However, it may be challenging to apply this defence to white-collar offences, as there have been cases in which convictions were obtained even though the amount involved was nominal. For example, in 2019, a forklift operator was convicted of corruption after receiving gratification of SGD0.10 to SGD1.00.

Furthermore, the courts – particularly in corruption cases – have made it clear that the mere potential for harm suffices as a relevant consideration, albeit at the sentencing stage (Public Prosecutor v Tan Kok Ming Michael and other appeals [2019] 5 SLR 926). This is likely due to the concept of harm in such cases being of an unquantifiable nature (eg, loss of confidence in the financial integrity of an entity or a financial system).

4.3 Co-operation, Self-Disclosure and Leniency

Factors such as self-reporting and co-operation in the course of investigations can be raised to the prosecution in the course plea bargain discussions. They can also be raised as mitigating factors for the court to consider in sentencing.

Other factors commonly considered by the prosecution/courts for these purposes include the offender's antecedent record, whether there is genuine remorse, and whether restitution has been made to the victim (where appropriate).

4.4 Whistle-Blower Protection

Whilst there are a growing number of laws and regulations that provide protection to whistle-blowers in distinct situations, there is no codified legislation governing whistle-blowing.

The existing framework is summarised below.

Informers

Section 36 of the PCA protects the identity of informers who have lodged corruption-related complaints under the PCA. Similar protection is given under Section 40A of the CDSA to those who lodge reports of knowledge or suspicion that any property represents the proceeds crime.

Companies

The Singapore Institute of Directors, in its Statement of Good Practice: Whistleblowing Policy, lays down guidelines and best practices for companies. Broadly, these stipulate that an effective whistle-blowing framework should include:

- confidentiality measures to protect whistle-blowers' identities;
- measures to prevent retaliatory action against whistle-blowers;
- independent/anonymous reporting channels; and
- assurances to genuine whistle-blowers that they will not face reprisals.

In June 2021, the SGX RegCo announced that issuers must have a whistle-blowing policy in place that, amongst other things, offers whistle-blowers protection from reprisals and ensures confidentiality of the information disclosed.

In addition, from 1 January 2022, issuers will be required to state in their annual reports that they have an appropriate whistle-blowing policy in place, and to provide an explanation of how they have complied with key requirements such as independent oversight of the policy and commitment to protecting whistle-blowers' identities.

Financial Institutions
In September 2020, the MAS published the Guidelines on Individual Accountability and Conduct, which amongst other things, emphasised the importance of adopting a formalised whistle-blowing programme.

Incentives
There are generally no statutorily provided incentives for whistle-blowers to report white-collar offences in Singapore. However, in some limited circumstances, provision is made for monetary rewards to informants.

- In respect of tax evasion offences, an informant who provides information and documents relating to possible tax evasion may request a reward, provided the information and/or documents provided lead to the recovery of tax that would otherwise have been lost (IRAS' "Report Tax Evasion" process).
- In respect of anti-competitive practices, monetary rewards may also be given to informants for information that leads to infringement decisions against cartel members (CCCS' Reward/Whistle-Blowing scheme).

5. BURDEN OF PROOF AND ASSESSMENT OF PENALTIES

5.1 Burden of Proof
The prosecution bears the burden of proving any offence "beyond a reasonable doubt". Where civil penalty enforcement proceedings are brought, the standard of proof is a "a balance of probabilities" (Section 232, SFA).

A number of notable evidential presumptions apply in relation to certain white-collar offences.

Section 8 of the PCA provides that where the giver/receiver of a bribe is either in the employment of the government/a public body, or an agent who has dealings with the Government/a public body, that gratification shall be presumed to have been paid/received corruptly. The recipient can rebut this presumption by adducing evidence of an innocent explanation proven on a balance of probabilities (Tey Tsun Hang v Public Prosecutor [2014] 2 SLR 1189).

Section 197(3) of the SFA provides that a person's purpose (or one of their purposes) is to create a false or misleading appearance of active trading in a capital markets product on an organised market if:

- the sale and purchase does not involve any change in beneficial ownership; or
- the person, makes/causes to be made an offer to purchase/sell the capital markets product at a specified price where they know that an associated person has made an offer to purchase/sell the same number, or substantially the same number of the capital markets products at a price substantially the same as the first mentioned price.

The Section 197(3) presumption may be rebutted if the defendant establishes that the purpose of the act was not to create a false or misleading appearance of active trading (Section 197(4), SFA).

5.2 Assessment of Penalties
In calibrating a sentence that is fair and just, the courts will consider the facts and circumstances of each case, including offence-specific factors, offender-specific factors, and any mitigating/aggravating factors (see Wong Chee Meng).

To assist the court in this process, the prosecution and defence may make submissions on the sentence to be imposed. The courts are also guided by the prescribed statutory punishment range, case precedents, and by benchmark sen-

tences/sentencing frameworks laid down in prior cases.

DPA Penalties

A wide variety of conditions can be imposed on a subject pursuant to a DPA. These include obligations to do the following.

- Pay a financial penalty.
- Compensate victims.
- Donate money to a charity or any other third party.
- Disgorge any profits made from the alleged offence.
- Implement a compliance programme, or make changes to an existing compliance programme, relating to the subject's policies or to the training of the subject's employees or both.
- Appoint a person to:
  - (a) assess and monitor the subject's internal controls;
  - (b) advise the subject and the Public Prosecutor of any improvements to the subject's compliance programme that are necessary, or that will reduce the risk of a recurrence of any conduct prohibited by the DPA; and
  - (c) report to the Public Prosecutor any misconduct in the implementation of the subject's compliance programme or internal controls.
- Co-operate in any investigation relating to:
  - (a) the alleged offence; and
  - (b) any possible offence, committed by any officer, employee or agent of the subject, that arises from the same or substantially the same facts as the alleged offence.
- Pay any reasonable costs of the Public Prosecutor in relation to the alleged offence or the DPA.

There are no published guidelines governing the conditions or penalties which may be imposed in any case. However, the statutory regime contains an important built-in checks and balance component: once parties have agreed on the DPA terms, the Public Prosecutor must apply to the High Court for declarations that (i) the DPA is in the interest of justice; and (ii) its terms are "fair, reasonable and proportionate". A DPA can only come into force once these declarations have been made.

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