

**SINGAPORE INSTITUTE OF DIRECTORS****STATEMENT OF GOOD PRACTICE****AGAINST BRIBERY AND CORRUPTION****1 Introduction**

Bribery and corruption are terms that are often used interchangeably. The term “bribery” is narrower and generally means the giving or receiving of payment or other reward in order to influence the recipient (usually someone in an official position) to carry out an illegitimate act or conduct. The term “corruption” includes bribery but is broader in scope – it pertains to any form of unlawful or improper conduct (usually in breach of obligations, ethics or duties) in order to gain an illegitimate advantage or benefit.

This paper:

- (a) provides a brief overview of anti-bribery and corruption laws;
- (b) explains why companies should adopt and implement an anti-bribery and corruption policy; and
- (c) outlines what a good anti-bribery and corruption policy should contain.

Bribery and corruption undermine the rule of law and fair competition. These practices erode confidence in public and other institutions. Bribery and corruption in developing and developed countries are well-documented, and have a significant adverse socio-economic impact on businesses and communities.

Singapore ranks in various publications as one of the least corrupt countries in the world. Through Singapore’s robust and zero tolerance anti-corruption policies, framework and enforcement action, corruption complaints received and registered for investigation by the Corrupt Practices Investigation Bureau (“**CPIB**”) have fallen to record lows in 2017.

However, low corruption does not mean no corruption. Corruption still exists in Singapore and is also prevalent in Asia. Governments, authorities and regulators as well as businesses and institutions would do well to engender a system that prevents and mitigates any form of bribery and corruption. This is paramount in building and protecting the integrity of Singapore as a leading financial and business centre.

## 2 Trends and challenges

According to statistics provided by the CPIB, private sector cases continue to form the majority of cases investigated. In this regard, the CPIB has highlighted two specific areas of concern with regards to private sector corruption matters: (1) maintenance work (e.g. inspection of equipment); and (2) wholesale and retail businesses (e.g. procurement of equipment).

Public sector corruption cases remain fairly low. There continues to be a strong commitment by the CPIB and the Attorney-General's Chambers to take corrupt offenders to task, regardless of political affiliation or seniority. This is evidenced in recent prosecutions involving former politicians and senior civil servants under Singapore's Prevention of Corruption Act (the "PCA").

Generally, the PCA makes it an offence for any person to **corruptly receive** or **give** any gratification as an inducement to or reward for such person doing or forbearing to do anything in respect of any matter or transaction (actual or proposed). The PCA also criminalises the **corrupt receipt** by an **agent** or a **corrupt gift** by a person to an **agent** of any gratification as an inducement for the **agent** to do (or not to do) any act or favour in relation to his principal's affairs or business.

Any person guilty of the abovementioned offences under the PCA is liable on conviction to a fine not exceeding S\$100,000 or to imprisonment for a term not exceeding 5 years or to both.

On the global stage, Singapore has established a framework for international cooperation with overseas enforcement agencies and regulators. The CPIB frequently participates in several international platforms (including the G20 Anti-Corruption Working Group, International Association of Anti-Corruption Authorities and the South-East Asia – Parties Against Corruption Group) in order to collaborate with anti-corruption agencies from different jurisdictions to fight corruption on a concerted and international level.

Of interest on the international front is the continued and strong enforcement of the United States' ("US") Foreign Corrupt Practices Act ("FCPA") and the United Kingdom's ("UK") Bribery Act ("UKBA"), which have resulted in record fines and penalties in the hundreds of millions of dollars. Investigations under these regimes, which have extra-territorial jurisdiction, have also led to enforcement in relation to corruption in Asia. In this regard, organisations which have footprints and dealings in the US and the UK would have to manage their operations carefully to ensure that anti-corruption measures are in place and functioning effectively.

Significant efforts by the Serious Fraud Office have resulted in the first conviction in the UK in 2016 for the offence of **failure** to prevent bribery under the UKBA. In addition, The Group of States against Corruption (GRECO), which was established by the Council of Europe in 1999, continues to monitor compliance by member States of Europe of anti-corruption standards through mutual evaluations and other various means.

Generally, the FCPA applies extra-territorially to prohibited payments that take place wholly outside of the US made by US companies and US citizens, foreign companies listed on any US stock exchange or any person in the US at the material time.

The UKBA, on the other hand has extra-territorial jurisdiction over UK nationals, residents and UK-incorporated companies/partnerships.

Under the PCA, the CPIB also has extra-territorial jurisdiction over Singapore citizens who carry out corrupt activities outside of Singapore.

### **3 Managing bribery and corruption risks**

Organisations in Singapore should quickly adapt to the rapidly changing enforcement and regulatory landscape. As the board of a company is ultimately responsible for risk governance, directors have an important role to play in shaping bribery and corruption risk controls within their organisations. They should work together with management to pro-actively establish, implement and monitor the company's risk management framework and policies (including bribery and corruption) through the relevant risk, audit and/or other committee. Clearly defined roles and responsibilities at the board and management levels for these processes would enhance and better manage risk governance.

In this regard, the CPIB has recently published a practical anti-corruption guide for businesses in Singapore to help stakeholders prevent corruption. This guide<sup>1</sup> provides useful facts on corruption and details on implementing an effective framework to combat corruption.

Specific areas which traditionally merit active monitoring and proper policies and procedures include:

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<sup>1</sup> <https://www.cpiib.gov.sg/pact>.

- **Gifts, entertainment and hospitality** – expenses in this regard should not be disproportionate, lavish or excessive. Further, they should have a proper and legitimate business purpose and can be justified as a normal business expense.
- **Facilitation payments** (customary payments made to facilitate or expedite the performance of routine governmental actions) – although this is allowed under the FCPA, such payments are not allowed under the PCA and the UKBA.
- **Procurement** – traditionally, a high-risk area.

A useful reference may also be made to the six principles which constitute the adequate procedures defence<sup>2</sup> for the offence of failure to prevent bribery under section 9 of the UKBA. These include:

- **Proportionate procedures** – an organisation's procedures to prevent bribery and corruption must be proportionate to the risks it faces in relation to the nature, scale and complexity of the organisation's businesses and operations.
- **Top level commitment to bribery prevention** – top management must be committed to preventing bribery and corruption as a key objective, and foster a culture where integrity and ethical values are paramount.
- **Risk assessment and management** – the organisation must critically and regularly assess the nature and extent of its exposure to internal and external corruption risks.
- **Due diligence and relationships with business partners** – the organisation should apply appropriate due diligence procedures on upstream and downstream partners as well as contractors/service providers to identify, mitigate and negate corruption risks.
- **Communication (including training)** – the organisation's anti-bribery and corruption policies and procedures must be properly communicated and understood both internally as well as externally.
- **Monitoring and review** – the organisation should effectively monitor and review anti-bribery and corruption policies and procedures at regular intervals, and to make changes and improvements where necessary.

The above principles are useful, as a starting point, to consider how a company should structure and implement anti-bribery and corruption policies and procedures, which should incorporate the following salient features:

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<sup>2</sup> See Guidance issued by the United Kingdom Ministry of Justice on section 9 of the Bribery Act: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/181762/bribery-act-2010-guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/181762/bribery-act-2010-guidance.pdf).

- **General statement of anti-bribery and corruption intent, policy or core values** - this should unequivocally set out the company's strict prohibition against any form of corruption and make clear the conduct and values expected of all employees.
- **Overview of anti-bribery and corruption laws**, prohibited payments/activities and applicable standards and disciplinary measures - this seeks to educate all employees of the different corruption regimes in the various jurisdictions they are operating in, the specific illegal acts that are prohibited and the serious consequences of the breach of any law.
- **Guidance on gifts, donations/contributions, travel and entertainment activities** - such guidance and a carefully designed system of management approvals of certain high-risk areas and conduct will provide checks and balances in order to mitigate against the risk of corrupt activities.
- **Whistle-blowing process** for actual or suspected bribery/corrupt practices - this helps the organisation to monitor, detect and investigate all possible corruption activities and to ensure that anti-corruption policies are properly enforced.
- **Independent contact point** within the organisation for queries/clarification - this will ensure that any concerns, possible lack of clarity, questions or even proposed improvements in relation to the relevant policies and procedures are appropriately addressed.

Corruption policies should express, in no uncertain terms, the tone from the top. They should also be comprehensive and designed after taking into account the organisation's unique business, industry and jurisdiction risk assessment.

Directors and management play an integral role in having direct oversight and approval of the policies and ensuring that they are:

- carefully monitored;
- rigorously enforced; and
- regularly re-assessed and improved,

to ensure risks and internal controls continue to be current and relevant.

Regular training is also necessary to effectively communicate the contents of the policies and to ingrain the same into the organisation's corporate culture. Directors and management should be actively involved in assessing, approving and attending such training.

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