

SINGAPORE'S EXPERIENCE IN INVESTIGATING AND RECOVERING PROCEEDS OF CORRUPTION CRIMES

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I. INTRODUCTION

One of CPIB's strategies to rip corruption at its core is to disgorge the criminal gains of the corrupt through strict enforcement of money laundering offences and rigorous asset recovery efforts. These, coupled with strong political will and other definitive measures, have abated the corruption situation in Singapore. The majority of the corruption cases are from the private sector. The public-sector cases are typically petty corruption by low or mid-level public officials.

CPIB also lends support to international asset recovery efforts and investigates into laundering of criminal proceeds of foreign origin. This is part of Singapore's national anti-money laundering and counter financing of terrorism policy objective to seize and restrain proceeds and instrumentalities of crime or property of equivalent value to prevent dissipation, regardless of the origin of the predicate crime.¹

This paper sets out our experience and practices in investigating and recovering proceeds of crimes in Singapore and our legislative framework that has supported us in this endeavour. We are cognisant that the same set of practices that work in Singapore may not achieve the same result in another country, and vice versa. An effective system is often the result of an interplay of myriad measures taking into account the unique circumstances of the country. Nevertheless, it is hoped that through this paper, lessons can be drawn and further discussions facilitated on the subject of asset recovery as a means to combat corruption.

II. SINGAPORE'S LAWS IN SUPPORT OF MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

The foremost underpinning of our successful asset recovery efforts is our legal framework that allows for expeditious seizure and restraint of proceeds and instrumentalities of crime or property of equivalent value, and securing of evidence thereof.

A. Prevention of Corruption Act

In Singapore, investigators in CPIB are empowered under our Prevention of Corruption Act (Chapter 241) to arrest, search and seize properties related to the commission of corruption offences. Additionally, they can also exercise general police powers to seize or prohibit disposal of or dealing in any assets to prevent the assets from being dissipated, without the need to obtain any court warrant, so long as there is sufficient information that an offence has been committed and that the assets are linked to the criminal activity. However, as a check and balance, such seizure has to be reported to the Magistrate when the property is no longer relevant to investigation or one year from the seizure date, whichever is earlier.

The Prevention of Corruption Act (Chapter 241) also encourages financial investigation to be conducted against the corrupt. Evidence adduced of accused in possession of pecuniary resources or property that is disproportionate to his known income and that he cannot satisfactory account for, or that he had accumulated

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¹ During the Second Reading of our primary anti-money laundering law, Corruption Drug Trafficking and other Serious Crimes Act (Amendment) Bill on 7 July 2014, the Minister for Home Affairs stated that it is:-

"in our national interest to participate pro-actively in the global effort against cross-border crime and money laundering. And this affirms our strong stance against such crimes, and sends a clear signal that illicit assets do not have safe harbour in Singapore, upholding our status as a well-regarded and well-regulated financial centre."

during the material period of the offence, may be used as corroborating evidence that the accused had received bribes, under section 24 of the Act.

Lastly, section 13 of Prevention of Corruption Act (Chapter 241) has an in-built mechanism to recover and disgorge criminal proceeds from corrupt receivers. Anyone who is convicted of corruptly receiving any gratification in contravention of the Act, and if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall order the person to pay a penalty equal to the amount of gratification received. The imposition of penalty under this Act is not a discretionary judicial measure but a mandatory one that has to be imposed in addition to any other punishment such as fines or imprisonment term that the court may mete out.

B. Corruption Drug Trafficking and other Serious Crimes Act

The Corruption Drug Trafficking and other Serious Crimes Act (“CDSA”) (Chapter 65A) is the primary legislation in Singapore that criminalises the laundering of criminal benefits and provides for the investigation and confiscation of such benefits. The Act provides for a wide range of serious offences for which an ML charge can apply. (As of last update on 1 September 2017, there are 460 serious offences listed in the CDSA schedules.) It provides for heavy penalties for money laundering offences, with imprisonment up to 10 years and/or fines up to \$500,000 for natural persons and S\$1 million for legal persons.

CPIB investigators are “authorised officers” under this Act and thus are also empowered to investigate money laundering offences and conduct asset recovery under this Act.

CDSA has a more extended reach for asset recovery, as it also goes after assets that are not directly traceable to a criminal offence. Under the Act, the court may make restraint orders or charging orders on any property owned or linked to a person, as long as the court is satisfied that there is a reasonable cause to believe that benefits have been derived from his criminal conduct. In the eventuality that the person is convicted of a serious offence such as corruption as specified in the CDSA’s schedule, a confiscation order may be obtained against the defendant for the benefits that he derived from the criminal conduct. The confiscation order can extend to any property or any interest therein (including income accruing from such property or interest) held by or linked to that person that is disproportionate to his known sources of income, the holding of which he cannot explain to the satisfaction of the court, and thus is presumed to have been derived from criminal conduct.

Singapore generally adopts a conviction-based confiscation regime. Having said that, there are allowable exceptions to this rule. For example, if a person cannot be found, apprehended or extradited at the end of six months from the date on which an investigation was commenced against him, he shall be taken as having absconded and thus deemed to be convicted of the offences for which he was investigated. In this way, a confiscation order can still be obtained against fugitives.

To illustrate the application of CDSA to recover assets from an absconded person, we have the case against Ng Teck Lee (“Ng”), who was the Chief Executive Officer and President of Citiraya Industries Limited, a publicly-listed electronic waste recycling company, at the material period of offence. Before CPIB commenced a corruption investigation against Ng, he fled Singapore with his wife. He was placed on Interpol’s wanted person list and his whereabouts are still unknown to this day.

Notwithstanding his absence, investigation by CPIB has adduced sufficient evidence that Ng had misappropriated and diverted the electronic scrap to overseas syndicates for repackaging and sale as standard products, and bribed various parties to keep the scam under wrap. The Court was satisfied that CPIB had exhausted its efforts to locate Ng and pronounced Ng an absconded person under CSDA and by that note, deemed to have been convicted of the alleged serious offences. Subsequently, a confiscation order of US\$ 51 million was issued against Ng for the benefits known to be derived by him through his criminal conduct. This was feasible even though Ng was never apprehended.

The same legal provision can be relied on to recover assets of international fugitives who have evaded investigation or prosecution in foreign jurisdictions and whose assets are still in Singapore.

III. CPIB'S EMPHASIS ON MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

Aligned with its strategic direction to cripple corruption through disgorgement of criminal proceeds, CPIB set up a Financial Investigations Branch in June 2011 as a specialised unit within its Investigations Department to lead money laundering investigations, as well as in the recovery and confiscation of benefits derived from corrupt proceeds. CPIB also aspires to have all its investigators adequately trained in financial investigations by year 2020, so that asset recovery and money laundering investigation will, in the near future, be performed as part of corruption investigation.

Internally, CPIB has also put in place processes throughout investigative phases to ensure that cases that involve significant proceeds are identified early, so that financial investigations can be triggered and conducted in parallel alongside predicate corruption investigations, so that proceeds and instrumentalities of crime can be identified, traced and seized promptly to prevent dissipation.

To enhance effectiveness in asset recovery, CPIB has invested in technology so that the financial investigators have the necessary intelligence analytical tools to analyse complex fund flows. CPIB also subscribed to third party solutions to allow for corporate and person screenings and risk screenings so that investigators can gain early insight into the relationships and interconnections between persons or entities of interest. More recently, CPIB is also enhancing its case management system to allow for more active tracking and managing of assets recovered.

IV. LEVERAGING ON FINANCIAL INTELLIGENCE TO DETECT OFFENCES AND IDENTIFY PROPERTY LINKED TO CRIME

In Singapore, there is a statutory obligation on everyone to file suspicious transaction reports ("STRs") with our Financial Intelligence Unit ("FIU") if, in the course of one's work, one has reason to suspect that any property is linked to crime, irrespective of the quantum of criminal proceeds or property involved. Due to extensive outreach efforts on the part of our FIU, there has been a significant increase in the STRs filed. In 2016, there were 34,129 such reports filed, of which one third were filed by the banking sector and another two-fifths from casinos, moneychangers and remittance agents.

In addition, anyone who brings cash into or moves cash out of Singapore in excess of S\$20,000, or any precious stones and metals dealer that conducts a cash transaction with a client in excess of \$20,000, or any casino operator that conducts a cash transaction with a patron in excess of \$10,000, are also compelled to file cash movement and transaction reports with our FIU.

These STRs contain important information on red flags and potential leads that enforcement authorities can leverage for detection and pursuit of money laundering offences. Together with the cash movement and transaction reports, they are a rich source of financial intelligence. They can shed light on beneficial ownership of accounts and transaction details that can lead to identification of assets related to criminal activities. They can also lead to disclosure of corruption or money laundering offences which could have remained undetected if not for the STRs.

For this reason, CPIB has for many years been leveraging financial intelligence for early detection of offences and for asset tracing.

A. Financial Intelligence as a Detection Tool

CPIB works closely with the FIU to scope the types of corruption-related financial intelligence that are relevant to CPIB. Based on the agreed understanding and pre-defined parameters, our FIU disseminates to CPIB a filtered list of corruption-related STRs fortnightly. A team of financial intelligence analysts in CPIB will then systematically review these STRs to detect if any corrupt proceeds of foreign or domestic origin were laundered in Singapore. The team will also identify whether any offence of corruption and money laundering has been disclosed in the STRs to warrant domestic investigation.

This proactive effort has yielded some positive results. There was one such case in 2010 where the proactive use of STRs by CPIB led to identification of a transnational crime and money laundering offences

that implicated a foreign head of state. Investigation was immediately mounted against the two co-accused in Singapore. They were apprehended, prosecuted and eventually convicted of fraudulently benefiting US\$3.6 million from a community project overseas through the use of false invoices issued under the name of a British Virgin Islands registered company. The accused were sentenced to jail for 60 to 70 months and the assets of the shell company and the foreign politically exposed person over \$2 million dollars were forfeited to the state.

B. Financial Intelligence as an Investigation Tool

Singapore does not have a central beneficial ownership database, but this does not significantly impact on our effectiveness in enforcing money laundering offences or asset recovery. If we require beneficial ownership information, we can order the corporate secretarial agents and banks to produce such information. Furthermore, through experience, it is found that FIU's financial intelligence of suspicious transactions may be more relevant and critical information for money investigation and asset tracing.

Therefore, in CPIB, as part of our standard procedures for money laundering investigation and asset recovery, we will screen against our FIU database all persons of interest and their related family members and entities, to uncover leads on financial assets and transactions that may be linked to the crime. This is particularly important if there is no prior information on how the corrupt proceeds were received or passed.

Take for example, in 2013, CPIB received information that a foreign national had assisted foreign politically exposed persons to receive bribes and part of the bribes might be laundered through Singapore. The foreign national has absconded and been placed on Interpol's wanted person list. Acting on the information, CPIB commenced a money laundering investigation immediately. A screening against the FIU's database revealed several bank accounts in Singapore that were beneficially owned by the foreign national abettor. The financial intelligence, supplemented with other reliable sources of information, led to CPIB's seizure of close to S\$100 million in these bank accounts that were reasonably suspected to be criminal proceeds. At the material times, the fugitive was in the midst of moving his funds out of Singapore. Had there been no STRs filed on the bank accounts linked to the fugitive or no screening against the FIU's database, CPIB would not have been able to so quickly recover the assets.

In another case, CPIB opened an investigation against a person linked to bribery of foreign public officials in that country. Based on open source information, the accused had paid bribes directly through his company. However, through the STRs, CPIB identified that the bribes were probably paid through another company owned by his mother, as banks have disclosed in their STRs that a significant amount of cash was withdrawn by his family members from the company of the accused's mother.

V. INTERNATIONAL COOPERATION IN MONEY LAUNDERING INVESTIGATION AND ASSET RECOVERY

Besides enforcing against the laundering of proceeds originating from domestic corruption, the CPIB also proactively detects and investigates money laundering offences involving corrupt proceeds of foreign origin. About 70% of assets recovered by CPIB are linked to foreign corruption cases.

To this end, all requests for assistance received by CPIB are reviewed to determine whether any person or property in Singapore may be linked to crimes of foreign origin that warrant a domestic investigation. If sufficient information of a domestic offence is disclosed through the requests, CPIB will liaise with the foreign authorities for the purpose of investigation and asset recovery efforts.

The bedrock to a successful international asset recovery is trust and cooperation among the foreign enforcement authorities. If this foundation is absent or weak, cross-agency information sharing will be impeded and asset recovery action cannot be taken as quickly. With this in mind, in July 2017, CPIB joined other law enforcement agencies from Australia, Canada, New Zealand, the United Kingdom and the United States of America in the launching of the International Anti-Corruption Coordination Centre (IACCC) which was set up to serve as a platform for enhancing international cooperation against grand corruption.

At this point, I wish to share a case to underscore the need for close cooperation and trust among foreign law enforcement agencies to allow for sharing of financial intelligence and, at times, investigation findings to

enable prompt action to be taken to arrest the illicit fund flow.

Last year, in 2016, through review of a suspicious transaction report, CPIB came to know that a Singapore bank account might be used as a conduit to receive funds intended for bribing foreign politically exposed persons. The filer informed that the bank account was featured in a foreign adverse news and there were suspicious bank transactions passed in the bank account. CPIB then, through the FIU, immediately alerted the foreign authorities and sought their confirmation whether the bank account was featured in their corruption investigation. The foreign authorities were also aware of the urgency of the matter as the beneficial owner was making plans to move the funds out of Singapore. Within a day, the foreign authorities responded and produced court affidavits to show that the bank account was complicit in a foreign offence. With the information, CPIB immediately launched a money laundering investigation and seized close to US\$16 million in the account.

Almost a year later, the foreign authorities followed up with a formal mutual legal assistance (“MLA”) request to Singapore to restrain the bank account. Had CPIB not acted to seize the assets earlier, the funds in the bank account would have been dissipated by the time the MLA request reached Singapore.

VI. EFFECTIVE MANAGEMENT OF SEIZED ASSETS

A. Preserving Value of Seized Assets

Through our experience, it is not ideal to seize and hold the tainted assets until the conclusion of the prosecution against the accused and through the protracted asset confiscation process that might take years to conclude, during which the values of the seized assets such as real estate properties, vehicles, precious metals and stones or luxury items, might have depreciated and dwindled. The conditions of the seized property might also be impaired if not properly maintained and safeguarded during the passage of time.

Therefore, in recent years, CPIB started to take a more proactive approach to preserving or realizing the value of the seized property, by working with the defendant, victims and other stakeholders to agree on an arrangement to realize the value of the seized property early.

Such an approach was adopted in realizing the seized assets of one accused person who was investigated by CPIB in 2015 for conspiring with others to cheat her company through use of fictitious quotations and invoices and from which she benefited about S\$ 5 million. Financial investigation against the accused revealed that she had an obsessive spending behaviour and would use the criminal benefits derived from cheating her company to purchase luxury items such as branded watches, jewellery, branded handbags and clothes, amongst other things. She also invested in a few properties in Singapore and offshore. During the course of investigations, CPIB had seized four properties, three bank accounts, two insurance policies and numerous luxury items and branded apparels.

The luxury items are of particular concern to us. Care has to be exercised to prevent loss and damage and thus they were catalogued meticulously, individually photographed and stored in a strong safe. Consideration was also taken to ensure that the seized assets were stored in optimal conditions (e.g. in a room with lowered humidity to prevent damage to luxury items) in order not to cause impairment to the seized property.

After the investigation into the predicate offences was substantially completed, CPIB started to engage the accused person to secure her agreement to liquidate the luxury items and branded apparel. Eventually with her consent and assistance of the accused’s employer who was victimised in this cheating scheme, a public auction was called to liquidate the seized items. Altogether, over 500 items of luxury watches, jewellery and branded bags were sold through the public auction and the liquidated value recovered from the auction was close to half a million Singapore dollars. It is noteworthy that the public auction was conducted months before the accused was finally charged for the cheating and money laundering offences in December 2016.

For this particular case, CPIB also secured the agreement from the developers of two properties owned by the accused, to return to the state the sums that the accused had contributed towards the properties, as a condition to lift the caveats that were placed on these properties. Negotiation is still ongoing with respect to the liquidation of two other properties owned by the accused.

B. Avoiding Holding and Maintenance Costs

Asset seizures also do not come without cost. It will be ineffectual against the asset recovery cause if the cost of holding and maintaining the asset seizures were to outweigh the value that can be realised from them.

Therefore, another practice of CPIB with respect to seizures of assets particularly those that have significant holding cost attached thereto, was to avoid taking physical possession of the seized assets, whilst applying the necessary safeguards to prevent dissipation and negotiating with the owner to liquidate the assets.

For example, if an accused was found to acquire luxury cars using criminal proceeds, the risks associated with holding these valuables may outweigh the benefits of taking physical possession of such assets. Instead of physically seizing the cars, CPIB investigators may decide to exercise their powers to order our land transport authorities to prevent transfer of ownership of the vehicles, which will effectively prevent the accused from disposing the vehicles.

VII. CONCLUSIONS

Monetary gratification remains the primary drive behind corruption. Tough actions must be taken and be seen to be taken against the laundering of criminal proceeds and to disgorge criminal benefits of the corrupt in order to deter and abate corruption.

Money laundering investigation and asset recovery however often entail an arduous and lengthy process even with the most effective legislative framework in place. The process can be even more resource intensive for transnational laundering or asset recovery cases.

Therefore, from CPIB's experience, it is more effective for law enforcement authorities to adopt a more collaborative and proactive approach towards asset recovery; through cooperation from law enforcement agencies but also from the accused person and key stakeholders of the assets. The assistance from the latter group is paramount to secure early preservation of the value of the assets seized and to overcome any operational constraints perennial in cross border asset recovery.