

Global Investigations Review

The Practitioner's Guide to Global Investigations

Volume II: Global Investigations
around the World

Third Edition

Editors

Judith Seddon, Eleanor Davison, Christopher J Morvillo,
Michael Bowes QC, Luke Tolaini, Ama A Adams, Tara McGrath

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Introduction to Volume II

**Judith Seddon, Eleanor Davison, Christopher J Morvillo,
Michael Bowes QC, Luke Tolaini, Ama A Adams and Tara McGrath¹**

Boards and senior executives have never been more concerned that they or their organisation may come under the scrutiny of enforcement authorities. And with good reason. Recent years have seen an upsurge in confidence among enforcement authorities across the globe, which has manifested and led to increased numbers of investigations, fines of unprecedented orders of magnitude and senior executives facing the much more realistic prospect of investigations concerning their own conduct and, in some cases, prosecution, conviction and imprisonment.

In many jurisdictions, the introduction of new offences and changes to the law of corporate criminal liability have provided enforcement authorities with enhanced opportunities to pursue criminal investigations and ultimately to prosecute corporate entities. Coupled to this has been the incentivisation of corporates to co-operate with investigations and provide information to assist authorities in pursuing culpable individuals through negotiated settlements. In some jurisdictions, notably the United States, these are an established feature of the enforcement landscape and are regularly used to bring investigations to a pragmatic conclusion without the commercially destructive consequences prosecution of a corporate entity can bring. In others, such as the United Kingdom and France, legislation enabling corporates to conclude investigations short of prosecution is still comparatively young.

The law relating to criminal and regulatory investigations shows no sign of standing still. Law and practice across the globe has changed, often in response to highly publicised scandals. Relationships between enforcement authorities continue to grow closer, and there is a marked trend in politicians, prosecutors and regulators carefully watching the way other jurisdictions choose to combat corporate crime, to apply the most effective mechanisms in

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their own national contexts. Recent examples of changes to legislation in terms of either extending corporate criminal liability or legislating for its resolution through deferred prosecution agreements (or both) include significant changes being made in Singapore, Japan, Canada, Australia and Ireland at the time of writing. A similar trend may be observed in the regulatory sphere through the implementation of individual accountability regimes modelled on or drawing from the UK Senior Managers and Certification Regime in, for example, Hong Kong, Australia and Singapore.

All these macro factors, together with important changes to technical local legislation such as the implementation of the EU General Data Protection Regulation, present numerous, significant challenges to corporates and individuals around the world. Both can quickly find themselves the targets of fast-moving and far-reaching investigations, whose possible outcomes may vary significantly in different jurisdictions.

In Volume II of this Guide, which in the third edition now covers 21 jurisdictions, local experts from national jurisdictions respond to a common set of questions designed to identify the local – continually evolving – nuances of law and process that practitioners are likely to encounter in responding to the increasing number of cross-border investigations they face.

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Singapore

Danny Ong and Sheila Ng¹

General context and principles

- 1 Identify the highest-profile corporate investigation under way in your country, describing and commenting on its most noteworthy aspects as it relates to your country.

The highest-profile corporate investigation currently under way in Singapore relates to a cyber-attack on Singapore Health Services Private Limited (SingHealth) between 27 June 2018 and 4 July 2018, which resulted in the largest data theft to date in Singapore. SingHealth is Singapore's largest group of public healthcare institutions, and comprises four public hospitals, five national speciality centres and eight polyclinics.

The data theft compromised the personal particulars of about 1.5 million patients and outpatient prescription information relating to about 160,000 people, including Singapore's Prime Minister Lee Hsien Loong (PM Lee) and other ministers.

The authorities have said that, during the investigations led by the Cyber Security Agency of Singapore (CSA), the attacks specifically and repeatedly targeted PM Lee's data and appeared to be a deliberate, targeted and well-planned cyberattack. The CSA is the national agency overseeing cybersecurity strategy, operation, education, outreach and ecosystem. It is part of the Prime Minister's Office and is managed by the Ministry of Communications and Information.

A Committee of Inquiry, chaired by former chief district judge Richard Magnus, has been convened by the Minister-In-Charge of Cybersecurity pursuant to section 9 of the Inquiries Act (Cap. 139A) to look into the events and contributing factors leading to the cyberattack.

¹ Danny Ong and Sheila Ng are partners at Rajah & Tann Singapore LLP.

2 Outline the legal framework for corporate liability in your country.

Corporate entities can be held criminally liable. The Interpretation Act (Cap. 1) expressly states that a 'person' includes 'any company or association or body of persons, corporate or unincorporate' unless the relevant legislation expressly provides otherwise or there is something in the subject or context inconsistent with such construction. As such, a corporate entity can be charged with an offence, whether or not the legislation refers specifically to corporate entities.

This is also borne out in Singapore's main criminal legislation, the Penal Code (Cap. 224), which provides expressly that 'persons' liable to punishment under the Penal Code include 'any company or association or body of persons, corporate or unincorporate'.

There are also various pieces of legislation that contain offences specifically directed at corporate entities. For example, criminal liability can arise on the part of a corporate entity for market misconduct under Part X of the Securities and Futures Act (Cap. 289) (SFA) if the offence is committed by an employee or an officer of a corporate entity with the consent or connivance of the corporate entity and for the benefit of that corporate entity (section 236B), whereas a corporate entity may be liable to an order for a civil penalty if the corporate entity fails to prevent or detect a contravention, if that contravention is committed for the benefit of the corporate entity and is attributable to the negligence of the corporate entity (section 236C).

3 In your country, what law enforcement authorities regulate corporations? How is jurisdiction between the authorities allocated? Do the authorities have policies relating to the prosecution of corporations?

The Accounting and Corporate Regulatory Authority (ACRA) is the national regulator of business entities, public accountants and corporate service providers. ACRA's Compliance Division, comprising the Enforcement Department and the Prosecution Department, undertakes investigations and prosecutions of breaches of various laws under ACRA's purview, including the Companies Act (Cap. 50).

The Monetary Authority of Singapore (MAS) is the central bank. It administers and enforces the SFA. Apart from the prosecution of criminal offences under the SFA, the MAS is also responsible for the enforcement of civil penalties for market misconduct and for supervising financial institutions.

The Singapore Exchange Regulation Pte Ltd is an independent regulatory subsidiary of the Singapore Exchange (SGX), which oversees the regulation of companies listed on the SGX.

The Competition and Consumer Commission of Singapore (CCCS) is the national agency that administers and enforces the Competition Act (Cap. 50B). The Competition Act empowers the CCCS to investigate and adjudicate anticompetitive activities, issue directions to stop or prevent anticompetitive activities and impose financial penalties. The CCCS is also the administering agency of the Consumer Protection (Fair Trading) Act (Cap. 52A), which protects consumers against unfair trade practices in Singapore.

The Commercial Affairs Department (CAD), which is a specialist department of the Singapore Police Force (SPF), is the principal white-collar crime investigation agency. It investigates a wide range of commercial and financial crimes, including offences under

the SFA. In 2015, the MAS and the CAD announced a collaboration to undertake joint investigations into market misconduct offences such as insider trading and market manipulation. In March 2018, this arrangement was extended to cover all offences under the SFA and the Financial Advisers Act, to allow for greater efficiency and more effective enforcement of capital markets and financial advisory offences.

The Corrupt Practices Investigation Bureau (CPIB) is the only agency authorised to investigate corruption offences under the Prevention of Corruption Act (Cap. 241) (PCA) and other related offences. The CPIB is a government agency under the Prime Minister's Office and is independent of the SPF.

4 What grounds must the authorities in your country have to initiate an investigation? Is a certain threshold of suspicion necessary to trigger an investigation?

A police officer will ordinarily initiate investigations when information about an arrestable criminal offence is received. There is no specific threshold of suspicion necessary to trigger a police investigation.

Insofar as regulators such as the MAS and the SGX are concerned, the relevant legislation provides them with investigative powers.

There is no specific threshold of suspicion necessary for the MAS to initiate an investigation into an alleged or suspected contravention of the SFA so long as it considers an investigation 'necessary or expedient' (section 152 of the SFA).

Under the SGX (Mainboard) Listing Rules, the SGX may conduct an investigation if the SGX has reason to believe that there is a possibility that any of its rules have been contravened, a written complaint is received, or the SGX is of the opinion that the circumstances warrant it.

5 Does double jeopardy, or a similar concept, apply to prevent a corporation from facing criminal exposure in your country after it resolves charges on the same core set of facts in another country?

Singapore laws protect against double jeopardy, that is to say a person who has been convicted or acquitted of an offence cannot be tried again for the same offence. However, the issue as to whether international double jeopardy applies in Singapore remains resolved.

Insofar as offences under the PCA are concerned, section 37(2) of the PCA addresses this situation by stating that, once proceedings in respect of an act committed outside Singapore have been commenced in Singapore, this shall be a bar to further proceedings against a person for his or her extradition for the same offence outside Singapore.

6 Does criminal law have general extraterritorial effect in your country? To the extent that extraterritorial effect is limited to specific offences, describe those which have extraterritorial effect, the statutory basis and any conditions that must be met for extraterritoriality to apply.

Generally, Singapore's criminal law does not have extraterritorial effect. However, there are certain offences that do have extraterritorial effect, such as corruption offences under the PCA.

The provisions of the PCA set forth extraterritorial powers to deal with corrupt acts committed by a Singapore citizen outside Singapore as though the acts were committed in Singapore (section 37 of the PCA).

Further, section 29 of the PCA, when read with sections 108A and 108B of the Penal Code (which deals with the abetment of corruption offences), can attach criminal liability to a person who, from Singapore, abets the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore, would be an offence under the PCA.

7 Describe the principal challenges in your country that arise in cross-border investigations, and explain whether and how such challenges are dependent on other countries involved.

Investigations that require the assistance of foreign authorities may be hampered by the level of international co-operation. Singapore is a party to various international conventions and treaties that facilitate the provision and obtaining of international assistance in criminal matters, including the Treaty on Mutual Legal Assistance in Criminal Matters. Some of these have been incorporated into Singapore's laws, such as the Mutual Assistance in Criminal Matters Act (Cap. 190A) (MACMA), the Corruption Drug Trafficking and Other Serious Crimes Act (Confiscation of Benefits) Act (Cap. 65A) (CDSA) and the Terrorism (Suppression of Financing) Act (Cap. 325) (TSOFA).

International co-operation between the MAS and other central banks is also provided for under the Monetary Authority of Singapore Act (Cap. 186) (the MAS Act).

8 What bearing do the decisions of foreign authorities have on an investigation of the same matter in your country?

Decisions made by foreign authorities would generally be of interest to local investigators in respect of the same matter in Singapore. It may also have a bearing on the pace of investigations in Singapore.

9 Do your country's law enforcement authorities have regard to corporate culture in assessing a company's liability for misconduct?

Singapore has been operating a regulatory disclosure-based regime since its departure from a merits-based approach in the late 1990s. As part of this regime, Singapore has sought to raise the bar in corporate governance and market transparency by introducing the Code of Corporate Governance for listed companies in 2001 (which has since come under the purview of the MAS and has undergone significant changes in its 2018 edition). There have also been significant revisions to the Companies Act (Cap. 50) over the years to move towards a risk-based corporate regulation, and improve transparency for better corporate governance.

10 What are the top priorities for your country's law enforcement authorities?

Singapore has a zero tolerance as regards corruption and prides itself on its clean and incorrupt system. This continues to be a top priority for Singapore.

Cybercrime and money laundering are also key priorities towards ensuring that a resilient system with high integrity is maintained for Singapore's financial institutions and the financial sector, not least because cybercrime is the fastest-growing type of transnational crime in Singapore.

11 How are internal investigations viewed by local enforcement bodies in your country?

Internal investigations are generally welcomed by law enforcement authorities. Additionally, financial institutions regulated by the MAS are generally expected to conduct internal investigations in cases involving certain types of misconduct by their licensed representatives.

Before an internal investigation

12 How do allegations of misconduct most often come to light in companies in your country?

Allegations of misconduct are often brought to light by whistleblowers making complaints directly to companies or to law enforcement authorities.

Apart from complaints of misconduct, which may be lodged with the law enforcement authorities, reports lodged pursuant to disclosure obligations under the CDSA in respect of property which are reasonably suspected of being connected to criminal activity are called 'suspicious transaction reports'. These reports are lodged with the Suspicious Transaction Reporting Office, which is Singapore's Financial Intelligence Unit. While these suspicious transaction reports are property-based and for the purpose of combating money laundering, the SPF may also initiate investigations into misconduct associated with the property.

Internal investigations into misconduct may also be initiated pursuant to internal or external audits conducted by the company.

13 Does your country have a data protection regime?

Yes. Personal data in Singapore is protected under the Personal Data Protection Act 2012 (No. 26 of 2012) (PDPA). The PDPA, which took effect in phases beginning in January 2013, governs the collection, use, disclosure, transfer and security of an individual's personal data.

Certain personal information is also protected under various statutes, such as the Banking Act (Cap. 19), the CDSA and the common law of confidentiality.

14 How is the data protection regime enforced?

The PDPA ensures a baseline standard of protection for personal data, which requires organisations to comply with the PDPA as well as the common law and other relevant laws that are applied to the industry they belong to, when handling personal data in their possession.

If the Personal Data Protection Commission finds that an organisation is in breach of any of the data protection provisions in the PDPA, it may give the organisation such directions as it thinks appropriate to ensure compliance.

There are also offences under the PDPA for which an organisation or a person may be liable.

15 Are there any data protection issues that cause particular concern in internal investigations in your country?

The PDPA provides that an organisation may collect personal data about an individual with the consent of the individual or from a source other than the individual in circumstances where collection is necessary for any investigation or proceedings, if it is reasonable to expect that seeking the consent of the individual would compromise the availability or the accuracy of the personal data.

The PDPA also provides that an organisation may use or disclose personal data about an individual without the consent of the individual where the use is necessary for any investigation or proceeding.

16 Are search warrants or dawn raids on companies a feature of law enforcement in your country? Describe any legal limitations on authorities executing search warrants or dawn raids, and what redress the company has if those limits are exceeded.

Yes, search warrants and raids on companies are features of law enforcement in Singapore.

The person granted a search warrant must conduct the search in accordance with the warrant and with the Criminal Procedure Code (Cap. 68) (CPC), including conducting the entry and search during a period of time specified in the warrant.

A court issuing a search warrant may suspend or cancel the warrant if there are good reasons to do so.

There are also instances when searches can be carried out by the SPF even without search warrants, for example if there is reasonable cause for suspicion that stolen property is concealed and a police officer of or above the rank of sergeant has good grounds for believing that by reason of delay in obtaining a search warrant, that property is likely to be removed (section 32 of the CPC).

If an illegal search is conducted, the aggrieved party may make a criminal complaint for trespass or criminal force, or commence a civil claim for damages in the tort of trespass.

17 How can privileged material be lawfully protected from seizure during a dawn raid or in response to a search warrant in your country?

There is no prescribed process to protect privileged material during a dawn raid or search. As a practical measure, the company or individual should assert privilege during the dawn raid or search itself regarding the relevant material seized by the authorities, and follow up thereafter with the authorities to claim privilege over the same.

18 Are there any privileges in your country that would prevent an individual or company from providing testimony? Under what circumstances may an individual's testimony be compelled in your country? What consequences flow in your country from such compelled testimony?

There is a right against self-incrimination in Singapore under section 22(2) of the CPC whereby a person need not say anything that might expose him or her to a criminal charge, penalty or forfeiture.

However, the Singapore courts are permitted to draw an adverse inference against the accused under section 261(1) of the CPC from a failure to disclose to the police facts that he or she subsequently relies on in his or her defence at trial. Further, the police do not have to inform the accused of the right against self-incrimination.

Under section 283(2) of the CPC, the court may issue a summons to compel the appearance of a witness where the person's evidence is essential to making a just decision at the close of the case for the defence, or at the end of any proceeding under the CPC.

19 What legal protections are in place for whistleblowers in your country?

The PCA protects whistleblowers in that no complaints of an offence under the PCA can 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 that might lead to the discovery of a person's identity.

A suspicious transaction report lodged pursuant to section 39(1) of the CDSA is also confidential and cannot 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 answer any question if the answer thereto would lead or would tend to lead to the discovery of the name or address of the informer.

20 What rights do employees possess under local employment law that determine how they are treated within a company if their conduct is within the scope of an investigation? What employment rights would attach if they are deemed to have engaged in misconduct? Does it differ for officers and directors of the company?

For employees covered under the Employment Act (Cap. 91), which generally covers all employees with certain exceptions, such as managers or executives with a monthly basic salary of more than S\$4,500:

- the employer can only dismiss the employee or take disciplinary action against the employee on the ground of misconduct inconsistent with the fulfilment of the express or implied terms of his or her service after due inquiry. There is no fixed procedure for an inquiry, but as a general guide, the person or persons hearing the inquiry should not be in a position that may suggest bias, and the employee who is being investigated for misconduct should have the opportunity to present his or her case; and
- the employer may suspend the employee from work during an inquiry, but any suspension cannot exceed one week and the employee should be paid at least half his or her salary during the suspension.

Employees are also protected against wrongful dismissal under common law. Directors and officers of a company are treated no differently from employees in terms of protection under common law.

- 21 **Are there disciplinary or other steps that a company must take in your country when an employee is implicated or suspected of misconduct, such as suspension or in relation to compensation? Can an employee be dismissed for refusing to participate in an internal investigation?**

There are no particular disciplinary or other steps that a company must take, subject to the company's own internal policies and procedures, and the terms of employment.

Subject to the applicability of the Employment Act to employees who are covered by the Employment Act, generally a company may terminate the employment of an employee in accordance with the terms of the employment contract. As such, subject to the terms of the employment contract, an employee may be dismissed for refusing to participate in an internal investigation.

Commencing an internal investigation

- 22 **Is it common practice in your country to prepare a document setting out terms of reference or investigatory scope before commencing an internal investigation? What issues would it cover?**

Yes, it is – particularly for larger-scale internal investigations. It would typically cover the objectives of the internal investigation, the scope of investigation, the identity and roles of the investigation team and any restriction or protocol on communications or information flow regarding the investigation.

- 23 **If an issue comes to light prior to the authorities in your country becoming aware or engaged, what internal steps should a company take? Are there internal steps that a company is legally or ethically required to take?**

If an issue comes to light, the company should first activate its in-house legal counsel or engage external counsel (or both) to obtain advice (including in respect of any interim measures that should be taken, and its disclosure obligations, if any) and commence an internal investigation.

The company may have an obligation to report to the authorities (for example, in respect of certain specified offences under the Penal Code pursuant to section 424 of the CPC, or its obligation to file a suspicious transaction report under the CDSA) or to make any public disclosures (if it is a listed company).

- 24 **At what point must a company in your country publicly disclose the existence of an internal investigation or contact from law enforcement?**

A listed company must make timely disclosure of any information it has concerning itself or any of its subsidiaries or associated companies that is either 'necessary to avoid the establishment of a false market in [its] securities' or 'that would be likely to materially affect the price or value of its securities' under Rule 703 of the SGX (Mainboard) Listing Rules (Rule 703).

An intentional or reckless failure to disclose under Rule 703 is a criminal offence under section 203 of the SFA, for which the directors of the listed company may also be liable.

There is no obligation on private companies to publicly disclose any information, including the existence of an internal investigation or contact from law enforcement officials.

25 When would management typically brief the board of a company in your country about an internal investigation or contact from law enforcement officials?

Typically, the board of a company is notified promptly about an internal investigation or contact from law enforcement officials, with a more comprehensive briefing after significant findings have been made in the internal investigation or where there is a significant development in the matter.

26 What internal steps should a company in your country take if it receives a notice or subpoena from a law enforcement authority seeking the production or preservation of documents or data?

The company would be required to comply with the notice or subpoena and should take immediate steps to obtain legal advice, and implement the identification, extraction and preservation of relevant documents and data. The company should ideally also take steps to ensure that copies of the documents and data are taken and maintained.

27 How can the lawfulness or scope of a notice or subpoena from a law enforcement authority be challenged in your country?

A notice or subpoena from a law enforcement authority may be challenged by asking the court to quash it or prohibit further action by the relevant law enforcement authority.

A search warrant issued by the Singapore courts under the CPC may be suspended or cancelled if there are good reasons for doing so.

Attorney–client privilege

28 May attorney–client privilege be claimed over any aspects of internal investigations in your country? What steps should a company take in your country to protect the privilege or confidentiality of an internal investigation?

A company may claim litigation privilege over investigation reports and documents created during an internal investigation if there is a reasonable prospect of litigation at the time the documents are created, and the dominant purpose for the creation of the documents over which privilege is claimed is pending or contemplated litigation.

Legal advice privilege can also be claimed for a document if there is legal advice embedded in it, or it was created for the dominant purpose of provision to legal counsel for the purpose of seeking legal advice.

To ensure that privilege is protected, legal counsel, whether external or in-house, should be substantially involved in the investigations, particularly when conducting interviews of witnesses. However, it should be noted that merely copying legal counsel in correspondence is not enough to attract privilege, and that the contents themselves have to satisfy the

requirements for privilege. It would also be good practice not to mix legal and business advice in the same document, and marking advice as ‘confidential and legally privileged’ would assist in identifying privileged material (even though the labelling itself does not create privilege).

Generally, to ensure that the confidentiality of an internal investigation is maintained, the company should put in place a communications protocol and limit the communications, reports and any advice regarding the investigations to specified individuals within the company on a need-to-know basis.

29 Set out the key principles or elements of the attorney–client privilege in your country as it relates to corporations. Who is the holder of the privilege? Are there any differences when the client is an individual?

Legal professional privilege is found in two principal forms – litigation privilege and legal advice privilege. Where a document is protected by either form, it is exempted from disclosure in litigation.

Legal advice privilege attaches to legal advice and communications between a lawyer (whether in-house or external legal counsel) and a client (or the company, as the case may be in the context of an in-house legal counsel) for the purpose of seeking legal advice, whether or not litigation is contemplated.

Litigation privilege will apply to documents and communications created for the dominant purpose of pending or contemplated litigation, and if there is a reasonable prospect of litigation at the time the documents are created.

Legal professional privilege belongs to the client, regardless of whether the client is an individual or a corporate entity.

30 Does the attorney–client privilege apply equally to in-house and external counsel in your country?

Yes, pursuant to section 131 of the Evidence Act (Cap. 97).

31 To what extent is waiver of the attorney–client privilege regarded as a co-operative step in your country? Are there any contexts where privilege waiver is mandatory or required?

Waiver of legal professional privilege is often viewed as a co-operative step by the authorities. There is no prescribed context in which waiver of legal professional privilege is mandatory or required. However, it is not unheard of for regulatory authorities, in certain circumstances, to request that a company waives privilege over an internal investigation report that is required to be submitted to the authorities.

32 Does the concept of limited waiver of privilege exist as a concept in your jurisdiction? What is its scope?

Yes. For example, in a recent High Court decision, the Court found that in a multiparty litigation, selective disclosure to an adverse party of any documents to which litigation privilege applies does not waive the litigation privilege generally.

- 33 If privilege has been waived on a limited basis in another country, can privilege be maintained in your own country?**

This question has not been determined specifically in Singapore. However, it is noted that the concept of limited waiver of privilege exists in Singapore.

- 34 Do common interest privileges exist as concepts in your country? What are the requirements and scope?**

Yes, common interest privilege exists.

Common interest privilege can be used to enable B to shield behind the privilege of A and prevent C from obtaining or using documents from B that were provided to B pursuant to the common interest between A and B in the subject matter of the documents.

Common interest privilege can also be used to enable A to obtain documents from B, which B can withhold on the ground of privilege against the rest of the world, on the basis that it is inconsistent with the common interest for B to claim privilege against A in relation to these documents.

- 35 Can privilege be claimed over the assistance given by third parties to lawyers?**

Yes, if the documents created with the assistance of third parties fall within the scope of litigation privilege or legal advice privilege, for example if a document was created by a third party who was acting as the client's agent at the time, for the dominant purpose of obtaining legal advice.

Witness interviews

- 36 Does your country permit the interviewing of witnesses as part of an internal investigation?**

There is no prohibition against witness interviews as part of an internal investigation.

- 37 Can the attorney–client privilege be claimed over internal witness interviews or attorney reports in your country?**

Yes, if the interview records fall within the scope of litigation privilege.

- 38 When conducting a witness interview of an employee in your country, what legal or ethical requirements or guidance must be adhered to? Are there different requirements when interviewing third parties?**

There are no specific requirements that must be adhered to for a witness interview of employees or third parties. However, it is good practice to state up front during the interview whom the interviewers represent and, where appropriate, make it clear that they are not acting for the employee. This is to avoid any potential claims of conflict of interest.

It would also be advisable to involve legal counsel to ensure that the witness interviews are conducted with the benefit of legal advice, and to ensure that any statements taken during internal investigations may properly be protected by privilege.

- 39 **How is an internal interview typically conducted in your country? Are documents put to the witness? May or must employees in your country have their own legal representation at the interview?**

Generally, an interview starts with the interviewer explaining the purpose of the interview and highlighting that the interview should be kept confidential. Questions would be asked, and where these questions relate to certain documents, these documents are usually put to the witness during the interview.

Where allegations are being made against the employee, it is advisable to give the employee an opportunity to seek legal advice.

Reporting to the authorities

- 40 **Are there circumstances under which reporting misconduct to law enforcement authorities is mandatory in your country?**

Yes. Section 39 of the CDSA imposes an obligation to lodge 'suspicious transaction reports' in respect of property that is reasonably suspected to be connected to criminal activity. Section 424 of the CPC also imposes an obligation to file a police report in respect of specified offences under the Penal Code.

- 41 **In what circumstances might you advise a company to self-report to law enforcement even if it has no legal obligation to do so? In what circumstances would that advice to self-report extend to countries beyond your country?**

Self-reporting and co-operation would generally be seen as mitigating factors, and would also provide an avenue for dialogue with the law enforcement authorities.

Companies should bear in mind that any self-reporting in a particular jurisdiction may trigger reporting or disclosure obligations in other jurisdictions.

- 42 **What are the practical steps you need to take to self-report to law enforcement in your country?**

Before making any self-report, a company should first undertake an internal investigation and obtain legal advice on the scope of the company's disclosure obligations and potential liability.

Responding to the authorities

- 43 **In practice, how does a company in your country respond to a notice or subpoena from a law enforcement authority? Is it possible to enter into dialogue with the authorities to address their concerns before or even after charges are brought? How?**

It is common, and indeed advisable, for a company to engage legal counsel upon receipt of any notice or subpoena from a law enforcement authority to seek advice on compliance therewith.

It may be possible to enter into dialogue with the authorities, depending on the nature of the investigations. It is also possible to engage in plea bargaining with the prosecutor even after charges are brought.

44 Are ongoing authority investigations subject to challenge before the courts?

It depends on whether the aggrieved persons satisfy the requirements for judicial review, and whether the relevant acts are justiciable in the first place.

45 In the event that authorities in your country and one or more other countries issue separate notices or subpoenas regarding the same facts or allegations, how should the company approach this?

It is important to ensure that a consistent position is taken across the various investigations in the different countries. To this end, the company may wish to engage legal counsel to coordinate the investigations.

46 If a notice or subpoena from the authorities in your country seeks production of material relating to a particular matter that crosses borders, must the company search for and produce material in other countries to satisfy the request? What are the difficulties in that regard?

If the material is in the possession or power of a company, the company must search for and produce the material, wherever that material may be located but provided that the material actually belongs to the company.

Issues might arise in circumstances where the data servers or material are maintained by third parties or related companies not in Singapore. In these circumstances, the Singapore company may nonetheless choose to co-operate and offer assistance to provide access to these data servers or materials.

47 Does law enforcement in your country routinely share information or investigative materials with law enforcement in other countries? What framework is in place in your country for co-operation with foreign authorities?

Yes, this is provided for under the MACMA, the CDSA, the TSOFA and the MAS Act (see question 7).

48 Do law enforcement authorities in your country have any confidentiality obligations in relation to information received during an investigation or onward disclosure and use of that information by third parties?

Generally, yes, depending on the relevant legislation empowering the investigations. See, for example, part VC of the MAS Act.

- 49 **How would you advise a company that has received a request from a law enforcement authority in your country seeking documents from another country, where production would violate the laws of that other country?**

The company should obtain legal advice from counsel in the foreign country to ascertain the potential liability if the documents were produced, and have its foreign and local legal counsel work together to explore a solution or establish whether it would be possible to resist the production or mitigate its exposure overseas.

- 50 **Does your country have blocking statutes? What related issues are implicated by complying with a notice or subpoena?**

No, but Singapore has general statutory provisions that prevent disclosure of matters relating to state interests.

- 51 **What are the risks in voluntary production versus compelled production of material to authorities in your country? Is this material discoverable by third parties? Is there any confidentiality attached to productions to law enforcement in your country?**

In practice, the law enforcement authorities generally maintain the confidentiality of material provided to them, whether voluntarily or because they are compelled to do so.

However, foreign law enforcement authorities may request assistance and the sharing of information or documents, whether informally or formally, pursuant to the relevant legislation or treaties. Confidentiality measures may be put in place for the sharing of such information or documents. For example, assistance provided by the MAS under the MAS Act in some circumstances requires the receiving authority to provide an undertaking to protect the confidentiality of information or documents.

Global settlements

- 52 **Prior to any settlement with a law enforcement authority in your country, what considerations should companies be aware of?**

If the company has a presence overseas, it should consider the implications of the settlement on any ongoing or pending investigation in respect of the same or similar subject matter overseas.

- 53 **What types of penalties may companies or their directors, officers or employees face for misconduct in your country?**

If a company is found guilty of a criminal offence, the typical penalty is a fine.

A company's directors, officers or employees found guilty of a criminal offence may generally be subject to imprisonment or fines.

Further, a company or individual found guilty of a criminal offence may be required by a court to pay compensation.

Other than criminal and civil liability, companies or their directors, officers or employees may also be subject to sanctions or civil penalties imposed by regulatory bodies such as the SGX and the MAS.

A court may also order a third party who has benefited from misconduct to disgorge benefit arising from that misconduct, on the application of the MAS or any other claimant pursuant to section 236L of the SFA.

54 What do the authorities in your country take into account when fixing penalties?

There are various mitigating factors that may be taken into account by a court when considering an appropriate sentence, including:

- co-operation with the authorities;
- self-reporting;
- remediation;
- lack of record; and
- voluntary restitution or compensation.

55 Are non-prosecution agreements or deferred prosecution agreements available in your jurisdiction for corporations?

Singapore has recently enacted a framework for deferred prosecution agreements (DPAs), which came into force on 31 October 2018. Under this framework, the public prosecutor can agree to dismiss the charges a company faces provided it agrees to undertake certain obligations. The DPA would be subject to approval by the High Court, which must be satisfied that the agreement is in the interests of justice and that the terms are fair, reasonable and proportionate.

56 Is there a regime for suspension and debarment from government contracts in your country? Where there is a risk of suspension or debarment or other restrictions on continuing business in your country, what are the options available to a corporate wanting to settle in another country?

Yes, the Standing Committee on Debarment (SCOD) decides all cases of debarment. The relevant grounds for debarment from government contracts include:

- cheating or attempted cheating;
- giving false information that has a material bearing on the award or performance of the contract;
- corruption in connection with a government agency or contract;
- compromise of national security or public interest;
- repeated defaults; and
- bid rigging.

Except for cases involving CPIB or CCCS investigations, government agencies generally would warn the defaulting companies in writing of the intention to debar them and the grounds for such an action before a case is submitted to SCOD. This would give the

defaulting contractor the opportunity to make a business trade-off between proceeding with the contract or facing the possibility of debarment. The defaulting contractor will also be given an opportunity to explain why it has defaulted.

57 Are 'global' settlements common in your country? What are the practical considerations?

No. It was only in December 2017 that the first known global resolution in relation to a Singapore company was arrived at.

58 Are parallel private actions allowed? May private plaintiffs gain access to the authorities' files?

Civil proceedings can continue in parallel with criminal investigations or proceedings. However, it is common to put civil proceedings on hold until the conclusion of any criminal investigation.

There is no obligation on the authorities to provide civil litigants with access to their files.

Publicity and reputational issues

59 Outline the law in your country surrounding publicity of criminal cases at the investigatory stage and once a case is before a court.

Anyone who intentionally publishes any matter or carries out any other act that prejudices, interferes with or poses a 'real risk of prejudice' to current court proceedings is liable to be found guilty of contempt of court pursuant to the Administration of Justice (Protection) Act 2016.

Further, obstruction of justice is an offence under section 204A of the Penal Code.

60 What steps do you take to manage corporate communications in your country? Is it common for companies to use a public relations firm to manage a corporate crisis in your country?

Depending on the scale of the matter, a company may choose to engage an external public relations firm if it does not have an in-house public relations or communications team. It is also common for external counsel to assist and advise a company on a holistic crisis management plan.

61 How is publicity managed when there are ongoing, related proceedings?

Generally, a company undergoing investigation or legal proceedings tends not to comment on the same when asked by the media, save to the extent necessary to meet disclosure obligations or to refute any inaccuracy. It is important that a crisis management plan is created and abided by, particularly if there are various stakeholders in the company.

Duty to the market

62 Is disclosure to the market in circumstances where a settlement has been agreed but not yet made public mandatory?

A settlement may fall within the scope of information that a listed company is required to disclose under Rule 703, subject to any disclosure obligations imposed by the relevant law enforcement authorities.

Appendix 1

About the Authors

Danny Ong

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Danny Ong specialises in complex international investigations and commercial disputes across a multitude of industries. In particular, on the banking and finance front, he has led cross-border investigations involving complex financial products, cryptocurrencies, securitisation transactions, commodities, bonds, market manipulation, insider trading, layering and spoofing, interest rate fixing, currency fixing and money laundering, to name a few. In his role as counsel to liquidators, he has also been called upon to oversee cross-border investigations into the affairs of Lehman Brothers, MF Global Singapore, Dynamic Oil Trading (of the OW Bunker Group) and BSI Bank. Danny also has a very broad experience and is well known for his work in cross-border fraud and asset recovery investigations and litigation. He has been recognised in these areas of expertise by international legal directories, with clients describing him as ‘a formidable force’, ‘an excellent litigator’, ‘our go-to guy’, an ‘outstanding lawyer’, ‘very switched on’, ‘good when you need someone to fight your corner’, ‘very commercial, he knows when he has to be aggressive and commercially aware at the same time’, and with *Who’s Who Legal* ranking him as one of 40 Thought Leaders globally in asset recovery globally.

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Having developed her legal career in both commercial and criminal litigation since joining the firm as a pupil upon graduation in 2007, Sheila Ng has been involved in a broad spectrum of disputes and advisory work. Her practice focuses on commercial and financial disputes and investigations, fraud and asset recovery, as well as corporate insolvency, and she has broad experience and expertise in these areas.

Sheila has advised and represented various international entities in the investigation and prosecution of cross-border claims involving commercial fraud and breaches of fiduciary duties, and the recovery of assets globally. She has also acted for major international banks

and brokerages in investigations into regulatory, risk and compliance issues related to matters such as market manipulation, fixing of benchmark rates, layering and spoofing, and insider trading. She has also been at the forefront of major cross-border insolvencies in the region, having acted and continuing to act for the liquidators of Dynamic Oil Trading (part of the OW Bunker Group), MF Global Singapore and various Lehman Brothers Singapore entities.

Sheila has recently been featured as one of 100 female investigations specialists in the *Global Investigations Review Women in Investigations 2018*. She was also recognised by the *Singapore Business Review* in its '40 and under Most Influential Lawyers' report in 2016.

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