

**International
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Business Crime

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APAC Overview



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1 Introduction

The Asia-Pacific ('APAC') jurisdictions reviewed in this overview represent a cross-section of countries in the APAC region. These countries represent a balance between States that have established legal systems in the common law and civil law traditions. The countries selected for review primarily include Australia, India, Japan, Singapore, South Korea and Taiwan. Business crimes are, of course, not always geographically limited to one jurisdiction. In fact, regarding offences involving money laundering, financing of terrorism, foreign bribery, and corruption, intricate transactions frequently have ramifications across various jurisdictions, involving corporations or their directors, officers, or staff.

This overview will examine the established regulatory and law enforcement frameworks that govern business crimes in the APAC region, with a focus on the role of intergovernmental organisations and the increased trends of international cooperation.

2 Prosecuting Authorities and Enforcement

Prosecuting authorities

In the APAC jurisdictions reviewed, countries generally have a primary prosecution body/bodies, with specialised agencies investigating specific areas.

For example, Australia and India have a primary federal body to prosecute crimes, with specialised agencies for specific matters, such as the Australian Taxation Office ('ATO'), the Australian Criminal Intelligence Commission ('ACIC') and the Securities and Exchange Board of India. Australia has separate state and territory prosecuting authorities. In Singapore, the role of the Attorney-General encompasses serving as the state prosecutor, with the authority to delegate prosecutorial responsibilities to other appointed officers.

In Hong Kong, Japan, South Korea and Taiwan, there is no split between national and regional authorities. However, these jurisdictions maintain a primary body of prosecution, for example, the Hong Kong Police Force and Department of Justice, the Public Prosecutors Office in Japan, the Supreme Prosecutors' Office in South Korea and the District Prosecutors Offices in Taiwan. Under each investigative body, there are relevant agencies or specialist units to investigate specific classifications of crime.

Determining competence for investigation and prosecution

In the APAC region, there is a variety of systems for deciding which body will investigate and prosecute a matter, but there is a generally available path for business crime matters to be forwarded to specialised agencies.

Australia generally relies on its primary federal and state bodies, but specific agencies that are responsible for the administration of legislation in an area have general responsibility to investigate; for example, the ATO for the investigation of tax crimes. There are also joint-agency taskforces led by different regulators such as the Serious Financial Crime Taskforce, led by the ATO, aiming to identify and address the most serious and complex forms of financial crime. Similarly, Hong Kong and Singapore rely on the Department of Justice and Attorney-General's Chambers, respectively, for general criminal prosecution, and each have specific agencies for particular business crimes.

In India, specialised government agencies can assist the Central Bureau of Investigation by obtaining a State's consent or direction from a higher court to investigate a crime in that State.

In Japan and Taiwan, each investigative authority can exercise discretion to conduct investigations, which may sometimes be led by the appropriate specialist agency.

Civil and administrative enforcement

In Japan, South Korea and Taiwan, there is no current civil enforcement against business crimes. However, the APAC jurisdictions reviewed generally have agencies to enforce civil and administrative penalties, such as revoking licences of business operators, or imposing surcharges and fines for such crimes. For example, in Australia, both conviction and non-conviction-based proceeds of crime can be forfeited pursuant to the proceeds of crime legislations.

In Singapore, specific statutes, such as the Securities and Futures Act, provide the opportunity to pursue civil penalties alongside criminal proceedings in certain circumstances, subject to the consent of the Attorney-General's Chambers. In Hong Kong, a dual civil and criminal regime is applied that enables the Securities and Futures Commission of Hong Kong to either bring a market misconduct case before the Market Misconduct Tribunal or initiate prosecutions in the criminal courts.

3 Courts and Juries

Most of the APAC jurisdictions reviewed do not have specialised criminal courts, although typically higher courts will hear crimes that are more serious. In contrast, India and Taiwan have exclusive criminal courts with specialist divisions dedicated to specific offences.

In India, Japan, Singapore and Taiwan, there is no jury system. South Korea espouses a system similar to a jury, although the jury decision is not binding on courts. The lay judge system adopted in Japan is only applicable to serious felonies, leaving most business crimes out of this system.

In Australia, there is often, but not always, a right to jury. In certain circumstances, an accused may apply for a trial by judge only. In Hong Kong, the right to jury is only available in the High Court.

4 Prosecuting Statutes and Inchoate Crimes

The APAC jurisdictions reviewed each have several separate statutes to deal with specific categories of business crimes. For example, Australia has the Corporations Act 2001 (Cth), Hong Kong has the Securities and Futures Ordinance, and Singapore has the Securities and Futures Act and Penal Code, dealing with crimes like securities fraud, accounting fraud and insider trading. Further, the Political Donations Act in Singapore specifically deals with offences concerning foreign or anonymous donations, such as failure to report donations or furnishing false information.

Japan and South Korea only punish inchoate crimes where it is specifically criminalised under relevant legislations, unlike in Australia, Hong Kong, Singapore and Taiwan, where persons can be held liable for inchoate crimes if acts taken are more than preparatory.

5 Entity, Personal and Successor Liability

Entity liability for criminal offences

The APAC jurisdictions reviewed generally prescribe entity liability for certain criminal offences but use different legal frameworks.

Japan, South Korea and Taiwan allow entity liability where specific provisions provide for joint liability, which attach liability to both corporations and the natural person who commits the offence.

Hong Kong treats corporations as legal persons, which can be liable for crimes where physically possible. India adopts a similar legal definition for corporations, save that most statutes also cover criminal liability of corporations.

Australia has offences specifically prescribed to corporations. Generally, an employee's conduct will be imputed to the corporation where the corporation is seen to have permitted or tolerated the employee's conduct. Australia has considered aligning its regime of combatting corporate crime to that of the United Kingdom by introducing the Crimes Legislation Amendment (Combatting Corporate Crimes) Bill 2019, which, amongst other things, introduces the offence of failure of a corporation to prevent foreign bribery by an associate, which includes an officer of the corporation or an employee. Despite the significant attention garnered during the initial introduction of the Bill, it discreetly expired on 25 July 2022 due to its failure to be approved before Parliament was adjourned in preparation for the 2022 Australian federal election.

Personal liability for managers, officers and directors

In Australia, Hong Kong and India, there is personal liability for company officers, with requirements in each jurisdiction that the officer must have contributed, planned or aided the company's offence, or in some cases, the offence being due to the officer's negligence. In Australia and India, for a person to be criminally liable, the prosecution must also charge the company. Personal liabilities may be pursued depending on the applicable status' provisions, such as section 80 of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act in Singapore.

There is liability for officers in Japan, South Korea and Taiwan in cases of joint liability provisions. Japan also recognises 'triple liability provisions', extending the liabilities to a representative of the entity who employs the offender when said representative failed to take necessary measures to prevent a crime.

As regards preference for pursuing entity *vs* individual liability, the approaches in the APAC jurisdictions reviewed differ. Australia does not prefer entity or personal liability, but considers prospects of conviction and public interest. In India, usually both entity and person are pursued. In Hong Kong and Japan, there is no written policy on whether to prosecute an entity or individual, and the decision is based on discretion depending on the seriousness of the crimes. In Taiwan, natural persons are prioritised due to corporations only being charged when a natural person is under joint liability provisions.

Successor liability

In South Korea and Taiwan, successor liability can apply. Hong Kong is similar, except only civil liabilities can apply. In Japan, there has been no detailed legal discussion on the topic, but successor liability cannot be ruled out. In India, it depends on the mode of merger; court-approved mergers only prescribe successor liability in specific circumstances.

In Australia, successor liability is not specifically recognised, and successor entities are generally structured to avoid exposure to liability, except for the transfer of liabilities pursuant to a court order under section 413 of the Corporations Act 2001 (Cth).

6 Statutes of Limitations

In all the APAC jurisdictions reviewed, save for Singapore, there are various limitations to enforcing or prosecuting criminal offences. These limitations are prescribed by statute and will generally depend on the type and amount of the statutory penalty.

For example, in Australia and New Zealand, there are limitations periods for the prosecution of summary offences. Similarly, in Hong Kong, where offences are triable in the Magistrates' Courts, proceedings should be commenced within six months from the time of the offence.

Regarding certain economic offences and business crimes, India and Australia prescribe a legislative framework where limitations may not apply. In India, the Economic Offences (Inapplicability of Limitation) Act 1974 provides that the limitation provisions in the Code of Criminal Procedure shall not apply in relation to various statutes, including those governing certain taxes.

Similarly, in Australia, under the Crimes Act 1914 (Cth), no limitations period applies for prosecution of offences by companies against a law of the Commonwealth where the maximum penalty exceeds A\$31,500.

In Australia, Hong Kong and Singapore, a charge of conspiracy to commit a serious offence is not subject to a limitations period. For offences of a continuing nature, typically countries that do prescribe limitations periods, including India, Japan and Taiwan, calculate the limitations period as commencing from the time the final act constituting an offence occurs.

In Australia and Hong Kong, the limitations period cannot be tolled. However, in India, Japan and Korea, there may be limited circumstances under which the limitations period is tolled; for instance, where the offender is absent from the State and purposely avoiding or concealing themselves from prosecution.

7 Initiation of Investigations – Domestic and Extraterritorial

In all the APAC jurisdictions reviewed, laws on extraterritorial jurisdiction are in place that apply to nationals of the State, primarily where the crime committed is classified as one of a serious nature. This means that States will generally have extraterritorial jurisdiction over nationals for crimes committed in a foreign country.

In Japan, territorial reach is extended to persons who are considered aliens or non-nationals of the State who have committed an offence against a Japanese national, outside the territory of Japan. Under article 3-2 of the Penal Code of Japan, the territorial reach is exclusive to the commission of a limited number of offences, such as homicide and kidnapping.

All APAC jurisdictions reviewed are signatories to the United Nations Convention against Transnational Organised Crime and the Protocols Thereto (**'UNTOC'**), which stipulates, under article 4(2) thereof, that the parties shall not undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other country by its domestic law. Such enforcement activities against transnational crimes therefore require international cooperation and are expressly encouraged under article 18 of UNTOC on the provision of Mutual Legal Assistance between States.

In all the APAC jurisdictions reviewed, government authorities typically commence an investigation upon receipt of a complaint where there is a reasonable suspicion of any form of crime or misconduct.

Investigations may also be commenced where there have been reports from other administrative organs. For example, Hong Kong's Securities and Futures Commission monitors the stock market through its Market Surveillance System, for the purposes of identifying any irregular and unusual market activities that may require investigation. Similarly, the Australian Securities and Investments Commission (**'ASIC'**) and the ATO are empowered to investigate corporate misconduct relating to their specific mandates.

Cooperation with foreign enforcement authorities

All the APAC jurisdictions reviewed have executed agreements to facilitate Mutual Legal Assistance and cooperation with foreign countries regarding criminal matters.

Various bilateral and multilateral international treaties also facilitate the provision of cooperation in international assistance for criminal matters, which most countries in the broader APAC region have signed. For example, under articles 13 and 18 of UNTOC, States agree to provide assistance and cooperation on the taking of evidence, the tracing of proceeds of crime, and the enforcement of foreign confiscation orders in other territories. In addition, some national law enforcement agencies of the APAC jurisdictions reviewed may work closely with the International Criminal Police Organization in combatting serious transnational crimes.

8 Gathering Information from a Company

Law enforcement authorities in the APAC jurisdictions reviewed have a range of investigative tools and powers that facilitate the gathering of information when investigating business crimes. Generally, these include powers to conduct searches and seize materials where a properly executed warrant has been issued by a relevant authority.

Document gathering

Besides courts issuing search warrants, some APAC jurisdictions allow for certain authorities to issue notices, which compel companies or individuals to produce documents or provide information to the authority.

In Australia, this power is provided to governmental agencies, such as the Australian Transaction Reports and Analysis Centre (**'AUSTRAC'**), ASIC, the Australian Competition and Consumer Commission, the ATO, and the ACIC. The Australian Federal Police can also execute a search warrant if granted by the court.

In Hong Kong and Singapore, certain authorities empowered by relevant legislation may issue a written order to require the company to produce or give access to documents or information that the relevant authorities consider necessary and desirable for their investigations. The general criteria for this are a reasonable suspicion that an offence has been committed, or that the recipient of the notice is in possession of such information or documents.

In all the APAC jurisdictions reviewed, save for Japan, Korea and Taiwan, legal professional privilege or attorney-client privilege expressly exists in legislation or common law to protect confidential communications between a client and a lawyer.

All the APAC jurisdictions reviewed have in force relevant legislation governing personal data protection and privacy. Generally speaking, corporations or entities are not, in principle, permitted to transfer personal data to a third party without the data subject's consent. A general exception to this principle is where the collection of personal data is necessary for any reason authorised under the respective laws of each jurisdiction.

For example, in Singapore, under the Personal Data Protection Act 2012 (No. 26 of 2012) (**'PDPA'**), such collection is permissible if necessary for any investigation or proceedings, and if it is reasonable to expect that seeking the individual's consent would compromise the availability or accuracy of the personal data (paragraph 1(e), Second Schedule, PDPA).

In Australia, India and Korea, there are currently no blocking statutes or domestic laws that may impede cross-border disclosure. However, in November 2022, the Parliament of India introduced the Digital Personal Data Protection Bill 2022, successor to the since-withdrawn Personal Data Protection Bill 2019. If enacted, the new Bill will create provisions that, amongst other developments, govern the terms and conditions for cross-border transfer of personal data.

Questioning of individuals

In all the APAC jurisdictions reviewed, save for Japan and Korea, there are relevant investigative agencies that have compulsory examination powers. These powers enable the relevant investigative agencies to compel an individual, whether on behalf of a company or otherwise, to submit to questioning. For example, provisions of the Taxation Administration Act 1953 (**'TAA 53'**) empower the ATO to conduct compulsory examinations of individuals and corporations for the purposes of administering tax laws.

Interviews conducted under compulsory powers typically take place at the offices of the government authorities concerned.

In other jurisdictions, the government cannot compel an employee, officer, or director of a company to submit to questioning, unless they are under arrest or detention.

Regarding the compulsion of third parties, in Hong Kong and Korea, those who are not arrested cannot be compelled to attend interviews for questioning. However, other powers, as mentioned in the first paragraph of this section, may be exercised to compel third parties to provide information.

In India, Japan and Singapore, there is no right to be represented during questioning. In some instances, the right arises depending on the capacity in which the interview is undertaken. In Taiwan, witnesses are not entitled to be accompanied by legal representatives upon questioning.

The right to silence of an accused individual is embedded in the criminal justice systems of Australia, Hong Kong, India, Japan and South Korea.

9 Initiation of Prosecutions / Deferred Prosecution / Civil Dispositions

Initiation of criminal cases

In all the APAC jurisdictions reviewed, procedural laws exist to address the manner in which criminal cases are initiated.

In Australia, Hong Kong, India and Singapore, criminal cases are typically initiated by an arrest or a summons to attend court. The relevant prosecuting authority would lay charges against the defendant.

In Japan and Korea, criminal proceedings are initiated by filing an indictment with a criminal court.

The existence of set prosecution guidelines across the APAC jurisdictions varies. In Australia, publicly available prosecution policies exist to guide most aspects of the prosecution procedure, including the decision to lay a charge and formulate the offence. The overarching consideration in this decision-making process is whether there is public interest to prosecute and whether there is a reasonable prospect of conviction.

In Japan, Korea and Singapore, there are no set guidelines published, though various matters are considered in the exercise of the prosecutor's discretion to lay a charge, including the public interest and likelihood of conviction.

In Hong Kong, the Prosecution Code prescribes two key requisites for the bringing of a charge: the sufficiency of evidence; and the public interest. Various factors are considered in weighing public interest, including, but not limited to, the seriousness, nature and circumstance of the offence, and the offender's age, criminal history, etc.

Deferred prosecution and civil penalties/remedies

In all the APAC jurisdictions reviewed, save for Australia, India and South Korea, there is a process of deferred prosecution. In Japan, the process involves the prosecutor entering into an agreement with a suspect or a defendant, that may include a corporate entity, with the consent of his or her attorney, under which the prosecutor agrees to drop or reduce criminal charges, or provide favourable treatment only when the suspect or defendant cooperates in the investigation against other individuals or companies with respect to certain types of crimes.

In Singapore, deferred prosecution agreements are only available to companies, and not individuals.

In all the APAC jurisdictions reviewed, save for Singapore, that espouse deferred prosecution agreements, there is no requirement to seek judicial approval for enforcement.

Further, a defendant can be subjected to civil penalties or remedies. However, civil penalties or remedies cannot be used as a substitute for the criminal disposition. A key remedy available across jurisdictions for civil wrongdoing is damages.

10 Burden of Proof

In all the APAC jurisdictions reviewed, the prosecution or the government bears the burden of proof for each element of an

offence to the standard of 'beyond reasonable doubt' in criminal matters.

In Australia, Hong Kong and Singapore, the defendant bears the burden of proving any affirmative defences to the standard of a 'balance of probabilities'. In India, the defendant bears the burden of proving any affirmative defences to the standard of a 'preponderance of probabilities'. In Japan and Korea, if a defendant asserts affirmative defences, the public prosecutor or the government bears the burden of proving the non-existence of such defences.

In Taiwan, the law remains silent on whether the defendant has the burden of proof with respect to his or her affirmative defences, although, in practice, he or she may request the criminal court to investigate and consider evidence in support of any affirmative defences.

In Australia, in a prosecution for a federal indictable offence in a superior court, the jury is the arbiter of fact and determines whether a legal burden has been discharged. If a federal indictable offence proceeds summarily in a Magistrates' Court, then the presiding Magistrate is the arbiter of fact. The same applies for state/territory offences unless there is a provision for a superior court trial by a judge alone, in which case the superior court trial judge is the arbiter of fact.

In Hong Kong, the Magistrate or judge are arbiters of both fact and law in the Magistrate's Court and the District Court, whereas the jury is the arbiter of fact, and the judge is the arbiter of law, in the High Court.

In India, Japan, Korea, Singapore and Taiwan, the judge, or the panel of judges and lay judges in certain cases, is the arbiter of fact and determines whether the burden of proof is satisfied.

11 Conspiracy / Aiding and Abetting

In all the APAC jurisdictions reviewed, a person who conspires with or assists another to commit a business crime can be criminally liable.

For example, in Australia, under the Criminal Code Act 1995 (Cth), a person who conspires with another person to commit a Commonwealth offence is deemed guilty of conspiracy to commit that offence. They face the same penalties as if they had committed the actual substantive offence. To be found guilty: they must have entered into an agreement with one or more other persons; the parties to the agreement must have intended that an offence be committed; and at least one party to the agreement must have committed an overt act pursuant to the agreement.

In Hong Kong and Japan, a person is subject to criminal liability if that person induces another person to commit a crime.

12 Common Defences

In all the APAC jurisdictions reviewed, it is a defence to a criminal charge that the defendant lacked the requisite intent to commit the offence. Generally, the prosecution or the government bears the burden of proof with respect to intent to the standard of 'beyond reasonable doubt' in criminal matters.

In some of the APAC jurisdictions reviewed, such as Australia, India, Japan and Taiwan, if the requisite state of mind for an offence is not intent, but knowledge, recklessness or negligence, then the prosecution or the government generally does not need to prove intent.

In all the APAC jurisdictions reviewed, it is generally not a defence to a criminal charge that the defendant was ignorant of the law, i.e., that they did not know that their conduct was unlawful, unless it is otherwise recognised and allowed by law. On the other hand, it is a commonly recognised defence to a criminal charge that the defendant was ignorant of the facts, i.e., that they did not know that they had engaged in conduct that they knew was unlawful, unless this defence is explicitly excluded.

For example, in India, sections 76 and 79 of the Indian Penal Code provide for a mistake of fact as an exception and a complete defence to a criminal charge. To successfully employ this defence, the defendant must show that the act was due to ignorance of fact and done in good faith. This entails exercising reasonable care and caution in performing the act. Please see section 10 above regarding the burden of proof.

13 Voluntary Disclosure Obligations

In Australia, Hong Kong, Japan, Korea and Taiwan, as a general rule, individuals or entities are not obligated to report a crime to the government, subject to various exceptions in these jurisdictions for public or government officials and certain indictable offences, for example, money laundering, drug trafficking and terrorism. Sometimes, additional reporting obligations can be imposed on relevant individuals and corporations operating businesses in certain industries, such as financial services.

However, in India and Singapore, there is a positive obligation on a person or entity to report a crime to the police, meaning that a person who is legally bound to give information of an offence but intentionally omits to do so may be punished with an imprisonment term of up to six months, or a fine, or both.

Whether a person or entity receives leniency or ‘credit’ in exchange for voluntary disclosure is discussed in the following section.

14 Cooperation Provisions / Leniency

In general, all of the APAC jurisdictions reviewed exhibit similar approaches towards voluntary disclosure of criminal conduct. Australia, Hong Kong and Singapore have similarly considered voluntary disclosure as a powerful mitigating factor with policies and programmes guiding the relevant law enforcement agencies or investigating authorities. To encourage self-reporting, immunity may be granted in extraordinary circumstances.

Japan and Taiwan rely on codified legislation. The extent of leniency or discount applicable as to the penalties varies for different offences. In contrast, Korea does not have any system or procedure in place for leniency in the context of voluntary disclosure of financial criminal conduct.

Besides voluntary disclosure, recent years have seen the development of mechanisms in providing protection for whistleblowers. For example, in 2019, the Treasury Laws Amendment (Enhancing Whistleblower Protections) Act 2019 was enacted in Australia, broadening the scope of people being subject to protection for corporate crimes. In addition, since 1 January 2020, Australian public companies, large proprietary companies and trustees of registrable superannuation entities are required to establish a whistleblower policy as per Part 9.4AAA Protection For Whistleblowers of the Corporations Act 2001. ASIC has further published RG 270 Whistleblower Policies as a guidance and good practice tips on establishing and implementing a whistleblower policy and programme. The guidance outlines the necessary elements that a whistleblower policy must incorporate in accordance with legal requirements. Additionally, it offers practical recommendations and suggestions to help companies establish and sustain policies that are customised to their specific operations.

In 2020, ASIC undertook a thorough examination of 102 whistleblower policies from various organisations that are obligated to have such policies. The purpose of this review was to enhance ASIC’s comprehension of how these entities were addressing the stipulated requirements. Furthermore, as of 2021, ASIC calls on Australian CEOs to review whistleblower policies and will continue to monitor compliance with the whistleblower policy requirements and handling of whistleblower disclosures.

Across most of the APAC jurisdictions reviewed, the extent of cooperation and determination on leniency are often assessed on a discretionary basis without definitive criteria. For example, in Hong Kong, reduced sanctions will be determined on a case-by-case basis by different authorities, while in Australia, the Commonwealth Director of Public Prosecutions has the ultimate power to decide and may consider the views and recommendations of relevant authorities.

For certain types of business crimes, the formula of penalty reduction is made more specific in the statute. For example, in Japan, the Antimonopoly Act stipulates a leniency programme, detailing the percentage of penalty reduction, which is subject to the final determination of the Japan Fair Trade Commission.

15 Plea Bargaining

In general, a defendant is allowed to negotiate with the prosecution to a guilty plea in most of the APAC jurisdictions reviewed. No specific criteria have been carved out for business crimes. Rather, the general principles under the criminal law of each country are applied.

Matters including terms of sentences, reduction of charges, and amount of compensation to the victims are commonly negotiated. In Australia, agreements on sentencing between the defendant and prosecution are unenforceable or non-binding upon a sentencing court. In Singapore, while no specific guideline is in place, the Attorney-General’s Chambers may take the relevant considerations, such as the nature and severity of the offence and public policy, into account. Further, self-reporting and cooperation can be raised as mitigating factors in the course of plea-bargaining discussions.

For business crimes, governments tend to create a separate programme or system to provide clarity on the plea-bargaining process and benefits available for the participants pursuant to policies and guidelines without the involvement of the court.

Unlike the majority of the APAC jurisdictions reviewed, in Taiwan, the agreement reached during the plea-bargaining process is endorsed by the court and the sentence shall be kept within the scope of such an agreement. Indian courts play a more active role in the plea-bargaining process by setting requirements for filing of an application for plea bargaining, examining the defendant, considering the evidence, and directing the prosecutions to reach a mutually acceptable settlement.

16 Elements of a Corporate Sentence

In general, courts in most of the APAC jurisdictions have wide discretion in sentencing, legislative frameworks specifying the range of penalties, and mitigating or aggravating factors for the sentencing judge to consider.

In South Korea and Taiwan, no specific legislations or regulations are available for sentencing judges to consider. Taiwanese judges are mindful to consider existing judgments and precedents in their internal database when making a determination. Korean judges follow sentencing guidelines published by the Supreme Court of Korea.

Sentencing principles are similarly applicable to both individuals and corporations. Penalties that can be laid against a corporation are usually pecuniary in nature, such as fines or confiscations of the company assets. Notwithstanding, courts are asked to consider all relevant factors in decision-making. In jurisdictions such as Australia and Singapore, there is legislation or regulations that provide guidance for the calculation of fines or other monetary penalties that could be imposed.

17 Appeals

Appeals are generally allowable for both the defendant and prosecution if there are reasonable grounds. Generally, in most of the APAC jurisdictions reviewed, a defendant has fewer restrictions surrounding an appeal against a guilty judgment in comparison to a prosecutor's appeal against an acquittal.

In Hong Kong, an appeal is not available for the prosecution against a non-guilty verdict. However, the 'case stated' approach is adopted if there is an error of law or jurisdictional issues. In contrast, any non-guilty judgment is appealable by the prosecutor in Japan.

Appealable rights and procedures in terms of criminal sentencing vary from country to country. Generally, rights to appeal against a sentence are available in most of the APAC jurisdictions reviewed for both prosecutors and defendants. The approach adopted in Taiwan is quite unique in that a sentencing procedure is combined with a fact-finding procedure.

Standards for review and court remedies

Although the threshold for an appeal is generally low in the sense that an appeal can be filed as long as reasonable grounds are stated, whether an appeal is allowable is a matter for the court to determine.

Most of the APAC jurisdictions reviewed only accept an appeal for error of law. Appeal judges are bound by legislative frameworks or practice guidelines in considering whether an appeal should be allowed.

In Australia, an appeal may still be dismissed if the appellate court, in its contemplation, cannot find any substantial miscarriage of justice in the previous sentencing. In Hong Kong, however, an appeal against a conviction must be allowed if any of the legislative elements for an appeal are satisfied.

A wide range of remedies are available in the appellate court of the APAC jurisdictions reviewed, including an order for retrial, reversing the findings and quashing the decision of conviction, and entering a verdict of acquittal.

18 Recent Developments

UN General Assembly special session against corruption

The United Nations General Assembly resolution 73/191 of December 2018, titled 'Special Session of the General Assembly Against Corruption', calls for the convening of a special session on challenges and measures to prevent and combat corruption and strengthen international cooperation.

On 2–4 June 2021, the first UN General Assembly Special Session Against Corruption was held at the United Nations' Headquarters in New York. As part of this Special Session, Member States adopted a political declaration, centred on increased efforts to combat corruption, agreed in advance through a consensus of intergovernmental negotiations under the auspices of the Conference of the States Parties to the United Nations Convention against Corruption.

Anti-money laundering / anti-terrorism financing ('AML/CTF')

The past year has witnessed an increased level of enforcement actions taken against money laundering and terrorism financing in the APAC region. Some key actions taken include launching

an AML campaign, expanding the scope of money laundering activities, clarifying the scope of responsibilities to be undertaken by different regulators, enhancing regulations of non-financial organisations, etc.

In June 2021, the People's Bank of China published the draft of an amended version of the Anti-Money Laundering Law of the People's Republic of China (the 'Draft'), inviting public comments and opinions. The Draft proposed that the scope of fines for illegal conducts be adjusted to make the degree of punishment commensurate with the seriousness of the misconducts. The amendments were further discussed in March 2022 during the Fifth Session of the Thirteenth National People's Congress with recommendations from The Finance and Economics Committee of the National People's Congress that the progression of the Anti-Money Laundering Law amendment should be accelerated.

In Australia, the Senate's Legal and Constitutional Affairs Committee published a report in November 2021 commenting on their assessment of adequacy and efficacy of Australia's AML/CTF regime, as well as recommending that the application of said regime be extended to professionals such as accountants and lawyers. Further, in 2021, AUSTRAC published the Suspicious Matter Reporting Reference Guide aiming to reduce the number of low-quality reports, thereby improving the efficiency for AUSTRAC to generate actionable intelligence.

In March 2022, South Korea enforced the Crypto Travel Rule for international virtual asset transfers over 1 million. Only one week later, the same rule, subject to nuance, was mandated in Japan pursuant to the Financial Action Task Force's recommendations, placing more obligations on virtual asset service providers ('VASPs') in terms of customs due diligence and the background check of the recipients, effective from April 2022.

COVID-19 impacts

Governments across the globe continue to combat the pernicious health and economic impacts exacerbated by the coronavirus ('COVID-19') pandemic. Along with this, COVID-19 has fostered a landscape in which crime groups have had to adopt more agile approaches in response to international restrictions.

By way of example, the emerging threats in money laundering and terrorism financing have implicated corporations through the use of seemingly legitimate businesses used to facilitate financial fraud and exploitative schemes – these include an increase in online fraud of medical supplies, fake charity scams and the misuse of public funds by businesses taking advantage of government stimulus (e.g., under the JobKeeper Payment scheme in Australia).

The increased prevalence of working from home, brought about by COVID-19, has opened up opportunities for cybercriminals to exploit technological and human vulnerabilities. Regulatory agencies in the APAC region have been agile in responding to these threats, such as ASIC in Australia, which has committed to supporting enhanced cyber resilience and cybersecurity amongst its regulated population.

Similarly, India's CERT-In agency, which has the primary responsibility of regulating cybersecurity, has issued new cybersecurity directives for reporting obligations, including the expansion of reportable cybersecurity incidents as well as other technical compliance obligations. It should be noted that some industry groups have sharply criticised the expansion of these reporting obligations, saying they may have severe unintended consequences without solving these genuine security concerns.

Despite these threats, however, there are various countries in the APAC region that have been recorded as top performers in combatting corruption. The 2021 data from Transparency

International's Corruption Perceptions Index ('CPI') on the level of corruption in the public sector per country has scored Australia, Hong Kong and New Zealand as top performers both in the APAC region and globally. Australia and Hong Kong have declined in the 2021 data, with Australia being especially cited by Transparency International as a backslider, having declined from a score of 85 (out of 100) in 2012 to 73 in 2022 and cited as a country to watch. Mongolia and the Philippines were also cited as significant decliners.

China, Myanmar and Timor-Leste were considered significant improvers in the 2021 CPI against scores of previous years. However, Transparency International did identify legal and

structural gaps with respect to human rights issues in Myanmar and continued bribery concerns in the Chinese public sector. These concerns regarding human rights were especially exacerbated by COVID-19, with Transparency International citing the centralisation and use of emergency powers as opening a door to misuse, corruption and repression.

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