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Singapore

WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Singapore.

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SINGAPORE
WHITE COLLAR CRIME

1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

Key financial crime offences include:

(a) various categories of offences under the Penal Code 1871, which contain the majority of criminal offences in Singapore. This includes offences of:

Cheating, under Sections 415 to 420A of the Penal Code. The offence of cheating generally applies to deception and fraud, including where the accused person makes a false statement which induces the victim to part with money or property, or to do things he otherwise would not have done.

Criminal misappropriation and breach of trust, under Sections 403 to 409 of the Penal Code. The offence involves dishonest misappropriation of money or property. Where the accused person is entrusted with property, the offence becomes a more serious criminal breach of trust. Under Section 409 of the Penal Code, a criminal breach of trust by certain categories of persons including directors or key executives of a corporation is liable to be punished more severely.

Forgery and falsification of accounts, under Sections 463 to 477A of the Penal Code. These offences apply where company directors or officers manipulate financial statements, forge auditor signatures on financial statements, or falsify accounts, among other things.

(b) Offences under the Securities and Futures Act 2001 ("SFA"). Offences include false trading and other market manipulation under Sections 197 and 198 of the SFA, as well as insider trading under Sections 218 and 219 of the SFA. For offences under Part 12 of the SFA (relating to market conduct), the company would also be guilty of the offence if the offence was committed with the company's "consent or connivance" and for the benefit of the company. If the company was negligent in failing to prevent or detect a breach under Part 12, the company is also liable to pay a civil penalty.

(c) Offences under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 ("CDSA"), which relate to money-laundering. The CDSA criminalises acquiring, possessing, using, concealing or transferring the benefits of crime or any property reasonably suspected of being benefits of crime. A company can also be guilty of CDSA offences through the actions of its directors, employees or agents.

(d) offences under the Prevention of Corruption Act 1960 ("PCA"). The PCA is the primary legislation in Singapore criminalising both public sector and private sector corruption and bribery.

(e) the Income Tax Act 1947 sets out the range of tax-related offences including tax evasion.

(f), the Companies Act 1967 ("CA") sets out the scope of a company and its directors' statutory duties and other obligations, and contains a wide range of offences involving companies and directors.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

Corporates can be held criminally liable. Section 2(1) of the Interpretation Act 1965 provides generally that in every written law of Singapore, the word "person" includes any company. Section 11 of the Penal Code defines a "person" as including "any company or association or body of persons, whether incorporated or not".

Most legislation will specify the circumstances in which a company is liable for offences committed by its directors or employees. For example under Part 12 of the SFA, an offence committed by an employee or officer of a corporation, with the consent or connivance of the corporation and for the benefit of the corporation, will

equally render the corporation guilty of that offence.

In the context of the CDSA, the High Court in Abdul Ghani bin Tahi v Public Prosecutor [2017] 4 SLR 1153 cited Huckerby v Elliot [1970] 1 All ER 189 that a director "consents" to the commission of an offence when he is "well aware of what is going on and agrees to it", whereas a director "connives" at the offence if he is "equally well aware of what is going on but his agreement is tacit, not actively encouraging what happens but letting it continue and saying nothing about".

Generally, a company officer's actions and state of mind can be attributed to the company where the person is the "living embodiment of the company", or if he was acting within the scope of a function of management properly delegated to him (Prime Shipping Corp v Public Prosecutor [2021] 4 SLR 795).

Similarly, Sections 73(1) and 73(2) of the CDSA provide that the state of mind and conduct respectively of a director, employee or agent of the company can be deemed to be that of the company's if the conduct was engaged in within the scope of the actual or apparent authority of the director, employee or agent.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

Commonly prosecuted offences personally applicable to company directors and officers include:

- corruption under the PCA
- cheating, forgery and criminal breach of trust under the Penal Code
- making false or misleading statements under Sections 401 and 402 of the CA
- market manipulation and insider trading under the SFA

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

The leading prosecuting authority for all criminal prosecution (whether of financial crime or other crime) is the Attorney-General's Chambers ("AGC"). The AGC is led by the Attorney-General who is concurrently also the Public Prosecutor, who has control and direction of criminal prosecutions and proceedings under the Penal Code and any other written law.

Most criminal prosecutions are conducted by Deputy Public Prosecutors, who are appointed by and act under the authority of the Public Prosecutor, in evaluating evidence and prosecuting offences before the Court.

Investigations of financial crime are conducted by a variety of different agencies, which often work together. This includes:

- the Singapore Police Force ("SPF"), which is the main police agency in Singapore;
- the Commercial Affairs Department ("CAD"), which is a specialised division of the SPF that investigates financial crime;
- the Corrupt Practices Investigation Bureau ("CPIB"), an independent agency under the Prime Minister's Office which investigates matters of corruption;
- the Monetary Authority of Singapore ("MAS"), which is the central bank and financial regulatory authority and has investigative powers in respect of matters relating to the SFA and Financial Advisers Act 2001 among other things; and
- the Inland Revenue Authority of Singapore, which investigates potential tax offences.

5. Which courts hear cases of financial crime? Are trials held by jury?

Offences involving financial crime are typically heard in the State Courts at first instance.

In the State Courts, criminal cases are heard by either the Magistrate's Court (which can hear offences for which the maximum imprisonment does not exceed 5 years) or the District Court (which can hear offences for which the maximum imprisonment does not exceed 10 years).

An appeal from a decision of the Magistrate's Court or the District Court is heard by the General Division of the High Court.

Although the General Division of the High Court has the jurisdiction and power to hear every case, including cases of financial crime, the vast majority of criminal cases in Singapore are heard by the State Courts. The General Division of the High Court typically only hears cases involving the most serious offences including murder, drug trafficking where the death penalty applies, and rape.

On rare occasions, financial crime cases are heard by the General Division of the High Court at first instance (see e.g. Public Prosecutor v Juandi bin Pungot [2022] SGHC 70 involving the mastermind of a large-scale

conspiracy to misappropriate gas oil of around S$128 million, who was eventually sentenced to 29 years' imprisonment).

Under the Singapore judicial system, there are no jury trials. All trials are heard by judges or judicial officers as finders of fact.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

Investigations start when a complaint or report is lodged and/or where the relevant authority has reason to suspect that an offence has been committed.

Raids may be conducted where there is a need to preserve evidence or other reasons for urgency. In general, the investigative authorities have document production and evidence taking powers, including to:

(a) search premises and seize evidence;

(b) examine witnesses and take statements from them;

(c) order the production of documents, including customer information from a bank;

(d) access computers to search any data and make copies of any data; and

(e) arrest suspects.

The exact scope of powers depend on the agency involved and the offence under investigation.

Failure to comply with such orders or obstructing the investigative authorities in their lawful exercise of powers also constitutes a criminal offence.

7. What powers do the authorities have to conduct interviews?

Under Section 21 of the CPC, a police officer may issue a written order requiring anyone within the limits of Singapore, who appears to be acquainted with any of the facts and circumstances of the case, to attend before the police officer. If the person fails to attend as required, the police officer may report the matter to a Magistrate who may then issue a warrant ordering the person to attend.

Under Section 22 of the CPC, the police officer may examine any person who appears to be acquainted with the facts of the case, and record a statement in writing or in the form of an audio-visual recording.

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

There is no right to be represented by a lawyer during an interview by the police or other authorities. There is no legal rule requiring the police to let counsel be present during interviews with the accused, while investigations are carried out (Muhammad bin Kadar v Public Prosecutor [2011] 3 SLR 1205 at [57]).

Under Article 9(3) of the Constitution of the Republic of Singapore, an arrested person is allowed to consult and be defended by a legal practitioner of his choice. However, this right only arises within a reasonable time after arrest, the rationale being to afford the police a degree of latitude in carrying out their investigations (James Raj s/o Arokiasamy v Public Prosecutor [2014] 2 SLR 307 at [5]).

There is only a limited right to silence under the CPC 2010. Under Section 22(2) of the CPC, a person giving a statement is bound to state truly what the person knows of the facts and circumstances of the case, except that the person need not say anything that might expose the person to a criminal charge, penalty, or forfeiture. However, failing to mention facts in statements to the police may be detrimental if the accused person subsequently wants to rely on those facts in his defence. Under Section 261 of the CPC, the Court may draw the necessary inferences against the accused from a failure to mention his defence in his investigative statements.

For statements recorded by the CPIB under the PCA, there is no right to silence. Section 27 of the PCA requires that every person required to give information to the CPIB is legally bound to give that information.

There is generally no right for an interviewee (whether as a suspect or a witness) to pre-interview disclosure. As a matter of discretion, a witness (meaning a person assisting with investigations who is not suspected of crime) may be provided with some context about the scope of investigations and what they may be questioned about during the interview.

Under Section 22(3) of the CPC 2010, statements made are recorded either in writing or in the form of an audio-

visual recording. In practice, statements are usually typed out by the recording officer during the interview or hand-written and subsequently transcribed into type-written form before the final statement is signed by the interviewee.

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

The starting position is that legislation in Singapore does not have extraterritorial effect, unless expressly provided for (Public Prosecutor v Muhammad Farid bin Sudi [2017] SGHC 228 at [64]).

Some of Singapore's laws and regulations governing financial crime are expressly stated to have extraterritorial effect. Examples relevant to financial crime offences include the following:

PCA: Section 37 of the PCA provides that the PCA applies extraterritorially to corruption offences committed by Singapore citizens both within and outside Singapore.

Penal Code: Public servants who are citizens or permanent residents of Singapore can be prosecuted for offences they commit outside Singapore when acting or purporting to act in the course of their employment (see Section 4 of the Penal Code).

Under Section 4B of the Penal Code, certain specified offences can also be prosecuted in Singapore where a physical element of the offence occurs in Singapore. This includes offences of dishonest misappropriation, criminal breach of trust, cheating, forgery, and other fraud-related offences among other things.

10. Do the authorities commonly cooperate with foreign authorities? If so, under what arrangements?

The Singapore authorities regularly cooperate with foreign authorities through various forms of mutual legal assistance.

The arrangements made are typically on a reciprocal basis by way of bilateral treaties or multilateral conventions between countries. In Singapore, relevant legislation facilitating mutual legal assistance include:

a. the Mutual Assistance in Criminal Matters Act 2000;
b. the Extradition Act 1968;
c. the Terrorism (Suppression of Financing) Act 2002; and
d. the Terrorism (Suppression of Bombings) Act 2007.

Amongst other things, the Attorney-General may request the assistance of foreign authorities to obtain evidence, arrange for potential witnesses to attend in Singapore, enforce Singapore confiscation orders, and locate and identify persons outside of Singapore. Foreign authorities may similarly seek such assistance from Singapore.

11. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

Legal professional privilege in Singapore comprises both legal advice privilege and litigation privilege (see e.g. Sections 128 and 131 of the Evidence Act 1893).

Legal advice privilege provides that confidential communications made between a client and their lawyer for the purpose of seeking legal advice are privileged and may not be disclosed without the consent of the client (Skandinaviska Enskilda Banken AB (Publ), Singapore Branch v Asia Pacific Breweries (Singapore) Pte Ltd [2007] 2 SLR(R) 367 ("Skandinaviska") at [43]).

Litigation privilege applies to every communication, whether confidential or otherwise so long as it is for the purpose of litigation (Skandinaviska at [44]). The party seeking privilege must show that there was a reasonable prospect of litigation and that the dominant purpose of the existence of the documents must have been for the purpose of litigation.

Communications made in furtherance of an illegal purpose are not protected from disclosure by legal professional privilege under Section 128(2) of the Evidence Act 1893. The authorities may be able to seize privileged information given the breadth of investigative powers available. However, they would not be able to freely use such privileged information. The High Court in Ravi s/o Madasamy v Attorney-General [2021] 4 SLR 956 set out the procedure to be followed when privileged information has been seized (at [83]-[89]).

- the AGC should conduct a review of the seized materials for legal professional privilege. The review should be conducted by a team of AGC officers (the "AGC privilege team") who are not involved in the investigation. This could

exclude officers from the AGC's Crime Division or the AGC's Civil Division depending on the circumstances in which the claim of privilege arises;
- the lawyer asserting privilege should identify what specific documents or files are protected by legal privilege. If he cannot remember which specific documents are privileged, he can inform the AGC and the AGC privilege team should provide supervised access;
- the AGC privilege team may accept a claim of legal professional privilege at face value, or they may review the identified materials to determine if they agree that the identified materials are privileged;
- If the documents are privileged, they should be returned if possible. If the seized documents are in softcopy and cannot be feasibly returned, they should be isolated or quarantined such that subsequent investigators or prosecuting officers will not chance upon the privileged materials;
- If the documents are not privileged, the AGC privilege team should inform the lawyer, who can consult with the affected client for the client to decide whether to insist on his claim to privilege or waive privilege;
- If the affected client waives privilege, the issue is resolved. If the affected client insists on his claim to privilege, he can either file an application under Order 53 of the Rules of Court 2014 (now under Order 24 of the Rules of Court 2021) for leave for a prohibiting order, or object to the admission of the privileged material in question into evidence on the grounds of legal professional privilege; and
- If an application is filed and there are judicial review proceedings, the identified materials should not be handed over to the investigating authority and the prosecution team until after the court challenge is decided.

The Prosecution may also rely on litigation privilege, where the Prosecution can show that the communications are made at a time when there was a reasonable prospect of litigation, and are made for the dominant purpose of litigation (Public Prosecutor v Soh Chee Wen [2020] 3 SLR 1435 at [11], [14] and [15]).

12. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

Singapore has data privacy and protection rules under the Personal Data Protection Act 2012 ("PDPA"). However, use of data for criminal investigations is generally permitted.

Paragraph 3 of Part 3 of the First Schedule to the PDPA provides that the collection, use and disclosure of personal data without consent is allowed where it is necessary for any investigations or proceedings.

The banking secrecy obligation under Section 47(1) of the Banking Act 1970 is also expressly subject to disclosure in compliance with requests to provide information for the purpose of investigation or prosecution, in relation to alleged offences under any written law, among other things.

13. Is there a doctrine of successor criminal liability? For instance in mergers and acquisitions?

The starting position is that each company is a separate legal entity and that a company is therefore not criminally responsible for the conduct of another. However, the individuals involved in the acquired company can still be held to account as their criminal liability is not affected by the merger and/or acquisition.

Where a company and its directors have been involved in criminal activity, a merger will not absolve the directors of their individual criminal responsibility.

14. What factors must prosecuting authorities consider when deciding whether to charge?

The AGC does not publish guidelines on its exercise of prosecutorial discretion, including the factors considered in deciding whether to charge. Nevertheless, the Prosecution will consider, among other things, the sufficiency of evidence as well as the consideration of what is in the public interest.

There are no specific factors enshrined in legislation that the prosecuting authorities must consider.

In general, factors considered by the AGC in its exercise of prosecutorial discretion include:

- whether the evidence supports a reasonable prospect of conviction;
- whether the public interest is supported by prosecuting the suspect;

- the nature, severity and scope of the offences committed;
- the harm caused by the offence, including whether restitution has been made;
- the character of the offence, including whether it offends the values expected by the public;
- public interest or public policy considerations; and
- offender-specific factors, including young age, prior convictions, cooperation with the authorities or contrition.

15. What is the evidential standard required to secure conviction?

The Prosecution must prove all the elements of each offence beyond a reasonable doubt.

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