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Law and Practice

Contributed by WongPartnership LLP

Contents

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1. Offences

1.1 Legal Framework for Offences

1.1.1 International Conventions

Singapore ratified the United Nations Convention against Corruption on 6 November 2009. It is also party to the United Nations Convention against Transnational Organised Crime, which it ratified on 28 August 2007.

In addition, Singapore participates in a number of international anti-corruption initiatives, including the Asia-Pacific Economic Co-operation's Anti-Corruption and Transparency Experts' Working Group, the G20's Anti-Corruption Working Group, the Organisation for Economic Co-operation and Development's Anti-Corruption Initiative for Asia and the Pacific, and most recently has joined the International Anti-Corruption Co-ordination Centre.

Singapore has also been a member of the Financial Action Task Force (FATF) since 1992 and in 1997 was one of the founding members of the Asia/Pacific Group on Money Laundering (APG).

1.1.2 National Legislation

The key anti-bribery and anti-corruption laws in Singapore are found in the following acts of parliament:

- the Prevention of Corruption Act, Chapter 241 (PCA), first enacted in 1960;
- the Corruption, Drug Trafficking and other Serious Offences (Confiscation of Benefits) Act, Chapter 65A (CDSA), first enacted in 1992; and
- Chapter IX of the Penal Code, Chapter 224 (PC), first enacted in 1871.

In practice, the vast majority of corruption-related prosecutions are brought under the PCA. The scope of the PC corruption-related provisions is much narrower, covering only offences by or relating to public servants.

1.1.3 Guidelines for the Interpretation and Enforcement of National Legislation

There are no official guidelines on the interpretation and enforcement of Singapore's anti-corruption laws. That said, some basic public information has been published on the website of the authority empowered to investigate and enforce corruption-related offences, the Corrupt Practices Investigation Bureau (CPIB).

In 2017, the CPIB also published a guide, PACT: A Practical Anti-Corruption Guide for Businesses in Singapore. PACT provides useful facts on corruption in Singapore, an easily-implementable anti-corruption framework, private sector case studies and other useful anti-corruption resources.

1.1.4 Recent Key Amendments to National Legislation

The PCA has been the subject of a governmental review since 2014; however, no amendments have yet been recommended.

The Criminal Justice Reform Act (CJRA) was passed by Parliament on 19 March 2018 and came into force on 31 October 2018. Among other things, the CJRA has amended the Criminal Procedure Code to introduce deferred prosecution agreements (DPAs) into Singapore's investigation and enforcement framework.

Under a DPA, the prosecution can agree not to prosecute a corporation in exchange for strict compliance with certain conditions, which may include an admission of wrongdoing by the corporate offender, imposition of a financial penalty, requirements to implement programmes for corporate reform, and assisting in the investigation and prosecution of other wrongdoers.

DPAs are presently restricted to the offences in the new Sixth Schedule to the Criminal Procedure code – namely, offences relating to corruption, money laundering, dealing with stolen property or proceeds of crime, and falsification of records.

With the scheme now in force, Singapore has joined the ranks of countries with similar schemes, such as the UK and the USA, where prosecutors have used DPAs to actively penalise corporations.

1.2 Classification and Constituent Elements

1.2.1 Bribery

Under the PCA and the PC, the term "gratification" is used to refer to bribes. Section 2 of the PCA defines this term as including the following:

- money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- any office, employment or contract;
- any payment, release, discharge or liquidation of any loan, obligation or other liability whatsoever, whether in whole or in part;
- any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and

- any offer, undertaking or promise of any gratification within the meaning of the paragraphs above.

As is evident, the statutory definition of gratification covers a broad range of eventualities and is meant to be non-exhaustive.

In keeping with this broad approach, the Singaporean courts have adopted an expansive approach to interpreting the term. Gratification has been held to include monetary reward (see PP v Syed Mostafa Romel (2015) 3 SLR 1166), sexual favours (see PP v Peter Benedict Lim Sin Pang (2013) SGDC 192), and even the mere opportunity to purchase shares in a company, which would unlock the possibility of future dividends (see PP v Teo Chu Ha (2014) SGCA 45).

Receipt of a Bribe

Section 5 of the PCA, which contains the general prohibition against corruption, makes it an offence to give and receive bribes. Section 5 states as follows:

> *"**Punishment for corruption***
> *5. Any person who shall by himself or by or in conjunction with any other person:*
>
> *(a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or*
> *(b) 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:*
>
> *(i) any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or*
> *(ii) 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,*
>
> *shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding five years or to both."*

Similarly, Section 6 of the PCA, which prohibits corrupt transitions with agents, makes it an offence for an agent to give and receive bribes in relation to his/her principal's affairs. Section 6 states as follows:

> **"*Punishment for corrupt transactions with agents***
> *6. If:*
>
> *(a) any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;*
> *(b) any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or*
> *(c) any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal,*
>
> *he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $100,000 or to imprisonment for a term not exceeding five years or to both."*

Notably, where the giver or receiver is a person in the employment of the Singaporean government or any public body, their acts are presumed to be corrupt unless the contrary is proved. The relevant provision is found in Section 8 of the PCA, which states as follows:

> **"*Presumption of corruption in certain cases***
> *8. Where in any proceedings against a person for an offence under Section 5 or 6, it is proved that any gratification has been paid or given to or 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 deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved."*

Proposing/Accepting an Unlawful Advantage

Under Section 5 of the PCA, the corrupt solicitation or the corrupt offer of gratification is sufficient to constitute an offence.

Hospitality Expenditures, etc

The CPIB, on its website, acknowledges that *"gifts and entertainment are often offered in the legitimate course of business to promote good relations."* In other words, business expenditures and courtesies will not contravene the provisions of the PCA or the PC, so long as they are legitimate. Examples of legitimate business expenditures and courtesies may include tokens of appreciation, modest gifts, meals or entertainment, which are intended to create good will, improve the company's image or better present its products or services.

As a general rule, it is advisable for precautions to be taken, such that allegations of impropriety are avoided. These include avoiding overly lavish business gifts, expenses or entertainment, ensuring that a justifiable business purpose is apparent in connection with each such transaction and ensuring transparency in the payment and accounting process that records these transactions.

Other good practices recommended by the CPIB include setting internal policies on when gifts and entertainment may be given, accepted or declared, informing business counterparties of these policies and ensuring that proper records are kept of these transactions.

The term "facilitation payments" is neither used nor defined in the relevant legislation. In so far as such payments fall within the broad definition of gratification under Section 2 of the PCA, they are treated as acts of corruption amounting to a criminal offence.

Failure to Prevent Bribery
The relevant legislation does not criminalise a person's failure to prevent corruption. However, Section 27 of the PCA places a legal obligation on any individual or company required by the CPIB to give information on any subject of inquiry by the CPIB. Section 27 states as follows:

> *"**Legal obligation to give information***
> *27. Every person required by the director [of the CPIB] or any officer to give any information on any subject which it is the duty of the director [of the CPIB] or that officer to inquire into under this Act and which it is in his power to give, shall be legally bound to give that information."*

Definition of 'Public Official'
"Public servants" in Singapore are defined in Section 21 of the PC to include, inter alia, all officers in the service or pay of the Government, or remunerated by fees or commission of any public duty. Other persons falling within the definition include officers of the Singapore Armed Forces, judges and members of the Public Service Commission or Legal Service Commission.

There is no specific legislation on the bribery of foreign public officials over and above the general offences of corruption described above.

Bribery Between Private Parties
Bribery between private parties in a commercial setting is covered by the legal framework in Singapore. The provisions of Sections 5 and 6 of the PCA (as discussed above) are wide enough and cover acts of corruption in a private, commercial setting.

Prior to the PCA's enactment in 1960, Parliament made it clear that the intention behind the Act was to address corrupt activities in the public and private sectors, and that Singapore would adopt a low-tolerance approach to any such transgression. As stated by Ong Pang Boon, the then Minister of Home Affairs, the Act: *"while directed mainly at corruption in the public services, is applicable also to corruption by private agents, trustees and others in a fiduciary capacity. To those who corrupt and those who are corrupt, the warning is clear – take heed and mend their ways. Just retribution will follow those who persist in corrupt practices."*

Since then, numerous prosecutions have been brought under Sections 5 and 6 of the PCA, covering public and private sector offences. In fact, private sector corruption cases outnumber the public sector cases.

1.2.2 Influence-Peddling

Influence-peddling may fall within the ambit of the corruption offences under Sections 5 and 6 of the PCA, which contains a wide definition of what may amount to a corrupt act. Corrupt "gratification" is defined in Section 2 of the PCA to include *"any other service, favour or advantage of any description whatsoever, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty"*.

In addition, under Section 163 of the PC, it is specifically an offence for a person to accept or obtain gratification for exercising personal influence on a public servant to do or forbear to do any official act. The abetment of this offence by a public servant is similarly an offence under Section 164 of the PC.

1.2.3 Financial Record-Keeping

Section 199 of the Companies Act, Chapter 50, requires a company to keep proper books and records to explain its transactions and financial position for at least five years. Failure to do so may attract penal sanctions for the company and its officers. The relevant extracts of Section 199 are reproduced below:

> ***"Accounting records and systems of control***
> *199. (1) Every company shall cause to be kept such accounting and other records as will sufficiently explain the transactions and financial position of the company and enable true and fair financial statements and any documents required to be attached thereto to be prepared from time to time, and shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited.*
>
> *(2) The company shall retain the records referred to in subsection (1) for a period of not less than five years from the end of the financial year in which the transactions or operations to which those records relate are completed.*

(2A) Every public company and every subsidiary company of a public company shall devise and maintain a system of internal accounting controls sufficient to provide a reasonable assurance that

(iii) assets are safeguarded against loss from unauthorised use or disposition; and

(iv) transactions are properly authorised and that they are recorded as necessary to permit the preparation of true and fair financial statements and to maintain accountability of assets. [...]

(6) If default is made in complying with this section, the company and every officer of the company who is in default shall be guilty of an offence and shall be liable on conviction to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 12 months and also to a default penalty."

In addition, Chapter XVIII of the PC sets out various offences relating to documents or electronic records. These include offences such as forgery (Section 463 of the PC), making a false document or false electronic record (Section 464 of the PC), using as genuine a forged document or electronic record (Section 471 of the PC) and falsification of accounts (Section 477A of the PC).

Section 477A and its accompanying explanatory note are reproduced below:

" *Falsification of accounts*

477A. Whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, or wilfully and with intent to defraud makes or abets the making of any false entry in, or omits or alters or abets the omission or alteration of any material particular from or in any such book, electronic record, paper, writing, valuable security or account, shall be punished with imprisonment for a term which may extend to ten years, or with a fine, or with both.

Explanation – It shall be sufficient in any charge under this section to allege a general intent to defraud without naming any particular person intended to be defrauded, or specifying any particular sum of money intended to be the subject of the fraud or any particular day on which the offence was committed."

Section 477A offences often accompany the commission of corruption offences, particularly where attempts have been made by a "clerk, officer or servant" of a company to cover up corrupt payments (eg, where such payments are falsely recorded in the company's books as "commissions" or where payment vouchers falsely describe the payment as "entertainment"). It is therefore common for an offender to face charges for both corruption and falsification of accounts, arising from one corrupt transaction.

1.2.4 Public Officials

There is no specifically applicable offences to such a scenario in the context of the existing statutory provisions on corruption. However, there are a number of general offences which would make such conduct illegal. These include: extortion, cheating, and criminal breach of trust.

Extortion

Extortion is an offence under Section 383 of the PC, and requires a direct or indirect threat (whether to body, mind, reputation or body):

"383. Whoever intentionally put any person in fear of any harm to that person or to any other person, in body, mind, reputation or property, whether such harm is to be caused legally or illegally, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits 'extortion'."

Extortion is punishable under Section 384 of the PC with imprisonment of two to seven years and also with caning.

Cheating

Cheating is an offence under Section 415 of the PC, and requires deception and fraudulent or dishonest inducement:

"415. Whoever, by deceiving any person, whether or not such deception was the sole or main inducement, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to any person in body, mind, reputation or property, is said to 'cheat'."

Cheating is punishable variously under Sections 417, 419 and 420 of the PC, depending on the factual scenario. Cheating and dishonestly inducing a delivery of property is punishable under Section 420 of the PC with imprisonment of up to ten years and also with a fine.

Criminal breach of trust

Finally, criminal breach of trust is an offence under Section 405 of the PC, and involves a misappropriation or conversion of property entrusted to the offender:

"405. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person to do so, commits 'criminal breach of trust'."

Where the criminal breach of trust is committed by a public servant, this is an aggravated offence under Section 409 of the PC and is punishable with imprisonment for life, or with imprisonment for a term which may extend to 20 years and liability for a fine.

Unlawful taking of interest by a public official
There are no specific provisions criminalising the unlawful taking of interest by a public servant over and above the general corruption offences in the PCA and Chapter IX of the PC.

Embezzlement of public funds
The relevant offence in Singapore is that of criminal breach of trust under Section 405 of the PC – see above.

Favouritism by a public official
There are no specific provisions criminalising favouritism by a public servant over and above the general corruption offences in the PCA and Chapter IX of the PC.

1.2.5 Intermediaries

Section 29 of the PCA makes it an offence to "abet" the commission of a corruption offence and the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under the PCA. The definition of "abet" is found in Part V of the PC, which provides that a person "abets" the doing of a thing where he/she: (i) instigates any person to do that thing; (ii) conspires with another, subsequent to which an illegal act or omission is carried out in order to the doing of that thing; or (iii) intentionally aids another in the doing of that thing.

In addition, Section 31 of the PCA makes in an offence to engage in a "criminal conspiracy" to commit any corruption offence. In brief, Part V of the PC provides that a "criminal conspiracy" takes place when two or more persons agree to do, or cause to be done, an illegal act or a legal act by illegal means.

Lastly, Section 5 of the PCA is worded broadly enough to cover the commission of a corruption offence through an intermediary. In particular, Section 5 makes it an offence for any person to give or receive bribes *"by himself or by or in conjunction with any other person."* This may be used as the catch-all provision in relation to offences committed through an intermediary.

1.3 Scope

1.3.1 Geographical Reach of Applicable Legislation

The PCA has extraterritorial reach, in limited circumstances. Section 37 provides that where an offence (as described under the PCA) is committed by a Singaporean citizen in any place outside Singapore, that person may be dealt with in respect of that offence as if it had been committed within Singapore.

1.3.2 Corporate Liability

The terms "person" and "party" are defined in the Interpretation Act, Chapter 1, as including "*any company or association or body of persons, corporate or unincorporate.*" Therefore, any offence under the PCA, PC or CDSA may be committed by an individual as well as any of the aforementioned entities.

Generally speaking, an entity will attract criminal liability where a corruption offence is committed in the course of business by a person in control of the entity's affairs, to such a degree that the entity can be said to think or act through this person (*Tom-Reck Security Services v Public Prosecutor* [2001] 2 SLR 70). In practice, however, court prosecutions of such entities have been rare. This may be due to the complexities involved in proving the required mental element (mens rea) ascribable to the entity. In such situations, the approach has been to charge the individuals within the entity who were involved in the corrupt endeavour.

Singapore does not have any legislative provision that imposes vicarious liability.

1.4 Limitation Periods

Generally, there is no limitation period for criminal offences in Singapore. This applies to the offences discussed above.

2. Defences and Exceptions

2.1 Defences

The relevant legislation does not contain any expressly enacted defences to the specific anti-corruption offences.

In defending a corruption charge, challenge may be had to the key elements required to prove the offence, such that it cannot be made at law or in fact. For example, it may be argued that the required mens rea or some required element of the alleged criminal act (actus reus) cannot be proved.

Chapter IV of the PC sets out the various general defences available against a criminal charge. These include the defences of accident (Section 80 of the PC), unsoundness of mind (Section 84 of the PC), intoxication (Sections 85 and 86 of the PC) and duress (Section 94 of the PC). However, the typical factual matrices that underpin a corruption offence do not lend themselves to the applicability of these general defences.

2.2 Exceptions

Several of the above-mentioned general defences are subject to exceptions – for example, the defence of duress under Section 94 of the PC is subject to the exception that the person committing the act must not have, of his own accord, placed himself in that situation of duress. However, as stated above, the typical factual matrices that underpin a corruption offence do not lend themselves to the applicability of the general defences, and thus also to the exceptions to such defences.

2.3 De Minimis Exceptions

The general defences to a criminal charge encapsulated in Chapter IV of the PC include a de minimis defence (Section 95 of the PC). For reference, Section 95 is reproduced below:

> ***"Act causing slight harm***
> *95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."*

However, it is unlikely that this general defence will have any applicability to corruption offences under Singaporean law. First, cases have been prosecuted where the bribe or gratification involved was minimal, including where the bribe was attempted but never carried out. Second, given the strict policy approach taken by lawmakers and the CPIB to the implementation and enforcement of corruption offences in Singapore, it is unlikely that any bribe, no matter how small, will be interpreted by the Singaporean courts as causing *"harm […] so slight that no person of ordinary sense and temper would complain of such harm."*

2.4 Exempt Sectors/Industries

There are no sectors or industries exempt from the above offences.

2.5 Safe Harbour or Amnesty Programme

There is no express or publicised safe harbour or amnesty programme arising from the self-reporting of corruption offences.

However, Section 36 of the PCA provides some measure of protection to the identity of informers who have lodged complaints under the PCA. The protection covers three areas. First, the complaint itself (eg, where in written form or reduced to written form) shall not be admitted into evidence in any civil or criminal proceeding whatsoever. Second, no witness in any proceeding shall be obliged or permitted to disclose the name or address of any informer, or state any matter that might lead to the discovery of his or her identity. Third, if any document in evidence or liable to inspection in any civil or criminal proceeding contains any entry that names, describes or may lead to the discovery of the informer's identity, the court shall cause such parts of the document to be concealed or obliterated from view.

The only exceptions to this protection arise where a court is, after full inquiry into the case, of the opinion that the informer wilfully made in the complaint a material statement that he or she knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

That said, acts of co-operation, self-reporting, remediation and genuine remorse are viewed favourably by the investigating authorities, the Public Prosecutor and the Singaporean courts.

By virtue of Article 35(8) of the Constitution of the Republic of Singapore and Section 11 of the Criminal Procedure Code, the Attorney-General has the power, exercisable at his direction, to institute, conduct or discontinue any proceedings for any criminal offence. Whilst there is no published guideline on how the Attorney-General may consider or treat factors such as self-reporting, adequate compliance or remediation, in practice, such acts are often taken into account when deciding the approach to take in any given prosecution. These factors frequently go towards arriving at a reduced plea or sentence bargain, or even the granting of immunity from prosecution.

Likewise, the Singaporean courts have generally attached mitigating value to a person surrendering him or herself to the authorities before investigations could implicate them (see PP v Siew Boon Loong (2005)] 1 SLR(R) 611). The Singaporean High Court inPP v Ang Seng Tho *r* (2011) 4 SLR 217 appeared to go even farther when it stated, obiter, that even more mitigating value may be attached where the offender discloses not only their own, but also their accomplice's crimes.

As stated above, the CJRA was passed by Parliament on 19 March 2018 and has come into force on 31 October 2018, amending the Criminal Procedure Code to introduce DPAs into Singapore's investigation 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/remediation efforts. Self-reporting may also be a factor taken into account in the prosecution's decision whether to use a DPA, and in deciding on any penalty imposed.

3. Penalties

3.1 Penalties on Conviction

A person convicted of an offence under the PCA faces a fine, imprisonment, or both. The prescribed penalties for the key offences (ie, Sections 5 and 6) are set out below:

- Section 5: fine not exceeding SGD100,000, or imprisonment for a term not exceeding five years, or both;
- Section 6: fine not exceeding SGD100,000, or imprisonment for a term not exceeding five years, or both.

In addition, Section 7 of the PCA provides that the penalty may be increased where the matter in relation to which the offence was committed was a contract or a proposal for a contract with the government or any department thereof or with any public body or a subcontract to execute any work comprised in such a contract. In such situations, the prescribed penalty is a fine not exceeding SGD100,000, or imprisonment for a term not exceeding seven years, or both.

Where the offender has received bribes, Section 13 provides that in addition to the above-mentioned punishments, where a person is convicted of accepting any gratification, the court may order the person to pay a penalty equivalent to the amount of gratification received.

Additionally, the CDSA provides for the confiscation of benefits derived from, amongst other "serious offences," the offence of corruption. Under Section 5 of the CDSA, an application for a confiscation order can be made by the Public Prosecutor once a person has been convicted of one or more such serious offences.

Lastly, where a person who is a director of a company is convicted of an offence involving fraud or dishonesty (such as a corruption offence), he or she will be disqualified from acting as a director, or taking part (whether directly or indirectly) in the management of a company, for a period of five years.

3.2 Guidelines Applicable to the Assessment of Penalties

The main sentencing considerations in corruption cases are deterrence and punishment. This approach was promulgated by the Singaporean High Court in the case of Public Prosecutor v Ang SengThor (2011) 4 SLR 217.

More recently, the High Court in PP v Syed Mostafa Romel (2015) 3 SLR 1166 dispelled any notion that a presumption existed in favour of non-custodial sentences for private sector corruption. In doing so, the High Court set out three broad categories of private sector corruption typologies and provided a general guide on the appropriate sentence for each:

- in a situation where the receiving party (recipient) is paid to confer on the paying party (giver) a benefit that is within the recipient's power to confer without regard to whether the giver ought properly to have received that benefit, the issue of whether the custodial threshold is crossed depends on the facts;
- in a situation where the recipient is paid to forbear from performing what he or she is duty-bound to do (thereby conferring a benefit on the giver), custodial sentences will frequently be imposed; and
- in a situation where the recipient is paid so that he or she will forbear from inflicting harm on the giver (even though there may no legal basis for the infliction of such harm), the recipient can generally expect a custodial sentence.

In cases involving public sector corruption, the "public service rationale" will apply. In such a scenario, the public interest in preventing a loss of confidence in Singapore's public administration takes precedence and where there is a risk of such harm occurring, *"a custodial sentence [is] normally justified"* (see PP v Ang Seng Thor (2011) 4 SLR 217). This principle has been reaffirmed more recently in the High Court cases of Tjong Mark Edward v PP (2015) SGHC 91 at [75].

4. Compliance and Disclosure

4.1 National Legislation and Duties to Prevent Corruption

There are no statutorily-mandated compliance programmes. However, the Singapore Standard (SS) ISO 37001 on anti-bribery management systems is a voluntary standard designed to help companies establish, implement, maintain and improve their anti-bribery compliance programmes, including a series of measures which represents globally recognised anti-bribery good practice. The ISO 37001 was introduced in 2016, and over time may well become commonly adopted by companies in Singapore as a best practice.

4.2 Disclosure of Violations of Anti-bribery and Anti-corruption Provisions

Section 424 of the Criminal Procedure Code places a duty on every person to report the commission or the intention of any other person to commit certain offences under the PC, including several PC offences relating to the corruption of public servants. However, this duty does not include the anti-bribery and anti-corruption provisions outside the PC (eg, Sections 5 and 6 of the PCA).

The PCA itself does not criminalise a person's failure to disclose violations of anti-bribery and anti-corruption provisions, save that Section 27 of the PCA places a legal obligation on any individual or company required by the CPIB to give information on any subject of inquiry by the CPIB (see **1. 2.1. Bribery**, above).

Additionally, under Section 39 of the CDSA, individuals and companies may be liable for failing to report a suspicion that any property represents the proceeds of, or was used in connection with, any criminal offence.

4.3 Protection Afforded to Whistle-blowers

No statutory protection is afforded to whistle-blowers. However, Section 36 of the PCA provides some measure of protection to the identity of informers who have lodged complaints under the PCA (see **2.5 Safe Harbour or Amnesty Programme**, above).

4.4 Incentives for Whistle-blowers

There are no incentives for whistle-blowers to report bribery or corruption. However, the Singaporean courts have generally attached mitigating value to a person surrendering him or herself to the authorities before investigations could implicate them (see **2.5 Safe Harbour or Amnesty Programme**, above).

4.5 Location of Relevant Provisions Regarding Whistle-blowing

Section 36 of the PCA provides some measure of protection to the identity of informers who have lodged complaints under the PCA (see **2.5 Safe Harbour or Amnesty Programme** above).

5. Enforcement

5.1 Enforcement of Anti-bribery and Anti-corruption Laws

Criminal enforcement is provided for under both the PCA and the PC – offences are punishable by imprisonment, fine, or both. Civil enforcement is also available to victims of corruption. Under Section 14 of the PCA, where gratification has been given to an agent, the principal may recover, as a civil debt, the amount of money either from the agent or the person who gave the gratification.

5.2 Enforcement Body

The agency responsible for investigating and enforcing anti-corruption offences in Singapore is the CPIB.

Court prosecutions of such offences fall under the ambit of the Financial and Technology Crime Division of the Attorney-General's Chambers (AGC). The AGC also works together with, and has general prosecutorial oversight of, the CPIB in the course of its investigations.

5.3 Discretion for Mitigation

By virtue of Article 35(8) of the Constitution of the Republic of Singapore and Section 11 of the Criminal Procedure Code, the Attorney-General has the power, exercisable at his direction, to institute, conduct or discontinue any proceedings for any criminal offence.

Accordingly, the AGC has the unfettered discretion to extend any plea or sentencing offer to the offender concerned. The same would apply to any plea or sentencing agreement arrived at subsequent to negotiations with the offender or his legal counsel.

There are no published or standard guidelines on the factors that may be taken into account by the AGC in such offers or negotiations. Factors that may be considered include the mental or physical health of the offender and/or the extent of the offender's co-operation in any ongoing or further prosecutions. Typically, such negotiations are confidential.

As stated above, the CJRA was passed by Parliament on 19 March 2018 and has come into force on 31 October 2018, amending the Criminal Procedure Code to introduce DPAs into Singapore's investigation 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/remediation efforts. Self-reporting may also be a factor taken into account in the prosecution's decision whether to use a DPA, and in deciding on any penalty imposed.

5.4 Jurisdictional Reach of the Body/Bodies

The CPIB is entitled to investigate offences committed by any person within Singapore. This reach is extended with regard to Singaporean citizens only, by virtue of Section 37, which criminalises PCA offences committed by Singaporean citizens in any place outside Singapore.

In the latter scenario, the CPIB may work together with the relevant jurisdiction to investigate the matter. Under the Mutual Assistance in Criminal Matters Act, Chapter 65A, Singapore may request legal assistance from a "prescribed foreign country." Such assistance includes the taking of evidence, search and seizure, and locating or identifying persons of interest.

Currently, the list of "prescribed foreign country" includes the UK, the USA, Hong Kong, Malaysia, India, Vietnam, Brunei, Laos, Indonesia, Myanmar, the Philippines, Cambodia and Thailand.

5.5 Recent Landmark Investigations or Decisions Involving Bribery or Corruption

From 2014 to 2016, seven senior executives of ST Marine, a local marine engineering company, were found to have

been involved in conspiracies to pay over SGD24.9 million in bribes between 2001 and 2011 to agents of ST Marine's customers as inducements for granting ship repair contracts to ST Marine. The offenders, who held positions equivalent to senior management, CEO and CFO, were sentenced to imprisonment terms of between four to ten months and fines of between SGD100,000 to SGD300,000, for corruption and offences under Section 477A of the PC. This case was unique in that the offenders were simply observing an established and pre-existing company protocol to make illicit commission payments, which were commonly required when doing business abroad. None of the offenders personally solicited or received any bribes, nor pocketed any gains from this protocol. The prosecution accepted these factors, yet took the position that offences had been committed. That said, they took the view that the sentences in this case are, for those same reasons, significantly lower than the benchmark.

In 2017 and 2018, Keppel Offshore & Marine, a subsidiary of the local Keppel Corporation, was investigated for having paid over USD50 million in bribes to officials in Brazil in exchange for business deals, as part of the global Petrobras corruption scandal. Keppel O&M was fined USD422 million as part of an unprecedented global settlement with the US Department of Justice, in conjunction with the Brazilian authorities and the CPIB in Singapore. The CPIB investigation in Singapore remains ongoing, and the question remains open as to whether further action will be taken in Singapore against any of the Keppel entities or individuals involved.

5.6 Level of Sanctions Imposed

The courts decide each case on a fact-specific basis. The sanctions on individuals and legal entities can be substantial, depending on the level of offending in each case. However, there have been cases in which only a fine is imposed on the offender (eg, where the bribe was solicited from the offender, and where the amount involved is low and the harm caused is minimal). More serious cases against individuals typically involve a sentence of imprisonment.

At present, the maximum penalty for PCA corruption offences in Singapore remains at a fine not exceeding SGD100,000 or imprisonment not exceeding five years or both (although in cases where the corruption was in relation to a Government contract or a contract with a public body, the maximum term of imprisonment can be increased to seven years). As can be seen, the maximum financial penalty/fine for an offence is significantly lower than the penalties seen in recent DPA settlements in the USA and the UK, which amount to hundreds of millions of dollars. In this regard, the Senior Minister of State for Finance and Law Ms Indranee Rajah, in commenting on the Keppel case above, noted that the global settlement of USD422 million achieved more than if the matter had been prosecuted under the PCA, given that the maximum fine under the Act remained at SGD100,000. During the second reading of the CJRA, Ms Rajah also noted that the financial penalties under the DPA regime would not be subject to a statutory maximum. Taken together, these may be suggestive of an increase in the maximum penalty for PCA corruption offences in the future, particularly where they are resolved by way of a DPA.

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6. Review and Trends

6.1 Assessment of the Applicable Enforced Legislation

The CPIB publishes an annual report that, amongst other things, highlights the key developments and trends. The 2017 annual report highlighted three main industry sectors that have continued to be of concern over the last four years:

- construction (eg, building construction, addition and alteration works, renovation);
- wholesale and retail business (eg, supply of drill pipes, drilling equipment, tubular products, plywood, F&B, kitchen equipment, IT products & horticulture); and
- warehousing, transport and logistics services (eg, freight-forwarding service, removal service, tour bus service, passenger service).

Other highlights of the 2017 annual report were that corruption cases registered for investigation had fallen to a new all-time low of 103 cases, and that private sector cases continued to form the majority of corruption cases (at 92%).

6.2 Likely Future Changes to the Applicable Legislation or the Enforcement Body

In January 2015, Prime Minister Lee Hsien Loong announced that the CPIB was reviewing the PCA, together with the AGC. The CPIB's manpower would also be increased by more than 20% and a One-Stop Corruption Centre would be set up so that complaints could be made more discreetly and in a more accessible manner.

To date, the results of this review and/or any changes to be made have yet to be announced.

As stated in **5.6 Level of Sanctions Imposed**, above, the Government appears to be aware of the limitations of the current maximum fine for PCA corruption offences. It is thus possible that an increase in the maximum financial penalty for PCA corruption offences may be proposed, once the Governmental review of the PCA provisions is complete.