



# Singapore - Global bribery offenses guide

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## 1) What is the legal framework governing bribery in Singapore?

The key legislation that governs bribery in Singapore is:

- the Prevention of Corruption Act (Cap. 241) (the PCA);
- the Penal Code (Cap. 224) (the Penal Code); and
- the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) (the CDSA).

## 2) What constitutes a bribe?

The PCA governs a range of bribery-related offenses and includes, *inter alia*, offenses relating to the bribing of public sector officials and private individuals. While bribery is not defined in the PCA, the term *gratification*, which covers both financial (such as money, gifts, rewards and valuable security) and non-financial (such as services and favors) benefits, is used instead when determining whether an offense of corruption from, *inter alia*, receiving bribes is found. Elements of bribery offenses under the PCA and Penal Code are discussed in item 3 (below).

## 3) What are the principal offenses under this legal framework?

### PCA

The main prohibitions under the PCA for corruption are found under Sections 5 and 6.

Section 5 of the PCA provides that any person who shall by themselves or by or in conjunction with any other person:

- corruptly solicit, receive, or agree to receive for themselves or any other person; or
- 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:

- any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed; or
- 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,

shall be guilty of an offense and shall be liable on conviction to a fine not exceeding SGD100,000 or to imprisonment for a term not exceeding five years, or to both.

Section 6 of the PCA further adds that it is an offense if:

- any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for themselves or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to their principal's affairs or business, or for showing or forbearing to show favor or disfavor to any person in relation to their principal's affairs or business;
- any person corruptly gives or agrees to give or offers any gratification to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do any act in relation to their principal's affairs or business, or for showing or forbearing to show favor or disfavor to any person in relation to their principal's affairs or business;
- any person knowingly gives to an agent, or if an agent knowingly uses with intent to deceive their principal, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to their knowledge is intended to mislead the principal,

they shall be guilty of an offense and shall be liable on conviction to a fine not exceeding SGD100,000 or to imprisonment for a term not exceeding five years, or to both.

In addition, the PCA also includes various other offenses such as:

- the offense of corruptly procuring the withdrawal of tenders (under Section 10 PCA);
- the offense of bribing a Member of Parliament (under Section 11 PCA); and
- the offense of bribing a member of a public body (under Section 12 PCA).

### Penal Code

The bribery of public servants is also regulated under the Penal Code as sections 161 to 165 of the Penal Code provides that it is an offense, *inter alia*, where:

- a public servant takes a gratification, other than legal remuneration, in respect of an official act;
- a person takes a gratification to influence a public servant by corrupt or illegal means;
- a person takes a gratification for exercising personal influence over a public servant;
- a person abets a public servant of the above offenses under sections 162 and 163 of the Penal Code; and
- a public servant obtains anything of value, without consideration or with consideration the public servant knows to be inadequate, from a person concerned in any proceedings or business conducted by such public servant.

A public servant is notably defined under section 21(1) of the Penal Code to include officers in the Singapore Armed Forces, judges, officers of a court of justice, assessors assisting a court of justice or public servant, arbitrators or other person to whom any cause or matter has been referred for decision or report by the court of justice or by any other competent public authority and officers of and acting on behalf of the Singapore government.

### CDSA

The CDSA criminalizes money laundering, and grants the state wide-ranging powers to confiscate corrupt benefits derived from corruption and other criminal conduct.

Section 5 of the CDSA provides that where a person is convicted of one or more serious offenses, the court shall, on the application of the Public Prosecutor, make a confiscation order against the defendant in respect of benefits gained by them from criminal conduct if the court is satisfied that such benefits have been so derived.

As criminal conduct is defined in the CDSA to mean doing or being concerned in – whether in Singapore or elsewhere – any act that constitutes a serious offense or a foreign serious offense which per the list of serious offenses in the Second Schedule to the CDSA includes corruption and bribery-related offenses under the PCA and the Penal Code, it is possible for a person who has been convicted of a corruption and bribery-related offense under the PCA or the Penal Code to have the bribes that they received confiscated.

## 4) What is the jurisdictional reach of the legal framework?

### PCA

The PCA has extraterritorial reach pursuant to Section 37 of the PCA which provides that the provisions of the PCA applies to Singapore citizens both outside as well as within Singapore. Where an offense under the PCA is committed

outside Singapore, the offender may be dealt with in respect of that offense as if it had taken place within Singapore.

Additionally, Section 29 of the PCA provides that whoever abets:

- the commission of an offense under the PCA; or
- 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 offense under the PCA,

shall be deemed to have committed the offense and shall be liable on conviction to be punished with the punishment provided for that offense.

### Penal Code

The Penal Code, similar to the PCA, has extraterritorial reach. Section 4 of the Penal Code provides that any public servant who, being a citizen or a permanent resident of Singapore, when acting or purporting to act in the course of their employment, commits an act or omission outside Singapore that if committed in Singapore would constitute an offense under the laws in force in Singapore, is deemed to have committed that act or omission in Singapore. Bribery-related offenses under the Penal Code if committed by a public servant who is a Singapore citizen or permanent resident of Singapore when acting or purporting to act in the course of their employment is therefore caught under the Penal Code as well.

### CDSA

As the CDSA applies to any serious offense or foreign serious offense, which, *inter alia*, means an offense (other than a foreign drug dealing offense) against the law of a foreign country or part thereof that consists of or includes conduct which, if the conduct had occurred in Singapore, would have constituted a serious offense, and any property, whether it is situated in Singapore or elsewhere, the CDSA notably also has extraterritorial reach pursuant to Sections 3(3) and 3(5) of the CDSA.

## 5) Who may be liable for bribery? (public servants, private individuals, legal entities etc)

As the offenses under the PCA and Penal Code may be committed by a person and a person is defined in the Interpretation Act (Cap. 1) to include “any company or association or body of persons, corporate or unincorporate,” both individuals and corporations may be held liable for bribery-related offenses. However, offenses such as Section 161 of the Penal Code which applies to public servants, will only apply to individuals who fall under the definition of public servant, which as discussed above includes, *inter alia*, a member of the Public Service Commission or the Legal Service Commission.

Although a company is an artificial legal person, it may still incur corporate liability for crimes committed by its employees or agents (as the case may be) if, *inter alia*, the relevant individual is considered to be the “living embodiment of the company” or if their acts were performed as part of a delegated function of management. In practice, however, enforcement has traditionally targeted individuals compared to companies.

On a related note, the CDSA applies to *any* defendant against whom proceedings have been instituted for a bribery-related offense. As defendant is defined to mean a person against whom proceedings have been instituted for a drug dealing offense or a serious offense (eg, corruption), as the case may be, or offenses whether or not they have been convicted thereof, a confiscation order under Section 5 of the CDSA for benefits derived from the criminal conduct upon conviction can also apply to *both* individuals and corporations.

## 6) Can a parent company be liable for its subsidiary’s involvement in bribery?

Under Singapore law, the doctrine of separate legal personality provides that a parent company and its subsidiary are considered to be separate corporate entities. A parent company will not therefore automatically incur liability for its subsidiary’s involvement in a bribery-related offense, unless the parent company itself is involved in the bribery (eg, by abetting an offence).

## 7) Are facilitation payments (i.e. small payments to speed up routine governmental

## action) considered to be bribes?

Such payments may potentially constitute offenses under both the PCA and the Penal Code for being acts of bribery, although they are not specifically regulated under the PCA or the Penal Code. It is also worth noting that unlike other jurisdictions, there are no special exemptions or defences in connection with such facilitation payments.

Section 12(a)(ii) of the PCA notably prohibits the offer of any gratification to any member of a public body as an inducement or reward for the member's expedition of any official act, among other prohibited acts, and Section 12(b) of the PCA correspondingly makes it an offense to receive such a gratification.

Such facilitation payments may also fall under the purview of Section 5 of the PCA if the payment is considered to have been, *inter alia*, corruptly given, promised or offered to any person (which includes a public sector official) 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 any person doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, and also correspondingly makes it an offense to receive the same.

The receipt of such a facilitation payment by a public servant may also, *inter alia*, constitute an offense under Section 165 of the Penal Code, which prohibits a public servant from obtaining any valuable thing without consideration or for consideration which they know to be inadequate, from any person whom they know to have been, or to be, or to be likely to be concerned in any proceedings or business transacted, or about to be transacted.

In the event such facilitation payments are found to have contravened the above provisions of the PCA and Penal Code, the same will likely qualify as a serious offense pursuant to the Second Schedule of the CDSA, and may accordingly be subject to a confiscation order under Section 5 of the CDSA.

## 8) Does the legal framework restrict political and charitable contributions?

While neither the PCA nor the Penal Code contain specific provisions addressing political contributions (which are governed primarily by the Political Donations Act (Cap. 236) and charitable contributions (which are governed primarily by the Charities Act (Cap. 37), the scope of offenses under the PCA and Penal Code for bribery-related offenses are sufficiently wide to capture political and charitable contributions if the same are made for corrupt purposes and the requisite elements of an offense are met.

The CDSA similarly does not consider the provision of political and charitable contributions as criminal conduct nor do they fall under a serious offense pursuant to the Second Schedule of the CDSA per se. However, such political and charitable contributions could potentially constitute serious offenses if they fulfill the requisite elements of the offenses under the PCA and/or Penal Code.

## 9) Does the legal framework place restrictions on corporate hospitality?

As there are no express restrictions in the PCA or Penal Code on the provision of, *inter alia*, corporate hospitality such as gifts and entertainment, and the CPIB (as defined below) itself recognizes that such gifts and entertainment are often offered in the legitimate course of business to promote good relations, the provision of such gifts and entertainment will be permissible so long as the same does not fall foul of any of the bribery-related offenses under the PCA and Penal Code.

Notably, Section 23 of the PCA also provides that evidence shall not be admissible to show that any gratification is customary in any profession, trade, vocation or calling in any criminal or civil proceedings under the PCA.

## 10) Are there any defenses for bribery offenses?

The Penal Code, PCA and the CDSA do not provide any formal defenses for bribery-related offenses.

On the other hand, section 8 of the PCA does provide a presumption whereby any gratification that 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, shall be deemed to have been paid or given and received corruptly as an inducement or reward. However, the same can be rebutted.

## 11) What are the key regulatory or enforcement bodies with regard to bribery?

The anti-corruption laws in Singapore are investigated and enforced mainly by:

- The Singapore Police Force, which includes the Commercial Affairs Department (CAD);
- Corrupt Practices Investigation Bureau (CPIB); and
- Attorney-General's Chambers (AGC).

The CPIB is the primary anti-bribery watchdog in Singapore responsible for the investigation and prevention of corruption in the private and public sector. No individual, regardless of rank, seniority and political affiliations falls outside the purview of its investigative scope.

The CAD is the principal white-collar crime investigative agency in Singapore empowered to investigate commercial and financial crimes. Within the CAD, the Financial Investigation Division specifically deals with money laundering and other offenses under CDSA.

Both the CPIB and CAD do not have prosecutorial functions. Instead, appropriate cases are referred to the AGC, which has prosecutorial discretion to initiate criminal proceedings after investigations have been carried out by the respective enforcement agencies. Within the AGC, the Crime Division handles the prosecution and all related appeals in respect of white collar and other financial crimes, corruption cases and cybercrimes.

## 12) What are the legal consequences of being found guilty of bribery offenses?

Upon conviction of an offense under the PCA, the prescribed penalties for the key offenses under Sections 5 and 6 is a fine not exceeding SGD100,000 or imprisonment for a term not exceeding five years, or both, where applicable. However, where the offense involves a government contract or bribery of a member of parliament, the maximum custodial sentence is extended to seven years.

Where a person is convicted of an offense under the PCA, which includes the acceptance of any gratification, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall order them to pay a penalty equivalent to the amount of bribes received under section 13 of the PCA, in addition to imposing on that person any other punishment.

Under Section 161, 162 or 164 of the Penal Code, a conviction under any of the aforementioned offenses can result in imprisonment of up to three years, or a fine, or both. Additionally, a conviction under Section 163 of the Penal Code can result in imprisonment of up to a year, or a fine, or both, and a conviction under Section 165 of the Penal Code can result in imprisonment of up to two years, or a fine, or both.

Additionally, under the CDSA, where a defendant is convicted of a serious offense (which includes bribery-related offenses), the court has the power, under section 5, to make a confiscation order against the defendant in respect of benefits derived by them from criminal conduct.

Under the Companies Act (Cap. 50), a director convicted of an offense, whether in Singapore or elsewhere, involving fraud or dishonesty (which includes corruption and bribery-related offenses) punishable with imprisonment of three months or more shall be disqualified from acting as a director or taking part in the management of a company for a period of five years.

## 13) Are deferred prosecution agreements (DPAs) or other similar settlement mechanisms available?

On March 19, 2018, the Singapore Parliament passed the Criminal Justice Reform Act (the Criminal Justice Act) which formally enacts, *inter alia*, provisions governing deferred prosecution agreements (DPA) as part of the Singapore Criminal Procedure Code (Cap. 68) (the CPC). Under section 149B of the CPC, the Public Prosecutor may enter into a DPA with persons charged with alleged offenses to resolve misconduct.

DPAs may be entered into for offenses committed prior to, on or after the date of commencement of the Criminal Justice Act that fall within the Sixth Schedule of the CPC, which include bribery related offenses under sections 5 and 12 of the PCA. DPAs are only available to corporate entities and require compliance from persons to cooperate in investigations

relating to the alleged bribery-related offense. DPAs must, *inter alia*, contain a statement of facts relating to the alleged offense and may impose various requirements (eg payment of financial penalty, disgorgement of profits, implementation of a compliance program, imposition of a corporate monitor etc).

All DPAs will require approval from the High Court. In approving a DPA, the court must declare that (i) the DPA is in the interests of justice and (ii) that the terms of the DPA are fair, reasonable and proportionate.

The terms of the DPA may be varied while the DPA is in force, subject to court approval. The prosecution may apply to the court for relief if it believes that the subject has failed to comply with the terms of a DPA, and must prove the alleged breach(es) on a balance of probabilities.

*Contribution by Sh DLA Piper Singapore Pte. Ltd.\**

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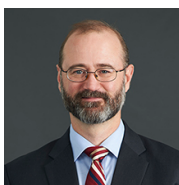
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