The International Comparative Legal Guide to: Business Crime 2012
A practical cross-border insight into business crime

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1.1 What authorities can prosecute business crimes, and are there different enforcement authorities at the national and regional levels?

Under Article 35(8) of the Constitution of Singapore, the Attorney-General of Singapore has powers to institute, conduct or discontinue any proceedings for any offence. Section 11 of the Criminal Procedure Code Act 2010 (No. 15 of 2010) (“CPC”) further provides that the Attorney-General shall be the Public Prosecutor, with control and direction of all criminal prosecutions and proceedings. The Criminal Justice Division and the State Prosecution Division in the Office of the Attorney-General are the organisational extensions of the Attorney-General’s role as the Public Prosecutor.

As for the enforcement of law in Singapore, the main authority in Singapore empowered to do so is the Singapore Police Force (“SPF”). There are various departments within the SPF, including the Commercial Affairs Department (“CAD”), which was established in 1985 as Singapore’s principal white-collar crime investigation agency, and the Criminal Investigation Department (“CID”). Within the CID, its Specialised Crime Division takes charge of investigation and enforcement against specialised crimes such as intellectual property rights violation and its Technology Crime Division conducts investigation, forensic examination and prosecution into technology-related offences committed under the Computer Misuse Act, such as hacking and unauthorised access to accounts.

Apart from the SPF, the Corrupt Practices Investigation Bureau (“CPIB”) is the independent anti-corruption agency, headed by a director directly responsible to the Prime Minister, which derives its powers of investigation from the Prevention of Corruption Act (Chapter 241) (“PCA”) and its purpose is to investigate and prevent corruption in the public and private sectors in Singapore.

For white collar offences under the Securities and Futures Act (Chapter 289) (“SFA”), the CAD is the key enforcement agency. However, the Monetary Authority of Singapore (“MAS”) administers the civil penalty regime of market conduct offences under the SFA. The MAS and the CAD co-operate and have an agreed set of protocols and criteria for assessing market misconduct complaints in deciding whether a matter should be dealt with criminally or not.

The Accounting and Corporate Regulatory Authority of Singapore (“ACRA”) may prosecute, by way of summonses, regulatory offences under the Companies Act (Chapter 50), such as failing to make timely disclosure of information and failing to file required documents with ACRA. ACRA may also issue penalties such as composition fines instead of prosecuting the matter in court. As to anti-competition practices, the regulatory body in Singapore is the Competition Commission of Singapore (“CCS”). The consequences of breaching these practices generally attract civil sanctions such as avoidance of the anti-competitive agreements, imposition of financial penalty or private legal action. The CCS is also empowered to consider structural or behavioural remedies to remedy, mitigate or prevent any adverse effects of mergers that substantially abuse competition.

1.2 If there are more than one set of enforcement agencies, please describe how decisions on which body will investigate and prosecute a matter are made.

The power to prosecute is vested in the Public Prosecutor. The enforcement agencies report to the Public Prosecutor after conclusion of their investigations with recommendation on prosecution which decision ultimately lies with the Public Prosecutor.

Each enforcement agency focuses on a specialised area with the bulk of the white collar crime cases being dealt with by the CAD or the police while the corruption cases are dealt with by the CPIB.

1.3 Is there any civil or administrative enforcement against business crimes? If so, what agencies enforce the laws civilly and which crimes do they combat?

The MAS administers the civil penalty regime under the SFA and may enforce civil penalties against individuals or companies for market conduct offences under the SFA, such as insider trading, false trading, market manipulation disclosure requirements by directors, etc.

Section 232 of the SFA empowers the MAS, with the consent of the Public Prosecutor, to bring an action in court against a person who has contravened the SFA to seek an order for a civil penalty against that contravention. If the court is satisfied on a balance of probabilities that the person has contravened the SFA, the court may make an order against him for the payment of a civil penalty of a sum not exceeding 3 times the amount of the profit gained/loss avoided as a result of the contravention. Section 232(5) of the SFA allows the MAS to enter into an agreement with any person to pay a civil penalty without bringing an action in court. This is usually observed by MAS with an admission of liability by the person who contravened the SFA.
2 Organisation of the Courts

2.1 How are the criminal courts in Singapore structured? Are there specialised criminal courts for particular crimes?

All criminal prosecutions, except cases that potentially involve capital punishment, are conducted in the Subordinate Courts of Singapore, comprising the District Court and the Magistrate’s Court, at first instance. The District Court has the jurisdiction to try all offences for which the maximum term of imprisonment does not exceed 10 years or which is punishable with fine (it has jurisdiction to impose a fine not exceeding $10,000 per offence) only. A Magistrate’s Court has the jurisdiction to determine prosecutions of offences for which the maximum term of imprisonment provided by law does not exceed 3 years or which are punishable with a fine only.

Cases that potentially attract the capital punishment (non-white collar crime cases) are heard in the High Court at first instance and will be heard by the highest court in Singapore, the Court of Appeal, on appeal. Some white collar offences are heard in the High Court at first instance if they involve forgery or serious embezzlement.

Appeals against the decisions in the District Court and the Magistrate’s Court are heard in the High Court of Singapore. There is also avenue to appeal further to the Court of Appeal when there are issues on points of law.

2.2 Is there a right to a jury in business-crime trials?

No. The jury system has been abolished since 1969 for all trials, whether civil or criminal in nature. All trials in Singapore are determined by a single judge at first instance.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in Singapore to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

- Fraud and misrepresentation in connection with sales of securities

  A. Specific offences of fraud under the SFA in relation to securities

  Offences of fraud, dishonesty and misrepresentation in relation to securities are principally found in sections 197 to 201 of the SFA. Section 197 of the SFA criminalises the conduct of creating false or misleading appearances of active trading of securities on a securities market and in respect of the prices of the securities. Under section 198 of the SFA, it is an offence to manipulate the securities market with an intention to induce other persons to subscribe for, purchase or sell securities of a corporation or a business trust. It is an offence under section 199 of the SFA to knowingly provide false or misleading statements that are likely to induce other persons to subscribe for securities, induce sale of or purchase securities by other persons or have the effect of raising, lowering, maintaining or stabilising the market price of securities.

  Section 200 of the SFA prohibits a person from fraudulently inducing or attempting to induce another person to deal in securities by making or publishing any statement, promise or forecast by dishonest concealment of material facts or the reckless publication or recording of a misleading, false or deceptive statement, promise or forecast. It is an offence under section 201 of the SFA to employ manipulative and deceptive devices in connection with the subscription, purchase or sale of any securities. Some examples of manipulative or deceptive devices are: a fraudulent device, scheme or artifice; or a fraudulent or deceptive business act, course or practice that is likely to operate as a fraud or deception upon any person.

  The penalties of these offences under the SFA are fines not exceeding $250,000 or imprisonment for a term not exceeding 7 years or both for individuals and fines up to $500,000 for corporations.

- B. General offences of fraud under the Penal Code

  Generally, fraudulent conduct is also caught under section 415 of the Penal Code (Chapter 224), the definition provision for cheating offences. A person is said to “cheat” under this provision when he dishonestly or fraudulently deceives another. Cheating simpliciter is punishable with imprisonment for a term not exceeding 3 years or with a fine or both while aggravated cheating offences under sections 418 to 420 of the Penal Code attract punishments of a term of imprisonment of up to 10 years, a fine, or both, depending on the particular provision.

  A. Falsification of Accounts

  Section 477A of the Penal Code provides that whoever, being a clerk, officer or servant, or employed or acting in the capacity of a clerk, officer or servant, would be guilty of an offence if he or she 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 in the possession of his employer, or has been received by him for or on behalf of his employer. A person acting in any of these capacities who abets the commission of the offence under section 477A would also be guilty of the offence.

  A person convicted under section 477A faces imprisonment of a term not exceeding 10 years, or a fine, or both.

  B. Forgery

  Another relevant offence is that of forgery, which is punishable under section 465 of the Penal Code with a term of imprisonment up to 4 years, or with a fine or both. Under this provision, a person would be guilty of forgery if he makes any false document or electronic record or any part of them, including accounting records, with the intention to cause damage or injury to the public or a person or with the intent to commit fraud or that fraud may be committed. Forgery for the purpose of cheating under section 468 of the Penal Code attracts a higher punishment of a term of imprisonment which may extend to 10 years, and also a fine.

  - Insider trading

  Sections 218 and 219 of the SFA prohibit persons who are either connected to the corporation or not so connected, having possession of Price Sensitive Information (“PSI”) concerning that corporation, and who knows that such information is not generally available, from subscribing for, purchasing, selling or entering into an agreement to subscribe for, purchase or sell such securities or procure another person to do the same.

  A rebuttable presumption arises for a connected person in possession of PSI that he or she knew the information was not generally available and if the information were generally available it might have a material effect on the price or value of securities of that corporation.

  It has been clearly articulated in the SFA that it is not necessary for the prosecution to prove that an accused person intended to use the price sensitive information in contravention of the SFA. Thus there
may be a technical contravention of the SFA as long as a person in possession of price sensitive information enters into a transaction on the shares of the company even though he did not intend to misuse such information for his own gain.

An offence under section 218 or 219 is punishable with a fine not exceeding $250,000 or a term of imprisonment not exceeding 7 years, or both.

- Embezzlement

Actions of embezzlement or criminal breach of trust ("CBT") are described under section 405 of the Penal Code, where property is entrusted with a person and is later dishonestly misappropriated or dishonestly converted to his own use.

CBT simpliciter is punishable under section 406 of the Penal Code with a term of imprisonment which may extend to 7 years, or with fine or with both.

Where an offender is a director of a company, a banker, public servant or an agent, he is usually prosecuted under section 409 of the Penal Code for CBT, which provides for a mandatory imprisonment term of life or up to 20 years and also a fine. As for employees of a company who commit an offence of CBT, such an offender is usually charged with section 408 of the Penal Code for CBT, which provides a mandatory imprisonment term of up to 15 years and also a fine.

- Bribery of government officials

Sections 5 (punishment for corrupt transactions) and 6 (punishment for corrupt transactions with agents) of the PCA are the main provisions prohibiting corruption in Singapore, whether in the private or public sectors.

There are two stages in assessing whether an offence of corruption has been committed under Singapore law. There must first be a corrupt element in the transaction according to the ordinary and objective standard, followed by the offender’s guilty knowledge that what he was doing was, by that standard, corrupt.

For corrupt transactions involving a government official, section 8 of the PCA provides that there is a presumption of corruption against the offender if it is proved in any legal proceedings that gratification has been paid to or received by a government official.

Offences under section 5 or 6 of the PCA are punishable with a fine not exceeding $100,000 or an imprisonment for a term of 5 years or both. Where the offender under either section 5 or 6 relate to a contract or a proposal for a contract with the Singapore government or public bodies, the offender is liable to a fine not exceeding $100,000 or to a term of imprisonment not exceeding 7 years.

Section 13 of the PCA also provides for penalties to be paid in addition to the punishment. The objective of imposing these penalties is to disgorge from the offender his ill-gotten gains from the corrupt transactions.

Chapter IX of the Penal Code also provides for offences relating to Government officials and public servants. It includes public servants taking gratification in respect of official acts or any person taking gratification in order to influence a public servant and a public servant taking a valuable thing without consideration.

- Criminal anti-competition

With respect to the anti-competition regime in Singapore, criminal offences only pertain to conduct that obstructs investigations on anti-competitive practices or the exercise of the CCS’ power of enforcement. These offences are found in Part V of the Competition Act (Cap. 50B) and include conducts such as the refusal to provide information or explanation of certain documents or refusal to produce documents, destroying or falsifying documents, providing false or misleading information to the officer of CCS during investigation and obstructing an officer of CCS authorised to act to assist CCS in discharging his duties under the Competition Act.

Except where a person wilfully refuses to give information or a document as required by the officer of CCS or fails to comply with the officer’s lawful demand in the discharge of his duties, the general penalty for offences under the Part V of the Competition Act is a fine not exceeding $10,000 or imprisonment for a term not exceeding 12 months, or both. In the case of the former, the offender would be liable to a fine not exceeding $5,000 or a term of imprisonment not exceeding 12 months, or both. Offences under the Competition Act or any subsidiary legislation made under it are also compoundable.

- Tax crimes

Offences relating to income tax are provided in Part XX of the Income Tax Act (Cap.134). There are offences for tax evasion and serious fraudulent tax evasion and each offence attracts a penalty of a fine or imprisonment, or both.

The tax evasion offence requires that the offender had an intention to evade or assist another person to evade tax by either omitting income that should be included in the return, making a false statement or entry in the return or any notice of assessment, giving a false answer to any question or request for information made or asked in accordance with the Income Tax Act or failing to comply with the requirements concerning the notice of assessment.

A person would be guilty of serious fraudulent tax evasion if he had the intention to evade tax by falsifying of books of accounts or other records or using fraudulent means generally.

Other offences in the Income Tax Act include the failure to make tax returns or making incorrect tax returns, which attract penalties of a fine or an imprisonment term in default.

The Goods and Service Tax Act (Cap. 117A) also provides for other tax-related offences.

- Government-contracting fraud

Generally, offences relating to fraud (whether against a private company/individual or against the Government) are prosecuted under the Penal Code as well as other relevant legislation such as the Companies Act (which includes an offence of fraud conducted by a company’s officer).

In addition to the generally applicable legislation, Chapter X of the Penal Code provides for offences committed against or with public servants. For example, an offence under section 177 for furnishing false information to public servants is punishable with a term of imprisonment not exceeding 3 years, or with fine, or with both.

- Any other crime of particular interest in Singapore

### A. Money-laundering-related offences

The Corruption, Drug Trafficking and Other Serious Crime (Confiscation of Benefits) Act (Cap. 65A) ("CDSA") makes money laundering an offence. The main offences under the CDSA include assisting another to retain benefits of drug trafficking or criminal conduct (sections 43 & 44); acquiring, possessing, using, concealing or transferring benefits of drug trafficking or criminal conduct (sections 46 & 47); tipping-off another person which effect is likely to prejudice the investigation or proposed investigation under the CDSA (section 48); and failure to disclose knowledge or suspicion that any property is connected to drug trafficking or criminal conduct (section 39).

The penalties for an offence under sections 43, 44, 46 and 47 of the CDSA is a fine not exceeding $500,000 or imprisonment not exceeding 7 years, or both if the offender is an individual or a fine not exceeding $1,000,000 if the offender is not an individual.
Tipping-off under section 48 of the CDSA is punishable with a fine not exceeding $30,000, or by imprisonment for a term not exceeding 3 years, or to both, whereas an offence under section 39 of the CDSA is punishable with a fine not exceeding $20,000.

B. Banking-related offences

Banking secrecy is provided for in Singapore’s Banking Act (Cap. 19). A breach of this banking secrecy by a bank or its officers is punishable as an offence under section 47(3) of the Banking Act with a fine not exceeding $125,000. The Banking Act also provides for other banking-related offences, including offences by directors, executive officers and agents of banks in regard to false and misleading information or book entries under sections 66 and 67.

In particular, a corporation can also be liable for insider trading by its officer’s possession in the course of performance of his duties to virtue of section 226(1) of the SFA which attributes information in the corporation for the purposes of an insider trading offence.

Generally, the test applied in determining whether a corporation should be liable for the conduct of its employee is whether the employee concerned was the “directing mind” of the corporation in respect of the conduct in question.

4.2 Is there personal liability for managers, officers, and directors if the entity becomes liable for a crime?

Managers, officers and directors may be personally liable depending on the degree of their involvement in causing the entity to commit the crime. For example, section 331 of the SFA provides that where an offence under the SFA committed by the corporation was attributable to the consent or connivance or neglect on the part of the officer or persons, both the officer and corporation shall be guilty of the offence.

Under section 408(3) of the Companies Act, an “officer who is in default” is guilty of an offence under the Companies Act if he is an officer of the corporation who is guilty of the offence or authorises or permits the commission of the offence.

There are also instances where the prosecution may decide to only prosecute the individuals and not the entity, even though the entity has also committed a crime.

4.3 Where there is entity liability and personal liability, do the authorities have a policy or preference as to when to pursue an entity, when to pursue an individual, or both?

The authorities have their internal policies but lawyers and the public are not aware how the authorities determine whether to pursue an entity, an individual or both for an offence where there is both entity and personal liability. However, it is observed that generally the authorities tend to focus on the individuals, especially if particular individuals can be identified for their role in the offence and if they play a significant role in the commission of the offence by the entity. This observation is reinforced by the fact that there are specific provisions for company liability in some cases but it is the officers in default who are usually pursued criminally.

5 Statutes of Limitations

5.1 How are enforcement-limitations periods calculated, and when does a limitations period begin running?

In Singapore, there is no enforcement-limitation period for criminal offences, unlike the limitation period governed by the Limitation Act that civil cases are subject to. However, the Court may take into consideration the delayed or protracted prosecution and/or enforcement as a factor in deciding the case.

5.2 Can crimes occurring outside the limitations period be prosecuted if they are part of a pattern or practice, or ongoing conspiracy?

This question is not applicable.

5.3 Can the limitations period be tolled? If so, how?

This question is not applicable.
6 Initiation of Investigations

6.1 How are investigations initiated? Are there any rules or guidelines governing the government’s initiation of any investigation? If so, please describe them.

Generally, the police may commence investigations when information relating to the commission of an offence is first received by them in a report from a police station. From the information in the report, the police can make arrest(s) (after obtaining a warrant of arrest issued by a court for non-arrestable offences) on the basis that there is reasonable suspicion of a commission of an offence and proceed with investigations from that point.

Additionally, investigations may also commence upon the lodgment of a Suspicious Transaction Report under section 39 of the CDSA filed by a person who has reasonable grounds to suspect that there is property which represents the proceeds of, or used in connection with, or was intended to be used in connection with drug trafficking or any criminal conduct (as defined in the CDSA).

Upon any of these events occurring, investigations may be initiated, subject to the discretion of the relevant enforcement authorities.

6.2 Do the criminal authorities have formal and/or informal mechanisms for cooperating with foreign prosecutors? Do they cooperate with foreign prosecutors?

Generally, the Mutual Assistance in Criminal Matters Act (Cap. 190A) sets out the framework for the provision and obtaining of international assistance in criminal matters. The type of assistance which Singapore authorities may offer or request from foreign authorities includes assistance in obtaining evidence, locating or identifying persons, arranging attendance of persons, or enforcing confiscation orders. Additionally, there may be extradition matters which come under the Extradition Act (Cap. 103).

Informally, the authorities do also interact with foreign prosecution especially where some cases require closer co-operation.

7 Procedures for Gathering Information from a Company

7.1 What powers does the government have generally to gather information when investigating business crimes?

Generally, the enforcement authorities are empowered to arrest, conduct a search and seizure of documents and property, including freezing bank accounts and compelling the attendance of witnesses and recording their statements in the course of investigating crimes. These powers are found in the CPC or certain enabling provisions in other legislations, such as section 18 of the PCA.

Unlike in other jurisdictions, Singapore does not provide for specific powers of the police to use wiretaps.

Document Gathering:

7.2 Under what circumstances can the government demand that a company under investigation produce documents to the government, and under what circumstances can the government raid a company under investigation and seize documents?

The government, through the enforcement agencies, rely on production orders which may be issued pursuant to the CPC. Under section 20(1) of the CPC a ‘person’ (which includes a company) may be ordered to produce documents if the police considers that the production of those documents are “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings”.

Under this section, any other items which are necessary or desirable for the purpose of investigation can also be compelled for production. The powers are very wide and rarely susceptible to challenge. The court also has similar powers conferred upon it under section 235 of the CPC to issue a summons to a person to produce documents or any other thing that is necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings.

Under section 35 of the CPC, the police may seize any property: (1) in respect of which an offence is suspected to have been committed; (2) which is suspected to have been used or intended to be used to commit and offence; or (3) which is suspected to constitute evidence of an offence. As to soft copy documents, the police also has power pursuant to section 39 of the CPC to access, inspect or check the operation of a computer that he has reasonable cause to suspect is or has been used in connection with an arrestable offence.

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does Singapore recognise any privileges protecting documents prepared by attorneys or communications with attorneys? Do Singapore’s labour laws protect personal documents of employees, even if located in company files?

There is no special protection for a company against a summons or order of court or police for the production of documents for investigation purposes. Protection is only afforded by the law against the production of such documents in the prosecution process if they are considered privileged (e.g. legal professional privilege).

In the same vein, the labour laws of Singapore do not provide additional protection in respect of production of personal documents of employees if there is a summons or order of court issued for their production.

7.4 Under what circumstances can the government demand that a company employee produce documents to the government, or raid the home or office of an employee and seize documents?

Generally, when the enforcement authority has a reasonable suspicion that an offence has been committed, the threshold for the issuance of a production order or a search warrant, or for seizure of documents is satisfied.

In addition to the power to order production of documents (sections 20 or 235 of the CPC), the court can issue a search warrant naming any person, to effect a search. Section 24 of the CPC provides for three situations when the court may issue a search warrant: (i) where the court has reason to believe that the person who has been or may be issued an order under section 20(1), requisition under section 20(3) or summons under section 235 under the CPC would not produce the document or other thing required; (ii) where it is not known who possesses that document or thing; or (iii) where the court considers that the purposes of justice or of any inquiry, trial or other proceedings under the CPC will be served by a general search or inspection.

The police are also empowered under section 35 of the CPC to seize any property in respect of which an offence is suspected to have been committed, which is suspected to have been used or intended to be used to commit an offence, or which is suspected to constitute evidence of an offence.
7.5 Under what circumstances can the government demand that a third person produce documents to the government, or raid the home or office of a third person and seize documents?

The investigative powers to search and seize documents and to compel the production of the documents are generally applicable to any person subject to the provisions of the CPC. A distinction in respect of investigative powers is not made in respect of third persons. However, when the police issue an order under section 20(1) of the CPC to a financial institution for the production of customer information, section 20(2) of the CPC requires that the order must only be made by a police officer of or above the rank of inspector. Further, the police has the power under section 20(2)(b) of the CPC to require the financial institution to monitor any account of a customer of the financial institution for a period of time and provide such information relating to the transactions carried out in the account during that period.

7.6 Under what circumstances can the government demand that an employee, officer, or director of a company under investigation submit to questioning? In what forum can the questioning take place?

This is statutorily provided for as well. Pursuant to section 21 of the CPC, a police officer conducting an investigation may require the attendance of a person in Singapore, who appears to be acquainted with any of the facts and circumstances of the case. If the person required to attend fails to do so, the police can report the said person to the Magistrate who can then issue a warrant to secure the attendance of the person. Subsequent to the person’s attendance before the police, the police are empowered to conduct an official interview, usually conducted at a police facility, in which a written statement pursuant to section 22 of the CPC may be taken from the said person as witness. The person is also obliged to sign the statement; a person who fails to do so faces an offence under section 180 of the Penal Code. Additionally, if a person refuses to answer a public servant authorised to question him, or gives false evidence to a public servant with intent to cause the latter to use his lawful power to the injury of another person, he could face prosecution under sections 179 and 182 of the Penal Code respectively.

7.7 Under what circumstances can the government demand that a third person submit to questioning? In what forum can the questioning take place?

A third person is also subject to section 21 of the CPC as a “witness” because of the wide scope of the provision.

7.8 What protections can a person being questioned by the government assert? Is there a right to refuse to answer the government’s questions? Is there a right to be represented by an attorney during questioning?

A person being questioned may asserted his privilege against self-incrimination as provided in section 22(2) of the CPC. Therefore, the person being questioned may refuse to answer the questions by the investigating authority. However, if an accused person being questioned fails to mention particular facts which he could reasonably be expected to answer, the trial court may draw adverse inferences against the accused person in determining whether the accused is guilty of an offence.

However, the privilege against self-incrimination does not apply in relation to corruption offences under the PCA. Save in the event that the person being questioned was arrested, there is no general right to counsel during questioning and investigations. Where a person is arrested, article 9(3) of the Constitution of Singapore provides that that person shall be allowed to consult and be defended by a legal practitioner of his choice. Nonetheless, the right to counsel is not triggered immediately upon arrest, but “within a reasonable time after arrest”. As such, in previous cases, the courts have balanced the need for efficient investigations with the arrested person’s right to counsel. In practice, the arrested persons are usually not allowed to be accompanied by legal counsel at the time of questioning.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal cases are initiated when an accused is formally charged in court after the conclusion of police investigations and the Public Prosecutor decides to proceed with prosecution in the Courts.

8.2 Are there any rules or guidelines governing the government’s decision to charge an entity or individual with a crime? If so, please describe them.

The decision whether to charge an entity or individual with a crime lies entirely in the Public Prosecutor’s unfettered discretion. Under Article 35(8) of the Constitution and section 11(1) of the CPC, the Public Prosecutor has the power to control all criminal prosecutions, including private prosecutions carried out by private persons. He also has the discretion to withdraw or amend the charges in the course of the prosecution.

8.3 Can a defendant and the government agree to resolve a criminal investigation through pretrial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution are available to dispose of criminal investigations.

While there are no formal rules or guidelines governing pre-trial diversion or deferred prosecution, it is an established practice in Singapore. For a defendant to submit a letter of representation to the Public Prosecutor to request for the discontinuation of ongoing investigation and/or reconsider the merits of preferring a charge against the defendant or reduce the gravity of the charge as part of the plea bargaining process. The decision whether to accede to the request in the letters of representation again lies in the discretion of the Public Prosecutor.

The plea bargaining process here does not involve the courts. However the Singapore courts have introduced a voluntary Criminal Case Resolution programme where a Senior District Judge functions as a neutral mediator facilitating the negotiation between the prosecution and defence with a view to parties reaching an amicable agreement. That Judge will not hear the case if the mediation is unsuccessful.
8.4 In addition to or instead of any criminal disposition to an investigation, can a defendant be subject to any civil penalties or remedies? If so, please describe the circumstances under which civil penalties or remedies are appropriate.

Yes, civil penalties may be available as an alternative to a criminal prosecution for offences under the SFA only. As discussed above, the MAS administers the civil penalty regime under the SFA.

In addition, a defendant can also be ordered to pay prosecution costs in some instances, as prescribed in section 335 of the CPC if the court is satisfied that the defence of the person was conducted in an extravagant and unnecessary manner.

Section 359(1) of the CPC confers on the court the power to order the defendant to pay compensation to the victim or to any person determined by the court. Under this section, the court is required to consider, after the conviction of a person, whether or not to make an order for compensation and if the court is of the view that it is appropriate to do so, it must make such an order.

On the flipside, if an accused is acquitted of any charge, and it is proved to the satisfaction of the court that the prosecution was frivolous or vexatious, the court can order (pursuant to section 359(3) of the CPC) the prosecution or the complainant or the person on whose information the prosecution was instituted to pay as compensation to the accused a sum not exceeding $10,000.

9 Burden of Proof

9.1 For each element of the business crimes identified above, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Unless provided otherwise in the legislation, the prosecuting party has the burden of proving the elements of the offence and the defendant has the burden of proving the affirmative defence.

9.2 What is the standard of proof that the party with the burden must satisfy?

The prosecuting party has the burden of proving the elements of the offence beyond a reasonable doubt.

9.3 In a criminal trial, who is the arbiter of fact? Who determines whether the party has satisfied its burden of proof?

The trial judge is the sole arbiter of fact and also has the authority to determine whether the respective burdens of proof have been discharged by the parties.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

Yes, subject to section 120A of the Penal Code, a person who conspires with another to commit a crime can be criminally liable and punishable under section 120B of the Penal Code. Criminal conspiracy is defined as two or more persons agreeing to do or causing to be done an illegal act or an act, which is not illegal, by illegal means. The material element in the offence of conspiracy is the agreement between the accused persons.

A person is said to have abetted if he instigated, conspired or aided in the commission of the offence and will be criminally liable for the same offence pursuant to section 109 of the Penal Code. For abetment, the accused must have intended that the person abetted carry out the offending conduct and known that such conduct is criminal. It is not necessary for the principal offence to have been committed before convicting a person of abetting in the commission of that principal offence.

In addition, section 34 of the Penal Code provides that if several persons act in furtherance of the common intention of all, each person is liable for that act as if the act were done by him alone.
mystery by fact, and not by reason of a mistake of law, believes himself to be bound by law to do it; and that of mistake of fact believing himself to be justified by law under section 79 of the Penal Code – that is, a person acted justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

12 Voluntary Disclosure Obligations

12.1 If a person becomes aware that a crime has been committed, must the person report the crime to the government? Can the person be liable for failing to report the crime to the government?

Section 424 of the CPC imposes a duty in limited circumstances to report on every person who is aware of the commission of or the intention of another person to commit certain specified arrestable offences. These offences include offences against the state and offences affecting the human body including death under suspicious circumstances. If triggered, section 424(1) of the CPC requires a person to make a report to a police officer at the nearest police station. It is notable that section 424 of the CPC does not include any of the major white collar criminal/property offences.

Further, as discussed above, section 39 of the CDSA makes it mandatory for a person in the course of his business or employment (including a company) to lodge a “suspicious transaction report” as long as he knows or has reasonable grounds to suspect that any property represents the proceeds of, or was or is intended to be used in connection with, an act which may constitute drug trafficking or criminal conduct. The scope of this provision includes major white collar criminal offences.

13 Cooperation Provisions / Leniency

13.1 If a person voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person, can the person request leniency from the government? If so, what rules or guidelines govern the government’s ability to offer leniency in exchange for voluntary disclosures or cooperation?

Yes, such a person who gives himself in to the authorities or cooperates in the criminal investigations may request for leniency from the prosecution. However in practice, this factor on its own is unlikely to convince the prosecution to exercise leniency in the matter. There is no legislation governing this aspect, and this is left to the discretion of the Public Prosecutor.

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in Singapore, and describe the favourable treatment generally received.

Entities which discover misconduct by its employees could take the initiative in reporting this to the enforcement agencies and provide full co-operation. Depending on the circumstances, the investigating authorities may look upon such conduct favourably and exercise leniency against the entity. Restitution, co-operation with the police and whistle-blowing are all relevant factors. In some cases where these factors are present, this could lead to a reprieve from prosecution.

14 Plea Bargaining

14.1 Can a defendant voluntarily decline to contest criminal charges in exchange for a conviction on reduced charges, or in exchange for an agreed upon sentence?

Yes, a defendant may voluntarily decline to contest criminal charges in exchange for the prosecution proceeding on reduced charges. This is of course subject to the prosecution’s sole discretion in deciding on the charges to proceed against an accused. However, there cannot be an agreement on sentence as such sentence to be imposed on the offender upon conviction is up to the Court’s discretion subject to the maximum prescribed punishment provided in law for the offence. This can be part of the plea bargaining process with the Public Prosecutor.

14.2 Please describe any rules or guidelines governing the government’s ability to plea bargain with a defendant. Must any aspects of the plea bargain be approved by the court?

There are no formal rules or guidelines governing the plea bargaining process. However, it is an established practice in Singapore for a defendant to submit letters of representation to the Public Prosecutor to appeal against their decision to proceed on the charge(s) against a defendant and/or to ask for a reduction or amendment of the charge(s).

The decision to accede to the request in the letters of representation lies in the unfettered discretion of the Public Prosecutor.

15 Elements of a Corporate Sentence

15.1 After the court determines that a defendant is guilty of a crime, are there any rules or guidelines governing the court’s imposition of sentence on the defendant? Please describe the sentencing process.

Yes, the Court is guided by statutory provisions which set out the maximum and/or stipulated punishment for the offence, as well as precedents from decided cases for the same offences committed in a similar manner. Courts generally adopt a form of benchmark as a guide and depart from it, depending on the facts of the case. Sometimes, the Public Prosecutor may ask the court to impose deterrent sentences.

15.2 Before imposing a sentence on a corporation, must the court determine whether the sentence satisfies any elements? If so, please describe those elements.

The primary objective of sentencing a corporation is deterrence. The justification of fulfilling the deterrence objective lies in the theory that a company engages in wrongful conduct as a calculated risk and is usually economically motivated. Therefore, a corporation can be deterred if such wrongful conduct represents a risk not worth taking.

However, this theory is balanced with the consideration that imposing overly onerous conditions on a corporation just to ensure compliance with regulatory provisions may cause corporations from reporting the wrongful conduct of the individuals responsible for steering the corporation.
16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Save for the situation where the defendant had pleaded guilty to the charge, the defendant or the prosecution may appeal to the High Court or Court of Appeal against the conviction or acquittal by the court after the conclusion of a trial within a period of 10 days.

16.2 Is a criminal sentence following a guilty verdict appealable? If so, which party may appeal?

The criminal sentence is appealable by either the defendant or the prosecution within 10 days of the judgment being given. This applies regardless of whether the defendant had pleaded guilty or was convicted after a trial.

16.3 What is the appellate court’s standard of review?

In considering the appeal against conviction, the appellate court has to determine whether the prosecution’s case has been proven beyond a reasonable doubt. The Singapore appellate courts are usually slow to interfere with the findings of facts of the trial court.

If the appellate court upholds the appeal against any other order, it can reduce or enhance the sentence or alter the nature of the sentence accordingly. If the appellate court upholds the appeal against sentence, it can reduce or enhance the sentence, and order a re-trial or further inquiry in the lower court or find the accused person guilty and impose a sentence.

If the appellate court upholds the appeal against conviction of the accused, the appellate court can reverse the finding of guilt and acquit the accused or order a re-trial. Alternatively, the appellate court can alter the finding or amend the charge and maintain the sentence or, with or without altering the finding, enhance or reduce the sentence. Also, the appellate court can, with or without reducing or enhancing sentence, and with or without altering the finding, alter the nature of the sentence.

If the appellate court upholds the appeal against sentence, it can reduce or enhance the sentence or alter the nature of the sentence accordingly.

If the appellate court upholds the appeal against any other order, it can alter or reverse the order accordingly.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If the appellate court upholds the appeal against the acquittal of the accused, the appellate court can either reverse the order of acquittal and order a re-trial or further inquiry in the lower court or find the accused person guilty and impose a sentence.

If the appellate court upholds the appeal against conviction of the accused, the appellate court can reverse the finding of guilt and acquit the accused or order a re-trial. Alternatively, the appellate court can alter the finding or amend the charge and maintain the sentence or, with or without altering the finding, enhance or reduce the sentence. Also, the appellate court can, with or without reducing or enhancing sentence, and with or without altering the finding, alter the nature of the sentence.

If the appellate court upholds the appeal against sentence, it can reduce or enhance the sentence or alter the nature of the sentence accordingly.

If the appellate court upholds the appeal against any other order, it can alter or reverse the order accordingly.

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Senior Counsel Andre Yeap, Senior Partner of Rajah & Tann LLP, has spearheaded numerous high-profile fraud, securities and white collar business crime cases, often involving bribery and corruption, as well as its impact in relation to underlying contracts not only in Court proceedings, but also in international arbitrations. Andre acted for one of the world’s largest disk-drivers producers in a claim where certain employees fraudulently hijacked ownership of their Dubai and Singapore operations and utilised their assets to create a new billion dollar enterprise.

Based on fraud against various shareholders, he lifted the double corporate veils of Cyprus and Singapore entities to restrain a Singapore company and its Cyprus parent from effecting repayment of US$180 million pursuant to certain equity leveraged loan securities.

Andre also represented the accused in one of Singapore’s most highly publicised white collar crimes relating to a charitable institution.

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As a former Senior State Counsel / Deputy Public Prosecutor of the Criminal Justice Division, Attorney-General’s Chambers and former Head Legal of the Commercial Affairs Department, Haq’s presence has bolstered Rajah & Tann LLP’s strength and dominance in the legal circle, particularly in the area of securities, business crimes, fraud and commercial litigation practice.

As well as representing clients who face criminal prosecution in court, Haq frequently advises companies, including several MNCs and banks on matters relating to forensic investigations, corporate governance and regulatory compliance. He also advises several companies and directors on issues relating to securities offences, anti-corruption, anti-money laundering and disclosure obligations.

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