ICLG

The International Comparative Legal Guide to:

Business Crime 2014

4th Edition

A practical cross-border insight into business crime

Published by Global Legal Group, in association with CDR, with contributions from:

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1 General Criminal Law Enforcement

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

The Attorney-General’s Chambers (“AGC”) prosecutes business crimes in Singapore. By virtue of Section 35(8) of the Constitution of Singapore, the Attorney-General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence. Section 11 of the Criminal Procedure Code (Cap. 68) (“CPC”) further provides that the Attorney-General shall be the Public Prosecutor with the control and direction of criminal prosecutions and proceedings under the CPC or any other written law.

The Economic Crimes and Governance Division (“EGD”) of AGC is responsible for prosecutions and all related appeals in respect of white-collar and other general commercial crimes.

Besides AGC, there are other agencies responsible for enforcing laws combating business crimes, including, for example, the Commercial Affairs Department (“CAD”), the Corrupt Practices Investigation Bureau (“CPIB”), the Monetary Authority of Singapore (“MAS”) and the Accounting and Corporate Regulatory Authority of Singapore (“ACRA”).

The CAD is the principal white-collar crime investigation agency in Singapore. It is the specialist department within the Singapore Police Force that investigates a wide spectrum of commercial and financial crimes. The CAD is equipped with its own investigative and intelligence resources in the Singapore Police Force.

The CPIB is the primary anti-bribery watchdog in Singapore, responsible for investigating bribery and corruption in both public and private sectors. The CPIB is under the aegis of the Prime Minister’s Office (“PMO”) and it reports directly to the Prime Minister of Singapore.

The MAS acts as the de facto central bank of Singapore and is the principal supervisor and regulator of financial services in Singapore. MAS and CAD work together in dealing with offences relating to securities fraud and market misconduct.

The ACRA is the national regulator of business entities and public accountants in Singapore. The Enforcement Division (ED) of the ACRA oversees compliance in the disclosure of corporate and financial information of businesses.

As Singapore is a city state, there are no different enforcement authorities at the national and regional levels.

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 investigating agencies such as CAD and CPIB investigate an alleged crime upon receipt of a complaint or on their own initiative. Upon completion of investigations, the investigating agencies will submit the investigation papers to the AGC for legal assessment on the sufficiency of evidence to support the offences investigated.

The process of legal assessment would usually involve the AGC officers going through the investigation papers, including statements recorded from the witnesses and documents seized. In the context of corporate and commercial offences, the EGD from time to time seeks professional opinions of experts (e.g. whether a particular piece of information is price sensitive) in determining whether a particular offence is made out.

Having assessed and considered all relevant aspects of the case and sufficiency of evidence, the AGC would then decide whether to prosecute the accused person in court. Whether to prosecute the case is a matter solely within the prosecutorial discretion of the AGC.

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?

Yes. In cases where the AGC decides not to prosecute a matter in court, it may direct the enforcement agency such as MAS and ACRA to take alternative action like the issuance of administrative warnings or reprimands.

Currently, civil sanctions are only available for certain offences under the Securities and Futures Act (Cap. 289) (“SFA”). Under Section 232 of the SFA, the MAS may, with the consent of the Public Prosecutor, bring an action in court against a person who has committed offences such as insider trading or market misconduct for an order of civil penalty. If the court is satisfied on a balance of probabilities that the person has contravened the SFA, it may make an order against him for payment of a civil penalty of a sum not exceeding 3 times the amount of the profit gained or loss avoided as a result of the contravention. Civil penalty actions, however, cannot be commenced against offenders who have been charged and convicted or acquitted for the offence. According to Section 233(1) of the SFA, a civil penalty is subject to a 6-year limitation period.

Further, pursuant to Section 234 of the SFA, a person who has committed any offence relating to market misconduct as specified thereunder, whether or not they had been convicted or had received
a civil penalty in respect of that contravention, would be liable to pay compensation to the victim of the crime.

2 Organisation of the Courts

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

The Singapore court system consists of 2 tiers: (i) Subordinate Courts; and (ii) the Supreme Court.

(i) The Subordinate Courts comprise the District Courts, Magistrates’ Courts, Juvenile Court, Coroners’ Court, Family Court as well as the Small Claims Tribunal.

In criminal cases, offences where the maximum imprisonment term does not exceed 10 years or are punishable with a fine only are tried in the District Court at first instance. District judges can sentence a person (upon conviction) to imprisonment of not more than 7 years, a fine not exceeding $10,000 and up to 12 strokes of the cane. Magistrates’ Courts can try offences where the maximum imprisonment term does not exceed 3 years or are punishable with a fine only. Magistrates’ Courts can sentence a person (upon conviction) to imprisonment of not more than 2 years, a fine not exceeding $2,000 and up to 6 strokes of the cane.

In addition to the criminal trial courts, the Commercial Criminal Trial Courts and Special Trial Courts have been established to deal with specialised offences relating to commercial crimes and all interlocutory matters related to financial fraud, money laundering and confiscation of assets, as well as cases involving corruption. Specialist judges have also been appointed on an ad hoc basis to hear specific complex cases.

(ii) The Supreme Court comprises the High Court and the Court of Appeal.

In general, cases that are punishable with death or with imprisonment for a term which exceeds 10 years are heard in the High Court at first instance.

The Court of Appeal, which is the highest court and the court of final appeal in Singapore, hears appeals from the High Court.

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

No. Jury trial is not available for any type of trial, whether civil or criminal, in Singapore. Trials at first instance are by a single judge.

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 mens rea of the accused:

o Fraud and misrepresentation in connection with sales of securities

Prohibited conduct in relation to securities are set out under Sections 196 to 204 of the SFA.

Section 198 of the SFA makes it an offence for any person to manipulate the securities market by carrying out two or more transactions in securities of a corporation, with the intent to induce other persons to subscribe for, purchase or sell securities of the corporation. Section 199 of the SFA criminalises the making of statement or dissemination of information that is false or misleading in a particular material and is likely to induce the sale or purchase of securities by other persons. Section 200 of the SFA prohibits any person from inducing or attempting to induce another person to deal in securities by making any statement or forecast that he knows or ought reasonably to have known to be misleading, false or deceptive, or by concealment of material facts.

Offences under these provisions are punishable with a fine not exceeding S$250,000 and/or imprisonment for up to 7 years.

o Accounting fraud

Under Section 477A of the Penal Code (Cap. 224) (“Penal Code”), whoever, being a clerk, officer or servant, wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, would commit an offence punished with imprisonment for a term which may extend to 10 years, and/or with fine.

Further, it is an offence for any person to make a false document or electronic record with intent to cause damage or injury to the public or to any other person, or to commit fraud. Such forgery offence is punishable with imprisonment for a term for up to 4 years and/or with a fine. Under Section 468 of the Penal Code, forgery for the purpose of cheating will attract a stiffer punishment of imprisonment that may extend to 10 years.

During the winding up of a corporation, it is a criminal offence under Section 338 of the Companies Act (Cap. 50) (“Companies Act”) for any officer to destroy, alter or falsify any books or papers of the company with intent to defraud or deceive any person. The falsification of book offence is punishable with a fine not exceeding $10,000 or imprisonment for a term not exceeding 2 years.

o Insider trading

Sections 218 and 219 of the SFA prohibit a person, whether connected to a corporation or not, and who possesses price sensitive information which he knows is not generally available, from dealing in, or procuring another person to deal in, the shares of the said corporation.

It bears noting that it is not necessary for the prosecution to prove the mens rea of the accused person that he has intended to use inside information for offences under Section 218 or Section 219 of the SFA. Instead, once a connected person is proved to be in possession of information concerning the company to which he is connected and once such information is proved to be not “generally available”, there is a rebuttal presumption that the connected person knows that: (a) the information was not generally available; and (b) if the information were generally available, it might be material to the price or value of the company’s securities.

The offence of insider trading is punishable with a maximum fine of S$250,000 or imprisonment for up to 7 years.

o Embezzlement

Cases of embezzlement of funds by company directors or employees are prosecuted for the offence of criminal breach of trust (“CBT”) under the Penal Code.

A person commits CBT if he, being entrusted with property or with dominion over property, dishonestly misappropriates or converts to his own use that property. There are varying degrees of severity of CBT under Sections 405 to 409 of the Penal Code. Directors of a company, bankers, public servants or agents involved in embezzlement are often prosecuted under Section 409 of the Penal Code, which carries a maximum punishment of imprisonment for life, or imprisonment up to 20 years and also a fine.

o Bribery of government officials

The Prevention of Corruption Act (Cap 241) (“PCA”) is the principal statute regulating corruption and bribery acts. A person is
guilty of an offence under Section 5 or 6 of the PCA if he corruptly solicits, receives or gives any gratification as an inducement to do or forbear from doing anything in respect of any matter or transaction. The transaction involved must have a “corrupt element” and the giver must know that he is doing a corrupt act.

In cases where bribes are paid to a person employed by the Government or a public body, by any person who has or seeks to have dealings with the Government or any public body, the accused public officer would be presumed to have received the gratification corruptly as an inducement or reward, unless the contrary could be proved by him.

An offence under the PCA is punishable with a maximum fine of S$100,000 and/or imprisonment up to 5 years. Where the transaction relates to a contract with the Government or any public body, the maximum term of imprisonment is increased to 7 years.

Besides the PCA, the Penal Code contains provisions relating to bribery of public servants. However, the Penal Code is a much older statute compared with the PCA, and is nowadays rarely used as a basis for prosecuting bribery offences.

**o Criminal anti-competition**

The Competition Act (Cap. 50B) was enacted in 2005 to prohibit anti-competitive agreements and concerted practices and against abuse of dominance. However, the Competition Act only provides for liability at the corporate level for anti-competitive behaviour under Section 69(4) which allows the Commission to impose financial penalties of up to 10% of the turnover of the business in Singapore for each year of infringement, up to a maximum of 3 years. Currently, there are no provisions that impose criminal liability on anti-competitive infringements.

Nonetheless, criminal liability may be attached to any person under Part V of the Competition Act. Any person who obstructs the investigation of the Competition Commission of Singapore (the regulatory agency in this area) by, for example, refusing to produce documents, destroying or falsifying documents or providing false or misleading information to the officer.

**o Tax crimes**

Under the Income Tax Act (Cap 134), any person who, wilfully with intent to evade tax or assist another person to evade tax, omits any income or makes any false statement in an income tax return, or gives any false answer to any question or request for information made under the Act is guilty of an offence punishable with a maximum fine of S$10,000 and/or imprisonment not exceeding 3 years (Section 96(1)).

Section 96A(1) of the Income Tax Act further provides that if the person, with intent to evade tax, prepares or maintains any false books of account or other records or falsifies any book of account or records, or makes use of any fraud, art or contrivance, he will be liable to a stiffer punishment of a maximum fine of S$50,000 and/or imprisonment for up to 5 years. The offender will have to pay, in addition, a penalty 4 times the amount of tax evaded.

In any prosecutions under these two sections, the offender is presumed to have wilfully intended to evade tax until he is able to rebut the presumption.

**o Government-contracting fraud**

General offences relating to fraud can be prosecuted under the Penal Code and other relevant legislation such as the Companies Act.

Under the PCA, a person convicted of a bribery offence involving a contract with the Government or any public body will attract an enhanced custodial sentence for up to 7 years (compared to 5 years for offences not relating to transactions with the Government). These offences include corrupt procuring of tenders for Government contracts, bribery of Members of Parliament or members of a public body.

**o Environmental crimes**

Criminal liabilities relating to environmental crimes can be found in various pieces of legislation. For example, the Environmental Public Health Act (Cap. 95) makes it an offence for any person who dumps or disposes of any refuse, waste from a vehicle in a public place, and an order for the forfeiture of the vehicle used to dump the refuse may be made by the court notwithstanding that no person may have been convicted of that offence.

The Hazardous Waste (Control of Export, Import and Transit) Act (Cap. 122A) prohibits any person from importing or exporting, without permit, hazardous (as defined) or other waste into or out of Singapore. Import and export without permit in this regard is an offence punished with a fine not exceeding S$300,000 for corporate offenders, and with a maximum fine of S$100,000 and/or imprisonment for up to 2 years for individual offenders.

**o Campaign-finance/election law**

Section 55 of the Parliamentary Elections Act (Cap. 218) contains a list of offences that may be broadly described as deliberate electoral fraud. These include forging of nomination papers and ballot papers, stuffing ballot boxes, and using devices or appliances that can manipulate ballot papers. These offences carry mandatory imprisonment of up to 5 years, as well as a fine, and the offender would also be disqualified for 7 years from voting.

Other relevant offences may be found in the Political Donations Act (Cap. 236), which is enacted to prevent foreign groups from interfering in domestic politics through donations to political associations, parliamentary candidates and presidential election candidates. Under the said Act, accepting foreign donations per se would not be an offence, and the foreign donations would simply be forfeited if they are not or cannot be returned to the donor.

However, it would be an offence: (a) for failure to submit the donation reports and declaration within the stipulated time (if convicted, each of the responsible officers of the political association would be liable to a fine of up to S$2,000 (Section 22)); and (b) for a person to facilitate the evasion of the restrictions on impermissible donations. The offence is punishable with a fine of not more than $3,000, and/or to imprisonment for up to 12 months (Section 23).

By virtue of Section 25 of the Political Donations Act, where an offence thereunder committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary, or any other person purporting to act in such capacity, both the individual director or officer and the body corporate shall be guilty of that offence.

**o Any other crime of particular interest in Singapore**

The Corruption, Drug Trafficking and Other Serious Crime (Confiscation of Benefits) Act (Cap. 65A) (“CDSA”) criminalises conducts relating to money-laundering. It is an offence under the CDSA to assist another to retain benefits of drug trafficking or other criminal conduct; to acquire, possess, use, conceal or transfer benefits of drug trafficking or other criminal conduct. These offences are punishable with a fine not exceeding S$500,000 and/or imprisonment not exceeding 7 years for individual offenders, or with a maximum fine of S$1 million if the person is not an individual.

It bears noting that failure to disclose knowledge or suspicion acquired during business or employment that any property is connected to drug trafficking or other criminal conduct itself may also constitute an offence under Section 39 of the CDSA, which is punishable with a fine.
Markets manipulation in connection with the sale of derivatives

Under Section 198 of the SFA, a person is prohibited from carrying out two or more transactions in the securities of a corporation which will have the effect of affecting or maintaining the price of securities, with the object of inducing other persons to deal in the securities of the corporation or of a related corporation. Transactions under the provision include the making of offers to buy or sell securities, and invitations to treat. Such an offence is punishable with a fine not exceeding S$250,000 and/or imprisonment for up to 7 years.

3.2 Is there liability for inchoate crimes in Singapore? Can a person be liable for attempting to commit a crime, whether or not the attempted crime is completed?

Yes. A person can be liable for attempting to commit a crime, whether or not the attempted crime is completed. Section 511 of the Penal Code makes it an offence for anyone to attempt to commit an offence punishable by the Penal Code or any other written law with imprisonment and/or fine. The attempt offence is punishable with an imprisonment not exceeding 15 years where such attempt is in relation to an offence punishable with imprisonment for life; or one-half of the longest term provided for other offence in any other case.

In respect of a bribery offence, Section 30 of the Prevention of Corruption Act specifically provides that whoever attempts to commit an offence punishable under this Act shall be deemed to have committed the offence and shall be liable on conviction to be punished with the punishment provided for that offence.

4 Corporate Criminal Liability

4.1 Is there entity liability for criminal offences? If so, under what circumstances will an employee’s conduct be imputed to the entity?

Yes, a corporation can be held liable for criminal offences. The Penal Code defines the word “person” to include any company or association or body of persons, whether incorporated or not.

In respect of commercial crimes, a corporation may be guilty of an offence under the SFA. According to Section 333 of the SFA, the court may impose a fine on the corporate offender not exceeding 2 times the maximum amount prescribed for the offence committed by the corporation. In particular, by virtue of Section 226(1) of the SFA, where a director, officer or employee acting on behalf of the company commits insider trading, both the company and director/officer/employee may be held liable.

For the purpose of establishing corporate liability, individual director’s or officer’s act can be imputed to the entity if it is established that they represent the company’s directing mind and will, and their acts are within the scope of the function of management properly delegated to them.

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

Yes. For example, Section 331 of the SFA specifically provides that where an offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of an officer thereof, the officer as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

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?

There is no published policy showing the authorities’ preference as to the enforcement target where there are both personal and entity liability. However, it should be noted that there are internal prosecution guidelines within the AGC and these guidelines, although not published to the general public, are routinely adhered to by the AGC in determining the appropriate course of action to take in each case, including who to charge and what charges to prefer.

It is observed that when a wrongdoing director or officer can be identified, the authorities would be likely to pursue the individual wrongdoer first.

5 Statutes of Limitations

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

There is no statutory limitation for prosecuting a business crime in Singapore.

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

This is not applicable in Singapore.

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

This is not applicable in Singapore.

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.

In respect of business crimes, investigations are usually triggered by receipt of a complaint. CAD would consider the facts and circumstances of the case stated in the complaint carefully, and provide the reporter an update of the CAD’s action within 7 days following receipt of the report. Investigation may also be started upon CAD’s own initiative. For example, if CAD becomes aware of any questionable activities or conduct through public media, it may be prompted to look into the matter further and to commence formal investigations.

Generally, CAD’s timeline for investigations is between 3 to 6 months. Any case exceeding this timeline would be closely monitored by CAD management to ensure its expeditious conclusion.

Furthermore, the AGC ensures consistency in its exercise of prosecutorial discretion by adhering to its internal prosecution guidelines. As mentioned above in question 4.3, however, these guidelines are not published to the general public. That said, the AGC does, from time to time, release press statements explaining
their course of action for certain high-profile cases that attract public interest so as to maintain public confidence in the administration of justice.

In its press release dated 20 January 2013, the AGC indicated that in exercising its prosecutorial discretion, it will take into consideration a wide range of factors, including all the facts surrounding each accused person’s offending behaviour in each case, the strength of evidence against each accused person, the level of cooperation provided by accused persons to investigation authorities as well as the existence of personal mitigating circumstances, including any mental impairment or physical illness which might warrant the taking of a compassionate approach.

In addition, investigations may be commenced upon receipt of a Suspicious Transaction Reporting (“STR”) with a Suspicious Reporting Officer as defined under the CDSA (which is the primary statute for combating money laundering in Singapore), or a police officer relating to proceeds used in connection with drug trafficking or any criminal conduct.

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

Yes. The Mutual Assistance in Criminal Matters Act (Cap 190A) was enacted to enable Singapore to provide and obtain international assistance in criminal matters with foreign countries. Such assistance covers a wide range of aspects, including evidence taking, effecting service of judicial documents, identifying or tracing proceeds of crime, the recovery, forfeiture or confiscation of property derived by crime, and the identification and location of witnesses and suspects.

Further, Singapore has an Extradition Act (Cap 103) that allows for the extradition of fugitives who are in Singapore to a state that requests for their extradition to face trial for offences committed in that state or vice versa.

Singapore has also signed the Treaty on Mutual Legal Assistance in Criminal Matters among like-minded states to strengthen ASEAN’s legal infrastructure to fight and prevent transnational crimes.

7 Procedures for Gathering Information from a Company

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

A business crime may be investigated by, inter alia, police officers, CAD officers, CPIB officers, MAS officers and other officers given the power to investigate under the law in Singapore.

Generally, these enforcement agencies are conferred with wide-ranging powers to arrest, conduct a search and seizure of documents and properties, require attendance of any person in Singapore for questioning and for taking a statement, and investigate and freeze a suspect’s financial accounts.

In respect of investigating commercial crimes, CAD investigators are conferred similar powers of investigation as police officers. As for corruption-related offences, CPIB officers are conferred, subject to authorisation by the Public Prosecutor, even wider powers of investigations under the PCA, including the power to investigate any bank account, share account or the like in any bank, to inspect banker’s books in relation to any public servant suspected to have committed a corruption offence, or his spouse, child or trustee/agent.

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?

As regards demand for production of documents, the police have wide powers to issue a written order under Section 20 of the CPC requiring a person to produce the document or thing, or to give access to such document or thing to the police, if the police officer considers that a document or other thing is necessary or desirable for any investigation, inquiry, trial or other proceeding under the CPC.

The court has a similar power under Section 235 of the CPC to issue a summons to the person requesting for the production of the document or thing stated in the summons.

As for seizure of documents, a police officer is empowered under Section 35 of the CPC to seize any property: (a) in respect of which an offence is suspected to have been committed; (b) which is suspected to have been used or intended to be used to commit an offence; or (c) which is suspected to constitute evidence of an offence. Section 39 of the CPC further empowers the police to, at any time, access, inspect and check a computer that is suspected with reasonable cause to be used in connection with the arrestable offences.

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 provided under the CPC or the labour laws to permit the company or its employees not to produce the required documents to the enforcement agencies.

That said, certain privilege such as attorney-client privilege is generally recognised and documents and communications prepared and exchanged between a client and its attorney are considered privileged. For example, Section 393 of the Companies Act expressly prohibits the inspector appointed thereunder from requiring disclosure by a solicitor of any privileged communication made to him in that capacity, except as respects the name and address of his client. More generally, Section 128 of the Evidence Act provides that, save for communication made in furtherance of illegal purposes and facts showing that any crime or fraud has been committed, no advocate or solicitor shall at any time be permitted to disclose any communication made to him in the course and for the purpose of his employment as such advocate or solicitor by or on behalf of his client without the client’s express consent. Section 128A of the Evidence Act also provides that a legal counsel in any entity shall not at any time be permitted, except with the entity’s express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal counsel, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his employment as such legal counsel, or to disclose any legal advice given by him to the entity, or to any officer or employee of the entity, in the course and for the purpose of such employment.
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?

In addition to the police’s and court’s powers under Sections 20 and 235 of the CPC regarding ordering for production of documents, Section 24 of the CPC empowers the court to issue a search warrant if: (a) the court has reason to believe that a person who has been or may be issued an order under Section 20 or a summons under Section 235(1) would not produce the document; (b) it is not known who possessed that document; or (c) the court considers that a general or specific search or inspection will serve the purposes of justice or of any investigation, trial or other proceeding.

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, or compel production of documents as explained above are not limited to the suspected offender or persons under investigation, and they are applicable to any person subject to the provisions of the CPC.

There are special provisions under Section 20(2) of the CPC relating to written orders issued to a financial institution for the production of customer information. In these circumstances, the written order must only be made by a police officer of or above the rank of inspector, and it may 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.

Questioning of Individuals:

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?

A police officer has the power to issue a written order under Section 21 of the CPC requiring attendance of any person in Singapore, who appears to be acquainted with any facts and circumstances of the case. If the person called fails to do so, the police officer may request a magistrate to issue a warrant ordering that person’s attendance.

If the person called fails to do so, the police officer may request a magistrate to issue a warrant ordering that person’s attendance. If the person fails to do so, the police officer may request a warrant ordering the person’s attendance.

When the person attends before the police, an investigation will be conducted, usually at the police station, and a statement will be made, and signed by the person questioned.

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

Section 21 of the CPC applies to all persons who “appear to be acquainted with any facts and circumstances of the case” and therefore applies to a third person as well.

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?

It is a constitutional right for a person being arrested to be informed as soon as may be possible of the grounds of his arrest and be allowed to consult and be defended by a legal practitioner of his choice.

Further, pursuant to Section 22(2) of the CPC, the person being questioned need not make any self-incriminating statement that might expose him to a criminal charge, penalty or forfeiture.

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Pursuant to Section 150 of the CPC, criminal proceedings against any person may be initiated pursuant to an arrest, a summons, an arrest warrant, a notice to attend court or any other mode for compelling the attendance of a person in court which is provided for under the CPC or any other written law, as the case may be.

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.

There are internal (albeit unpublished) guidelines governing the AGC’s decision to charge an entity or individual. As explained above, the decision is solely within the prosecutorial discretion of the AGC.

In practice, the AGC would take into account all aspects of the cases particularised in the investigation papers, including the nature of offence, factual matrix and sufficiency of evidence, etc., when deciding whether to charge a person in court.

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.

Whilst the AGC has reportedly been considering the use of deferred prosecution in Singapore, there are, as yet, no formal rules or guidelines governing pretrial diversion or deferred prosecution. It is within the unfettered discretion of the AGC to initiate, conduct or discontinue any criminal proceedings.

That said, it is possible and actually quite common for a person under investigation to submit “without prejudice” letters of representation to the public prosecutor for the purpose of plea bargaining. It lies solely within the AGC’s discretion to decide whether to accede to such letters of representation. Such representations may request the AGC to consider deferring or waiving prosecution and direct the law enforcement agency to issue a warning to the accused instead. The effect of such warnings is that should the accused commit an offence in future, the fact that he/she had been previously warned will be taken into consideration in the initiation of the second prosecution.

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.

As explained above, civil penalties are available for securities fraud
offences like insider trading and market misconduct under the SFA. The CAD and MAS will determine at a very early stage of investigation whether a particular case should proceed by way of criminal proceeding or “civil track”, taking into account factors such as the severity of the offences, the extent of market impact, the need for deterrence and the evidential strength.

Once it is decided that the case will proceed on “civil track”, the MAS officers will conduct the investigation, and decide on the course of action to take against the offender thereafter. Such actions may range from issuing a letter of warning to offering the offender the option of making compensation. MAS may also enter into a settlement with the offender to pay a civil penalty with or without any admission of liability.

The MAS may also, with the consent of the public prosecutor, bring an action in court against the offender via the normal civil process. Following the civil trial, an order for a civil penalty may be issued against the offender if the court is satisfied on a balance of probabilities that the offender has contravened the relevant provisions. Alternatively, the offender may consent to the order being made against him (without a trial) on such terms as may be agreed between the MAS and the offender.

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?

Generally, the prosecution has the burden to prove 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 standard of proof for the prosecution is “beyond 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 he also determines whether the party has discharged its burden of proof.

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. Criminal conspiracy is defined under Section 120A of the Penal Code as when two or more persons agree to do, or cause to be done, an illegal act or an act, which is not illegal, by illegal means. Section 120B of the Penal Code further provides that whoever is a party to a criminal conspiracy shall, in absence of any expressed provision on the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

A person is considered to abet an offence if he instigates any person to do that thing, engages with one or other persons for the doing of that thing, or intentionally aids the doing of that thing. Section 109 of the Penal Code provides that whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and in absence of expressed provision for the punishment of such abetment, be punished with the punishment provided for the offence.

11 Common Defences

11.1 Is it a defence to a criminal charge that the defendant did not have the requisite intent to commit the crime? If so, who has the burden of proof with respect to intent?

In criminal cases, for offences involving a mens rea element, the prosecution would usually have to prove the requisite mens rea on the part of the defendant. However, for certain statutory offences, the legislation relieves the prosecution of having the burden of proving the requisite intent. Examples include prosecutions of public officers under the Prevention of Corruption Act, where a gratification paid to, given to or received by a public officer is deemed to have been paid or given and received corruptly as an inducement or reward. Also, for insider trading, it is not necessary for the prosecution to show that the person charged in court intends to use the price sensitive information for the offences under Sections 218 or 219 of the SFA.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that his conduct was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant’s knowledge of the law?

It is a well-established principle in Singapore criminal law that ignorance of law is not a valid defence to unlawful conduct.

11.3 Is it a defence to a criminal charge that the defendant was ignorant of the facts i.e. that he did not know that he had engaged in conduct that he knew was unlawful? If so, what are the elements of this defence, and who has the burden of proof with respect to the defendant’s knowledge of the facts?

Mistake of facts may be a defence that could be raised by the defendant. Section 76 of the Penal Code provides that it is not an offence which is done by the accused person who is, 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, bound by law to do it. Section 79 of the Penal Code further provides that it is not an offence which is done by any person who is 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?

Save for limited circumstances where reporting of certain crimes is required by law, there is no general mandatory duty to report crime to the government.

That said, as discussed above, Section 39(1) of the CDSA requires that any person who knows or has reasonable grounds to suspect...
that any property represents the proceeds of, or was used or intended to be used in connection with any drug trafficking or other criminal conduct, which has come to his attention in the course of business or employment, disclose such knowledge or suspicion to a Suspicious Transaction Reporting Officer at his earliest convenience. Failure to do so would constitute an offence punishable with a fine not exceeding S$20,000.

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. Whilst there is no legislation or formal rules governing cooperation provisions, a person may voluntarily disclose criminal conduct to the government in exchange for leniency. Statements volunteered by an accused person in the hope of leniency will be treated the same as those made in the course of plea bargaining. The decision whether to grant leniency, however, is solely at the discretion of the AGC.

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.

The investigating authorities may act with a degree of leniency against the entity, if the company voluntary reports its employee’s misconduct and provides full cooperation with the investigation. Genuine whistleblowing may also be a factor considered by the court during sentencing.

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. Whilst there are no formal legislative mechanisms in place, plea bargaining with the Public Prosecutor is available. As explained above, an accused can make representation to the AGC to negotiate the possible withdrawal, amendment or reduction of the charges, highlighting any merits of the case that may warrant the exercise of the Public Prosecutor’s discretion to do so.

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 in Singapore. Whilst the plea bargaining process in Singapore does not involve the court, a programme dubbed “Criminal Case Resolution” ("CCR") was implemented in 2011 to allow reference of suitable criminal cases to a senior judge for voluntary mediation without a trial. The CCR will be conducted in the judge’s chambers and all discussions at the CCR session(s) are confidential and without prejudice. Where a case remains unresolved at CCR and proceeds to trial, notes taken by the CCR judge would not be included in the case file and would not be accessible to the trial judge.

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.

The statutory provisions under which maximum or specified punishment is set out for each relevant offence, as well as the precedents with same offences with similar facts and circumstances provide guidance for the court in determining the sentence. In so doing, the court usually considers all relevant factors, such as the harm done to the victim and the public, culpability of the defendant, as well as any mitigating factor. In August 2013, the Chief Justice launched the third edition of a book that captures sentencing decisions in the Subordinate Courts. With regard to the sentencing process, the judge will usually hear the mitigation plea made by or on behalf of the accused, followed by any address by the prosecution on sentence. For certain categories of offences, the prosecution may also tender a victim impact statement to assist the Court in assessing the appropriate sentence.

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.

In respect of corporate sentence, the court will usually seek to strike between the primary objective of the criminal law to deter unlawful conduct on one hand, and promoting business efficacy on the other.

16 Appeals

16.1 Is a guilty or a non-guilty verdict appealable by either the defendant or the government?

Generally, both the prosecutor and the accused person can appeal against the acquittal or conviction. However, where an accused person has pleaded guilty and been convicted, there shall be no appeal except as to the extent or legality of the sentence (Section 244 of CPC).

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

Both the prosecutor and the convicted defendant can appeal against sentence, 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 an appeal against conviction, the appellate court will review the Grounds of Decision of the trial judge and determine whether the trial judge had correctly applied the law to the facts and whether the prosecution’s case has been proven beyond a reasonable doubt. Save for exceptional circumstances, the appellate court generally has a limited power of review over a trial judge’s findings of fact.

In an appeal against sentence, the appellate court would mainly consider whether the sentence was manifestly excessive or inadequate.
16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

If an appeal against conviction is allowed, the appellate court may quash the finding of guilt and acquit or discharge the accused or order that he be retried or committed for trial, or it may alter the finding, maintaining the sentence, or, with or without altering the finding, reduce or enhance the sentence.

If an appeal against acquittal (by the prosecution) is upheld, the appellate court may 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.

In an appeal against sentence, the appellate court can reduce or enhance the sentence or alter the nature of sentence.

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