

## Business Crime and Investigations in Singapore: Overview

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### CORPORATE MANSLAUGHTER Regulatory Provisions and Authorities

#### 1. What is the main legislation relevant to corporate manslaughter?

There is no offence of corporate manslaughter in Singapore. However, under the Singapore Penal Code 2008 (PC), a corporation may be liable for causing the death of a person on account of gross negligence under section 304A of the PC. However, there are no reported cases where corporations have been found liable under this section.

#### Offences

#### 2. What is the specific offence that can be used to prosecute corporate manslaughter?

Not applicable since the specific offence of corporate manslaughter does not exist in Singapore.

#### Enforcement

#### 3. Which authorities have the powers of prosecution, investigation and enforcement in cases of corporate manslaughter? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

Not applicable (see *Question 1*).

### SAFEGUARDS

#### 4. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is there a process of judicial review? Is there a process of appeal?

Not applicable (see *Question 1*).

### Civil Suits and Settlement

#### 5. Can private parties bring civil suits for cases of corporate manslaughter?

The offence of corporate manslaughter does not exist in Singapore. However, civil suits may be brought seeking remedies for negligent actions or omissions against corporations, when death is caused, under both the common law and, in particular, under the law of negligence.

#### 6. Can individuals and/or legal entities reach a civil settlement with the appropriate authority in cases of corporate manslaughter?

Not applicable.

### HEALTH AND SAFETY OFFENCES Regulatory Provisions and Authorities

#### 7. What are the main regulatory provisions and legislation relevant to health and safety offences?

The main legislation concerning health and safety-related offences include the:

- **Workplace Safety and Health Act 2009 (WSHA).** The WSHA ensures employers (including corporate bodies) abide by their obligations owed towards their employees' health and safety at work.
- **Poisons Act 1999 (PA).** The PA regulates the importation, possession, manufacture, compound, storage, transport and sale of poisons.
- **Radiation Protection Act 2008 (RPA).** The RPA administers and enforces the safe use of radiation through a system of licensing, notification, authorisation and inspection.
- **Biological Agents and Toxins Act 2006 (BATA).** BATA prohibits or regulates the possession, use, import, transshipment, transfer and transportation of biological agents, inactivated biological agents and toxins, to provide safe handling practices.
- **Health Products Act 2008 (HPA).** The HPA regulates the manufacture, import, supply, presentation and advertisement of health products and of active ingredients used in the manufacture of health products.

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## Offences

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### 8. What are the specific offences relating to health and safety?

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#### WSHA Offences

**Elements.** The specific offences are listed in sections 12 and 15 of the WSHA. Section 12 of the WSHA provides that it is the duty of every employer to take, so far as is reasonably practicable, any measures necessary to ensure the safety and health of its employees at work.

Section 15 of the WSHA provides that it is the duty of every person at work to:

- Use, in such manner so as to provide the protection intended, any suitable appliance, protective clothing, convenience, equipment, or other means or thing provided (whether for use alone or in common with others) to secure safety, health and welfare while a work.
- Co-operate with their employer, principal or any other person to comply with the provisions of the Act.

**Penalties.** The general penalties under section 50 of the WSHA apply to individuals and bodies corporate who are guilty of the offences under sections 12(1), 12(2) and 15(3) of the WSHA. These include:

- **Natural persons.** A fine up to SGD200,000 and/or imprisonment for a term up to two years. For a continuing offence, there is a further fine up to SGD2,000 for every day during which the offence continues after conviction (*sections 50(a) and 50(i), WSHA*).
- **Body corporate.** A fine up to SGD500,000. For a continuing offence, there is a further fine up to SGD5,000 for every day during which the offence continues after conviction (*sections 50(b) and 50(ii), WSHA*).

**Right to bail.** Bail is available for offences under the WSHA.

**Defences.** It is a defence to a breach of duty under the WSHA if the officer of the corporate body proves that both:

- The offence was committed without their consent or involvement.
- They had exercised all the diligence possible to prevent the commission of the offence with regard to the nature of their function in that capacity and to all of the circumstances.

(*Section 48, WSHA*.)

An employer or corporate body can avoid liability for failure to comply with a duty to do something so far as is reasonably practicable, if they can prove that either:

- It was not reasonably practicable to do more than what was done to satisfy that duty.
- There were no better practicable means than were used to satisfy that duty.

(*Section 47, WSHA*.)

#### PA Offences

**Elements.** The PA regulates the importation, possession, manufacture, compound, storage, transport and sale of poisons. Poisons are referred to as substances prepared either from natural sources or artificially, or as a substance when contained in any preparation, solution, admixture or natural substance. The Schedule to the Poisons Act contains the full list.

Section 16(5) of the PA provides that an offence can be committed by both a body corporate and an individual and that both can be punished. For an individual to be responsible, it must be proved that they committed the prohibited act with the consent, connivance or neglect from any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity.

**Penalties.** Under section 16, any person who acts in contravention of any of the provisions of the PA will be guilty of an offence and liable on conviction to a fine up to SGD10,000 or to imprisonment for a term up to two years, or to both.

**Right to bail.** Bail is available for offences under the PA.

**Defences.** Section 19(1) prohibits the sale of poisons to persons below 18 years. Any person contravening the provision is guilty of an offence and liable on conviction to a fine up to SGD1,000 or to imprisonment for a term up to six months, or to both. However, section 19(3) provides that it is a sufficient defence to any charge under section 19(2) that the person charged had reasonable cause to believe that the person to whom the sale of poison was made was above the age of 18 years.

#### RPA Offences

**Elements.** Section 9 of the RPA relates to the occupational health and safety of the licensee's employees. It provides that every licensee must provide and maintain, as far as is practicable for any employees who are exposed or likely to be exposed to radiation, a working environment that is safe and without risks to health.

An offence resulting in the breach of safety standards can be brought against both individuals and corporate bodies (*section 37, RPA*).

**Penalties.** Any person who contravenes any provision of the RPA where no penalty is expressly provided, will be guilty of an offence and liable on conviction to a fine up to SGD50,000 or to imprisonment for a term up to 12 months or to both, where the contravention will endanger, or is likely to endanger, human life (*section 39, RPA*). The RPA also provides penalties for specific offences listed under it.

**Right to bail.** Bail is available for offences under the RPA.

**Defences.** There is no statutory defence under the RPA.

#### BATA Offences

**Elements.** The BATA regulates the possession, use, import, transfer and transportation of biological agents and toxins that are known to be hazardous to human health. Biological agents mean any micro-organism (including any bacterium, virus, fungus, rickettsia and parasite), any infectious substance (including any prion) or any component of a micro-organism or an infectious substance (but not including any toxin).

Toxin means any poisonous substance that is produced and extracted from any micro-organism.

The legislation provides for safe practices and security when handling of these agents and toxins.

Offences can be brought against both individuals and corporate bodies (*section 56, BATA*).

**Penalties.** Any person who uses, develops or produces, acquires, stockpiles, retains or possesses or transfers to another person (whether directly or indirectly) any toxin for any non-peaceful purpose is guilty of an offence and liable on conviction to a fine up to SGD1 million or to imprisonment for a term that may extend to life imprisonment, or to both (*section 30, BATA*).

**Right to bail.** Bail is available for offences under the BATA.

**Defences.** There is no statutory defence under the BATA.

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## HPA Offences

**Elements.** Subject to the provisions in sections 12, 13, 15, 16, 17, 18, 19 and 21 of the HPA, no person is allowed to manufacture and import, supply and advertise health products.

Offences can be brought against both individuals and corporate bodies (*section 59*).

**Penalties.** Under sections 12, 13, 15, 16, 17, 18, 19 and 21 of the HPA, any person found guilty and convicted of an offence faces fines ranging from SGD20,000 to SGD100,000, or imprisonment ranging from one year to three years.

**Right to bail.** Bail is available for offences under the HPA.

**Defences.** Section 22 provides that in any proceedings for an offence under section 19 (advertisement of health products), section 20 (false or misleading advertisement) or section 21 (further requirements for advertisement of health products), it is a defence to prove that the person charged:

- Is a person whose business is to publish or arrange for the publication of advertisements and that they received the advertisement for publication in the ordinary course of business.
- Has no financial interest in the supply of the health product featured in the advertisement.
- Did not know and had no reason to suspect that the advertisement would contravene the provisions of sections 19, 20 or 21, as the case may be.

## Enforcement

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### 9. Which authorities have the powers of prosecution, investigation and enforcement in cases of health and safety offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.

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#### Attorney General (AG)

**Investigation and enforcement powers.** The AG plays the key role as the public prosecutor who is the principal prosecuting authority in Singapore (*section 11, Criminal Procedure Code (CPC)*). The AG decides on prosecutorial matters independent of the government and is empowered to commence, conduct or discontinue any proceedings in respect of any offences (*Article 35(8), Constitution*).

A person who appears to be acquainted with any of the facts and circumstances of the case can be interviewed by a police officer with the rank of sergeant or above (*sections 21 and 22, CPC*).

During the course of the investigations, persons can be ordered by a police officer of the rank of sergeant or above to produce any relevant document or exhibits (*section 20, CPC*). Any place can be searched under a search warrant, if this is deemed necessary or desirable for the purposes of the investigation (*sections 24 to 40, CPC*). A search warrant may be issued for the search of a place for several reasons, such as if the court has reason to believe that a house contains stolen property (*section 25, CPC*), or if there is reason to believe that there is a person wrongfully confined within a place (*section 30, CPC*).

A search warrant is typically issued to police officers, but the court may in the appropriate circumstances, issue a search warrant to named persons who are not police officers (*sections 26(3) and 28, CPC*). Regardless, the person who is issued the search warrant must conduct the search in accordance with the warrant (*section 29, CPC*).

Property can be seized as evidence for investigations, if this is necessary (*sections 35 to 38, CPC*).

A police officer may also be given authority, in the process of investigating an arrestable offence, to access, inspect and check a computer where there is reasonable cause to suspect that the computer has been used in connection or contains evidence of the arrestable offence (*section 39, CPC*).

Similarly, the public prosecutor may also authorise a police officer to access any information or technology, require any person the police officer reasonably suspects of using a computer in connection with an arrestable offence or any other person having charge of the computer to provide reasonable technical or other assistance to access the information and decrypt it (*section 40, CPC*).

**Power to charge.** Section 64(1) of the CPC provides that any police officer may, without a warrant, arrest any person who has been involved in an arrestable offence or is reasonably suspected of having been involved in one, or against whom a reasonable complaint has been made or credible information has been received about them having committed a crime.

For criminal prosecution, the decision to charge is solely at the discretion of the public prosecutor (*Article 35(8), Constitution*). The exact mechanism adopted in the exercise of prosecutorial discretion is not delineated or articulated anywhere, but may involve the following:

- Case theory (that is, an interpretation of the facts in relation to the events that have occurred).
- Evidentiary proof, which includes the admissibility, reliability and credibility of the evidence as well as the availability of relevant witnesses, in accordance with the requirements of the law.
- Question of law (that is, whether this is a test case for contentious criminal law).
- Public policy (that is, whether it is in the public interest to prosecute the accused).

#### Ministry of Manpower (MOM)

**Investigation and enforcement powers.** The implementation of workplace safety and standards set out in the WSHA comes within the remit of the MOM. Section 7 of the WSHA confers the Minister of the MOM with the power to appoint a Commissioner for Workplace Safety and Health. This Commissioner has powers to issue remedial orders or stop-work orders (*section 21, WSHA*), and the approval of the Commissioner is required for a person to act as an authorised examiner for various workplace machinery (*section 32(a), WSHA*). Applications to be approved as a workplace safety and health officer must be made to and approved by the Commissioner before a person they begin (*Rules 2 and 3, Workplace Safety and Health (Workplace Safety and Health Officers) Regulations 2007*).

As the regulatory authority, when MOM is alerted to a workplace accident, the Commissioner can direct an inspector to investigate the incident. An Inquiry Committee may also be appointed to hold an inquiry into the circumstances in which the workplace accident or dangerous event occurred.

Criminal investigations generally involve formal investigation including recording statements from witnesses and suspects and seizing and analysing evidence from the relevant parties.

**Power to charge.** The AG has the discretion to institute, conduct or discontinue any proceedings for any offence in Singapore (see above, *Attorney General (AG): Power to charge*).

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## SAFEGUARDS

### 10. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is

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## there a process of judicial review? Is there a process of appeal?

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### Abuse of Investigatory Powers

The following are designed to protect against abuse of investigatory powers:

- **Voluntariness rule.** Statements from accused persons are inadmissible if they are procured involuntarily (*section 258(3), CPC*).
- **Procedural impropriety.** The court can exclude evidence for procedural impropriety. It is for the prosecution to show that the probative value of the statement outweighs its prejudicial effect by giving a reasonable explanation for the procedural irregularity. The burden is also higher where violations are deliberate or reckless
- **Legal privilege.** Legal advice privilege protects disclosure of confidential communication between client and solicitor which arises in a legal context in the course of the relationship. Litigation privilege protects communications between a third party and a lawyer or between a third party and client if they were made for the dominant purpose of litigation.

Judicial reviews of administrative actions can generally be brought on the grounds of illegality, irrationality and procedural impropriety in the Supreme Court of Singapore. A party must first apply (under Order 53 of the Rules of Court 2014) for leave from the High Court to apply for the prerogative orders, which is heard by a single High Court Judge in Chambers. If leave is granted, the applicant may then proceed to file an application to seek the prerogative orders, which is heard by a single High Court Judge in Open Court.

### Appeal Process

Once a judge has decided on conviction and sentence, parties can generally appeal to the High Court or Court of Appeal.

A party can lodge an appeal from the State Courts to the General Division of the High Court by filing a Notice of Appeal with the Registrar of the State Courts within 14 days after the date of the judgment, sentence or order being appealed against.

An appeal from the General Division of the High Court to the Court of Appeal (not to the Appellate Division of the High Court) is made by filing a Notice of Appeal with the Registrar of the Supreme Court within 14 days after the date of the judgment, sentence or order being appealed against.

Subject to the provisions of the Supreme Court Judicature Act 1969 (last updated 2020) (SCJA), any party who is not satisfied with a decision made by the General Division in a civil matter can appeal to the Appellate Division to set aside or vary the decision. The jurisdiction of the Appellate Division will include appeals against decisions made by the General Division in the exercise of its civil jurisdiction. The Appellate Division will not have criminal jurisdiction.

### Civil Suits and Settlement

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## 11. Can private parties bring civil suits for health and safety violations?

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The laws listed in *Question 7* neither confer nor remove any right to bring civil suits for health and safety violations.

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## 12. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for health and safety violations?

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The laws listed in *Question 7* do not allow for civil settlement. While the offences remain criminal in nature, the relevant authorities can, at their discretion, compound them in exchange for compensation.

### ENVIRONMENTAL OFFENCES Regulatory Provisions and Authorities

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## 13. What are the main regulatory provisions and authorities responsible for investigating environmental offences?

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The main laws relating to pollution of the environment are the:

- **RPA.** The RPA controls the import, export, sale, transport, possession and use of radioactive materials (both ionising and non-ionising) and irradiating apparatus. Any person who engages in this conduct without a licence is guilty of an offence.
- **Hazardous Waste (Control of Export, Import and Transit) Act 1998 (HWA).** The HWA regulates the export, import and transit of hazardous waste in accordance with the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.
- **Prevention of Pollution of the Sea Act 1999 (PPSA).** The PPSA regulates and prevents sea pollution, regardless of whether the pollution originates from land or from ships.
- **Environmental Protection and Management Act 2002 (EPMA).** The EPMA is complemented by regulations. Any person who fails to comply with these regulations is guilty of an offence and liable on conviction.
- **Environmental Public Health Act 2002 (EPHA).** The EPHA is complemented by regulations. Any person who fails to comply with these regulations is guilty of an offence and liable on conviction.
- **Transboundary Haze Pollution Act 2014 (THPA).** The THPA is complemented by regulations. Any person who fails to comply with these regulations is guilty of an offence and liable on conviction.

### Offences

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## 14. What are the specific offences relating to the environment?

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### RPA Offences

**Elements.** Anyone who engages in import, export, sale, transport, possession and use of radioactive materials (both ionising and non-ionising) and irradiating apparatus without a licence is guilty of an offence. The RPA imposes duties on licensees to provide, so far as it is reasonably practicable to do so, a safe working environment that is free from health and safety risks for its employees and third parties.

The RPA confers powers on the Director-General of Environmental Protection, their inspectors and the inspectors appointed by the International Atomic Energy Agency, to ensure that the RPA's provisions are complied with. These powers include the power to inspect documents and to grant, renew, vary, revoke, suspend, cancel or refuse an application for a licence.

**Penalties.** A body corporate and an officer of the body corporate can be guilty of the same offence and be liable to be proceeded against and punished accordingly. Under section 52(a) of the RPA, in a case

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where the contravention endangers or is likely to endanger human life, a fine not exceeding SGD50,000 can be imposed or imprisonment for a term not exceeding three months or to both.

In any other case, a fine not exceeding SGD10,000 can be imposed or imprisonment for a term not exceeding three months, or to both.

**Right to bail.** The First Schedule of the Criminal Procedure Code sets out the following for non-Penal Code offences:

Offences punishable with death or imprisonment for seven years or more years are not bailable.

Offences punishable with imprisonment for between three and seven years are not bailable.

Offences punishable with imprisonment for less than three years or a fine are bailable.

**Defences.** While there is no specific defence, section 47 of the RPA provides that no suit or legal proceedings lie personally against any authorised officer, any person acting under the officer's direction and any other person, for anything done in good faith done or intended to be done in the execution of the RPA.

### HWA Offences

**Elements.** A person cannot import or export hazardous or other waste unless without an authorisation permit. A person cannot bring hazardous or other waste into Singapore as part of a transit proposal without a transit permit.

The HWA confers powers on the Director of Hazardous Wastes and its authorised officers to ensure that the HWA's provisions are complied with. These powers include the power of entry and search, to control movement of vessels and aircrafts, and the power to obtain information.

**Penalties.** A body corporate and an officer of the body corporate can be guilty of the same offence and be liable to be proceeded against and punished accordingly. A District Court has jurisdiction to try any offence under the HWA. A District Court can pass any of the following sentences:

- Imprisonment for a term not exceeding ten years.
- Fines of up to SGD30,000.
- Any lawful sentence combining any of the sentences which it is authorised by law to pass.

**Right to bail.** See above, *RPA Offences: Right to bail*.

**Defences.** While there is no specific defence, section 43 of the HWA provides that no suit or legal proceedings can be brought personally against the Director-General or an authorised officer or any person acting under the direction of the Director-General for anything done in good faith done or intended to be done in the execution of the HWA.

### PPSA Offences

**Elements.** It is an offence for any person to discharge oil or oily mixtures, or to throw pollutants into Singapore waters from land, a ship or from any apparatus used for transferring oil to or from any ship.

The PPSA gives the Maritime and Port Authority of Singapore powers to implement preventive measures against sea pollution. These powers include the power to provide reception facilities for ships using ports or any terminal in Singapore.

The Director of Marine, the Port Master and the inspectors appointed by the Director of Marine can ensure that the provisions of the PPSA are complied with. Their powers include the power to deny entry, to detain a ship and to enter on lands.

**Penalties.** Under section 32 of the PPSA, any offence can be tried by a Magistrate's Court or a District Court, which has jurisdiction to impose the maximum penalty.

A District Court can pass any of the following sentences:

- Imprisonment for a term not exceeding ten years.
- Fines of up to SGD30,000.
- Up to 12 strokes of the cane.
- Any lawful sentence combining any of the sentences that it is authorised by law to pass.

A Magistrate's Court can pass any of the following sentences:

- Imprisonment for a term not exceeding three years.
- Fines not exceeding SGD10,000.

However, where the law expressly provides for it, the District Courts and Magistrates' Courts have jurisdiction to try offences and impose sentences that exceed the above limits.

**Right to bail.** See above, *RPA Offences: Right to bail*.

**Defences.** In respect of an offence relating to the discharge of oil or oily mixtures from land or apparatus (under section 3 of the PPSA), special defences are found in section 4(1) of the PPSA. One defence is to prove that the discharge of the oil or oily mixture was not due to any want of reasonable care and that as soon as practicable after the discharge was discovered all reasonable steps were taken to stop or reduce it.

Under section 4(2), it is a defence for the occupier of a place on land who is charged with an offence under section 3 to prove that the discharge was caused by the act of a person who was in that place without the permission of the occupier

Under section 4(3), where a person is charged in respect of an oily mixture from a place on land under section 3, it is a defence to prove:

- That the oil was contained in an effluent produced by operations to refine oil.
- That it was not reasonably practicable to dispose of the effluent otherwise than by discharging it into Singapore waters.
- That all reasonably practicable steps had been taken to eliminate oil from the effluent.

Under section 4(4), where it is proved that, at the time to which the charge relates, the surface of the waters into which the oily mixture was discharged or the land adjacent to those waters was fouled by oil, the defence under subsection (3) does not apply unless the court is satisfied that the fouling was not caused, or contributed to, by oil contained in any effluent discharged at or before that time, from that place.

### EPMA Offences

**Elements.** The EPMA sets out numerous offences including the following:

- **Control of air impurities (section 12(1)).** Owners or occupiers of any industrial or trade premises commit an offence if they cause, permit or allow the emission of air impurities in excess of the standard of concentration or rate of emission prescribed, by either:
  - conducting any trade or industrial process; or
  - operating any fuel burning equipment or industrial plant in or on a premise.
- **Discharging of polluting matters onto land or into any drain (section 15(1)).** A person commits an offence by discharging (or causing or permitting discharge of) any trade effluent, oil, chemical, sewage or other polluting matter into any drain or land, without written permission from the Director-General of Environmental Protection.
- **Discharging toxic substances or hazardous substance into inland waters (section 17(1)).** A person commits an offence by

discharging (or causing or permitting discharge of) any toxic or hazardous substance into any inland water that is likely to pollute the environment.

- **Hazardous substances (sections 22 to 27).** Offences are committed if hazardous substances are labelled, stored, used, or dealt with in contravention of the provisions of the EPMA.
- **Noise pollution (section 28).** The Director of Pollution Control can, by written notice, specify all of the following:
  - plant or machinery that can or cannot be used;
  - hours during which the works can be carried out; and
  - level of noise or vibration that can be emitted from the premises during specified hours (section 28(2)).

Failure to comply with the notice is an offence (section 28(3)).

- **Power to prohibit work and processes (section 39(1)).** If the National Environment Agency (NEA) has reason to believe that the emission of air impurities, the discharge of trade effluent or the emission or discharge of any hazardous substance or toxic substance (pollutants) from any premises is likely to pollute the environment or endanger public health or safety, it can order the owner or occupier of the premises to do any or all of the following:
  - cease immediately any processes or operations that produce the pollutants;
  - cease immediately the emission or discharge of the pollutants into the atmosphere or any land, drain or inland waters; or
  - take steps to collect, store and treat the pollutants indefinitely or until any steps that have been specified in the order have been taken, and to treat the pollutants before they are discharged into any public sewerage system, drain or inland waters.
- **Failure to comply with pollution control measures prescribed by the NEA (section 39(2)).** An owner or occupier of any premises commits an offence if they fail to comply with any pollution control orders made under section 39(1) of the EPMA.
- **Failure to provide the Director-General with information or documents (section 44A(3)).** The failure to comply, without reasonable excuse, with a notice by the Director-General of Environmental Protection to provide information or documents constitutes an offence.

Liability for offences under the EPMA can attach to both the officers within the company and the company as a corporate entity (section 71, EPMA). The EPMA does not provide a specific penalty for the contravention of sections 12(1) and 15(1). Therefore, the general penalty applies to individuals and bodies corporate who are guilty of offences under these sections (section 67, EPMA).

**Penalties.** The general penalty for a first conviction is a fine not exceeding SGD20,000. The penalty for a continuing offence is a further fine not exceeding SGD1,000 for every day during which the offence continues after conviction (section 67(1)(a), EPMA). Specific penalties for other offences are laid out in the relevant sections of the EPMA.

**Right to bail.** Bail is available for non-PC offences (including offences under the EPMA) that are only punishable with a fine or with imprisonment for less than three years (Schedule 1, Criminal Procedure Code (CPC)).

**Defences.** The body corporate and its officer can avoid liability if its officer can prove that the offence both:

- Was committed without their consent or involvement.
- Cannot be attributable to any act or default on their part.

(Section 71(1), EPMA.)

The NEA can permanently, or for a period, exempt any person or premises from any provision of the EPMA, subject to the general or special directions of the Minister (section 75, EPMA).

## EPHA Offences

**Elements.** The EPHA sets out numerous offences including the following:

- **Prohibition against dumping and disposing (sections 20(1)(a) and 20(1)(b)).** An offence is committed if any person either:
  - dumps or disposes of any refuse, waste or any other article from a vehicle in a public place; or
  - uses a vehicle to dump or dispose of any refuse, waste or any other article in a public place.
- **Disposal of industrial waste in unauthorised places (section 24).** Disposing of industrial waste in a facility not licensed by the Director-General of Public Health constitutes an offence.
- **Dangerous substance or toxic industrial waste not to be brought to disposal facility without permission (section 29(1)).** Bringing any owned/possessed dangerous substance or toxic industrial waste (or the residue from its treatment) to any disposal facility for disposal without the written permission of the Director-General of Public Health constitutes an offence.
- **Articles of food unfit for human consumption (section 40).** A person commits an offence if they, without lawful excuse, has in their possession for sale any article of food intended for human consumption that is unsound or unfit for human consumption (sections 40(1) and 41A(1)).
- **Failure to comply with a nuisance order (section 45).** The Director-General of Public Health can, if satisfied of the existence of a nuisance, serve a nuisance order on the person by whose act, default or sufferance the nuisance arises or continues (or if the person cannot be found, on the owner or occupier of the premises on which the nuisance arises). Failure to comply with an order constitutes an offence (section 45(1) and 45(11)).
- **Control of purity of water supplies (sections 78 to 80).** A person commits an offence by failing to ensure that water being sold is fit for human consumption and is of the requisite standard of purity (sections 78 and 80A).

**Penalties.** The EPHA provisions that do not provide for specific penalties are subject to a general penalty (section 103, EPHA). The general penalty is a fine not exceeding SGD5,000 and, in the case of a second or subsequent conviction, a fine not exceeding SGD10,000 and/or imprisonment for a term not exceeding three months. Other specific penalties are set out in the relevant sections of the EPHA.

**Right to bail.** Bail is available for non-PC offences (including under the EPHA) that are only punishable with a fine or with imprisonment for less than three years (Schedule 1, CPC).

**Defences.** The body corporate and its officer can avoid liability if its officer can prove that the offence both:

- Was committed without their consent or involvement.
- Cannot be attributable to any neglect on their part.

(Section 103A(1), EPHA.)

The NEA can permanently or for a period, exempt any person or premises from any provision of the EPHA, subject to the general or special directions of the Minister (section 110, EPHA).

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## THPA Offences

**Elements.** An "entity" is defined by the TPHA as any sole proprietorship, partnership, corporation or other body of persons, whether corporate or unincorporated (*section 2, TPHA*).

An entity is guilty of an offence under section 5(1) of the TPHA if it:

- Engages in conduct (whether in or outside Singapore) which causes or contributes to any haze pollution in Singapore.
- Engages in conduct (whether in or outside Singapore) that condones any conduct (whether in or outside Singapore) by another entity or individual which causes or contributes to any haze pollution in Singapore.
- There is haze pollution in Singapore at or about the time of that conduct by that entity.

An entity also commits an offence if all of the following apply:

- That entity participates in the management of a second entity.
- The second entity is an owner or occupier of any land situated outside Singapore.
- The second entity engages in the criminal conduct (*see above in relation to section 5(1), TPHA*).
- There is haze pollution in Singapore at or about the time of that criminal conduct.

(*Section 5(3), TPHA*.)

**Penalties.** It is unclear whether liability for the same offence can attach to both an individual within a company and to the company as a corporate entity. There is a lack of case law on this point. The offending entity is liable on conviction to a fine not exceeding SGD100,000 for each day (or part of a day) that there is haze pollution in Singapore occurring at or about the time of the entity's conduct. The total fine cannot exceed SGD2 million. If the entity fails to comply with any preventive measures or notices at or about the time of the haze pollution, an additional fine is imposed. This additional fine cannot exceed SGD50,000 for each day that the entity fails to comply with the preventive measures notice, and the total fine cannot exceed SGD2 million (*sections 5(2), 5(4) and 5(5), TPHA*).

Any person who obstructs, hinders or delays the Director-General for Public Health or any authorised officer in the performance or execution of their duties or powers under the TPHA is guilty of an offence. That person is liable on conviction to both a fine not exceeding SGD10,000 and/or to imprisonment for a term not exceeding three months (*section 14(a), TPHA*). The penalty for a second or subsequent conviction is a fine not exceeding SGD20,000 and/or imprisonment for a term not exceeding three months (*section 14(b), TPHA*).

**Right to bail.** Bail is available for non-PC offences (including under the TPHA) that are only punishable with a fine or with imprisonment for less than three years (*Schedule 1, CPC*).

**Defences.** It is a defence to a prosecution for an offence under section 5(1) or 5(3) of the TPHA, if the accused proves, on a balance of probabilities that the haze pollution in Singapore was caused solely by:

- A grave natural disaster or phenomenon.
- An act of war.

(*Section 7(1), TPHA*.)

Other detailed defences are available under section 7 of the TPHA.

## Enforcement

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### 15. Which authorities have the powers of prosecution, investigation and enforcement in cases of environmental

**offences? What are these powers and what are the consequences of non-compliance? Which authority makes the decision to charge and on what basis is that decision made? Please identify any differences between criminal and regulatory investigations.**

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#### Attorney General (AG)

**Investigation and enforcement powers.** See *Question 9*.

**Power to charge.** The AG has the discretion to institute, conduct or discontinue any proceedings for any offence in Singapore.

#### Director-General of Environmental Protection

**Investigation and enforcement powers.** For EPMA and TPHA offences, the Director-General of Environmental Protection can, with written notice, require any person to provide documents and information that both:

- Are within that person's knowledge, custody or control.
- Relate to any matter that the NEA considers necessary to carry out its functions or duties under the EPMA.

This power includes the power to obtain an explanation of the document or information provided by the person. Any person who fails to provide documents and information is guilty of an offence.

The Director-General has slightly different powers to investigate and enforce under the EPMA and TPHA.

**Power to charge.** The AG has the discretion to begin, institute, continue or terminate all prosecutions in Singapore.

The Director-General or a police officer can arrest any person whom they have reason to believe has committed an offence under the EPMA if, among other things, the name and address of the person are unknown to them (*section 45(1), EPMA*). Conversely, any person who is suspected of having committed an offence under the TPHA cannot be arrested without a warrant (*section 17, TPHA*).

The District and Magistrate's Courts have jurisdiction to try an offence and can impose the full penalty or punishment in respect of any offence under the EPMA (*section 73, EPMA*).

A District Court has jurisdiction to try any offence under the TPHA and can impose the full penalty or punishment in respect of the offence (*section 18, TPHA*).

#### Director-General of Public Health

**Investigation and enforcement powers.** For EPHA offences, the Director-General for Public Health can, for the purposes of an investigation, orally examine any person who should know the facts and circumstances of the case, and produce a written statement from that examination.

The Director-General can enter into any premises for the purposes of making investigations (among other things) between 6.00 am and 6.00 pm.

Where information is required of a person under sections 17(4) or 17(5), or 20(1A) of the EPHA, a person is not excused from disclosing the information even if doing so may incriminate them.

**Power to charge.** The AG has the discretion to begin, institute, continue or terminate all prosecutions in Singapore (see *Question 9*).

The District and Magistrate's Courts have jurisdiction to try an offence and can impose the full penalty or punishment in respect of any offence under the EPHA (*section 106, EPHA*).

## Safeguards

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### 16. Are there any measures in place to safeguard parties subject to a government or regulatory investigation? Is

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### **there a process of judicial review? Is there a process of appeal?**

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#### **Abuse of Investigatory Powers**

See *Question 10, Abuse of Investigatory Powers*.

#### **Appeal Process**

See *Question 10, Appeal Process*.

#### **Civil Suits and Settlement**

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### **17. Can private parties bring civil suits for environmental offences?**

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Under the THPA, if an entity engages in or condones any conduct that causes or contributes to any haze pollution in Singapore which results in a person in Singapore suffering personal injury, sustaining physical damage to property, or sustaining any economic loss, that person can bring a civil suit for damages (*section 6, THPA*).

The environmental laws listed below do not allow private parties to bring civil suits under their statutory provisions but parties are not excluded from bringing civil action seeking damages and remedies under common law:

- Environmental Protection and Management Act.
- Prevention of Pollution of the Sea Act.
- Environmental Public Health Act.
- Sewerage and Drainage Act.
- Hazardous Waste (Control of Export, Import and Transit) Act.
- Radiation Protection Act.

### **18. Can individuals and/or legal entities reach a civil settlement with the appropriate authority for environmental offences?**

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No punitive damages are available under the laws listed in *Question 17*.

Deferred Prosecution Agreements (DPAs) can be agreed, which may include the payment of a financial penalty to the public prosecutor, compensating victims of the alleged offence, donating money to a charity or third party, or the implementation of a compliance programme.

The relevant authorities can choose to prosecute an offence, which may require either a fine or a custodial sentence, or both.

There are no settlements with authorities available per se. The court either imposes a fine, or a custodial sentence, or both.

#### **MODERN SLAVERY**

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### **19. What are the general concerns regarding modern slavery in your jurisdiction?**

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The term "modern slavery" has not been defined in law. However, legal protection is provided to vulnerable members of society and foreign nationals. Certain domestic laws protect against human trafficking, sexual exploitation and abuse of foreign domestic workers and helpers. Although a number of vulnerable members of society are subjected to exploitation and cruelty, there has generally been increasing awareness of these matters, leading to an increase in reporting and monitoring cases. Examples of legislations include:

- The Prevention of Human Trafficking Act 2014, which deters and punishes trafficking in persons and those assisting people trafficking.
- Section 335A of the Penal Code, which sets out offences designed to protect the safety of domestic workers. Similar liabilities can also be imposed in respect of vulnerable persons defined who are subjected neglect, physical or mental harm or sexual abuse.

#### **REFORM, TRENDS AND DEVELOPMENTS**

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### **20. Are there any impending developments or proposals for reform?**

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On 13 January 2023, a new extradition treaty signed in February 2022 between Singapore and Indonesia (Treaty) came into force. The Treaty represents the two nations' renewed commitment to combating cross-border crimes, with a focus on financial crimes such as money-laundering and graft. With the Treaty, both countries will be able to provide each other with full support for cross-border law enforcement.

Briefly, the extradition co-operation with Singapore will make it easier for law enforcement officials to solve criminal cases in which the perpetrators are located in Singapore. Similarly, Singaporean suspects hiding in Indonesia can also be extradited. Under the Treaty, fugitives who have committed certain types of crime will be liable to be extradited, and it will apply retrospectively to offences committed up to 18 years ago.



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# Practical Law Contributor Profile

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**Professional qualifications.** Singapore, Advocate and Solicitor; Barrister-at-Law, England and Wales

**Areas of practice.** Investigations; enforcement; white collar crime.

### Recent transactions

- Acting for a Vietnamese company whose chemical oil tanker was extensively used to receive misappropriated gas oil from Shell Pulau Bukom, which was seized/forfeited by the Singapore authorities.
- Acting for a British Virgin Islands (BVI) company whose Singapore bank account consisting of more than USD26 million had been seized by the Singapore authorities on a possible offence under section 47 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.
- Acting for a Singaporean engineer/accredited checker who failed to check the detailed structural plans and design calculations on the Pan Island Expressway Viaduct in accordance with regulations under the Building Control Act.
- Acting for a Singaporean for his suspected involvement in at least 450 cases of e-commerce scams involving the sale of tickets for Universal Studios Singapore (USS), concerts and other events on Carousell and Facebook.
- Acting for a Singapore well-known home-grown pastry chain on multiple counts of underpaying its foreign employees under the Employment of Foreign Manpower Act.
- Acting for an Australian citizen allegedly involved in a condominium fatal killer litter case which involves issues of religiously aggravated attack and mental health.
- Acting for a Mali-born naturalised Singapore citizen who was served with a Notice of Proposed Deprivation of his Singapore Citizenship after he became involved in a global match-fixing, syndicate and criminal activities.
- Acting for a Singaporean and his companies for supplying to North Korea prohibited luxury items worth over SGD500,000 and contravening the United Nations sanctions.

**Languages.** English, Tamil, Malay

**Professional associations/memberships.** Member of the Law Society of Singapore; Member of the Singapore Academy of Law; Member of the Honourable Society of Lincoln's Inn (UK); Member of the ASEAN Law Association; Volunteer Lawyer with the Movement for the Intellectually Disabled of Singapore (MINDS); State Assigned Lawyer for Capital Cases in the Supreme Court of Singapore.