



**COUNTRY
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Singapore

BRIBERY & CORRUPTION

Contributing firm

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This country-specific Q&A provides an overview of bribery & corruption laws and regulations applicable in Singapore.

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SINGAPORE

BRIBERY & CORRUPTION



1. What is the legal framework (legislation/regulations) governing bribery and corruption in your jurisdiction?

The primary legislation governing bribery and corruption in Singapore is the Prevention of Corruption Act 2020 (PCA). The main offences under the PCA are set out in sections 5 and 6, which apply to both the private and public sector and prohibit both active and passive bribery.

The Penal Code 1871 (Penal Code) contains further provisions relating to bribery and corruption. This includes offences related to the bribery of domestic “public servants” under sections 161 to 165 of the Penal Code. In practice, however, the offences under the Penal Code are rarely used for the prosecution of corruption offences. Prosecutors usually rely on the offences under the PCA instead.

The Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act 1992 (CDSA) is another legislation to combat corruption. The CDSA criminalises the acquiring, possessing, using, concealing and/or transferring of the benefits from criminal conduct (such as corruption), and allows for the confiscation of such benefits.

2. Which authorities have jurisdiction to investigate and prosecute bribery in your jurisdiction?

In Singapore, the main authority which investigates bribery is the Corrupt Practices Investigation Bureau (CPIB). Meanwhile, the main authority which prosecutes bribery is the Attorney-General’s Chambers (AGC).

3. How is bribery defined?

Bribery is defined widely under the PCA.

Section 5 of the PCA provides that it is an offence for anyone to:

- a. “(a) corruptly solicit or receive, or agree to receive for himself, or for any other person; or
- b. (b) corruptly give, promise or offer to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or reward for, or otherwise on account of —

- i. any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
- ii. any member, officer or servant of a public body doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body is concerned [...]

[emphasis added]

Section 6 of the PCA also provides that it is an offence for an agent to corruptly accept or obtain any gratification in relation to the acts or performance of his principal. For example, this may involve an employee corruptly accepting or obtaining any gratification in relation to the acts of his company.

Further, sections 11 and 12 of the PCA provide that it is an offence to offer gratification to domestic public officials (such as Members of Parliament).

Under the PCA, “gratification” has a wide definition which includes both monetary and non-monetary benefits. Monetary benefits include “any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable”. Non-monetary benefits include “any other service, favour or advantage of any description whatsoever”.

4. Does the law distinguish between bribery of a public official and bribery of

private persons? If so, how is 'public official' defined? Are there different definitions for bribery of a public official and bribery of a private person?

The primary corruption offences under section 5 and 6 of the PCA apply to both the private and public sectors.

However, the law distinguishes between bribery of a public official and private persons in that there is a presumption of corruption in certain cases involving the bribery of public officials. In this regard, Section 8 of the PCA provides as follows:

Where in any proceedings against a person for an offence under section 5 or 6, it is proved that any gratification has been paid or given to or received by a person in the employment of the Government or any department thereof or of a public body by or from a person or agent of a person who has or seeks to have any dealing with the Government or any department thereof or any public body, that gratification shall be deemed to have been paid or given and received corruptly as an inducement or reward as hereinbefore mentioned unless the contrary is proved.

For the purposes of Section 8 of the PCA, a public official is defined as being "a person in the employment of the Government (or any department thereof", or "any public body".

Further, Section 2 of the PCA defines a "public body" widely as "any corporation, board, council, commissioners or other body which has power to act under and for the purposes of any written law relating to public health or to undertakings or public utility or otherwise to administer money levied or raised by rates or charges in pursuance of any written law".

Aside from this, the law also distinguishes between bribery of a public official and private persons in that there are specific offences under the PCA and the Penal Code that relate to the public sector.

In particular, under the PCA, it is an offence to:

- Corruptly procure the withdrawal from a government tender (Section 10 of the PCA);
- Bribe a Singapore Member of Parliament (Section 11 of the PCA); and
- Bribe a member of a public body (Section 12 of the PCA).

Further, under the Penal Code, the following are offences (among others):

- The acceptance by a public servant of a

gratification or anything of value as a reward for doing any official act, outside of legal remuneration (Section 161 of the Penal Code).

- The acceptance of a gratification by any person in order to influence or to exercise personal influence over a public servant (Sections 162-163 of the Penal Code); and
- The acceptance by a public servant of a gratification or anything of value without any or adequate consideration (Section 165 of the Penal Code);

In this regard, it should be noted that a "public servant" is defined differently from a "public officer" under the PCA. Whereas the definition of the latter is set out above, the former is defined under Section 21 of the Penal Code as including:

- An officer in the Singapore Armed Forces;
- A judge;
- An officer of a court of justice;
- An assessor assisting a court of justice;
- An arbitrator or other person to whom any cause or matter has been referred for decision;
- An office holder who holds powers to confine other persons;
- An officer of the Singapore Government;
- An officer who acts on behalf of the Government; or
- A member of the Public Service or Legal Service Commission.

5. What are the civil consequences of bribery in your jurisdiction?

Under Section 14 of the PCA, 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. This would allow, for example, a company to seek damages from a former director or employee who paid corrupt payments on account of their dealings on behalf of the company. Any such civil liability would be in addition to any penalty or fine imposed as part of a criminal sentence.

In addition to the civil recovery proceedings permitted by the PCA, other types of civil actions are available. For example, in certain circumstances, it is possible for a company to bring a civil action for conspiracy against its employee(s) who orchestrated and/or participated in the giving / receiving of bribes.

6. What are the criminal consequences of

bribery in your jurisdiction?

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

- A fine of up to S\$ 100,000; and/or
- Imprisonment of up to five years (for private sector offences); or
- Imprisonment of up to seven years (for public sector offences).

Further, under Section 13 of the PCA, any person found guilty of receiving a bribe may also be ordered to pay a penalty equal to the amount of the bribe itself.

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

7. Does the law place any restrictions on hospitality, travel and entertainment expenses? Are there specific regulations restricting such expenses for foreign public officials?

There are no specific restrictions placed on the provision of hospitality, travel and entertainment expenses per se.

However, careful consideration should be given before providing any hospitality, travel or entertainment benefits to domestic public officials. This is since, under section 8 of the PCA, any gratification given to public officials will be presumed to have been given corruptly unless proven otherwise.

There are no explicit equivalent restrictions in the context of foreign public officials.

However, Section 37 of the PCA also states that if a Singapore citizen commits an offence under the PCA in any place outside of Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore. Section 4 of the Penal Code also provides that public servants who commit offences outside of Singapore are deemed to have committed that offence in Singapore.

The sum total of this is that the various prohibitions for corruption-related offences under the PCA and Penal Code apply to cases involving foreign public officials and, in some cases, even apply where the acts of corruption occur outside of Singapore.

8. Are political contributions regulated?

Political contributions are primarily regulated by the Political Donations Act 2000 (PDA). This legislation was enacted predominantly to prevent foreign citizens and foreign controlled bodies from interfering in the domestic political process by funding candidates and political associations.

Under the PDA, political associations and candidates can only accept contributions from permissible donors - that is, Singapore citizens not less than 21 years of age, Singapore-controlled companies carrying on business mainly in Singapore, or a candidate's political party. If donations come from anonymous donors, such donations from anonymous donors may not exceed S\$5,000 per financial year.

Further, Section 12 of the PDA mandates that every political association must prepare and send the Registrar of Political Donations a donation report.

Donation reports should state details such as the identity of donors, value of donations and circumstances in which donations were made. Further, donation reports must also contain details of every donation where:

- The donation is not less than S\$10,000; or
- If added to any other donation from the same permissible donor, the aggregate amount of the donations is not less than S\$10,000.

9. Are facilitation payments regulated? If not, what is the general approach to such payments?

Facilitation payments may be defined as payments which are made to public officials to speed up an administrative process where the outcome is already pre-determined.

Facilitation payments are not specifically regulated in Singapore - in particular, there is no exemption or defence applicable to such payments similar to that provided under the United States Foreign Corrupt Practices Act 1977 (FCPA).

However, regard should be had to Section 12 of the PCA. That section prohibits, among others, the giving, solicitation and/or accepting of gratification for a member of a public body's performing or abstaining from performing, or his aid in procuring, expediting, delaying, hindering or preventing the performance of any official act.

10. Are there any defences available?

There are no formal defences available under the PCA or Penal Code. In particular, there is no equivalent to the facilitation payment exemption found under the FCPA, or the “adequate procedures” defence under the United Kingdom Bribery Act 2010 that a company has put in place adequate procedures to prevent corruption.

Further, Section 23 of 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.

11. Are compliance programs a mitigating factor to reduce/eliminate liability for bribery offences in your jurisdiction?

As discussed above, there is no formal “adequate procedures” defence in Singapore to reduce or eliminate liability for bribery offences on account of the implementation of a compliance program.

That being said, if a company has an effective anti-bribery compliance program in place, this may be a mitigating consideration for prosecutors in deciding whether to commence criminal proceedings and/or for the courts at sentencing stage.

The Deferred Prosecution Agreements (DPA) scheme may also allow companies to highlight effective anti-bribery compliance programs as part of their negotiations on any DPA to be entered into with the Attorney-General’s Chambers (AGC).

A DPA is a voluntary alternative in which a prosecutor agrees to grant amnesty in exchange for a defendant agreeing to fulfil certain requirements and specific conditions, such as, for example, co-operating in investigations into wrongdoing by individuals. For now, there are no publicly-available guidelines on when the AGC will enter into a DPA with a corporate entity.

12. Who may be held liable for bribery? Only individuals, or also corporate entities?

Both individuals and corporate entities may be held liable for bribery. The primary bribery offences under Sections 5 and 6 of the PCA apply to all “persons”. The term “person” is defined in the Interpretation Act as including “any company or association of body of persons, corporate or unincorporated.”

In practice, however, the authorities’ enforcement efforts have focused predominantly on individuals, with prosecutions against corporates entities for corruption offences being rare to date.

13. Has the government published any guidance advising how to comply with anti-corruption and bribery laws in your jurisdiction? If so, what are the elements of an effective corporate compliance program?

The CPIB has published their answers to some frequently asked questions relating to anti-corruption and bribery laws in Singapore on their website at http://www.ifaq.gov.sg/CPIB/apps/Fcd_faqlmain.aspx.

In 2017, the CPIB and SPRING (now Enterprise Singapore – a government agency championing enterprise development) also launched the Singapore Standard (SS) ISO 37001 on anti-bribery management systems. This voluntary standard is based on internationally-recognised good practices. It provides guidelines to help Singapore companies strengthen their anti-bribery compliance systems and processes and ensure compliance with anti-bribery laws.

Further, in 2017, CPIB published PACT – its Practical Anti-Corruption Guide for Businesses in Singapore.

PACT provides guidance for business owners on how to develop and implement an anti-corruption system. The elements of an effective corporate compliance program as stated in PACT include the following:

- Tone from the top promoting a corporate culture of compliance;
- Implementation of clear, visible and easy to understand anti-corruption policies and a code of conduct;
- Guidance on common corruption risk areas including:
 - Corporate gifts and entertainment;
 - Conflicts of interests; and
 - Contributions and sponsorship.
- Conducting bribery and corruption risk assessments;
- The implementation of effective internal controls;
- The availability of effective reporting and whistleblower systems; and
- Regular monitoring of the compliance system.

14. Does the law provide protection to whistle-blowers?

There is currently no specific omnibus legislation to provide protection to whistle-blowers in Singapore.

However, some protection is offered by the PCA – in

particular, Section 36 of the PCA renders any complaints under the PCA inadmissible as evidence in any civil or criminal proceedings. Further, no witness is obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

There is growing attention in terms of the need for such specific legislation.

15. What are the recent and emerging trends in investigations and enforcement in your jurisdiction? Has the Covid-19 pandemic had any impact and, if so, what?

Based on the CPIB's statistics released on 5 May 2022, it would appear that there has been an overall decrease in corruption-related reports received from 2017 to 2021 and, correspondingly, reports registered as new cases for investigation.

Moreover, of these new cases registered for registration, the majority of these cases involved the private sector (89%), and this figure has remained relatively constant since 2017. In a similar vein, the majority of individuals prosecuted in Court in 2021 were from the private sector (93%), and this figure has also remained relatively constant since 2017.

Overall, it would appear that the COVID-19 pandemic has not made any significant impact on the overall trends in relation to investigations and enforcement. In fact, despite workplace disruptions due to the pandemic, the CPIB completed investigations into 87% of subjects investigated in both 2020 and 2021.

Aside from this, one of the fairly recent introductions in enforcement is the Deferred Prosecution Agreements (DPA) regime introduced in 2018 through the Criminal Justice Reform Act 2018 (CJRA). A DPA is a voluntary alternative in which a prosecutor agrees to grant amnesty in exchange for a defendant agreeing to fulfil certain requirements and specific conditions, such as, for example, implementing compliance programmes, and/or co-operating in investigations into wrongdoing by individuals.

For now, there are no publicly-available prosecution guidelines on when the AGC will enter into a DPA with a corporate entity, and it remains to be seen how the DPA regime will affect trends in investigations.

However, the introduction of DPAs in Singapore may be an indication of an increased focus on corporate entities by the Singapore government. This is since the Singapore Ministry of Law stated that the DPAs serve

two main purposes – to encourage corporate reform to prevent future offending, and facilitate investigations into wrongdoing both by the company and by individuals.

The COVID-19 pandemic has also given rise to emerging new trends in information gathering arising from, among others, challenges relating to the availability of witnesses during the investigation process. This has required investigators, Prosecutors to adopt technology to a greater degree and at an accelerated rate. In fact, this applies equally to solicitors and clients as well.

16. Is there a process of judicial review for challenging government authority action and decisions?

Yes. However, in order to commence any judicial review process, an applicant must first apply for and be granted leave to do so.

In this regard, the applicant must satisfy the Court hearing the leave application that three requirements are met:

- The subject matter of the complaint is susceptible to judicial review;
- The applicant has sufficient interest in the matter; and
- The materials before the court disclose an arguable or prima facie case of reasonable suspicion in favour of granting the remedies sought by the applicant.

Further, matters which are 'non-justiciable' may not be subject to judicial review. Such matters are typically:

- Matters which involve matters of government policy and which require the intricate balancing of various competing policy considerations that judges are ill-equipped to adjudicate; and
- Matters where a judicial pronouncement could embarrass some other branch of government or tie its hands in the conduct of affairs traditionally regarded as falling within its purview.

17. Are there any planned developments or reforms of bribery and anti-corruption laws in your jurisdiction?

Since the Deferred Prosecution Agreements (DPA) regime was introduced in 2018, the legal practitioners in Singapore have been waiting for the first test case for

DPA in Singapore. The introduction and use of DPAs would no doubt enhance anti-corruption enforcement by encouraging corporate reform to prevent future offending, and to facilitate investigations into wrongdoing both by the company and by individuals.

There are also growing discussions on the need for a general whistleblowing law to help send the right signal, extend the influence of a whistleblowing platform and encourage people in using whistleblowing as a channel to report wrongdoing. Currently, Singapore's laws on whistleblowing protect targeted groups of informants which may lead to gaps in addressing certain segments of whistle-blowers. A universal legislation on whistleblowing can cover various types of improper conduct, and allows for a unified approach towards protection of whistle-blowers.

Given Singapore's status as a key commerce and financial hub in Asia with a strong rule of law, continuing reforms to Singapore's anti-bribery and corruption laws are bound to be contemplated. The recent case of *Public Prosecutor v Takaaki Masui & anor and other matters* [2021] SGCA 119 (which was touted as one of the largest private sector corruption cases in Singapore history) was also a stark reminder that corruption can afflict any industry and can involve international and foreign parties of any size. In that case, the accused persons were convicted of having received more than S\$2 million in bribes relating to contracts between a subsidiary of the international conglomerate Sojitz Corporation and a local Singapore entity. We can expect that any contemplated reforms will need to address contemporary issues such as these.

18. To which international anti-corruption conventions is your country party?

Singapore is a party to the United Nations Convention against Corruption, which was ratified on 6 November 2009. Singapore is also a party to the United Nations Convention against Transnational Organised Crime, which was ratified on 28 August 2007.

Further, Singapore is a member of the Financial Action Task Force (FATF) and Asia/Pacific Group on Money Laundering (APG). CPIB also represents Singapore at various anti-corruption fora such as:

- Asian Development Bank (ADB) – Organisation for Economic Co-operation and Development (OECD) Anti-Corruption Initiative for Asia and Pacific
- Asia-Pacific Economic Cooperation (APEC) Anti-Corruption and Transparency Experts' Working Group (ACTWG)

- Economic Crime Agencies Network (ECAN)
- G20 Anti-Corruption Working Group (ACWG)
- International Association of Anti-Corruption Authorities (IAACA)
- South East Asia – Parties Against Corruption (SEA-PAC)

19. Do you have a concept of legal privilege in your jurisdiction which applies to lawyer-led investigations? If so, please provide details on the extent of that protection.

Singapore law recognises both legal advice and litigation privilege, both of which are codified under the Evidence Act. In summary:

- Legal advice privilege protects communications and/or documents between a client and his / her lawyer where such communications are made for dominant purpose of the client seeking legal advice.
- Meanwhile, litigation privilege protects communications and/or documents which are made under circumstances where there is a reasonable prospect of litigation, and whether the communications and/or documents are created for the dominant purpose of litigation.

Where lawyer-led investigations are concerned, the existence or non-existence of privilege will necessarily turn on the specific facts of the case. For example, if investigations are purely for fact-finding purposes and/or where no litigation is immediately contemplated, lawyer-led investigations may not in fact be privileged.

20. How much importance does your government place on tackling bribery and corruption? How do you think your jurisdiction's approach to anti-bribery and corruption compares on an international scale?

Singapore adopts a zero-tolerance approach to corruption.

Based on the statistics published by the CPIB on 5 May 2022, the CPIB achieved a 98% conviction rate in 2021 and, in the past 5 years, has never achieved a conviction rate lower than 97%. The vast majority of these cases involved private sector corruption.

Singapore was ranked the 4th least corrupt country globally (out of 180 countries) in Transparency

International's 2021 Corruption Perceptions Index (CPI). In the Political and Economic Risk Consultancy's 2022 Report on Corruption in Asia, Singapore was also ranked the least corrupt country in the region – a position Singapore has held since 1995.

Further, Singapore ranked third for absence of corruption in the World Justice Project Rule of Law Index 2021, and was the top Asian nation out of 139 countries ranked.

Singapore's resolve and commitment to fight corruption continues to be deeply unwavering. Singapore's anti-corruption approach stands shoulder to shoulder with the best international standards both locally and in terms of international co-operation with other anti-corruption agencies.

21. Generally how serious are organisations in your country about preventing bribery and corruption?

Businesses and organisations in Singapore are generally serious about preventing bribery and corruption. Companies in Singapore know that no one is above the law and organisations will not be spared the full brunt of the law if the company, management or employees are caught for corruption or corrupt practices.

To combat corruption in the private sector, CPIB launched the Anti-Corruption Partnership Network (ACPN) in September 2018. It aims to encourage firms to adopt anti-corruption measures and inculcate a culture of integrity and business ethics among their staff through sharing sessions and discussions.

22. What are the biggest challenges enforcement agencies/regulators face when investigating and prosecuting cases of bribery and corruption in your jurisdiction?

CPIB has highlighted that one of the biggest challenges that it faces is that corruption is hard to detect – with perpetrators going to great lengths to conceal the corrupt transactions and proceeds. CPIB also highlighted that, for corruption, both the giver and receiver of bribes are offenders who would avoid telling the truth to shield themselves from criminal prosecution.

Evidence gathering in cross-border transactions also typically poses a challenge for enforcement agencies. On top of this, rapid developments in technology also continually change the complexion of crime, such that the investigation process must consistently evolve with

these developments.

23. What are the biggest challenges businesses face when investigating bribery and corruption issues?

One of the biggest challenges businesses face when investigating bribery and corruption issues is a lack of internal, specialised expertise to truly and thoroughly unravel corrupt activities. This is especially given that corruption is increasingly hard to detect and that an increasing amount of specialised expertise (including cross-disciplinary expertise) is required for the investigation process.

Further, such internal investigations typically require a significant investment of time, effort and resources by businesses. From an economic perspective, this may lead to disruptions in the businesses' day-to-day commercial activities and/or profitability. Indeed, such investigations will invariably require a delicate balance of micro and macro commercial and reputational considerations.

24. What do you consider will be the most significant corruption-related challenges posed to businesses in your jurisdiction over the next 18 months?

The global economy appears to be relatively optimistic that the effects of the COVID-19 pandemic are starting to wane.

However, the residual economic effects of the COVID-19 pandemic remain strong, and it is likely that the temptation and opportunities for individuals to engage in corrupt activities to secure an economic advantage will continue to linger. There may be certain sectors that may be more susceptible e.g. the "essential" sectors of the economy, such as healthcare and medical supplies.

The immense pressure to deliver financial results in the midst of the present economic situation may also be a challenge to companies operating in and out of Singapore. Indeed, companies and/or their employees may turn to corrupt activities as a manifestation of a survival instinct, rather than greed. Moreover, in this economic climate, companies may begin viewing corrupt payments as nothing more than a 'cost of business'.

Further, although Singapore has done well in terms of combating corruption, Singapore is situated in the Asia Pacific region which exposes Singapore to various corruption risks. In the CPI for 2020, it was noted that

the Asia Pacific region had made little progress in the fight against corruption with a regional average of 45/100 (i.e. no change from 2019).

25. How would you improve the legal framework and process for preventing, investigating and prosecuting cases of bribery and corruption?

Encourage whistleblowing even more. Whistle-blower protection laws are in place in most developed countries, and such laws serve to encourage employees to report wrongdoing and protect them when they do.

In Singapore, however, the main protection that whistle-blowers are afforded is Section 36 PCA, which provides that in cases where an individual complains of a PCA offence, evidence and/or documents containing information which may lead to the discovery of that

individual's identity are inadmissible and/or may be concealed or obliterated.

This protection only arises in the context where Court proceedings are afoot. While critical, it does not, however, address a whistle-blower's concern that reporting any wrongdoing may lead to him losing his job, being threatened, physically harmed or sued for defamation. The issue of stigma for whistle-blowers is a real and present one. This is especially relevant given the gloomy economic situation in light of the COVID-19 pandemic.

Aside from this, we should also continue to incentivise companies and individuals to stay clear of corrupt activities and to focus on developing sustainable business practices. This is especially critical in the present economic climate, where corruption may increasingly be driven by a survival instinct, rather than material greed.

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