

Corruption: Legal impact on Singapore companies in international business

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Roadmap:

- Corruption law – international landscape
- Aspects of international business susceptible to corruption
- Corporate liability
- Dealing with CPIB – practical tips
- Q&A

“Clean and honest dealing is one of our key competitive advantages and corruption compromises the predictability and openness which Singapore offers and investors have come to expect...achieved through our collective efforts as a society and we must not allow these to be undone.”

**PP v Syed Mostofa Romel [2015] SGHC 117,
Sundaresh Menon CJ**

“One of the characteristics that defines Singapore is our intolerance of corruption.”

**The Rule of Law in Singapore, 2012,
Law Minister K Shanmugam**

"There is clearly a public interest in the private sector maintaining a reputation for being corruption free, with business being conducted in a fair and transparent manner so as to ensure that the public's legitimate expectations of bona fides, commercial even handedness and economic welfare are not prejudiced, and the efficient operation of the market is no disrupted."

**Public Prosecutor v Ang Seng Thor [2011] 4 SLR 217,
VK Rajah JA**

Corruption law – international landscape



	PCA	UK Bribery Act (for general information, not advice)	US FCPA (for general information, not advice)
Nature of the advantage obtained	<ul style="list-style-type: none"> Under s 5 – gratification must be an inducement to, reward for, or something to which acts on the mind of the receiver; Under s 6 – gratification pertains to the inducement or reward for either the action or inaction in relation to the receiver's affairs or business, or showing favour or disfavour to any person in relation to his affairs or business. 	<ul style="list-style-type: none"> Focused on the "improper performance"; S 4(1) – in breach of a relevant expectation, and the failure to perform the function or activity to which is also a breach of the relevant expectation. 	<ul style="list-style-type: none"> Payment made for the purposes of obtaining or retaining business, or directing business to, any person.
Distinction between giver and recipients	<ul style="list-style-type: none"> An offence to either give or receive a bribe. 	<ul style="list-style-type: none"> An offence to either give or receive a bribe. 	<ul style="list-style-type: none"> Targets the giver of the bribe.
Bribery of foreign (public) officials	<ul style="list-style-type: none"> Not expressly mentioned, but can be argued under ss 5 and 6 PCA. 	<ul style="list-style-type: none"> It is an offence to bribe a foreign (public) official; Foreign public official is defined narrowly under s. 6(5) of the Act, in comparison to FCPA. 	<ul style="list-style-type: none"> It is an offence to bribe a foreign (public) official; Broadly defined to include any individual within the public sector.

Corruption law – international landscape



	PCA	UK Bribery Act (for general information, not advice)	US FCPA (for general information, not advice)
Element of Corruption and strict liability	<ul style="list-style-type: none"> Offender must possess guilty knowledge that what he was doing was by an objective standard corrupt Presumption of corrupt intent and corrupt element when transaction involves official of a public body. 	<ul style="list-style-type: none"> There is no corrupt element contained within the statute; it only makes reference to the purpose to which the bribe was made; to which is to "obtain or retain business" or "obtain or retain a business advantage" S 7 makes it a strict liability offence for a commercial organisation, with a defence of 'adequate procedures'. 	<ul style="list-style-type: none"> The bribe must be done 'corruptly'.
Facilitation Payments – payments made to induce public officials to perform their functions, such as issuing licenses or permits	<ul style="list-style-type: none"> No exceptions 	<ul style="list-style-type: none"> No exceptions 	<ul style="list-style-type: none"> Exception granted for the expedition or securing routine governmental action; Routine governmental action is defined as an action which is ordinarily and commonly performed by a foreign official; Save areas of discretion which are afforded to such officials.

Corruption law – international landscape



STEPHENSON HARWOOD (SINGAPORE) ALLIANCE

	PCA	UK Bribery Act (for general information, not advice)	US FCPA (for general information, not advice)
<p>Business amenities, promotional expenses and hospitality</p>	<ul style="list-style-type: none"> ▪ No expressed provision relating to business amenities and/or hospitality; ▪ In order to avoid the "corrupt element" to make out the offence, it is suggested that all expenses made should be documented and made transparent and above-board; ▪ Frequency should not be seen as excessive and/or extravagant; ▪ Gifts or invitations should be extended officially as compared to that which is made within a personal capacity. 	<ul style="list-style-type: none"> ▪ Prosecution would need to show that the hospitality was intended to induce conduct that amounts to a breach of an expectation that a person will act in good faith, impartially, or in accordance with a position of trust; ▪ Adjudged on the objective standards of a reasonable person. 	<ul style="list-style-type: none"> ▪ Defence of a "reasonable and bona fide expenditure" to a foreign public official, to which is connect in relation to either a) the promotion, demonstration, or explanation of products or services, or b) the execution or performance of a contract with a foreign government or agency thereof.

Corruption law – international landscape



	PCA	UK Bribery Act (for general information, not advice)	US FCPA (for general information, not advice)
The Implementation of corporate compliance programmes		<ul style="list-style-type: none"> Full defence available of adequate procedures –show that despite a particular case of bribery it nevertheless had adequate procedures in place to prevent persons associated with it from bribing. 	<ul style="list-style-type: none"> No similar "adequate procedures defence", but the US Sentencing Guidelines are used as a standard/threshold for corporate compliance programmes.
Jurisdiction	<ul style="list-style-type: none"> Singapore Courts have territorial jurisdiction over any acts of corruption taking place within Singapore; CPIB is permitted to investigate Singapore Citizens who have committed offences under the PCA in any place, including conduct occurring outside of Singapore; S 4 Penal Code also permits jurisdiction upon Singapore courts in relation to offences committed by public servants outside Singapore. 	<ul style="list-style-type: none"> There is jurisdiction for acts contravening of s 12; Offences committed outside the UK where the person committing has a close nexus link to the UK; Under s 7, so long as either party is connect to the UK, the UK courts have jurisdiction. 	<ul style="list-style-type: none"> Transnational jurisdiction; Any user of securities listed on a US stock exchange, or no-ordinary grants the UK courts powers to check; They are also prohibited from using the US Mail or any means or instrumentality of interstate commerce.

Corruption law – international landscape



	PCA	UK Bribery Act (for general information, not advice)	US FCPA (for general information, not advice)
<p>Penalties</p>	<ul style="list-style-type: none"> ▪ SS 5 or 6 PCA – Fine not exceeding \$100,000 and/or imprisonment for a term not exceeding five years; ▪ If it involves a public body, imprisonment for a term not exceeding seven years; ▪ Guilty under the Penal Code – imprisonment for a term not exceeding three years. 	<ul style="list-style-type: none"> ▪ Convictions under ss1, 2 and 6 – ▪ Summary conviction – a term of imprisonment not exceeding 12 months and/or a fine not exceeding the statutory maximum; ▪ Indictable Offence – A term of imprisonment up to 10 years and/or a potentially unlimited fine; ▪ Commercial organisations convicted under s 7, face a potentially unlimited fine. 	<ul style="list-style-type: none"> ▪ Individuals face up to a 5 years' imprisonment and/or a fine up to \$100,000; ▪ Corporations and other business entities are subject to a fine of up to \$2,000,000; ▪ Under the United States Alternative Fines Act, the fines may be higher; to which is up to twice the benefit that the defendant sought to obtain by making the corrupt payment.

Judicial Discretion is the deciding factor based on the facts of each case.

- Tipping service provider?
 - ✓ Case of Chan Wing Seng

- Personal investments into a Company?
 - ✓ Case of Teo Chu Ha

- Oiling the wheels – foreign government officials?
 - ✓ See the case of UBS Ltd v DEPFA Bank Plc [2014] EWHC 3615

- Helping someone out?
 - ✓ See the case of *Wee Toon Boon*

- Commission for aiding to close a deal?
 - ✓ See the case of FHR European Ventures LLP and others v Cedar Capital Partners LLC [2014] UKSC 45

- Intimate Relations with another person?
 - ✓ See the case of Tey Tsun Hang

Can a Corporate entity be charged under the PCA?

Yes, if...

- "Where the employee is found to be "an embodiment of the company", the company is liable whether or not he acted within the scope of his authority or not; or
- Where a person is not regarded as "the company" but merely "as the company's servant" then the company can be liable if his acts are within the scope of a function of management properly delegated to him."

Tom-Reck Security Services Pte Ltd v Public Prosecutor
[2001] 1 SLR(R) 327

Under Singapore law

Having a compliance system set up is not a sufficient defence per se.

Companies need to demonstrate case by case that the corrupt acts of its employees were not its own.

Companies should set up policies in which there is no tolerance for unauthorised favours / payments to customers or public body officials and anyone who receives information of such acts should inform the company so that the company can distance itself from the acts of the employee. This will help prove that the employee's act was not a function of management delegated to him.

Under the UK Bribery Act

To set up the defence under the UK Act:

- a) Proportionate procedures: procedures to prevent bribery should be proportionate to the bribery risks it faces and to the nature, scale and complexity of the business' activities;
- b) Top level commitment: it is the responsibility of the management of a company to foster a culture of "zero-tolerance" to bribery and to demonstrate leadership by example;
- c) Risk assessment: anti-bribery procedures should be informed by a company's assessment of the risk it faces from bribery. Such assessment should be periodic, informed and documented;
- d) Due diligence: companies should be able to demonstrate thorough due diligence in respect of persons who will perform services on behalf of the organisation;
- e) Communication: a company's anti-bribery ethos and procedures should be disseminated throughout its workforce and appropriate training provided where required;
- f) Monitoring and review: a company should review its procedures periodically and in particular, where the nature of the business changes or develops into a new area."

"Corruption, N. Higgins & P. Lownds (UK)"

s. 36 Protection of informers

(1) Except as hereinafter provided, **no complaints as to an offence under this Act shall be admitted in evidence** in any civil or criminal proceeding whatsoever, and **no witness shall be obliged or permitted to disclose** the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any **books, documents or papers** which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contain any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause **all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery**, but no further.

But note:

(3) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceeding **the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer**, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

Powers of enforcement

Power to Arrest

- The CPIB's powers arise out of Part IV of the PCA, to which needs to be sanctioned by the AGC's office.

- Individuals who are detained without a warrant can only be held up to 48hrs.

S. 68 Criminal Procedure Code (Cap. 68)

Power of Investigate

- Warrant granted by either the Director or a Magistrate to an agent no lower than the rank of 'Inspector'.

- They are allowed to; to enter a place by force if necessary and to search, seize and detain any such document, article or property, if there is a reason to believe that a corruption offence has been committed.

Legal Obligation

- Under s. 27 PCA, individuals are legally bound to give information.
- If an individual knowingly gives false information, under s. 28 of the PCA, the individual will be liable for conviction to a fine not exceeding \$10,000 and/or a term of imprisonment not exceeding one year.

Practical tips for companies upon CPIB raid

- Immediately telephone counsel to attend at premises.
- Ask to see letter from director or warrant so as to find out the angle of the investigations, if possible.
- Provide information and documents as requested if immediately available, making a note of all assistance given.
- Where information sought is immediately available, ask that the officers put their queries in writing so that a considered answer may be provided slightly later.

Practical tips for individuals upon CPIB arrest

- Immediately telephone counsel.
- Ask what you are being investigated for, so as to find out the angle of the investigations, if possible.
- Keep answers short and direct to each question's scope.
- Avoid self-incriminating answers.
- Do not lie. If any question is difficult to answer without incriminating oneself, it is better to say "I have nothing more to say" rather than lie.
- Expect CPIB interviews to last hours, past midnight.
- Once you are allowed to leave the interview, immediately note all questions and answers given and contact counsel.
- Expect CPIB to request that you attend numerous follow up interviews, repeating questions already asked.



Questions?

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