

# ANTI-CORRUPTION REGULATION

## Singapore



# Anti-Corruption Regulation

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights, including into relevant domestic and international law, agencies, enforcement and sanctions; recent landmark investigations and decisions; and other recent trends.

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## Table of contents

### RELEVANT INTERNATIONAL AND DOMESTIC LAW

International anti-corruption conventions

Foreign and domestic bribery laws

Successor liability

Civil and criminal enforcement

Out-of-court disposal and leniency

### FOREIGN BRIBERY

Legal framework

Definition of a foreign public official

Gifts, travel and entertainment

Facilitating payments

Payments through intermediaries or third parties

Individual and corporate liability

Private commercial bribery

Defences

Agency enforcement

Patterns in enforcement

Prosecution of foreign companies

Sanctions

Recent decisions and investigations

### FINANCIAL RECORD-KEEPING AND REPORTING

Laws and regulations

Disclosure of violations or irregularities

Prosecution under financial record-keeping legislation

Sanctions for accounting violations

Tax-deductibility of domestic or foreign bribes

### DOMESTIC BRIBERY

Legal framework

Scope of prohibitions

Definition of a domestic public official

Gifts, travel and entertainment

**Facilitating payments**

**Public official participation in commercial activities**

**Payments through intermediaries or third parties**

**Individual and corporate liability**

**Private commercial bribery**

**Defences**

**Agency enforcement**

**Patterns in enforcement**

**Prosecution of foreign companies**

**Sanctions**

**Recent decisions and investigations**

**UPDATE AND TRENDS**

**Key developments of the past year**

**LAW STATED DATE**

**Correct on**

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## RELEVANT INTERNATIONAL AND DOMESTIC LAW

### International anti-corruption conventions

To which international anti-corruption conventions is your country a signatory?

Singapore became a signatory to the United Nations Convention against Corruption on 11 November 2005 (ratified on 6 November 2009) and to the United Nations Convention against Transnational Organized Crime on 13 December 2000 (ratified on 28 August 2007).

Singapore has been a member of the Financial Action Task Force since 1992, was one of the founding members of the Asia-Pacific Group on Money-Laundering in 1997, and was admitted as a member of the Egmont Group of Financial Intelligence Units in 2002. Singapore is also a member of the Asia Development Bank's and Organisation for Economic Cooperation and Development's joint Anti-Corruption Initiative for Asia and the Pacific, which it endorsed on 30 December 2001.

*Law stated - 08 December 2021*

### Foreign and domestic bribery laws

Identify and describe your national laws and regulations prohibiting bribery of foreign public officials (foreign bribery laws) and domestic public officials (domestic bribery laws).

The primary Singapore statutes prohibiting bribery are the Prevention of Corruption Act (PCA) (Cap 241, 1993 Rev Ed) and the Penal Code (Cap 224, 2008 Rev Ed).

Sections 5 and 6 of the PCA prohibit bribery in general. Section 5 makes active and passive bribery by individuals and companies in the public and private sectors an offence. Section 6 makes it an offence for an agent to be corruptly offered or to corruptly accept gratification in relation to the performance of a principal's affairs or for the purpose of misleading a principal. The term 'gratification' is interpreted broadly. Sections 11 and 12 of the PCA prohibit the bribery of domestic public officials, such as members of parliament and members of a public body. A public body is defined as:

[A]ny corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law.

The Singapore Interpretation Act defines the term 'public officer' as 'the holder of any office of emolument in the service of the [Singapore] Government'.

The PCA does not specifically target bribery of foreign public officials, but such bribery could fall under the ambit of the general prohibitions, namely section 6 on corrupt transactions with agents.

The Penal Code also contains provisions that relate to the bribery of public officials (sections 161 to 165). Public officials are referred to in the Penal Code as 'public servants', which have been defined in the Penal Code to include mainly domestic public officials.

Sections 161 to 165 describe the following scenarios as constituting bribery:

- a public servant taking a gratification, other than legal remuneration, in respect of an official act;
- a person taking a gratification to influence a public servant by corrupt or illegal means;
- a person taking a gratification for exercising personal influence over a public servant;
- abetment by a public servant of the above offences; and

- a public servant obtaining anything of value, without consideration or with consideration the public servant knows to be inadequate, from a person concerned in any proceedings or business conducted by such public servant.

In addition to the above, the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) (Cap 65A, 2000 Rev Ed) – Singapore’s key anti-money laundering statute – provides for the confiscation of benefits derived from corruption and other criminal conduct.

*Law stated - 08 December 2021*

### **Successor liability**

Can a successor entity be held liable for violations of foreign and domestic bribery laws by the target entity that occurred prior to the merger or acquisition?

In a situation where the acquiring entity purchases shares in the target entity, the acquiring entity is not legally liable for acts of bribery by the target entity that occurred prior to the merger or acquisition. This is because of the common law doctrine of separate legal personality. Likewise, there is no change to the legal liability or otherwise of the target entity following the change of identity of its shareholder or shareholders.

Subsequent to the acquisition, the commercial value of the target entity sought by the acquiring entity may be adversely affected in the event that the target entity is investigated, prosecuted or ultimately held liable for acts of bribery that occurred prior to the acquisition. The target entity may be liable for investigation costs, suffer business disruptions and loss of revenue and may have to bear financial penalties or debarment consequences. These may adversely impact the value of the shares in the target entity, which are owned by the acquiring entity.

*Law stated - 08 December 2021*

### **Civil and criminal enforcement**

Is there civil and criminal enforcement of your country’s foreign and domestic bribery laws?

Yes, criminal enforcement against corrupt activities is provided for in both the PCA and the Penal Code. In particular, if the court rules that there has been a violation of the general prohibitions on bribery in the PCA, a penalty of a fine, imprisonment or both will be imposed on the offender. The offender may also have to pay the quantum of the bribe received.

With regard to civil enforcement, a victim of corruption will be able to bring a civil action to recover the property of which it has been deprived. Section 14 of the PCA expressly provides that, where gratification has been given to an agent, the principal may recover, as a civil debt, the amount or the money value thereof either from the agent or the person paying the bribe. This provision is without prejudice to any other right and remedy that the principal may have to recover from his agent any money or property. The objective of imposing this additional penalty is to disgorge the offender’s proceeds from the corrupt transaction.

*Law stated - 08 December 2021*

### **Out-of-court disposal and leniency**

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

## exchange for lesser penalties?

In March 2013, the Attorney General's Chambers (AGC) and the Law Society issued the Code of Practice for the Conduct of Criminal Proceedings by the Prosecution and Defence, which is a joint code of practice that sets out the duties of prosecutors and lawyers during criminal trials and deals with various matters including plea bargaining. The Criminal Justice Reform Act was passed by Parliament on 19 March 2018 and came into force on 31 October 2018, amending the Criminal Procedure Code (CPC) to introduce Deferred Prosecution Agreements (DPAs) into Singapore's criminal justice framework. Under a DPA, the prosecution can agree not to prosecute a corporation in exchange for strict compliance with certain conditions, which may include implementing adequate compliance procedures or remediation efforts. Self-disclosure of violations is likely a factor the public prosecutor will consider when deciding whether to enter into a DPA with a company to resolve corporate misconduct under the DPA regime.

In December 2017, a Singapore-based shipbuilding company was issued a 'conditional warning' by Singapore's Corrupt Practices Investigation Bureau (CPIB) as part of its global resolution with the US Department of Justice (US DOJ), Brazilian and Singapore authorities. In announcing the resolution, the CPIB and AGC stated that in issuing the 'conditional warning', due consideration was given to the company for self-reporting to CPIB and AGC the corrupt payments that had been made.

On the mechanism for companies to disclose violations of domestic and foreign bribery laws in exchange for lesser penalties, the PCA and the Penal Code do not expressly provide a formal mechanism for companies to disclose violations of bribery laws in exchange for leniency.

*Law stated - 08 December 2021*

## FOREIGN BRIBERY

### Legal framework

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

There are no provisions in the Prevention of Corruption Act (PCA) or the Penal Code that specifically prohibit bribery of a foreign public official. However, the general prohibition against bribery in the PCA, in particular on corrupt transactions with agents, read together with section 37 of the PCA, prohibits, in effect, the bribery of a foreign public official outside Singapore by a Singaporean citizen.

Section 37 of the PCA gives the anti-corruption legislation extraterritorial effect, because if the act of bribery takes place outside Singapore and the bribe is carried out by a Singaporean citizen, section 37 of the PCA states that the offender would be dealt with as if the bribe had taken place in Singapore.

Under section 5 of the PCA, it is an offence for a person (whether by himself or herself, or in conjunction with any other person) to:

- corruptly solicit, receive, or agree to receive for himself, herself or any other person; or
- corruptly give, promise, or offer to any person, whether for the benefit of that person or of another person, any gratification as an inducement to or reward for, or otherwise on account of:
  - any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
  - any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned.



It is also an offence under section 6 of the PCA for:

- an agent to corruptly accept or obtain any gratification as an inducement or reward for doing or forbearing to do any act in relation to his or her principal's affairs;
- a person to corruptly give or offer any gratification to an agent as an inducement or reward for doing or forbearing to do any act in relation to his or her principal's affairs; or
- a person to knowingly give to an agent a false or erroneous or defective statement, or an agent to knowingly use such statement, to deceive his or her principal.

Section 4 of the Penal Code also creates extraterritorial obligations for all public servants of Singapore and states that any act or omission committed by a public servant outside of Singapore in the course of his or her employment would constitute an offence in Singapore and will be deemed to have been committed in Singapore. Accordingly, if the public servant accepted a bribe overseas, he or she would be liable under Singapore law.

*Law stated - 08 December 2021*

### **Definition of a foreign public official**

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

As the PCA and the Penal Code do not specifically deal with the bribery of a foreign public official, the statutes do not define this term.

*Law stated - 08 December 2021*

### **Gifts, travel and entertainment**

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

There are no express restrictions in the PCA or Penal Code on providing foreign officials with gifts, travel expenses, meals or entertainment. However, any gift, travel expense, meal or entertainment provided with the requisite corrupt intent will fall foul of the general prohibition under the PCA, and would constitute an offence.

The PCA prohibits (among other things), the offer or provision of any 'gratification' if accompanied with the requisite corrupt intent. The term 'gratification' is broadly defined under the PCA to include:

- money;
- gifts;
- loans;
- fees;
- rewards;
- commissions;
- valuable security;
- property;
- interest in property;
- employment contract or services or any part or full payment;
- release from or discharge of any obligation or other liability; and

- any other service, favour or advantage of any description whatsoever (see *Public Prosecutor v Teo Chu Ha* [2014] SGCA 45).

Under the Penal Code, the term 'gratification' is used but not expressly defined. The explanatory notes to the relevant section stipulate that the term is not restricted to pecuniary gratifications or those with monetary value.

Singapore's courts have also held that questionable payments made pursuant to industry norms or business customs will not constitute a defence to any prosecution brought under the PCA (see *Public Prosecutor v Soh Cham Hong* [2012] SGDC 42) and any evidence pertaining to such customs will be inadmissible in any criminal or civil proceedings under section 23 of the PCA (see *Chan Wing Seng v Public Prosecutor* [1997] 1 SLR(R) 721).

*Law stated - 08 December 2021*

### **Facilitating payments**

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

Neither the PCA nor the Penal Code expressly permits facilitating or 'grease' payments. This prohibition also applies to foreign officials. Such payments would technically constitute an act of bribery under the general prohibitions of both the PCA and the Penal Code. Notably, section 12(a)(ii) of the PCA prohibits the offer of any gratification to any member of a public body as an inducement or reward for the member's 'expediting' of any official act, among other prohibited acts.

*Law stated - 08 December 2021*

### **Payments through intermediaries or third parties**

**In what circumstances do the laws prohibit payments through intermediaries or third parties to foreign public officials?**

Corrupt payments through intermediaries or third parties, whether such payments are made to foreign public officials or to other persons, are prohibited. Section 5 of the PCA expressly provides that a person can commit the offence of bribery either 'by himself or by or in conjunction with any other person'.

*Law stated - 08 December 2021*

### **Individual and corporate liability**

**Can both individuals and companies be held liable for bribery of a foreign official?**

Both individuals and companies can be held liable for bribery offences, including bribery of a foreign official. The various provisions in the PCA and Penal Code set out certain offences that may be committed by a 'person' if such person were to engage in certain corrupt behaviour. The term 'person' is defined in the Singapore Interpretation Act to include 'any company or association of body of persons, corporate or unincorporated'.

In addition, Singapore case law indicates that corporate liability can be imposed on companies for crimes committed by their employees, agents, etc (see *Tom Reck Security Services Pte Ltd v Public Prosecutor* [2001] 2 SLR 70). A test for establishing corporate liability is whether the individual who committed the crime can be regarded as the 'embodiment of the company' or whose acts 'are within the scope of the function of management properly delegated to him'. This test, known as the 'identification doctrine', was derived from English case law (*Tesco Supermarkets Ltd v*

Nattrass [1971] 2 All ER 127). It was subsequently broadened in the Privy Council case of Meridian Global Funds Management Asia Ltd v Securities Commission [1995] 2 AC 500, which held that the test for attributing mental intent should depend on the purpose of the provision creating the relevant offence. This broader approach has been affirmed in Singapore ( The Dolphina [2012] 1 SLR 992) in a case involving shipping and conspiracy but not in the context of bribery offences.

However, the test for corporate liability is different in relation to money-laundering offences. Section 52 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) introduces a lower threshold of proof for corporate liability. It provides that where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged by the body corporate it shall be sufficient to show that a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, had that state of mind. Likewise, any conduct engaged in or on behalf of a body corporate by a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, or by any other person at the direction or with the consent or agreement of the above, shall be deemed, for the purposes of the CDSA, to have been engaged in by the body corporate.

Generally, individual directors and officers of a company will not be held strictly liable for offences found to have been committed by the company if they were not personally responsible for, or otherwise involved in, that particular offence. However, section 59 of the CDSA provides that where an offence under the CDSA committed by a body corporate is proved to have been committed with the consent or connivance of an officer or to be attributable to any neglect on his or her part, the officer as well as the body corporate shall be guilty of the offence. It is also possible that an individual such as a director or officer of a company, although not personally guilty of committing a corrupt act, may be held liable for consequential offences including money-laundering or failure to report a suspicion that certain property or the transfer of assets was connected to criminal conduct. In addition, individual directors who ignore red flags of criminal misconduct committed by employees of the company may also find themselves liable for failing to use reasonable diligence in performing their duties under the Companies Act (Cap 50, 2006 Rev Ed). A former president of a shipyard was recently prosecuted for this infraction.

Ultimately, the decision on whether to pursue an individual or a corporate entity for criminal conduct is a matter of prosecutorial discretion. In this regard, an opinion-editorial written by Singapore's then Attorney-General, Mr VK Rajah SC, in November 2015 sheds some light on Singapore's approach on such matters. In his opinion-editorial, Mr Rajah stated that in Singapore both individuals and corporate entities should expect prompt enforcement action for financial misconduct. However, he pointed out that, '[t]he emphasis, if there is one, is placed on holding accountable the individuals who perpetuated the misconduct'. In addition, he stressed that 'significant attention is also given to the culpability of corporations . . . especially if the offending conduct is institutionalised and developed into an established practice in an entity over time'.

In August 2018, the Penal Code Review Committee released its report setting out its recommendations on reforming the Penal Code. Among other things, the Committee considered the current rules on corporate liability under Singapore law and recommended that the government study the adequacy of the current rules and consider reform if necessary.

*Law stated - 08 December 2021*

## Private commercial bribery

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

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

*Law stated - 08 December 2021*

## Defences

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

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

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

*Law stated - 08 December 2021*

## Agency enforcement

### What government agencies enforce the foreign bribery laws and regulations?

The main government agency that enforces bribery laws in Singapore is the Corrupt Practices Investigation Bureau (CPIB). The CPIB derives its powers from the PCA and is responsible for investigating and preventing corruption in Singapore, focusing on corruption-related offences arising under the PCA and the Penal Code.

Under the PCA, the CPIB has extensive powers of investigation, which include powers to require the attendance of witnesses for interview, to investigate a suspect's financial and other records and the power to investigate any other seizable offence disclosed in the course of a corruption investigation. Seizable offences are also known as 'arrestable offences' (ie, offences where the persons committing the offences can be arrested without a warrant of arrest). Special investigative powers can be granted by the public prosecutor, such as the power to investigate any bank account, share account, purchase account, expense account or any other form of account or safe deposit box and to require the disclosure of all information, documents or articles required by the officers.

The CPIB carries out investigations into complaints of corruption but does not prosecute cases itself. It refers the cases, where appropriate, to the public prosecutor for prosecution. The PCA provides that no prosecution under the PCA shall be instituted except by or with the consent of the public prosecutor.

The Commercial Affairs Department (CAD) is the principal white-collar crime investigation agency in Singapore. CAD investigates complex fraud, white-collar crime, money laundering and terrorism financing. CAD's Financial Investigation Division is specially empowered to combat money laundering, terrorism financing and fraud involving employees of financial institutions in Singapore and works closely with financial institutions, government agencies and its foreign counterparts. In January 2019, the Criminal Justice Division and Financial and Technology Crime Division were merged into a single Crime Division within the AGC to bring the prosecution of all criminal offences under a single division's purview. However, there remain specialist prosecution teams within the reorganised Crime Division who specialise in the enforcement, prosecution and all related appeals in respect of financial crimes and corruption cases within and outside of Singapore.

The Monetary Authority of Singapore (MAS) is responsible for issuing guidelines on money laundering and terrorist financing to financial institutions and conducting regulatory investigations on such matters. The MAS may also refer potential criminal offences to CAD for further investigation. In this regard, in 2015, MAS and CAD embarked on an initiative to jointly investigate market misconduct offences under the Securities and Futures Act (Cap 289, 2006 Rev Ed). The MAS has also forged a closer relationship with the CPIB. Enforcement actions by the MAS have resulted in nine criminal convictions and S\$11.7 million in civil penalties in the 18 months leading up to June 2020. The MAS has also imposed S\$3.3 million in composition penalties for money laundering-related control breaches.

*Law stated - 08 December 2021*

## Patterns in enforcement

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

Significantly, in January 2015, Singapore's prime minister announced that the capabilities and manpower of the CPIB were to be strengthened by more than 20 per cent, as corruption cases had become more complex, with some having international links.

The Mutual Assistance in Criminal Matters Act was revised in July 2014 to improve Singapore's ability to provide mutual legal assistance to other countries and demonstrates a commitment to cross-border cooperation. The amendments primarily ease requirements that foreign countries would need to satisfy to make requests for legal assistance and widen the scope of mutual legal assistance that Singapore can provide. In a related development, on 5 July 2017, the CPIB joined its counterparts from Australia, Canada, New Zealand, the United Kingdom and the United States in launching the International Anti-Corruption Cooperation Centre (IACCC). The IACCC will be hosted by the UK National Crime Agency in London until 2021. The IACCC aims to coordinate law enforcement action against global grand corruption. The CPIB has announced that it will be sending an officer to serve at the IACCC. Singapore's participation in the IACCC is likely to result in Singaporean authorities taking a more proactive role in investigating foreign bribery cases with Singaporean links.

On 1 April 2019, the Serious Crimes and Counter-Terrorism (Miscellaneous Amendments) Act (the SCCT Act) came into force, which among other things, enhances the ability of Singapore authorities to share financial intelligence with Financial Intelligence Units (FIUs) overseas. In this regard, the SCCT Act has amended the CDSA by allowing Singapore authorities to share information with FIUs overseas under an international arrangement (as opposed to sharing intelligence with countries with which Singapore has a bilateral arrangement), provided that there are safeguards to protect the confidentiality of information shared and control their use. Consequently, Singapore would be able to exchange financial intelligence with more than 150 FIUs of overseas jurisdictions that have endorsed the Egmont Charter and Principles for Information Exchange (which is an international arrangement to enhance cooperation between FIUs).

In addition, the SCCT Act also introduced a new section 47AA to the CDSA that criminalises the possession or use, by an accused person, of property that would be suspected by a reasonable person of being benefits from criminal conduct, if the accused person cannot satisfactorily explain how he or she came by the property. This new offence would significantly bolster Singapore's ability to combat grand corruption and foreign bribery, by allowing the authorities to prosecute the laundering of criminal proceeds from such illegal conduct through Singapore.

There is a trend of law enforcement agencies using anti-money laundering laws and falsification of accounts provisions (section 477A of the Penal Code) to prosecute foreign bribery cases. This is because it may be difficult to prove the predicate bribery offences in such cases, owing to the fact that key witnesses are often located overseas.

*Law stated - 08 December 2021*

## Prosecution of foreign companies

In what circumstances can foreign companies be prosecuted for foreign bribery?

Under the general offences of the PCA, foreign companies can be prosecuted for the bribery of a foreign public official if the acts of bribery are committed in Singapore. In addition, section 29 of the PCA read together with section 108A of the Penal Code allows foreign companies to be prosecuted for bribery that was substantively carried out overseas, if the aiding and abetment of such bribery took place in Singapore.

*Law stated - 08 December 2021*

## Sanctions

### What are the sanctions for individuals and companies violating the foreign bribery rules?

The PCA provides for a fine, a custodial sentence, or both for the contravention of the general anti-corruption provisions under sections 5 and 6 (which include the bribery of foreign public officials in Singapore, and the bribery of foreign public officials overseas by a Singaporean citizen when read with section 37). The guilty individual or company may be liable to a fine not exceeding S\$100,000 or imprisonment for a term not exceeding five years, if appropriate.

Where the offence involves a government contract or bribery of a member of parliament, the maximum custodial sentence has been extended to seven years. There are also civil remedies and penalties for the restitution of property pursuant to the PCA. A person convicted of an offence of bribery under the Penal Code may be sentenced to a fine and a custodial sentence of up to three years.

There are other statutes imposing sanctions on the guilty individuals or companies. For example, under the CDSA, where a defendant is convicted of a 'serious offence' (which includes bribery), the court has the power, under section 4, to make a confiscation order against the defendant in respect of benefits derived by him or her from criminal conduct. Under the Companies Act, a director convicted of bribery offences may be disqualified from acting as a director.

*Law stated - 08 December 2021*

## Recent decisions and investigations

### Identify and summarise recent landmark decisions or investigations involving foreign bribery.

In December 2017, a Singapore-based company in the shipbuilding industry entered into a global resolution led by the US DOJ in connection with corrupt payments made to officials of a Brazilian state-owned enterprise, Petroleo Brasileiro SA (Petrobras), and other parties, to win contracts with Petrobras or its related companies. The company concealed these corrupt payments by paying commissions to an intermediary, under the guise of legitimate consulting agreements, who then made payments for the benefit of officials of Petrobras and other parties. Under the terms of the global resolution, the company entered into a DPA with the US DOJ and agreed to pay total criminal penalties amounting to US\$422.2 million to the United States, Brazil and Singapore.

In Singapore, the company received a 'conditional warning' from the CPIB for corruption offences under section 5(1)(b) (i) of the PCA and committed to certain undertakings under the 'conditional warning', including an undertaking to pay US\$105.55 million to Singapore as part of the total criminal penalties imposed pursuant to the global resolution.

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

In July 2018, a Singaporean woman, Sharon Rachael Gursharan Kaur, was sentenced to an imprisonment term of 33 months for her involvement in the largest bribery and fraud conspiracy in the history of the United States Navy. As a lead contract specialist employed by the US Navy, Kaur received more than SG\$130,000 in cash and luxury vacations for leaking confidential information to a Malaysian defence contractor, Leonard Glenn Francis. The case – known as the 'Fat Leonard scandal' – involved Francis bribing US Navy personnel so that they would provide him with inside



information enabling his company in Singapore to secure lucrative contracts and overcharge for goods and services, defrauding the US Navy of about US\$35 million. Kaur leaked information linked to 16 US Navy contracts to Francis, of which 11 contracts worth a total of approximately US\$48 million were awarded to his company. The information she provided included pricing strategies, price information of competitors and questions that were posed by the contracts review board to these competitors. On appeal by the Prosecution, the High Court increased Kaur's imprisonment term to 40 months. The High Court considered that such cases threaten Singapore's international reputation for incorruptibility and run contrary to Singapore's obligations and efforts to combat transnational corruption. Further, although Kaur argued that she was merely a civilian employee of the US Navy, and thus not a public official, officer or servant in the Singapore context, the High Court found nevertheless that there was the aggravating factor of corruption of a foreign public official. The High Court held that the involvement of a person in the employment of a foreign government constitutes foreign public sector corruption, and it did not matter that the person was a civilian employee, as opposed to one in uniformed service.

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

Under this 'conditional warning', the bank's Singapore subsidiary would also be required to cooperate with the CAD in its investigations related to the investment fund and comply with the terms of the DPA. The DPA further required the Singapore subsidiary to disgorge the sum of US\$61 million – a fee representing what had been earned by the subsidiary from the bond offerings – to the Malaysian authorities. In a related matter, the MAS ordered the bank's Singapore subsidiary to appoint an independent external party to conduct a review of its remedial measures.

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

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

**FINANCIAL RECORD-KEEPING AND REPORTING****Laws and regulations**

What legal rules require accurate corporate books and records, effective internal company controls, periodic financial statements or external auditing?

The Companies Act is the main statute that regulates the conduct of Singapore-incorporated companies. Among other things, the Companies Act requires the keeping of proper corporate books and records that:

- sufficiently explain the transactions and financial position of the company;
- contain true and fair profit and loss accounts and balance sheets for a period of at least five years;
- allow for the appointment of external auditors; and
- include the filing of annual returns.

The Act was amended in October 2014 to reduce the regulatory burden on companies, provide for greater business flexibility and improve corporate governance. Amendments include revised requirements for audit exemptions, inclusion of a requirement that CEOs disclose conflicts of interest and the removal of the requirement that private companies keep a register of members.

Apart from the requirements set out under the Companies Act, section 477A of the Penal Code also criminalises the falsification of a company's accounts by a clerk or a servant of the company with intent to defraud.

Singapore-listed companies are also subject to stringent disclosure, auditing and compliance requirements as provided by:

- the Securities and Futures Act;
- the Singapore Exchange Limited (SGX) Listing Rules;
- the Code of Corporate Governance; and
- other relevant rules.

The SGX Listing Rules state that a company's board 'must provide an opinion on the adequacy of internal controls'. The Code of Corporate Governance provides that the board 'must comment on the adequacy and effectiveness of risk management and internal control system'.

Companies that do not comply with the laws and regulations may be investigated by CAD, the Accounting and Regulatory Authority of Singapore or other regulatory bodies.

Law stated - 08 December 2021

**Disclosure of violations or irregularities**

To what extent must companies disclose violations of anti-bribery laws or associated accounting irregularities?

Section 39 of the CDSA imposes reporting obligations on persons who know or have reasonable grounds to suspect that there is property that represents the proceeds of, or that was used or was intended to be used in connection with



criminal conduct. Criminal conduct includes acts of bribery (which potentially extends to acts of bribery overseas) and falsification of accounts under section 477A of the Penal Code. A breach of these reporting obligations attracts a fine of up to S\$20,000. The penalties for an offence under section 39 of the CDSA have been enhanced with the SCCT Act. An individual convicted of an offence under section 39 of the CDSA will be liable to a fine of S\$250,000 or a term of imprisonment not exceeding three years if the offender is an individual, or to both, and for corporations convicted of such an offence, a fine not exceeding S\$500,000.

Section 424 of the CPC also imposes reporting obligations on every person aware of the commission of or the intention of any other person to commit most of the corruption crimes (relating to bribery of domestic public officials) set out in the Penal Code.

Section 69 of the CPC allows the police to conduct a formal criminal discovery exercise during the course of corruption investigations, empowering them to search for documents and access computer records.

Apart from these express reporting and disclosure obligations under the CDSA and the CPC, the requirements pursuant to the Companies Act, Securities and Futures Act, Listing Rules, and regulations and guidelines issued by MAS may also impose obligations on a company or financial institution to disclose corrupt activities and associated accounting irregularities.

On 6 August 2018, MAS issued a revised Code of Corporate Governance, which, in conjunction with the Listing Rules, sets out a number of obligations that listed companies are expected to observe. This version of the Code retains the stringent requirements introduced in 2012, relating to the role and composition of the board of directors (Principles 1 and 2), risk management and internal controls (Principle 9) and the need to have an adequate whistle-blowing policy in place (Principle 10). The revised Code now places a greater emphasis on the need to have well-rounded and competent boards with diverse perspectives by imposing further conditions to strengthen director independence and to enhance board composition and diversity. The revised Code also imposes requirements to enhance shareholder engagement and to encourage transparent remuneration practices. Even though the revised Code has newer areas of emphasis, it is actually now streamlined with a net reduction of three Principles and 31 Provisions, and demonstrates a move towards being more concise and less prescriptive, so as to encourage thoughtful application and to move away from a box-ticking mindset. The Listing Rules require listed companies to disclose, in their annual reports, a board commentary assessing the companies' internal control and risk management systems.

*Law stated - 08 December 2021*

## **Prosecution under financial record-keeping legislation**

Are such laws used to prosecute domestic or foreign bribery?

No. The laws primarily used to prosecute domestic or foreign bribery are the PCA and the Penal Code.

*Law stated - 08 December 2021*

## **Sanctions for accounting violations**

What are the sanctions for violations of the accounting rules associated with the payment of bribes?

Falsifying accounts to facilitate the payment of bribes is a violation of section 477A of the Penal Code. The penalty for violating section 477A of the Penal Code is imprisonment for a term of up to 10 years, or a fine, or a combination of both.

Apart from section 477A, sanctions for violations of the laws and regulations relating to proper account keeping,

auditing, etc, include fines and terms of imprisonment. The amount of any fine and length of imprisonment will depend on the specific violation in question. Liability may be imposed on the company, directors of the company and other officers of the company.

*Law stated - 08 December 2021*

## **Tax-deductibility of domestic or foreign bribes**

**Do your country's tax laws prohibit the deductibility of domestic or foreign bribes?**

Tax deduction for bribes (whether domestic or foreign bribes) is not permitted. Bribery is an offence under the PCA and the Penal Code.

*Law stated - 08 December 2021*

## **DOMESTIC BRIBERY**

### **Legal framework**

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

The general prohibition on bribery in the Prevention of Corruption Act (PCA) specifically states, at section 5, that it is illegal to bribe a domestic public official.

Where it can be proved that gratification has been paid or given to a domestic public official, section 8 provides for a rebuttable presumption that such gratification was paid or given corruptly as an inducement or reward. The burden of proof in rebutting the presumption lies with the accused on a balance of probabilities. In *Public Prosecutor v Ng Boon Gay* [2013] SGDC 132 ( Ng Boon Gay ), the prosecution argued that the threshold to establish the presumption was very low and ultimately any 'gratification' given to a public official by someone intending to deal with the official or government would be enough to create the rebuttable presumption. On the facts of the case, however, the defence succeeded in rebutting the presumption.

Prohibition of the bribery of a domestic public official is also set out in sections 11 and 12 of the PCA as outlined below. Section 11 relates to the bribery of a member of parliament. It is an offence for any person to offer any gratification to a Member of Parliament as an inducement or reward for such member's doing or forbearing to do any act in his or her capacity as a Member of Parliament. It will also be an offence for a Member of Parliament to solicit or accept the above gratification. Section 12 relates to the bribery of a 'member of a public body'. It is an offence for a person to offer any gratification to a member of such a public body as an inducement or reward for:

- the member's voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to that public body;
- the member's performing, or abstaining from performing, or aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act; or
- the member's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person.

It will, correspondingly, be an offence for a member of a public body to solicit or accept such gratification described above.

The Penal Code also sets out a number of offences relating to domestic public officials (termed 'public servant'). The Singapore government also issues the Singapore government Instruction Manual (Instruction Manual) to all public

officials. The Instruction Manual contains stringent guidelines regulating the conduct of public officials.

*Law stated - 08 December 2021*

## Scope of prohibitions

Does the law prohibit both the paying and receiving of a bribe?

Yes. Singapore law prohibits both the paying and receiving of a bribe. In particular, sections 5, 11 and 12 of the PCA prohibit both the paying of a bribe to, and receiving of a bribe by, a domestic public official.

*Law stated - 08 December 2021*

## Definition of a domestic public official

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

A domestic public official is referred to as a 'member, officer or servant of a public body' in the PCA. There are also specific provisions at section 11 of the PCA in respect of members of parliament. 'Public body' has been defined in section 2 of the PCA to mean any:

[C]orporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law (ie, Singapore's legislation) relating to public health or to undertakings or public utility or otherwise administer money levied or raised by rates or charges in pursuance of any written law.

In *Ng Boon Gay and Public Prosecutor v Peter Benedict Lim Sin Pang* DAC 2106-115/2012 – in which the former Singapore Civil Defence Force Chief was found guilty and sentenced to six months jail for corruptly obtaining sexual favours in exchange for the awarding of contracts – both the Central Narcotics Bureau and the Singapore Civil Defence Force were unsurprisingly held by the courts to be public bodies.

In *Public Prosecutor v Tey Tsun Hang* [2013] SGDC 164 – where the former law professor at National University of Singapore (NUS) was convicted for obtaining sex and gifts from one of his students but was later acquitted on appeal – despite the arguments of defence counsel, the NUS was also found to be a public body, being a 'corporation which has the power to act . . . relating to . . . public utility or otherwise to administer money levied or raised by rates or charges', as 'public utility' included the provision of public tertiary education. The receipt by the NUS of funds from the government and its function as an instrument of implementing the government's tertiary education policy further supported the finding that the NUS was a 'public body'.

The provisions in the Penal Code pertaining to domestic public officials use the term 'public servant'. This has been defined in section 21 to include:

- an officer in the Singapore Armed Forces;
- a judge;
- an officer of a court of justice;
- an assessor assisting a court of justice or public servant;
- an arbitrator;
- an office holder empowered to confine any person;
- an officer of the Singapore government;
- an officer acting on behalf of the Singapore government; and

- a member of the Public Service Commission or Legal Service Commission.

It would appear from the above definitions under the PCA and the Penal Code that an employee of a state-owned or state-controlled company may not necessarily be a domestic public official. Such employees of state-owned or state-controlled companies may be considered domestic public officials if they fall within the definitions set out in the PCA and the Penal Code.

It should also be noted that the Singapore Interpretation Act defines the term 'public officer' as 'the holder of any office of emolument in the service of the [Singapore] Government'.

*Law stated - 08 December 2021*

### **Gifts, travel and entertainment**

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

Domestic public officials are not permitted to receive any money or gifts from people who have official dealings with them, nor are they permitted to accept any travel and entertainment, etc, that will place them under any real or apparent obligation.

*Law stated - 08 December 2021*

### **Facilitating payments**

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

Facilitating or 'grease' payments are technically not exempt under Singapore law. In particular, as regards domestic public officials, section 12 of the PCA prohibits the offering of any gratification to such officials as an inducement or reward for the official's 'performing, or . . . expediting . . . the performance' of any official act.

Accordingly, it is also an offence under section 12 of the PCA for the domestic public official to accept any gratification intended for the purposes above.

*Law stated - 08 December 2021*

### **Public official participation in commercial activities**

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

The Instruction Manual, which applies to all Singapore public officials, is a comprehensive set of rules that govern how public officials should behave to avoid corruption. The Instruction Manual allows public officials to participate in commercial activities but sets out certain restrictions, such as public officials not being allowed to profit from their public position. The Instruction Manual details how public officials can prevent conflicts of interest from arising and when consent must be obtained. Consent is required for various investment activities such as holding shares in private companies, property investments and entering into financial indebtedness.

The Corrupt Practices Investigation Bureau (CPIB) also advises domestic public officials not to undertake any paid part-time employment or commercial enterprise without the written approval of the appropriate authorities. Subject to such safeguards and approvals, a public official is allowed to participate in commercial activities while in service.

## Payments through intermediaries or third parties

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

Corrupt payments through intermediaries or third parties, whether such payments are made to domestic public officials or to other persons, are prohibited. Section 5 of the PCA expressly provides that a person can commit the offence of bribery either 'by himself or by or in conjunction with any other person'.

Law stated - 08 December 2021

## Individual and corporate liability

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

Both individuals and companies can be held liable for domestic bribery offences. The various provisions in the PCA and Penal Code set out certain offences that may be committed by a 'person' if such person were to engage in certain corrupt behaviour. The term 'person' has been defined in the Singapore Interpretation Act to include 'any company or association of body of persons, corporate or unincorporated'.

In addition, Singapore case law indicates that corporate liability can be imposed on companies for crimes committed by their employees, agents, etc (see *Tom Reck Security Services Pte Ltd v Public Prosecutor* [2001] 2 SLR 70). A test for establishing corporate liability is whether the individual who committed the crime can be regarded as the 'embodiment of the company' or whose acts 'are within the scope of the function of management properly delegated to him'. This test, known as the 'identification doctrine', was derived from English case law (*Tesco Supermarkets Ltd v Nattrass* [1971] 2 All ER 127). It was subsequently broadened in the Privy Council case of *Meridian Global Funds Management Asia Ltd v Securities Commission* [1995] 2 AC 500, which held that the test for attributing mental intent should depend on the purpose of the provision creating the relevant offence. This broader approach has been affirmed in Singapore (*The Dolphin a* [2012] 1 SLR 992) in a case involving shipping and conspiracy but not in the context of bribery offences.

However, the test for corporate liability is different in relation to money-laundering offences. Section 52 of the CDSA introduces a lower threshold of proof for corporate liability. It provides that where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged by the body corporate it shall be sufficient to show that a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, had that state of mind. Likewise, any conduct engaged in or on behalf of a body corporate by a director, employee or agent of the body corporate acting within the scope of his or her actual or apparent authority, or by any other person at the direction or with the consent or agreement of the above, shall be deemed, for the purposes of the CDSA, to have been engaged in by the body corporate.

Generally, individual directors and officers of a company will not be held strictly liable for offences found to have been committed by the company if they were not personally responsible for, or otherwise involved in, that particular offence. However, section 59 of the CDSA provides that where an offence under the CDSA committed by a body corporate is proved to have been committed with the consent or connivance of an officer or to be attributable to any neglect on his or her part, the officer as well as the body corporate shall be guilty of the offence. It is also possible that an individual such as a director or officer of a company, although not personally guilty of committing a corrupt act, may be held liable for consequential offences including money-laundering or failure to report a suspicion that certain property or the transfer of assets was connected to criminal conduct. In addition, individual directors who ignore red flags of criminal

misconduct committed by employees of the company may also find themselves liable for failing to use reasonable diligence in performing their duties under the Companies Act (Cap 50, 2006 Rev Ed). A former president of a shipyard was recently prosecuted for this infraction.

Ultimately, the decision on whether to pursue an individual or a corporate entity for criminal conduct is a matter of prosecutorial discretion. In this regard, an opinion-editorial written by Singapore's then Attorney-General, Mr VK Rajah SC, in November 2015 sheds some light on Singapore's approach on such matters. In his opinion-editorial, Mr Rajah stated that in Singapore both individuals and corporate entities should expect prompt enforcement action for financial misconduct. However, he pointed out that, '[t]he emphasis, if there is one, is placed on holding accountable the individuals who perpetuated the misconduct'. In addition, he stressed that 'significant attention is also given to the culpability of corporations . . . especially if the offending conduct is institutionalised and developed into an established practice in an entity over time'.

In August 2018, the Penal Code Review Committee released its report setting out its recommendations on reforming the Penal Code. Among other things, the Committee considered the current rules on corporate liability under Singapore law and recommended that the government study the adequacy of the current rules and consider reform if necessary.

*Law stated - 08 December 2021*

### **Private commercial bribery**

To what extent does your country's domestic anti-bribery law also prohibit private commercial bribery?

The PCA contains provisions that prohibit bribery in general, and these prohibitions extend to both private commercial bribery as well as bribery involving public officials.

*Law stated - 08 December 2021*

### **Defences**

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

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

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

*Law stated - 08 December 2021*

### **Agency enforcement**

What government agencies enforce the domestic bribery laws and regulations?

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

The main government agency that enforces bribery laws in Singapore is the CPIB. The CPIB derives its powers from the PCA and is responsible for investigating and preventing corruption in Singapore, focusing on corruption-related offences arising under the PCA and the Penal Code.

Under the PCA, the CPIB has extensive powers of investigation, which include powers to require the attendance of

witnesses for interview, to investigate a suspect's financial and other records and the power to investigate any other seizable offence disclosed in the course of a corruption investigation. Seizable offences are also known as 'arrestable offences' (ie, offences where the persons committing the offences can be arrested without a warrant of arrest). Special investigative powers can be granted by the public prosecutor, such as the power to investigate any bank account, share account, purchase account, expense account or any other form of account or safe deposit box and to require the disclosure of all information, documents or articles required by the officers.

The CPIB carries out investigations into complaints of corruption but does not prosecute cases itself. It refers the cases, where appropriate, to the public prosecutor for prosecution. The PCA provides that no prosecution under the PCA shall be instituted except by or with the consent of the public prosecutor.

The Commercial Affairs Department (CAD) is the principal white-collar crime investigation agency in Singapore. CAD investigates complex fraud, white-collar crime, money laundering and terrorism financing. CAD's Financial Investigation Division is specially empowered to combat money laundering, terrorism financing and fraud involving employees of financial institutions in Singapore and works closely with financial institutions, government agencies and its foreign counterparts. In January 2019, the Criminal Justice Division and Financial and Technology Crime Division were merged into a single Crime Division within the Attorney-General's Chambers to bring the prosecution of all criminal offences under a single division's purview. However, there remain specialist prosecution teams within the reorganised Crime Division who specialise in the enforcement, prosecution and all related appeals in respect of financial crimes and corruption cases within and outside Singapore.

The Monetary Authority of Singapore (MAS) is responsible for issuing guidelines on money laundering and terrorist financing to financial institutions and conducting regulatory investigations on such matters. The MAS may also refer potential criminal offences to CAD for further investigation. In this regard, in 2015, MAS and CAD embarked on an initiative to jointly investigate market misconduct offences under the Securities and Futures Act (Cap 289, 2006 Rev Ed). The MAS has also forged a closer relationship with the CPIB. Enforcement actions by the MAS have resulted in nine criminal convictions and S\$11.7 million in civil penalties in the 18 months leading up to June 2020. The MAS has also imposed S\$3.3 million in composition penalties for money laundering-related control breaches.

*Law stated - 08 December 2021*

## Patterns in enforcement

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

Public sector complaints and prosecutions remain consistently low due, in part, to the aggressive enforcement stance taken by the CPIB, as well as to the high wages paid to public servants that reduce the financial benefit of taking bribes as compared to the risk of getting caught. The CPIB also noted that, amid the covid-19 pandemic in 2020, it had received 32 per cent less corruption-related reports, possibly due to the sharp fall in economic activity as a result of the covid-19 pandemic. The majority of the CPIB's investigations relate to the private sector, which in 2020, made up 86 per cent of its investigations registered for action.

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

*Law stated - 08 December 2021*



## Prosecution of foreign companies

### In what circumstances can foreign companies be prosecuted for domestic bribery?

Under the general offences of the PCA, foreign companies can be prosecuted for the bribery of a foreign public official if the acts of bribery are committed in Singapore. In addition, section 29 of the PCA read together with section 108A of the Penal Code allows foreign companies to be prosecuted for bribery that was substantively carried out overseas, if the aiding and abetment of such bribery took place in Singapore.

*Law stated - 08 December 2021*

## Sanctions

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

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

The PCA provides for a fine, a custodial sentence, or both for the contravention of the general anti-corruption provisions under sections 5 and 6 (which include the bribery of foreign public officials in Singapore, and the bribery of foreign public officials overseas by a Singaporean citizen when read with section 37). The guilty individual or company may be liable to a fine not exceeding S\$100,000 or imprisonment for a term not exceeding five years, if appropriate.

Where the offence involves a government contract or bribery of a member of parliament, the maximum custodial sentence has been extended to seven years. There are also civil remedies and penalties for the restitution of property pursuant to the PCA. A person convicted of an offence of bribery under the Penal Code may be sentenced to a fine and a custodial sentence of up to three years.

There are other statutes imposing sanctions on the guilty individuals or companies. For example, under the CDSA, where a defendant is convicted of a 'serious offence' (which includes bribery), the court has the power, under section 4, to make a confiscation order against the defendant in respect of benefits derived by him or her from criminal conduct. Under the Companies Act, a director convicted of bribery offences may be disqualified from acting as a director.

*Law stated - 08 December 2021*

## Recent decisions and investigations

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

### The Ang Mo Kio Town Council general manager case

On 20 November 2019, the former general manager of Ang Mo Kio Town Council (AMKTC) was sentenced to 27 months' jail for receiving bribes of more than S\$75,000 from the director of two construction companies, in exchange for furthering the interests of the companies (which were contractors of AMKTC). The director was sentenced to 21 months' jail for giving the bribes to the former general manager, while the director's two companies were each fined S\$75,000. The companies had won tenders and contracts from AMKTC amounting to millions of dollars. The bribes paid included the following: (1) discounts on a car that the director sold to the former general manager; (2) money sent to the former general manager's mistress in China; and (3) entertainment expenses incurred by the former general



manager and the director at various KTV lounges and massage parlours that they frequented at night. Two other charges – the free use of a mobile line that the director gave the former general manager and employment that the director had secured for the former general manager's daughter-in-law – were taken into consideration during sentencing.

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

### **The shipbuilding firm case**

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

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

### **The fuel survey and misappropriation case**

In February 2021, three former employees of a global oil company were charged with bribing employees of surveying companies who inspected vessels that the oil company supplied fuel to. The former oil company employees had provided approximately US\$116,900 in bribes to 10 employees from various surveying companies between 2014 to 2017. The bribes were paid in exchange for the surveying employees inaccurately reporting the amount of gas oil loaded onto vessels which the surveying companies were engaged to inspect.

The three former oil company employees are also among the dozen former oil company employees who were previously charged for their involvement in the misappropriation of S\$200 million worth of marine fuel from a Pulau Bukom refinery over several years.

### **The SMRT employee case**

In August 2021, a former SMRT employee was charged with accepting bribes totalling more than S\$54,000 in exchange for divulging information on quotations made to SMRT by other vendors. The receipt of the bribes took place on several occasions between 2016 and 2020.

He was also charged with forgery for fraudulently appending the signature of an SMRT procurement manager on two documents in November 2017.

### **The LTA director case**

In September 2021, a former deputy group director of the Land Transport Authority (LTA) was sentenced to five-and-a-half years' jail for (1) accepting approximately S\$1.24 million in bribes, in the form of loans, to advance the business interests of contractors and subcontractors with the LTA between 2014 and 2019; and (2) cheating his LTA colleagues into giving him loans totalling approximately S\$726,500 between 2008 and 2019. The former LTA director concealed the fact that the loans were intended to service his gambling habit and debt.

### **The BCA officer case**

In October 2021, a former Building and Construction Authority (BCA) inspection officer was sentenced to eight weeks' jail for (1) misrepresenting himself to be a safety and sales manager of Angelshield Safety Consultant who provided services related to the drafting of a construction site's safe management measures plan; (2) misrepresenting to Domain Trading & Construction that the safe management measures plan of its construction site was insufficient; and (3) accepting the payment of S\$600 from Domain Trading & Construction to draft the safe management measures plan. The aforementioned misrepresentations and wrongful acceptance of payment took place between November 2020 and December 2020.

### **The PUB employee case**

In November 2021, a former assistant engineer at Public Utilities Board (PUB) was sentenced to 11-and-a-half months' jail for accepting and attempting to accept bribes totalling S\$45,169 in exchange for facilitating and expediting a water and gas pipeline subcontractor's (Pipe Works) water diversion works. The receipt of the bribes took place over several occasions between November 2017 and August 2018.

He was also sentenced to two weeks' jail (which ran concurrently with his sentence above) for using a company he set up in his son's name to prepare false invoices to bill Pipe Works for fictitious cleaning services, as a cover to receive the bribes above.

## **Technology-related cases**

### **The IT infrastructure case**

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

### **The NLB manager case**

In October 2020, a former manager of the National Library Board (NLB) pleaded guilty to receiving approximately S\$581,000 in bribes from a former employee in exchange for advancing the latter's business interests with NLB. The former employee, in turn, pleaded guilty to charges of providing bribes to the former NLB manager.

The former manager was in an NLB department set up to spearhead its move into e-books and other digital resources and shared NLB's move towards digitalisation with the former employee, advising him to explore this business opportunity. The former employee then set up three companies that provided digital content. To help advance the former employee's business interests with NLB, the former NLB manager shared confidential information with him

regarding the digital resources that NLB was interested in and how such resources were assessed for procurement or renewal. With this information, the former employee was able to source and supply the resources to NLB when the opportunity arose. The former NLB manager also advised him on what prices to quote NLB.

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

### **<strong>The network solutions case</strong>**

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

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

### **<strong>The network services contracts case </strong>**

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

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

*Law stated - 08 December 2021*

## **UPDATE AND TRENDS**

### **Key developments of the past year**

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

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

As part of Singapore's ongoing efforts to combat corruption, it launched the Singapore Standard (SS) ISO 37001 on Anti-bribery management systems on 12 April 2017, following a public consultation from February to March 2016 on

the adoption of the International Organization for Standardization's (ISO) new set of voluntary standards (designated as ISO 37001) for anti-bribery compliance. The Corrupt Practices Investigation Bureau (CPIB) continues to be supportive of the standard, and encourages companies to adopt the ISO 37001 standard.

In 2020, a number of prosecutions were brought in relation to corrupt conduct in connection with IT and technology procurement . This may suggest that the acceleration in technology transformation and digitalisation has created greater exposure for corruption risk in the IT and technology sector. Consequently, the IT and technology sector may be an area of increased focus for enforcement efforts as more corruption cases involving IT and technology procurement arise.

In February 2021, then Minister of Trade and Industry Mr. Chan Chun Sing released a statement stating that (1) the CPIB has been conducting a review of the PCA; and (2) that, as part of the review, the CPIB has been working in consultation with the AGC on introducing a comprehensive list of new provisions, which includes the disgorgement of corrupt benefits from perpetrators and strengthening the protection of informers' identity.

*Law stated - 08 December 2021*

## LAW STATED DATE

### Correct on

Give the date on which the information above is accurate.

8 December 2021.

*Law stated - 08 December 2021*

## Jurisdictions

	<b>Australia</b>	Holding Redlich
	<b>China</b>	Herbert Smith Freehills LLP
	<b>France</b>	Bougartchev Moyne Associés AARPI
	<b>Greece</b>	ANAGNOSTOPOULOS
	<b>Hong Kong</b>	Herbert Smith Freehills LLP
	<b>Israel</b>	Herzog Fox & Neeman
	<b>Italy</b>	Studio Legale Pisano
	<b>Japan</b>	Anderson Mori and Tomotsune
	<b>Netherlands</b>	Sjöcrona Van Stigt
	<b>Russia</b>	Noerr PartGmbH
	<b>Singapore</b>	Norton Rose Fulbright
	<b>Sweden</b>	NORDIA LAW
	<b>Switzerland</b>	Schellenberg Wittmer
	<b>Ukraine</b>	GOLAW
	<b>United Kingdom</b>	White & Case LLP
	<b>USA</b>	Miller & Chevalier Chartered