

# Deferred Prosecution Agreements

## The move toward corporate criminal liability in Singapore

### Recent Announcements

On 15 January 2018, Law and Home Affairs Minister K Shanmugam announced the introduction of deferred prosecution agreements (“DPA”) in Singapore, as part of a wide-ranging set of proposed changes to Singapore’s criminal justice system.

In brief, DPAs allow an entity to enter into an agreement with an investigating authority or regulatory body, to avoid prosecution on condition that the entity comply with specific conditions. Such conditions may include a financial penalty, requirements to co-operate with further investigations, requirements to strengthen internal controls and policies, compliance and staff training programmes, and obligations to implement internal whistle-blowing procedures. If the entity does not observe the conditions, the prosecution process may resume. Monitoring arrangements are thus often set out in the terms of the DPA. DPAs may also allow for settlement payments to be agreed in amounts that far exceed the prescribed fines payable for the offences involved.

A key feature of the proposed regime in Singapore is that it will only be available to entities with legal representation. Once a DPA has been concluded between the parties, it will need to be approved by the High Court as being fair, reasonable and proportionate in the circumstances. DPAs will be published once they have been approved by the High Court.

Further details on the ambit of the proposed regime have yet to be released, including the type of entities and offences to be covered. More will be known once the changes have been tabled in Parliament in the first half of 2018.

### The Use of DPAs in Other Jurisdictions to Regulate Corporate Economic Crime

DPAs involving business entities have increasingly been used by regulatory bodies in other jurisdictions, as an effective method of resolving endemic issues of economic crime found to exist within such entities. The types of offences typically dealt with include corruption offences, fraud, theft, forgery, money-laundering, and offences relating to financial markets and exchanges.

In the past year, authorities in the United States, the United Kingdom, and France have all made public the terms of certain high-profile DPAs entered into with corporate entities. These DPAs have seen penalties imposed in the hundreds of millions (in US dollars).

Like Singapore, Canada and Australia are presently considering the implementation of DPA regimes, and public consultation exercises are now underway.

### Closer Scrutiny of Corporate Behaviour in Singapore

Whilst the position at Singapore law has always been that any “company or association or body of persons, corporate or unincorporated” may be subject to potential liability for criminal acts, criminal prosecutions have rarely been brought against such entities, and have instead been brought against individuals or key office holders within the entity. This is due to the complexities involved in proving beyond a reasonable doubt that a criminal act carried out by an individual (or group of individuals) within the entity can be attributed to the entity itself, thereby allowing it to be held criminally liable.

The proposal to implement DPAs in Singapore signals an increased focus by the authorities on the regulation of corporate behaviour and on the

enforcement of corporate criminal liability. Clear steps have been taken to ensure that entities in Singapore are accountable for the actions committed in the course of their business.

Further evidence of this shift in focus can be seen by the recent launch, in 2017, of the Singapore Standard on Anti-Bribery Management Systems (ISO 37001); a voluntary standard designed to help companies establish, implement, maintain and improve their anti-bribery compliance programmes. An accreditation scheme is in the process of being developed, and companies may in due course seek to have themselves certified as ISO 37001 compliant.

Now more than ever, the onus is on entities to ensure a legally compliant working environment. A key focus must be to ensure that criminal liability does not accrue to an entity for acts committed by its officers or employees in the course of their work. This can be done by several means, including putting in place internal controls,

policies and practices, ensuring proper training of staff as well as providing a proper whistle-blowing mechanism.

In addition, where a potential criminal transgression has been discovered within an entity, immediate steps must be taken to ensure its interests are protected, and that the option of a DPA remains available to it should criminal investigations ensue. Companies facing such circumstances should seek legal advice early on how best to deal with this.

### Concluding Remarks

Overall, the proposed DPA regime is a change to be welcomed. It provides regulatory authorities with an additional tool for dealing with and resolving crimes committed by or within companies. A major part of a DPA's value also lies in its ability to ensure that beneficial changes are made within the entity, whilst simultaneously avoiding the need to expend the time and cost involved in prosecuting the matter.

If you would like information on this or any other area of law, you may wish to contact the partner at WongPartnership that you normally deal with or any of the following partners:



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Melanie and Simran are co-authors of the Singapore chapter of the inaugural edition of *Chambers Global Practice Guides - Anti-Corruption 2018*, an international handbook designed to assist business by detailing key issues on corruption and financial crime. A copy of the publication may be accessed [here](#).

WongPartnership's Crime: Litigation, Investigations & Prosecution team is a dedicated commercial crime practice that handles corruption, financial market and securities offences, as well as technology crime, across all major industry sectors. The team provides a comprehensive array of services, including compliance advisory, assistance in government investigations, internal investigations, and prosecution services for regulatory bodies.

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