

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

*Loh Yoon Min**

I. INTRODUCTION

1. There is a growing importance to build and maintain close working cooperation with foreign agencies as corruptors operate in a globalised world. In recent years, a rising trend observed involves corrupt offenders committing their initial offences in one country, while hiding and moving their corrupt proceeds overseas across jurisdictions to prevent detection. Given the transnational feature of such offences, the evidence gathering process is indeed challenging and time-consuming. Therefore, close international cooperation is necessary to combat these transnational criminals.

2. As a global financial centre, Singapore is vulnerable to such transnational crimes. The effective prevention and elimination of such crimes, given their transnational nature, would necessitate close and timely international cooperation between countries. Singapore takes its international obligations to provide legal assistance and to combat trans-boundary crimes, in accordance with our laws, very seriously. This is instrumental to detecting criminals and to disgorge their ill-gotten gains.

3. To combat corruption, Singapore has put in place an effective anti-corruption framework which is underpinned by resolute political will and leadership. Effective enforcement of corruption is a key component of Singapore's strategy against corruption. The Corrupt Practices Investigation Bureau ("CPIB") is the sole agency in Singapore that independently investigates bribery offences. CPIB has in place specialised units that investigate public and private sector bribery. In addition, we have a Financial Investigations Branch (FIB) staffed mainly by accounting professionals with vast experience in the private sector and auditing. The FIB investigates the money laundering offences attendant from bribery offences and/or other predicate offences uncovered in the course of our bribery investigations. The FIB also handles requests for mutual legal assistance (MLAs) from foreign jurisdictions vis-à-vis bribery and the attendant money laundering offences.

4. While CPIB's FIB handles formal cooperation, the handling of informal assistance and other operational liaison matters are undertaken by the CPIB's Intelligence Branch. A key segment of the Branch is the Strategic Intelligence Section that handles all financial intelligence emanating from the Suspicious Transaction Reporting Office ("STRO")¹ — Singapore's Financial Intelligence Unit (FIU). The Strategic Intelligence Section analyses and studies bribery-related suspicious transaction reports (STRs) from the STRO.

* Senior Assistant Director (Financial Investigations), Corrupt Practices Investigation Bureau, Singapore.

¹ STRO (Suspicious Transactions Reporting Office) - the central agency in Singapore for receiving, analysing and disseminating reports of suspicious transactions, known as Suspicious Transaction Reports (STRs). STRO turns raw data contained in STRs into financial intelligence that could be used to detect money laundering, terrorism financing and other criminal offences. It also disseminates financial intelligence to relevant enforcement and regulatory agencies.

5. Through the efforts of its FIB and Intelligence Branch, CPIB plays its part in the global fight against bribery and money laundering through active engagement and collaboration with foreign agencies and counterparts. Both formal and informal cooperation are the key tools at CPIB's disposal to conduct international cooperation. Given the transnational face of bribery offences, these cooperation tools have been used concurrently, resulting in contemporary investigations techniques such as joint operations among other things.

II. USE OF FORMAL COOPERATION

6. Formal cooperation comprises the use of MLA and extradition. All incoming and outgoing requests for MLA and extradition are co-ordinated by the Attorney-General's Chambers (AGC), which is designated as Singapore's Central Authority for international legal co-operation. It provides a convenient point-of-access for sending and receiving requests for assistance. The range of assistance that can be provided via MLA is provided for in the Mutual Assistance in Criminal Matters Act (MACMA). The law on extradition in Singapore can be found in the Extradition Act.

A. Mutual Legal Assistance (MLA)

7. As the Central Authority, the AGC processes all incoming and outgoing MLA requests in accordance with the laws and processes as per the MACMA and works closely with the foreign authority.

8. Together with informal cooperation between law enforcement agencies, MLA is critical to the investigation of transnational bribery cases. For an outgoing MLA request, the AGC, with input from the CPIB, will draft the request in accordance with the legal requirements of the foreign country. Where necessary, the case officer from the Central Authority will consult with the foreign authorities to respond to questions or clarifications in order to facilitate the processing of the request. When dealing with complex cases containing foreign elements, CPIB will engage the AGC at the early stages of our investigation to discuss the best available avenues to engage foreign agencies to seek assistance or share evidence or information so that the offenders can be appropriately dealt with in Singapore or abroad.

9. For bribery-related incoming requests for MLA received by the AGC from foreign countries, these will be subsequently routed to CPIB's FIB to conduct background checks and to evaluate the requests. Where an MLA request discloses that an offence has been committed in Singapore, CPIB will conduct domestic investigations. For requests involving asset recovery, the key priority is to prevent the dissipation of funds. Hence, upon receipt of such requests, CPIB would act swiftly to prevent the dissipation of the funds and assets from Singapore.

10. Gathering evidence for some cases may be more time-sensitive than others. This is especially true for cases where it is critical to prevent the dissipation of funds and assets. In this regard, the AGC leverages on technological tools to expedite MLA and extradition matters via an electronic case management system known as the Enterprise Legal Management System (ELMS). It comprises standard operating procedures, time norm guidelines and monitoring mechanisms to prioritise and manage the processing of incoming and outgoing MLA and extradition requests. When the case is flagged as urgent in ELMS, it is marked and displayed at the top of each officer's ELMS desktop.

11. Being cognisant of the challenges that may arise from formal cooperation, the AGC coordinates closely with the various domestic agencies (e.g., CPIB, among others) that deal with international co-operation matters. Face-to-face meetings or meetings through video or telephone conferencing with foreign authorities are also arranged to mitigate recurring process issues, including those arising from issues relating to conflicts of jurisdiction, and clarifying the facts/evidence, among others. CPIB also advises and assists to provide information to our foreign counterpart agencies to assist them to draft their MLA requests. This has enabled our counterparts to acquire a better understanding of our MLA laws and requirements, which also led to a considerable reduction in time taken to seek clarifications between the parties involved.

B. Extradition

12. Singapore has extradition arrangements with the USA, Germany, Hong Kong SAR, as well as 40 declared Commonwealth Countries.

13. There are also reciprocal arrangements in place for the “backing of warrants” between Singapore, Malaysia and Brunei and these are legislated under the Criminal Procedure Code (CPC). Under these arrangements, warrants or summonses authorising the arrest of persons or requiring their attendance before any court in any one of these jurisdictions can be endorsed in another where the person is believed to be. This allows for a simplified and swift procedure for the surrender of fugitives. Requests under this scheme can be managed between the law enforcement agencies and their foreign counterpart agencies without having to submit the request through their respective Central Authorities.

14. Singapore is also actively engaged in negotiations with the ASEAN Member States to develop an ASEAN model extradition treaty, which upon its conclusion, would serve to facilitate the negotiation of extradition treaties among ASEAN Member States.

15. The AGC is able to respond to urgent extradition requests. Under the Extradition Act, urgent applications for provisional arrest may be made by the requesting country to facilitate the arrest of a fugitive, pending the receipt of the formal extradition request. This has been particularly useful where there is information that the fugitive is transiting through Singapore’s airport or is in Singapore for only a short duration. When there is information that the case is urgent, the case will be flagged as such. As extradition matters can be time-sensitive, the case officer(s) will, in appropriate cases, make an urgent application before a duty judicial officer to obtain the warrant in accordance with the Extradition Act, so that a fugitive does not escape detention even if his presence in Singapore is for only a short period. If necessary, arrangements can be made for this to be done after office hours as well as over weekends and public holidays if there is a risk that any delay may result in the fugitive leaving Singapore without being apprehended.

III. USE OF INFORMAL COOPERATION

16. CPIB routinely makes use of informal co-operation to pursue bribery cases, such as when the facts of a case suggest cross-border elements and where our foreign counterparts may be able to assist further investigations. Such co-operation can take place through working-level contact points on the basis of reciprocity as well as through joint investigations. As a matter of policy and practice, agencies rely on such co-operation before turning to formal co-operation under the MLA process. This provides an early indication of whether there is information that would yield useful leads on the cross-border element.

17. CPIB regularly cooperates with anti-corruption agencies in the region, such as the Malaysian Anti-Corruption Commission, Anti-Corruption Bureau (Brunei), Corruption Eradication Commission (Indonesia) and Independent Commission against Corruption (HK SAR), as well as other foreign law enforcement agencies, such as the Federal Bureau of Investigations (FBI) and Naval Criminal Investigative Service (NCIS) (USA), Australian Federal Police (Australia), Serious Fraud Office (UK), in the exchange of information, intelligence and joint operations. CPIB signed a Memorandum of Understanding (MOU) on Co-operation for Prevention and Combating Corruption with Southeast Asian anti-corruption agencies. This MOU, also known as the South East Asia Parties against Corruption (SEA-PAC), is a forum where CPIB shares operational information with its MOU partners. In addition, CPIB has established a bilateral working group with the Malaysian Anti-Corruption Commission for the purpose of intelligence-sharing and the conduct of joint operations between the two agencies.

18. Informal cooperation by CPIB can also take place via the FIU-to-FIU networks. The network of FIUs that the STRO is a part of (e.g., Egmont Group of FIUs) is valuable as it allows CPIB to seek the STRO's assistance to send a request for assistance (RFAs) to related foreign FIUs that STRO has an arrangement with. Otherwise, RFAs can be sent once there is an undertaking by the foreign counterpart for such exchange on the basis of reciprocity and confidentiality. STRO also facilitates exchange of information by sending the financial intelligence using the FIU network while CPIB will inform our counterparts to pick up the financial intelligence from their respective FIU.

19. The CPIB also leverages on the INTERPOL network to request or exchange information. In 2010, CPIB joined the INTERPOL Match Fixing Task Force² (IMFTF), which is a network of foreign agencies tackling the rising trend of match fixing through the bribing of football players and officials and linking to organised crimes. This network has provided an additional contact point to request assistance from other countries, as well as to share intelligence and the trends and changes in modus operandi, which are instrumental to fighting transnational bribery.

IV. CONTEMPORARY METHODS OF INVESTIGATION RESULTING FROM INTERNATIONAL COOPERATION

20. The growing trend of complex crimes comprising transnational elements have led law enforcement agencies to resort to a range of international co-operation mechanisms to effectively investigate such crimes using contemporary investigation techniques such as joint operations. Joint operations have often led to the seeking and sharing of information so that appropriate actions could be taken both by Singapore and foreign jurisdictions to deal with the crimes.

21. When transnational bribery cases arise, CPIB's Intelligence Branch will immediately alert our foreign counterparts of the impending request and clarify related issues in advance. CPIB will state clearly the facts of the case and the assistance sought, and may propose to conduct joint investigations/operations if the offences are committed in the requested

² IMFTF-Interpol Match Fixing Task Force. It was established in 2011 to support member countries' efforts to combat match-fixing activities under the auspices of INTERPOL's Crimes in Sport programme.

jurisdiction. Further clarifications are often communicated through phone calls or e-mails, or even face-to-face meetings/discussions.

22. Requests received from the foreign counterparts are evaluated based on the nature of the allegation and offences, whether the offences were committed in Singapore, the persons involved and their nationality. If Singaporeans are involved, CPIB will also evaluate whether they are only witnesses, or likely to be offenders (givers, receivers or others) and whether the commission of the offence(s) involved the use of corporate vehicles and bank accounts, among others.

23. The types of assistance that CPIB has provided via joint investigations/operations include the following (the list below is not exhaustive):

- a. Voluntary interviewing of persons in Singapore
- b. Voluntary statement recording from persons in Singapore
- c. Request for voluntary production of records and/or documents
- d. Serving documents / subpoenas to witnesses
- e. Provide business profiles of Singapore registered entities
- f. Locating absconders / executing warrants of arrest

24. The use of the informal cooperation channels during joint operations allows our counterparts to obtain information quickly and more efficiently. This is especially important if the investigations are at a critical stage and are time sensitive. Our counterparts may use the information to conduct parallel discovery as part of their evidence-gathering process. CPIB, at the early stages of cooperation with its foreign counterparts, will advise our counterparts to draft an MLA request if they require the information to be obtained through an MLA request for use in their court proceedings.

25. The seeking and provision of international cooperation is not limited to investigation matters only. CPIB has provided assistance in relation to court matters as well. In this regard, assistance rendered has to adhere to due process to ensure that there is a proper chain of evidence and is able to withstand scrutiny by the Courts. Some examples of the assistance we have provided vis-à-vis court matters are as follow:

- a. Subpoenas on behalf of counterparts to related persons to attend Court trials in the requesting country.
- b. CPIB recording officers providing evidence in a foreign Court if assistance was previously rendered to record the statement from persons in Singapore on behalf of the foreign authorities.
- c. CPIB officers giving evidence in Court vis-à-vis MLA requests pertaining to the conduct of search and seizure resulting in material evidence being uncovered in Singapore.

V. CONCLUSION

26. As economies become more globalised and borders become increasingly porous, it becomes easier for criminals to offend. This has led to a greater propensity for bribery and/or related offences to assume transnational dimensions, with ill-gotten proceeds easily flowing through multiple jurisdictions. Hence, cross-border and international cooperation, and investigative methods that tap such cooperation are essential in effectively combating the scourge of transnational bribery.