

International **Comparative** Legal Guides



Business Crime **2021**

A practical cross-border insight into business crime law

11th Edition

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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, as the Public Prosecutor (“PP”), controls and directs all criminal prosecutions and proceedings, including prosecutions of business crimes. The Attorney-General has the power to institute, conduct or discontinue any proceedings for any offence. This power may also be exercised by officers of the Attorney-General’s Chambers (“AGC”), who are appointed to carry out the PP’s duties.

Several enforcement authorities including the Commercial Affairs Department (“CAD”) within the Singapore Police Force, the Corrupt Practices Investigation Bureau (“CPIB”), and the Monetary Authority of Singapore (“MAS”) investigate and refer matters to the AGC for criminal prosecution. These enforcement authorities are organised at the national level.

1.2 If there is more than one set of enforcement agencies, how are decisions made regarding the body which will investigate and prosecute a matter?

The enforcement agency that will investigate a matter depends on the nature of the offence. For example, CAD is the main white-collar crime investigation agency, and CPIB is the only agency authorised to investigate corruption offences under the Prevention of Corruption Act (Cap. 241) (“PCA”).

Although enforcement agencies may provide recommendations on the appropriate charges to be brought, the final decision to prosecute lies with 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?

A person, including a company, may face civil penalties for committing business crimes. This will be provided in the specific legislation governing the offence.

For example, section 232 of the Securities and Futures Act (Cap. 289) (“SFA”) states that the MAS may, with the PP’s consent, bring a court action to seek a civil penalty for a breach of relevant SFA provisions. The court may order a civil penalty of a sum not exceeding the greater of S\$2 million, or three times the amount of profit gained or loss avoided as a result of the contravention.

1.4 Have there been any major business crime cases in your jurisdiction in the past year?

In July 2019, three individuals were convicted of multiple insider trading offences and sentenced to imprisonment terms ranging from 20 to 36 months. They had engaged in a “front-running” arrangement (using advance information of pending share orders to illegally benefit from trading shares) for over seven years, resulting in S\$8.07 million in profits. This was the first case of front-running prosecuted as an insider trading offence in Singapore, which carries a heavier penalty.

In November 2019, a Singaporean company director was sentenced to 34 months’ imprisonment after pleading guilty to multiple counts of cheating and illegally supplying luxury goods to North Korea in breach of United Nations sanctions. He had created a financing scheme based on false invoices to deceive five banks of about S\$130 million.

In November 2019, the MAS imposed a civil penalty of S\$11.2 million on UBS AG as its client advisors had engaged in acts that deceived or were likely to deceive clients. The client advisors, among other things, did not adhere to the spread or inter-bank price of a trade as agreed with or understood by the client.

2 Organisation of the Courts

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

The Singapore court system has two tiers: the Supreme Court (comprising the High Court and Court of Appeal); and the State Courts (comprising, among other things, the Magistrates’ Courts and District Courts). Criminal cases are heard at first instance in the State Courts or High Court. The Magistrates’ Courts and District Courts may try any offence for which the maximum term of imprisonment provided by law does not exceed five years and 10 years, respectively, or which is a fine-only offence (sections 7(1)(a) and 8(1), Criminal Procedure Code (Cap. 68) (“CPC”). The High Court tries all other offences at first instance.

Appeals from the State Courts are heard by the High Court, and appeals from the High Court are heard by the Court of Appeal.

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

Singapore does not have jury trials. Trials are typically heard before a judge.

3 Particular Statutes and Crimes

3.1 Please describe any statutes that are commonly used in your jurisdiction to prosecute business crimes, including the elements of the crimes and the requisite mental state of the accused:

• Securities fraud

Prohibited market conduct relating to capital markets products such as securities is set out in sections 196 to 204, SFA.

For example, it is an offence to create a false or misleading appearance of active trading in any securities, or with respect to the market for, or the price of, such securities (section 197, SFA). Further, a person must not carry out two or more transactions in securities of a corporation (including derivatives), which will have the effect of manipulating the price of the securities, with the intent to induce other persons to subscribe for, purchase or sell securities of the corporation or a related corporation (section 198, SFA).

• Accounting fraud

Under section 477A, Penal Code (Cap. 224) (“PC”), it is an offence for a clerk, officer or servant to intentionally and with intent to defraud, destroy, alter, conceal, mutilate or falsify any account that is in his employer’s possession, or make or abet the making of any false entry in such account.

• Insider trading

Insider trading is governed by sections 213 to 231, SFA. In general, it is an offence to trade or procure another person to trade in the securities of a corporation while in possession of materially price-sensitive information concerning the corporation that is not generally available. Notably, the Prosecution does not need to prove that the accused intended to use the said information (section 220(1), SFA).

• Embezzlement

Criminal breach of trust (“CBT”) is covered under sections 405 to 409, PC. A person commits CBT if he is entrusted with or has dominion over property, which he dishonestly misappropriates or converts to his own use. If convicted of simple CBT, the accused faces up to seven years’ imprisonment and/or a fine. Public servants, bankers, merchants, or agents could be charged for aggravated CBT, which carries a maximum punishment of 20 years’ imprisonment, and shall also be liable to a fine.

• Bribery of government officials

Section 5, PCA makes it an offence for a person to corruptly give or corruptly receive any gratification as an inducement to or reward for any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed, in which such public body is concerned.

Notably, where the giver or receiver is a person in the employment of the Singapore government or any public body, a rebuttable presumption of corruption arises (section 8, PCA).

• Criminal anti-competition

Anti-competitive practices are regulated by the Competition Act (Cap. 50B). Notably, there is no criminal liability for contravening competition law *per se*. However, the Competition and Consumer Commission of Singapore (“CCCS”) may impose financial penalties for infringements (section 69, Competition Act).

• Cartels and other competition offences

Section 34, Competition Act prohibits cartel activities, specifically agreements between undertakings, decisions by associations

of undertakings or concerted practices which have the object or effect of preventing, restricting or distorting competition within Singapore.

• Tax crimes

Tax evasion is punishable under the Income Tax Act (Cap. 134) (“ITA”). Any person who wilfully, with intent to evade or assist any other person to evade tax, omits any income that should be included in a tax return, makes any false statement in a tax return, or gives a false answer to any question or request for information from the Inland Revenue Authority of Singapore, shall be guilty of an offence (section 96(1), ITA).

• Government-contracting fraud

There is no specific legislation dealing with government-contracting fraud. Fraudulent acts such as cheating may be punished under the PC.

• Environmental crimes

The Environmental Protection and Management Act (Cap. 94A) governs environmental crimes concerning air, water, land and noise pollution, as well as hazardous substances.

• Campaign-finance/election law

The Parliamentary Elections Act (Cap. 218) and Presidential Elections Act (Cap. 240A) prohibit certain corrupt and illegal practices relating to parliamentary and presidential elections, respectively.

• Market manipulation in connection with the sale of derivatives

See the answer to “Securities fraud”.

• Money laundering or wire fraud

The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) (“CDSA”) criminalises the laundering of benefits of drug dealing/criminal conduct. These include:

- (i) assisting another to retain the benefits of drug dealing/criminal conduct (section 43/44, CDSA); and
- (ii) acquiring, possessing, using, concealing or transferring the benefits of drug dealing/criminal conduct (section 46/47, CDSA).

• Cybersecurity and data protection law

The Computer Misuse Act (Cap. 50A) (“CMA”) sets out penalties for various offences, including unauthorised access to computer material, use or interception of computer service, and disclosure of access code (sections 3, 6, and 8, CMA).

• Trade sanctions and export control violations

Singapore, as a member of the United Nations, implements trade sanctions imposed by the United Nations Security Council through the United Nations Act (Cap. 339). The regulation and control of exports is also governed by the Regulation of Imports and Exports Act (Cap. 272A), Strategic Goods (Control) Act (Cap. 300), and Customs Act (Cap. 70).

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

A person who attempts to commit an offence punishable by the PC or any other written law, shall be guilty of an offence (section 512, PC). This is even if the attempted crime is not completed.

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?

An entity can be liable for criminal offences. Generally, in every written law of Singapore, the word "person" includes any company (section 2(1), Interpretation Act (Cap. 1)).

An entity can be liable for an employee's conduct if the employee effectively controls what the entity does and can be said to be its "directing mind and will".

Sometimes, entity liability is specifically provided for in statute. For example, for insider trading, section 226(1), the SFA states that a corporation is taken to possess any information that its officer possesses and that came into his possession in the course of the performance of his duties.

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

The managers, officers and directors of an entity may be personally liable for a crime if the specific legislation governing the offence provides for such liability, and the requirements therein are satisfied. For example, section 141(1) of the Customs Act states that where an offence has been committed by a company, any person who at the time of the offence was a director, manager, secretary or other similar officer shall be deemed guilty of that offence unless he proves that: (a) the offence was committed without his consent or connivance; and (b) he exercised all such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his functions in that capacity and all the circumstances.

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?

Although no official policy has been published, the Attorney-General stated in a newspaper op-ed in November 2015 that in the context of business crimes, the decision to take action against an entity requires careful consideration to ensure that disproportionate collateral damage is not inflicted on innocent parties such as the entity's employees and shareholders.

4.4 In a merger or acquisition context, can successor liability apply to the successor entity? When does successor liability apply?

Generally, a company, as a separate legal entity, will remain liable for any offence even after a merger/acquisition.

5 Statutes of Limitations

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

There is no limitation period for enforcing or prosecuting criminal offences.

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

See question 5.1.

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

See question 5.1.

6 Initiation of Investigations

6.1 Do enforcement agencies have jurisdiction to enforce their authority outside your jurisdiction's territory for certain business crimes? If so, which laws can be enforced extraterritorially and what are the jurisdictional grounds that allow such enforcement? How frequently do enforcement agencies rely on extraterritorial jurisdiction to prosecute business crimes?

Enforcement agencies do not have the jurisdiction to carry out investigations outside Singapore. However, they may request assistance from foreign authorities (see question 6.3).

Certain statutes have extra-territorial reach. For example, section 37, PCA provides that a Singapore citizen may be prosecuted for an offence under the PCA that is committed outside Singapore as if it had been committed in Singapore.

It is not uncommon for the AGC to rely on extra-territorial jurisdiction to prosecute business crimes.

6.2 How are investigations initiated? Are there any rules or guidelines governing the government's initiation of any investigation? If so, please describe them.

Investigations are initiated when a complaint or report is lodged and the relevant authority has reason to suspect that an offence has been committed. In the case of the police, their powers of investigation are set out in Part IV, CPC.

6.3 Do the criminal authorities in your jurisdiction have formal and/or informal mechanisms for cooperating with foreign enforcement authorities? Do they cooperate with foreign enforcement authorities?

The Mutual Assistance in Criminal Matters Act (Cap. 190A) sets out the mechanisms that Singapore uses for cooperation with foreign countries in relation to criminal matters. Singapore is also a party to multiple international treaties that facilitate the provision and obtainment of international assistance in criminal matters. Such assistance includes the taking of evidence, locating or identifying persons, and enforcing foreign confiscation orders.

7 Procedures for Gathering Information from a Company

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

Under the CPC, the police have the power to, among other things, compel the production of documents, examine witnesses, conduct searches for documents and other things, seize property, access computers, and arrest suspects (sections 20, 22, 34, 35, 39 and 64, CPC).

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?

Where the police consider that any document or thing is necessary or desirable for any investigation, inquiry, trial or other proceeding under the CPC, the police may issue a written order to require the company to produce or give the police access to that document or thing (section 20, CPC).

Additionally, the court may issue a search warrant if, among other things, it considers that a general or specific search or inspection will serve the purposes of justice or of any investigation, inquiry, trial or other proceeding under the CPC (section 24, CPC). In this regard, the police are empowered to search, without a warrant, for any property alleged to have been stolen, if there is reasonable cause for suspecting that such stolen property is concealed or lodged in any place and the police have good grounds for believing that the property will likely be removed due to the delay in obtaining a search warrant (section 32, CPC).

The police may 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 35, CPC).

7.3 Are there any protections against production or seizure that the company can assert for any types of documents? For example, does your jurisdiction recognise any privileges protecting documents prepared by in-house attorneys or external counsel, or corporate communications with in-house attorneys or external counsel?

The company under investigation may invoke legal advice privilege and litigation privilege at common law to resist the disclosure of certain types of communications and documents. Legal advice privilege may be claimed over communications between the company and their lawyers made confidentially for the purpose of obtaining or giving legal advice. Litigation privilege may be maintained over documents that were created for the dominant purpose of litigation or contemplated litigation.

7.4 Are there any labour or privacy laws in your jurisdiction (such as the General Data Protection Regulation in the European Union) which may impact the collection, processing, or transfer of employees' personal data, even if located in company files? Does your jurisdiction have blocking statutes or other domestic laws that may impede cross-border disclosure?

Section 13 of the Personal Data Protection Act 2012 (No. 26 of 2012) ("PDPA") provides that an individual's consent is required before an organisation may collect, use or disclose his personal data, unless the collection, use or disclosure without the individual's consent is required or authorised under the PDPA or any other written law. Specifically, the organisation may collect an individual's personal data without his consent, or from a source other than the individual, if the collection is necessary for any investigation or proceedings, and if it is reasonable to expect that seeking the individual's consent would compromise the availability or accuracy of the personal data (paragraph 1(e), Second Schedule, PDPA).

An organisation transferring personal data to a country outside Singapore must ensure that it protects the personal data to a standard that is comparable to the protection under the PDPA (section 26(1), PDPA).

7.5 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?

See question 7.2.

7.6 Under what circumstances can the government demand that a third person or entity produce documents to the government, or raid the home or office of a third person or entity and seize documents?

The investigative powers under the CPC are also applicable to third parties. See question 7.2.

Questioning of Individuals:

7.7 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?

In the course of investigations, the police 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 (section 21, CPC). The police are empowered to examine such person orally (section 22(1), CPC). It is an offence for a person to refuse to answer a public servant authorised to question him (section 179, PC).

The police may record a statement from the person in writing. This statement must be read over to the person, interpreted for him (if he does not understand English), and be signed by him (sections 22(3) and 22(4), CPC).

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

The investigative powers under sections 21 and 22 of the CPC are also applicable to third parties. See question 7.7.

7.9 What protections can a person assert upon being questioned by the government? Is there a right to be represented by an attorney during questioning? Is there a right or privilege against self-incrimination that may be asserted? If a right to assert the privilege against self-incrimination exists, can the assertion of the right result in an inference of guilt at trial?

An arrested person shall be allowed to consult and be defended by a legal practitioner of his choice (article 9(3), Constitution). However, this right only arises within a reasonable time after arrest, which depends on the circumstances of each case. There is no right to be represented by a lawyer during questioning.

In police investigations, a person examined must state truly what he knows of the facts and circumstances of the case, but need not say anything that might expose him to a criminal charge, penalty or forfeiture (section 22(2), CPC).

However, a person questioned under section 27 of the PCA has no privilege against self-incrimination as CPIB officers are empowered to require a person to give information in relation to corruption offences and the person is legally bound to give that information.

The court may draw an adverse inference from an accused's silence, where: (a) he was charged or informed by the police that he may be prosecuted for an offence; and (b) he failed to mention any fact which he subsequently relies on in his defence, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so questioned, charged or informed (section 261, CPC).

8 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

8.1 How are criminal cases initiated?

Criminal proceedings against any person may be initiated pursuant to an arrest, a summon, an arrest warrant, a notice to attend court or any other mode for compelling the attendance of a person in court as provided in the CPC or any other written law (section 150, CPC).

8.2 What rules or guidelines govern the government's decision to charge an entity or individual with a crime?

Guidelines on prosecutorial decisions are not published in Singapore. Generally, after investigations, the AGC will assess whether there is a reasonable prospect of conviction and whether it is in the public interest to prosecute. Ultimately, it is a matter of prosecutorial discretion (see questions 1.1 and 1.2).

8.3 Can a defendant and the government agree to resolve a criminal investigation through pre-trial diversion or an agreement to defer prosecution? If so, please describe any rules or guidelines governing whether pretrial diversion or deferred prosecution agreements are available to dispose of criminal investigations.

Criminal investigations into certain specified offences may be resolved through deferred prosecution agreements ("DPAs"). These are available to companies but not individuals. The decision to enter into a DPA is a matter of prosecutorial discretion.

The subject of an investigation may also write letters of representation to urge the PP to not initiate criminal proceedings, or if charges have already been brought, to withdraw, amend, or reduce the charge(s). The PP has the discretion to decide whether to accede to these requests.

8.4 If deferred prosecution or non-prosecution agreements are available to dispose of criminal investigations in your jurisdiction, must any aspects of these agreements be judicially approved? If so, please describe the factors which courts consider when reviewing deferred prosecution or non-prosecution agreements.

A DPA comes into force only when the High Court approves it by making a declaration that the DPA is in the interests of justice, and that its terms are fair, reasonable, and proportionate.

8.5 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 may apply.

As stated in question 1.3, the MAS may, with the PP's consent, bring a court action to seek a civil penalty for a breach of relevant SFA provisions (section 232(1), SFA).

9 Burden of Proof

9.1 For each element of the business crimes identified above in Section 3, which party has the burden of proof? Which party has the burden of proof with respect to any affirmative defences?

Generally, the Prosecution bears the burden of proving the elements of the offence, and the accused bears the burden of proving any affirmative defences.

9.2 What is the standard of proof that the party with the burden must satisfy?

The Prosecution must prove the elements of the offence beyond a reasonable doubt, while the accused must prove any defence on a balance of probabilities.

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 arbiter of fact and determines whether the party has satisfied its burden of proof.

10 Conspiracy / Aiding and Abetting

10.1 Can a person who conspires with or assists another to commit a business crime be liable? If so, what is the nature of the liability and what are the elements of the offence?

A person abets an offence if he: (a) instigates any person to commit the offence; (b) engages with one or more other person(s) in any conspiracy for the commission of the offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to commit the offence; or (c) intentionally aids the commission of the offence (section 107, PC). Notably, to constitute the offence of abetment, it is not necessary that the act abetted should be committed.

Whoever abets an offence shall, if the act abetted is committed in consequence of the abetment, and there is no express provision for its punishment, be punished with the punishment provided for the offence (section 109, PC).

Further, when a person agrees with another person to commit an offence or cause an offence to be committed, they may be liable for criminal conspiracy (section 120A, PC). A party to a criminal conspiracy shall, where there is no express provision for its punishment, be punished in the same manner as if he had abetted the offence that is the subject of the conspiracy (section 120B, PC).

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?

Generally, the Prosecution bears the burden of proving the elements of the offence, including intent, beyond a reasonable doubt (see question 9.1). Therefore, the accused needs only to cast reasonable doubt as to whether he had the requisite intent to commit the crime.

11.2 Is it a defence to a criminal charge that the defendant was ignorant of the law, 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?

Ignorance of the law is not a defence to a criminal charge.

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?

A person who, by reason of a mistake of fact or in ignorance of a fact in good faith, believes himself to be bound by law or justified by law to do an act would not have committed an offence (section 79, PC). The burden of proof lies on the accused (section 107, Evidence Act (Cap. 97)).

12 Voluntary Disclosure Obligations

12.1 If a person or entity becomes aware that a crime has been committed, must the person or entity report the crime to the government? Can the person or entity be liable for failing to report the crime to the government? Can the person or entity receive leniency or "credit" for voluntary disclosure?

Section 424 of the CPC requires every person, including every company (see question 4.1), who is aware of the commission of or the intention of any other person or company to commit certain specified offences, to, in the absence of reasonable excuse, immediately give information to the police.

The punishment for intentionally omitting to give any information of an offence that a person is legally bound to give is an imprisonment term which may extend to six months, or a fine, or both (section 202, PC).

Under section 39(1) of the CDSA, a person must also file a Suspicious Transaction Report as soon as reasonably practicable where he knows or has reasonable grounds to suspect that any property represents the proceeds of criminal conduct, and the information or matter on which the knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment.

Any person who contravenes section 39(1), CDSA shall be guilty of an offence and shall be liable on conviction to a fine not exceeding S\$250,000 or to imprisonment for a term not exceeding three years or to both (if the person is an individual), or to a fine not exceeding S\$500,000 (if the person is not an individual) (section 39(2), CDSA).

A person or entity may receive leniency for voluntary disclosure, subject to the PP's discretion.

13 Cooperation Provisions / Leniency

13.1 If a person or entity voluntarily discloses criminal conduct to the government or cooperates in a government criminal investigation of the person or entity, can the person or entity request leniency or "credit" from the government? If so, what rules or guidelines govern the government's ability to offer leniency or "credit" in exchange for voluntary disclosures or cooperation?

Generally, voluntary disclosure and cooperation with investigations are viewed favourably by enforcement agencies, and may amount to a mitigating factor.

Under CCCS's leniency programme, the first cartel member to notify CCCS of cartel activity will be entitled to immunity from financial penalties (if CCCS has not started investigations), or a reduction of up to 100% of the financial penalties (if CCCS has started investigations).

13.2 Describe the extent of cooperation, including the steps that an entity would take, that is generally required of entities seeking leniency in your jurisdiction, and describe the favourable treatment generally received.

See question 13.1.

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?

In practice, it is not uncommon for the Prosecution to make a plead guilty ("PG") offer, such as offering to proceed on certain charges and for the remaining charges to be taken into consideration for the purpose of sentencing, or to withdraw or reduce certain charges, in exchange for the accused pleading guilty.

However, there can be no agreement as to sentence as this is within the court's jurisdiction.

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?

See questions 8.3, 8.4 and 14.1. The PG offer does not have to be approved by the court.

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 a sentence on the defendant? Please describe the sentencing process.

In determining an appropriate sentence, the court will consider, among other things, the minimum (if any) and maximum punishments prescribed in the relevant legislation, the circumstances of the offence, the relevant sentencing benchmarks and sentencing principle(s) (i.e. deterrence, retribution, prevention and/or rehabilitation), and any aggravating and/or mitigating factors present.

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.

Penalties for corporate offences generally include fines and confiscation orders in respect of the proceeds derived from the offence.

In determining the quantum of fine to be imposed on a corporate offender, the court may consider, among other things: (a) the intention or motivation of the company; (b) the steps taken by the company upon discovery of the breach or the degree of remorse shown by the company; (c) whether the company was merely an alter ego of its directors, who had already been punished for the same offences; and (d) where appropriate, the community of interests (e.g. shareholders, employees and creditors of the company) that may be affected if a prohibitive fine is imposed on the company.

16 Appeals

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

An accused convicted by a trial court may appeal against the conviction, the sentence imposed or an order of the trial court (section 374(4), CPC). However, an accused who pleaded guilty may appeal only against the extent or legality of the sentence (section 375, CPC).

The Prosecution may appeal against the acquittal of an accused, the sentence imposed or an order of the trial court (section 374(3), CPC).

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

Both the accused and Prosecution may appeal against the sentence imposed. See question 16.1.

16.3 What is the appellate court's standard of review?

Any judgment, sentence or order of a trial court may be reversed or set aside if the appellate court is satisfied that it was wrong in law, against the weight of the evidence or, in the case of a sentence, manifestly excessive or manifestly inadequate (section 394, CPC).

Generally, the appellate court is slow to overturn a trial judge's findings of fact, as the trial judge is better placed to assess the witnesses' credibility. However, it may intervene when the inferences of fact drawn by the trial court are not supported by the primary or objective evidence on record.

16.4 If the appellate court upholds the appeal, what powers does it have to remedy any injustice by the trial court?

In an appeal against a conviction, the appellate court may reverse the finding and sentence and acquit or discharge the accused, order him to be re-tried, alter the finding, or reduce or enhance the sentence (section 390(1)(b), CPC).

In an appeal against the sentence, the appellate court may reduce, enhance or alter the nature of the sentence (section 390(1)(c), CPC).

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