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Anti-corruption (private company acquisitions) Q&A: Singapore

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This Q&A provides jurisdiction-specific commentary on *Practice note, Anti-corruption due diligence (private company acquisitions): Cross-border* and form part of *Cross-border private company acquisitions*.

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Anti-corruption (private company acquisitions)

1. What are the main legislation and regulatory provisions relevant to bribery and corruption? Is the applicable legislation extraterritorial?

The Prevention of Corruption Act (*Chapter 241*) (PCA) is Singapore's primary anti-corruption legislation, which underpins the country's sophisticated and robust anti-corruption framework.

Singapore's Penal Code (*Chapter 224*) also contains a number of specific corruption offences that relate to bribery involving "public servants". In practice, however, the offences under the Penal Code are rarely used to prosecute corruption offences.

There is limited extraterritorial application under both the PCA and the Penal Code. This applies in circumstances where a corruption offence has been committed by a Singaporean citizen or Singaporean public official outside Singapore, which if it had been committed in Singapore, would have constituted an offence.

This could include, for example, a scenario where:

- A Singaporean citizen has bribed a foreign public official outside Singapore.
- A Singaporean public official has accepted a bribe outside Singapore.

2. What international anti-corruption conventions apply in your jurisdiction?

Singapore has signed and ratified the United Nations Convention Against Corruption 2003, which requires each state signatory to implement various anti-corruption measures, including:

- Developing and implementing effective and coordinated anti-corruption policies.
- Affording necessary independence to a designated national anti-corruption body.
- Adopting a system for the suitable recruitment, hiring, retention, promotion and retirement of civil servants.

Singapore has also signed and ratified the United Nations Convention Against Transnational Organized Crime 2001, which contains a general provision requiring each state signatory to adopt legislative measures to create criminal offences for bribery involving a public official.

Connection with money laundering

As a regional financial hub, Singapore recognises the close connection between corruption and money laundering. Singapore has established a rigorous anti-money laundering and counter-terrorism financing regime, and has recently taken measures to strengthen both its legislative and enforcement frameworks. It is also a member of the Financial Action Task Force and a founding member of the Asia/Pacific Group on Money Laundering.

3. What are the specific bribery and corruption offences in your jurisdiction? Can both individuals and (incorporated or unincorporated) entities be held liable for criminal offences?

Offences under the PCA

Under the PCA, both individuals and companies can be held liable for bribery offences. Additionally, agents and intermediaries who facilitate the giving and receiving of bribes can also be held liable for these offences. The PCA prohibits both active and passive bribery (that is, the giving, promise of giving, offering, soliciting, receiving, and agreement to the receiving of bribes) in both the public and private sectors (*sections 5 and 6*).

The concept of a bribe is defined widely under the PCA (with reference to the term "gratification" (*section 2*)) and includes both monetary and non-monetary benefits including "any other service, favour or advantage of any description whatsoever" (*section 2*).

The PCA covers further public sector corruption offences, including (*sections 10-12*):

- A prohibition against corruptly procuring the withdrawal from a government tender.

- A prohibition against bribery of a member of the Singapore Parliament.
- A prohibition against bribery of a member of a public body.

"Public body" is defined widely, and includes government boards, councils, commissioners, universities, and public health and utility bodies (*section 2, PCA*).

Offences under the Penal Code

In addition to the PCA offences, the Penal Code also sets out a number of specific corruption offences involving public servants, including where:

- A public servant has accepted a gratification or anything of value without any or adequate consideration (*section 165, Penal Code*).
- A person has taken a gratification in order to influence or to exercise personal influence over a public servant (*sections 162-163, Penal Code*).
- A public servant has accepted a gratification or anything of value as a reward for doing any official act, outside of legal remuneration (*section 161, Penal Code*).

4. What defences, safe harbours or exemptions are available (if any) and who can qualify?

There are no formal defences, safe harbours or exemptions available under the PCA. In particular, there is no exemption for "facilitation payments" or equivalent as provided under the United States Foreign Corrupt Practices Act 1977 (*15 U.S.C § 78dd-1, and following*).

There are also no "adequate procedures" or equivalent defence as provided under the United Kingdom Bribery Act 2010 (*c. 23*).

The PCA explicitly states that the fact that the giving of gifts or other benefits is customary in any trade or profession is not a valid defence to a corruption offence (*section 23*).

5. What do companies usually do to mitigate their anti-corruption risk in your jurisdiction (for example, do they implement anti-corruption policies and procedures and roll-out training programmes for employees)?

Companies in Singapore can effectively mitigate their corruption risk by recognising and addressing different risks specific to their business, and more widely to their industry sector.

Some of the measures taken by companies in Singapore typically include:

- Implementing a comprehensive risk assessment programme to assess potential corruption risks and allocate suitable resources to mitigate those risks.
- Conducting thorough due diligence and ongoing audits on third party service providers and other intermediaries.
- Drafting and implementing policies and procedures in relation to:
  - interaction with foreign public officials;
  - gifts and hospitality;
  - charitable and political donations and sponsorship; and
  - facilitation payments.
- Conducting practical and scenario-based anti-corruption compliance training with all employees on a periodic basis.
- Establishing and implementing an effective system of internal controls including structured financial and organisational checks and balances.
- Monitoring and reviewing the efficacy of the anti-corruption compliance programme.
- Fostering a culture of compliance by urging employees to "speak up", and by developing "a tone from the top" where senior management publicly and strongly emphasise compliance messages.
- Creating user-friendly and confidential feedback and reporting channels, including implementing a whistleblower hotline.

Companies with regional headquarters in Singapore

There are many companies with regional headquarters in Singapore but with operations, markets or business partners in other parts of South-East Asia. For such companies, measures to mitigate anti-corruption risk should take into account the fact that they may face indirect exposure to corruption coming from higher-risk, neighbouring jurisdictions such as Malaysia, Indonesia and Vietnam.

Recognising the close link between corruption and money laundering

Multinational companies based in Singapore will also want to ensure that they have robust controls and practices in place to detect and deter the flow of illicit funds resulting from or facilitating corrupt acts.

6. Can associated persons (such as spouses) and agents be liable for these offences and in what circumstances?

The PCA provides that a corruption offence can be committed by a person, either "by himself or in conjunction with any other person" (*section 5*). Depending on the circumstances, this can include any individual or corporation involved in the corrupt act itself or in its abetment.

Agents are explicitly liable for corruption offences (*section 6, PCA*). An "agent" has a wide definition under the PCA, and includes any person employed by or acting for another, including trustees, administrators and executors (*section 2*). The specific corruption offences in relation to agents include where:

- An agent gives or accepts a bribe in relation to their principal's affairs or business.
- A person knowingly gives to an agent a false document, or an agent knowingly uses a false document intended to mislead the principal.

7. Which authorities have the powers of prosecution, investigation and enforcement in cases of bribery and corruption? What are these powers and what are the consequences of non-compliance? What are the possible outcomes of any investigations, prosecutions and other forms of enforcement?

Investigation of potential corruption offences is generally conducted by:

- The Corrupt Practices Investigation Bureau (CPIB). The CPIB is the primary anti-corruption body in Singapore.
- The Commercial Affairs Department (CAD) of the Singapore Police Force. The CAD is the primary white-collar crime investigative body in Singapore.

The two agencies often work together in investigating bribery offences related to commercial fraud, money laundering or terrorist financing. The investigative powers of both agencies are wide-ranging. They can, for example, order a person to attend an interview or to produce documents and other evidence.

The Attorney-General's Chambers (AGC) is the primary public prosecutorial body in charge of prosecuting corruption offences. Within the Financial and Technology Crime Division of the AGC, the Corruption Directorate team is responsible for the prosecution of corruption offences arising from investigations carried out by the CPIB or CAD. The AGC can also direct the CPIB and CAD to take further investigative steps. The prosecution and enforcement options available to the AGC are set out at *Question 8*.

In addition to the above, various specific investigation and enforcement powers are granted to regulatory bodies such as the Monetary Authority of Singapore (MAS) and the Singapore Exchange (SGX).

The MAS is the central bank of Singapore and the country's primary financial services regulator. In this latter role, it has the power to investigate regulatory breaches and take enforcement action concerning corrupt activity. Notably, the MAS has the power to issue a removal or disqualification order against a director of a financial institution and impose a fine of up to SGD1 million.

In its role as the primary equity, commodities and currencies exchange in Singapore, the SGX also assists in the investigation and enforcement of corruption offences committed by companies listed on or trading through the SGX.

8. What are the potential penalties (for example, criminal or administrative) for participating in bribery and corruption? Can matters be resolved by a deferred prosecution agreement (or similar alternative to formal prosecution) or civil settlement?

Any person found guilty of an offence under the PCA may be subject to the following:

- A fine of up to SGD100,000.
- Imprisonment of up to five years (for private sector offences).
- Imprisonment of up to seven years (for public sector offences).

The PCA further provides that any person guilty of receiving a bribe may be ordered to pay a penalty equal to the amount of the bribe, if the value of such a bribe can be quantified (*section 13*).

Penalties for corruption offences under the Penal Code can be in the form of a fine and/or imprisonment for up to three years.

Corporations can also be found guilty of a corruption offence under the PCA and the Penal Code. However, in practice, prosecutions against corporations for corruption offences in Singapore are rare.

Alternatives to formal prosecution

It is common practice in Singapore for accused persons to make written representations to the AGC as part of a plea bargaining process. Such representations may include requests to discontinue ongoing investigations or prosecutions, or reconsider the merits of a charge. An accused person may also request a reduction in the severity of the charges in exchange for voluntarily declining to challenge criminal charges. The extent to which such requests are acceded to, however, is subject to the full discretion of the AGC.

At the time of writing, Singapore does not have a formal Deferred Prosecution Agreement (DPA) scheme in place. However, authorities in Singapore are currently considering a series of amendments to Singapore's Criminal Code which include the potential introduction of a formal DPA scheme.

In the meantime, prosecutors in Singapore are able to issue "Conditional Warnings" which, in practice, can operate as de facto DPAs. This prosecutorial tool was first deployed by the Singapore Corrupt Practices Investigation Bureau (CPIB) in 2017 in the case of Keppel Offshore & Marine (Keppel) as part of a global settlement entered into by Keppel and authorities in Singapore, the US and Brazil.

Under the Conditional Warning arrangement, the CPIB declined to prosecute Keppel for a series of corrupt payments made to officials of Brazilian state-run oil company, Petroleo Brasileiro SA (Petrobras). However, Keppel committed to certain undertakings and agreed to pay financial penalties totalling more than USD100 million to the Singapore authorities (in addition to further penalties due to authorities in the US and Brazil).

In exercising its discretion to issue the Conditional Warning in lieu of prosecution, the CPIB indicated that it gave particular consideration the substantial investigative cooperation rendered by Keppel (including the fact that Keppel had self-reported) and the extensive remedial measures that had been implemented.

Civil liability

The PCA provides that where a bribe has been given by any person to an agent, the agent's principal may recover the value of the bribe as a civil debt (*section 14*). Any such civil liability would be in addition to any penalty or fine imposed as part of a criminal sentence. This includes circumstances where a company can seek damages from a former director or employee who received corrupt payments on behalf of the company.

In addition to the civil recovery proceedings under the PCA, other types of civil action are available. For example, it is possible to bring a civil action against a bribe payer or other third party (such as the employer of the bribe payer) for damages for fraudulent misrepresentation or deceit.

9. Are there any circumstances under which payments such as bribes, ransoms or other payments arising from blackmail or extortion are tax-deductible as a business expense?

There are no circumstances under which illegal payments that would constitute a criminal offence in Singapore (including a corruption offence) are tax-deductible as a business expense. This is in line with Singapore's obligations under the United Nations Convention Against Corruption, which explicitly states that expenses that constitute bribes are disallowed from being tax-deductible as business expenses.

10. Are anti-corruption warranties inserted in share purchase or asset purchase agreements? Which is their usual wording?

Anti-corruption warranties are commonly inserted in share purchase or asset purchase agreements but are subject to commercial negotiation. The wording of anti-corruption warranties in Singapore law-governed agreements is generally in line with international best practice. For an example of anti-corruption warranties, see *Standard clause, Anti-corruption warranties: Cross-border*. Jurisdiction-specific drafting notes (updated periodically) provide practical information on Singapore, including revised wording where appropriate.

Anti-corruption warranties may be significantly "watered down" in a seller-friendly version of a share purchase or asset purchase agreement on the basis that, as a starting point, the buyer should rely on the general compliance with laws warranty.

Given Singapore's status as a hub for many multinational companies operating in South-East Asia, it would be prudent to consider adapting anti-corruption warranties to reflect the acquired company or asset's compliance with relevant local anti-corruption laws.

11. Are there any other provisions that should or are commonly set out in a share purchase or asset purchase agreement in relation to anti-corruption?

Money laundering and proceeds of crime

Under the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (*Chapter 65A*), and the Organised Crime Act (*Act No. 26 of 2015*), assets could be seized where these are found to be proceeds of corrupt activity. To mitigate the risk of disgorgement or seizure of assets following a share or asset purchase, specific warranties can be inserted in a share purchase or asset purchase agreement. For some standard wording, see *Standard clause, Anti-corruption warranties: Cross-border: Drafting note, Additional clauses (Optional): Singapore*.

Debarment of government tenders

In certain sectors, companies may be debarred from being awarded any government tenders if they have been found guilty of a corruption offence. To address this specific risk in relation to an acquired company or asset, a warranty drafted in the form set out

in *Standard clause, Anti-corruption warranties: Cross-border: Drafting note, Additional clauses (Optional): Singapore* can be inserted in a share purchase or asset purchase agreement.

12. Do you expect that the United Kingdom's exit from the European Union (Brexit) may affect anti-corruption matters in relation to your jurisdiction?

Brexit is unlikely to affect anti-corruption matters in Singapore. The UK Bribery Act will continue to have extraterritorial effect and the UK Anti-Corruption Strategy (published in December 2017) confirms it is one of its aims to work with other countries to combat corruption. In particular, the cross-border Keppel settlement illustrates the Singapore authorities' continued commitment to coordinate with other countries' anti-corruption authorities on cross-border investigations and enforcement.

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