

# The 24<sup>th</sup> Cambridge International Symposium on Economic Crime

## Confronting economic crime – Singapore's experience

### **Introduction**

At the core of the free market economy lies a fundamental paradox. It is the need to provide the greatest degree of commercial freedom for the market to allow the entrepreneurial and innovative spirit to flourish, while concomitantly having to ensure that those whose criminal activities would undermine the commercial effectiveness of the markets, are denied access to the benefits accrued from the free market. The solution lies in giving due regard to competitiveness, innovation and business efficiency without undermining the basic tenets of good supervision and regulation, and at the same time, ensuring that criminal infiltration of the commercial infrastructure is not allowed to take root.

This article draws attention to the unmitigated costs and impact of economic crime<sup>1</sup> at the national level. The main scope of the article stresses that the high standards Singapore has attained in containing economic crime and preserving her integrity as a safe international financial and business hub may be attributed to several mutually reinforcing components in her system. These include her legal, supervisory and enforcement regime; her framework of partnership with stakeholders; her commitment to be part of the global network of cooperation in combating crime; and the commitment of her corporate leaders to maintaining integrity.

## **Estimating the costs**

The 2005 PricewaterhouseCoopers Global Economic Crime Survey (PwC Survey) found that economic crime was a significant global threat. The PwC Survey found that 45% of companies surveyed reported suffering fraud between the years 2003 and 2005.<sup>2</sup> This represented an 8 percent increase compared to the 2003 PwC global survey. The Survey also found that without taking into consideration the detrimental impact on reputation, brand and staff morale, the average financial loss per company incurred in 2005 was approximately US\$1.7 million.

There have been various historical estimates of the financial costs of economic crime. In his 1940 paper, Edwin H Sutherland suggested that the cost of white-collar crime in the United States was much greater in terms of dollar loss than all the other types of crimes and 10 times greater than street crime.<sup>3</sup> In 2001, the FBI was investigating cases of white-collar crime and corporate fraud that cost companies in the United States some \$400 billion annually. In Asia, the percentage of white-collar crime and corporate fraud similarly being investigated by investigators for that year was approximately at 10 per cent of annual sales.<sup>4</sup>

A comprehensive quantitative assessment of the financial losses of economic crime is an imprecise science, often involving guesstimates and probabilities based on hypothesis. It is trite that unlike most property crimes, victims may not even have detected the more complex of economic crimes. There may also be a multiplicity of other elements, such as the reluctance of victims to report business crimes, which render it difficult to accurately assess the losses. Indeed, according to the 2005 PwC Survey, in only 50 per cent of financial misrepresentation cases did companies inform their audit committees of the cases.

Any exercise at quantifying the costs of economic crime must reasonably include several categories of direct, indirect, financial and non-financial costs. Account must be taken of the costs incurred in preventing and anticipating economic crime, such as the cost of insurance or other opportunity costs. The costs sustained as a consequence of the crime, such as the criminal damage and the knock-on effect on market participants, must also be accounted. The costs incurred in responding to the crime, including the cost to the criminal justice system, and the cost incurred by organisations to restore public confidence after an economic crime, are also not tangential to the overall costs of economic crime. It is thus difficult to make a precise quantitative assessment of the costs of economic crime.

### **The unmitigated costs of economic crime at the national level**

The axiomatic correlation between economic crime and market failure is clearly illustrated in the capital market. Trust and integrity of the market is the cornerstone of investor confidence. Investors must have confidence that the market is clean, transparent, and provides fair dealing for all participants. This very integrity can be eroded by market misconduct. Insider trading for instance is a damaging activity that is antithetical to market fairness and efficiency. Insider trading inflates the cost of raising funds in the stock market as investors will pay less for shares floated in markets they think are rigged. Indeed, a study revealed that those countries which enforced their insider-trading laws had a lower cost of equity.<sup>5</sup> Where there is information asymmetry due to the use and abuse of confidential, price-sensitive information, then market failure is said to occur.

The correlation between money laundering and economic distortion is also well articulated. It is axiomatic that money laundering damages the financial-sector institutions that are critical to economic growth, reduces productivity in the economy's real sector by diverting resources and distorts the economy's external sector – international trade and capital flows – to the

detriment of long-term economic development.<sup>6</sup> Money laundering can also increase the threat of monetary instability due to the misallocation of resources from artificial distortions in asset and commodity prices.<sup>7</sup> The director of the Commercial Affairs Department (CAD), Tan Siong Thye, alluded to the menacing correlation in his keynote address to the Asia-Pacific Financial Crime Conference in 2004:

“Money launderers are less interested in profit generation from their investments than in concealing the source of their proceeds. They are less likely to invest their funds in areas that are economically beneficial to the country where the funds are located.”

It has also been well established that the nexus between money laundering and terrorist financing exacerbates the national cost of economic crime. Tan Siong Thye called for vigilance at the 7<sup>th</sup> Annual Conference and General Meeting of the International Association of Prosecutors in London. He cautioned:

“As with criminals, money is oxygen to terrorist ... Besides the apparent social implications, money laundering and terrorist financing can also create economic chaos.”

There is a strong correlation between economic growth and a well supervised financial environment. Financial institutions do business in large part because of the safe, well-regulated, stable and sound financial system in the jurisdiction. In a globalised world, a strong reputation as a trustworthy jurisdiction is a key competitive advantage in attracting trade and investment. When companies, which are the basic building blocks of the economy, are associated with integrity and reliability, all market players enjoy the spill-over effects of their good reputation.<sup>8</sup> When corporate shenanigans and fraud are allowed to creep into the economy and corporate governance is ignored, trust can be lost overnight.

It is thus plain that the corrosive effect of unmitigated economic crime is suffered by everyone in the state. The myth that economic crime is a victimless crime or that it is merely a concern for businesses is being debunked as market players and participants become increasingly alive to corrosive knock-on impact of unmitigated economic crime. In today's globalised world, the impact often assumes significant global repercussions, with adverse effects on the markets and commodity prices.

## **The response**

### *Singapore's dynamic financial and business hub*

Singapore has one of the most developed, dynamic and vibrant financial and business sectors in the world. Singapore's capital markets have developed significantly in depth and sophistication and she remains one of the established leading global foreign exchange trading centres in the world. Singapore is home to one of the largest asset management communities in Asia, managing in excess of S\$720 billion in assets. Her banking environment is one of the most liberal in Asia. Singapore's position as a choice location for global talent has been noted by *The Economist's* "World in 2005" publication which rated Singapore as the best Asian city to live in; and the IMD World Competitiveness Yearbook 2005 which declared Singapore as the most attractive Asian economy to foreign-skilled professionals. The fact that more than 60 per cent of the 7,000 multinational corporations in Singapore have set up their headquarters in Singapore to manage a wide range of corporate functions for their regional, as well as global operations, is an affirmation that Singapore is an ideal location for companies and industries to converge and do business together.

This strong performance can, in part, be credited to Singapore's solid fundamentals. Apart from her sound and stable political environment, Singapore has an established reputation as a safe and progressive financial centre, with macro-economic soundness, robust legal and judicial framework, efficient infrastructure and conducive business environment.

## *Economic crime control in Singapore – an assessment*

Crime does not impose significant costs to businesses in Singapore. The World Economic Forum's "Global Competitiveness Report (GCR) 2005-2006" ranked Singapore's police service first out of 117 countries for her reliability in protecting businesses from criminals. The Report also ranked Singapore as one of the top three of 117 countries where the incidents of crime imposed the least costs to businesses. It is telling that over the past few years, the GCR has consistently assessed Singapore very favorably in these two categories.

The 2005 PwC Global Economic Crime Survey found that Singapore companies had relatively few incidents of economic crime. The survey found that Singapore fared better than the global average in that only 16 per cent of the companies surveyed reported being victims of economic crime between the years 2003 and 2005, compared to 45 per cent of companies worldwide.<sup>9</sup> The survey also found Singapore companies reported 50 per cent fewer cases of fraud than they did in the 2003 PwC Survey, when 32 per cent of Singapore companies said they suffered from economic crime.

Singapore's overarching framework to combat money laundering has been internationally recognised. Singapore was highly ranked in the recent WEF Global Competitiveness Reports for the relative absence of money laundering through Singapore's banking and non-banking channels.<sup>10</sup> Additionally, the IMF/World Bank Financial Sector Assessment Programme of Singapore in August 2003 found that Singapore had a strong compliance culture and a comprehensive legal, institutional, policy and supervisory framework to combat money laundering and terrorism financing.

Singapore's corporate governance standards have been consistently ranked highly. Singapore was ranked top in Asia for transparency in the World Competitiveness Yearbook 2002. Credit Lyonnais Securities Asia and Political and Economic Risk Consultancy (PERC), both of whom regularly

monitor the corporate governance climate, accorded Singapore the highest ratings in Asia in 2003. In 2004, the IMD World Competitiveness Report ranked corporate boards in Singapore to be the best in Asia in supervising the management of companies. Singapore was also ranked first out of 10 Asian countries in a joint study on corporate governance standards by CLSA and the Asian Corporate Governance Association. In 2005, CLSA also issued a special report on the Singapore market to re-assess Singapore's strength in corporate governance, in the light of the recent corporate incidents here. Singapore's strong position within Asia was re-affirmed in the report. In 2006, PERC reported that out of the 14 countries surveyed, Singapore was ranked second behind the US, for the quality of corporate governance.

The corporate ethics of firms in Singapore have been rated to be among the best in the world. The World Economic Forum's GCR for 2005-2006 ranked corporate ethics of Singapore firms to be among the top five of the 117 economies which were assessed in the study. Singapore was behind only Denmark, United Kingdom, Finland and New Zealand. Additionally, the IMD World Competitiveness Yearbook 2006 found that credibility of managers in Singapore is highly prevalent in business. Singapore was ranked eighth in this category. It is also telling that since its inception in 1996, PERC has consistently ranked Singapore as the least corrupt country in Asia. Transparency International has since 1995, consistently ranked Singapore as one of the least corrupt countries in the world.

While these rankings are at best only an affirmation of Singapore's past efforts, they nevertheless attest to the high standards that she achieved in controlling economic crime, and to the premium she places on tenaciously preserving her reputation as an international financial and business hub.

### *Mutually Reinforcing Components*

The survey results reflect reality. As Singapore is one of the premier financial centres in the world, the Government places a high premium in safeguarding

Singapore's integrity as a world class financial and commercial centre. The high standards Singapore has achieved in mitigating the adverse impact of economic crime may be attributed to several mutually reinforcing components in her system. These include her legal, supervisory and enforcement regime, her framework of partnership with stakeholders, her commitment to be part of the global network of cooperation in combating crime, and the commitment of her corporate leaders to maintaining integrity.

## **The legal regime**

### *Focused and timely legislation*

Singapore's law-making body is renowned for her effectiveness in enacting focused and timely laws. The WEF "Global Competitiveness Report 2005-2006" ranked Singapore's parliament first out of 117 countries for her effectiveness as a law-making and oversight institution. Singapore has been ranked first in this category in the past few years.

Singapore's substantive, procedural and evidentiary laws provide an effective yet nuanced legal regime to punish wrongdoers and preserve Singapore's integrity as an international financial and business hub. She has carefully benchmarked her laws against the laws of leading developed and industrialised nations. The bare bones of the legal regime governing some of the more serious economic crimes are mentioned in this section.

### *Significance of securities and capital markets laws*

Singapore is well-regarded as a country with a commendable legal framework for investor protection. Indeed, in the World Bank's "Doing Business in 2006" report, which ranks 155 economies on key business regulations and reforms, Singapore ranked second after New Zealand as a country where investors are most protected.<sup>11</sup>

The Securities and Futures Act 2001 ("SFA") is Singapore's legislative framework to regulate activities and institutions in the securities and futures industry. The juxtaposition of several significant provisions in the SFA provide Singapore an effective yet nuanced approach to punish wrongdoers in the securities and futures industry, and address new challenges in the regulation of the capital markets.

A key significance of the SFA is her embodiment of the new jurisprudential approach to Singapore's insider trading laws. The laws on insider trading were redefined in 2001 by removing the need to prove the defendant's connection with the corporation, and shifting the focus to the possession of inside information by the Accused. This means that liability now directly depend on whether the defendant traded whilst in knowing possession of undisclosed market sensitive information, and is not dependent on how he was connected with the company concern.

The new SFA provisions also tightened the *mens rea* test for directors or connected persons. A refutable presumption was created that connected persons with possession of inside information are deemed to know that the information is undisclosed and price sensitive. The new standard introduced a greater degree of market discipline for those in fiduciary positions. The regulations curbing the misuse of privileged information also help to create a level playing field among market participants.

Another significance of the SFA lies in the enhanced effectiveness of the law in deterring market misconduct offences. The civil penalty regime to deal with market misconduct contraventions was introduced to support Singapore's move towards a disclosure-based regulatory regime for her capital markets. Under the civil penalty regime for market misconduct contraventions, the Monetary Authority of Singapore (MAS) may, with the consent of the Public Prosecutor, seek a court order requiring a person to pay a civil penalty to MAS for market misconduct breaches. The regime also provides for out-of-court agreements between MAS and the contravening

person for the latter to pay civil penalties to MAS, with or without admission of liability. The regime makes it easier to prove instances of market misconduct in court since the civil lawsuit, which is won on the “balance of probabilities”, can now be waged against the alleged offenders.

One other important development brought about by the SFA is the issue of liability of offenders for civil damages to investors who suffer losses as a result of the market abuse. Instead of having to institute their own legal action, aggrieved investors can file within 6 years of the offence, claims for compensation with the Court on the strength of criminal convictions or civil penalties imposed by MAS.

The SFA is also noteworthy as it expanded the jurisdictional reach of market misconduct proscriptions to take into account the internationalised environment in which investment and advisory services are provided. In this regard, the SFA legislation provides extra-territorial reach in the securities and futures legislation.<sup>12</sup>

### *Significance of Singapore's anti money laundering (AML) and terrorist financing (CTF) legislation*

Singapore's legislative framework gives legitimacy and empowers law enforcers to combat global money laundering effectively. The Corruption, Drug Trafficking and Serious Offence (Confiscation of Benefits) Act (CDSA) was introduced in Singapore in 1999 to provide serious penalties for persons involved in the laundering of proceeds of crime. Subsequent legislative amendments to the CDSA have given more teeth to the Singapore regulators to control money laundering and recover the benefits of crimes. Additionally, these amendments allow for greater mutual cooperation and assistance between Singapore and the rest of the world to combat money laundering more effectively.

The CDSA is significant as the law, *inter alia*, makes the laundering of the proceeds of at least 297 crimes which can be linked with money laundering, regardless of whether they were committed locally or not, an offence in Singapore. The Act also amended the *mens rea* requirement for a money laundering offence to the accused person “knowing or having reasonable grounds to believe” that the proceeds were derived from serious crimes. The CDSA makes it mandatory for all persons to report suspicious transactions to the authorities.<sup>13</sup> The amendments to the CDSA also facilitate the sharing of information obtained under mandatory Suspicious Transaction Reporting, with Singapore’s foreign agency counterparts.

Singapore’s legislative protection against money laundering through the non-financial institutions is found in the Money-changing and Remittance Business Act. The robust licensing requirement under the Act, *inter alia*, restricts persons of dubious reputation or poor financial standing from entering the remittance business. In addition, the obligation to report suspicious money laundering activity under the CDSA is a general one and extends to non-financial institutions such as money changers and remitters.

Singapore lifted her ban on casinos in 2005, paving the way for the development of integrated resorts with casinos which are expected to open in 2009. In passing the Casino Control Act, the Government announced the need for internal controls, procedures and measures to protect the integrity of the financial transactions against criminals in the casino environment.<sup>14</sup> The measures, which will be prescribed in the subsidiary legislation under the Act, are in line with international anti-money laundering standards set by the Financial Action Task Force (FATF) and other leading gaming jurisdictions around the world.

Singapore’s legislative regime provides teeth to the authorities to combat terrorist financing and terrorist organisations that can adversely affect the integrity of the financial systems. Various laws such as the United Nations Act 2001, United Nations (Anti-Terrorism Measures) Regulations and

the Terrorism (Suppression of Financing) Act, are significant in Singapore's war against terrorist financing. These laws also give effect to the international conventions signed by Singapore as with the proper statutory framework in place, she is in a position to negotiate with foreign countries.

#### *Significant corporate fraud legislation*

The legal framework of control against corporate fraud is achieved, in part, through the Companies Act. At the core of the Companies Act is the expectation that directors, executives or employees in positions of trust must conform to exacting standards of professional integrity. A comprehensive review of the Companies Act in 2003 resulted in several amendments which were designed, inter alia, to ensure that Singapore's company law remains relevant and modern, so as to enhance her competitiveness as a global business hub. The amendments also focused on improving Singapore's corporate governance and regulatory framework, and in aligning her practices with the leading jurisdictions.

#### *Transnational economic crime*

Singapore's legal framework positions her as a global player in the international battle against economic crime. The Mutual Assistance in Criminal Matters Act (MACMA) was enacted in 2000 as part of Singapore's commitment to help combat crime on a global scale. The events of September 11, 2001 made it increasingly urgent for countries to co-operate closely, especially in combating of terrorism. Timely amendments were made to MACMA to address components of rigidity in the Act. For example, certain forms of assistance which involve coercive measures, such as search warrants in aid of a criminal prosecution in a foreign country, could only be made available if a mutual legal assistance treaty between Singapore and the requesting country was in existence. The amendments to MACMA allow Singapore to render such assistance, on a case-by-case basis, to countries where there is no such treaty.

While MACMA facilitates assistance to a foreign authority, there are safeguards in the Act to prevent abuse and unnecessary intrusion by foreign authorities into the privacy of Singapore businesses and individuals. For example, there is a general power to decline a request if it is not in the public interest to provide the assistance. Singapore's own investigations takes priority and no assistance will be rendered if it could prejudice a local investigation or local criminal proceeding. The Act has also many safeguards against "fishing expeditions" where a foreign authority is merely "fishing" for information that might be of use against a person or a corporation.

#### *Administration of justice in commercial law*

Singapore is keenly aware that the development of her commercial laws is critical to meet the legal needs of the business and financial sectors of the economy. Since 1999, the Subordinate Courts have for example, systematically put in place a series of measures to build up the judicial expertise and resources to handle complex economic cases within the jurisdiction. A specialist cluster of courts, the Commercial Civil and Criminal Courts, was set up in 1999 to deal with specialised offences relating to complex economic crimes and all interlocutory matters related to financial fraud, money laundering, confiscation of assets and complex commercial civil cases. These courts are presided over by judges with specialised training.

The Singapore courts strive to develop on its corpus of jurisprudence by rendering grounds of decision as a matter of course for complex commercial cases. The courts have since tried several complex economic crime cases under the SFA, the Companies Act and the Penal Code, and have laid down several decisions and sentencing principles which have influenced market behaviour and helped shape the commercial and corporate governance practices of businesses and investments in Singapore.

One such significant judicial decision involved a case in which the court held that “corporate interests and fiduciary duties cannot be sacrificed at the altar of family interest and loyalty”. By this decision, the judiciary sent a very strong signal that in Singapore there are no exceptions to good corporate governance and that all other considerations must be subordinate to the fiduciary duties of the directors. Another significant judicial decision involved the unprecedented 42 years’ imprisonment imposed on a finance manager who cheated four banks collectively of S\$117 million, a case that was dubbed one of the largest case of commercial fraud in Singapore. By this decision, the judiciary sent a clear indication of its views on crimes that strike at the heart of banking and commerce and damage Singapore’s reputation as a honest and efficient financial hub.<sup>15</sup>

On the broader front, the Singapore courts’ prominence as an outstanding reformer and innovator among judicial institutions is renowned the world over. Since the early 1990s, Singapore has undertaken a wide array of judicial reforms that have guided the Singapore courts towards higher standards, inter alia, in the administration of justice in commercial law. The Subordinate Courts, which handles more than 95 per cent of the judiciary’s caseload, have with the support of the Government, fronted various judicial reforms. In his keynote address at the 15<sup>th</sup> Subordinate Courts Workplan, the Honourable the Chief Justice Chan Sek Keong said:

“Today, the Singapore Subordinate Courts stand out as an outstanding judicial and administrative reformer and innovator amongst judicial institutions around the world whose work in providing timely access to justice and efficient in-court administration, has been acknowledged by several international bodies, such as the World Bank, the Asian Development Bank, the National Center for State Courts, the United Kingdom and other regional judiciaries. The Subordinate courts have also been cited as a model of modernisation for Latin American countries”.

## **The regulatory regime**

### *Overarching principles*

Singapore's approach to regulation and supervision of the financial and business sector is characterised as one that is risk-based, stakeholder-reliant, disclosure-based and business-friendly. The supervisory activities<sup>16</sup> that the regulator performs and facilitates are aimed at promoting a safe, sound, fair, efficient and transparent financial and business sector, and one that is concomitantly progressive, competitive and thriving.

### *Risk-based supervisory approach*

The MAS's move away from the traditional one-size-fits-all regulatory prescriptive approach to the risk-based approach enables the regulator to give stronger institutions the flexibility to innovate and develop, while maintaining stricter control on weaker ones. This approach entails a streamlining of supervisory intensity to match the risk profiles of the financial institutions that the regulator oversees.

Under the MAS risk-focused supervisory framework, financial institutions are clustered into supervisory categories according to their risk and impact profiles. Allocation of resources, supervision plans and inspection cycles are worked out based on these profiles. Institution-specific and thematic inspections are used to assess specific risks in the financial system. The inspections cover a wide range of prudential, market conduct and risk management areas.

### *AML/CFL supervisory regime*

Like other established financial centres, Singapore is alive to the possibility that terrorist and criminal funds might seek to abuse her financial system.

Singapore has thus instituted strict regulations and rules against money laundering and terrorist financing which meet the FATF standards.

The MAS requires all financial institutions operating in Singapore to institute rigorous measures to guard against money-laundering and terrorist financing. These include the need to comply with the MAS' Notice on Prevention of Money Laundering and Anti-Terrorism (Measures) Regulations and to enhance their systems for the monitoring of customer transactions commensurate with their institution's risk profile and business strategies.

The MAS performs both offsite reviews and onsite inspections of financial institutions to ensure that AML and CFT measures are in place. External auditors engaged by banks and financial institutions are similarly required to audit for compliance with MAS regulations. These rigorous processes have enabled banks to identify and file suspicious transaction reports with the CAD. CAD investigates these reports and where it detects wrongdoing, takes firm action.

The AML/CFT supervisory regime also involves the assessment of the life insurers' compliance with MAS' AML/CFT regulations. This process involves the inspection of the life insurers' AML/CFT measures to ensure their adequacy relative to their size and risk profile, and the need to continue to enhance their systems in order to ensure robust ongoing monitoring of customer transactions.<sup>17</sup>

The AML/CFT supervisory regime to regulate and monitor the alternative remittance systems is equally robust. The AML/CFT regulations require money changing and remittance business licensees to, inter alia, conduct customer due diligence, screen customers against updated terrorist lists, and comply with the requirements for maintenance of proper records and reporting of suspicious transactions. The MAS inspections highlight to all financial institutions the need to put in place robust AML/CFT policies, procedures and controls, and to regularly review and enhance them.

### *Stakeholder-reliant supervisory approach*

The primary responsibility for the professional market conduct and prudential soundness of a financial institution lies with its board of directors and senior management. MAS's supervisory approach seeks to reinforce the responsibility of the board and management to deal fairly with customers, ensure compliance with regulatory standards, and maintain adequate risk oversight of its business activities. By working to encourage best practices by the boards and management, the regulator is able to minimise the need to unnecessarily interfere with the institutions' business decisions.<sup>18</sup>

The regulator also leverages on relevant stakeholders to complement its supervisory activities. Professionals such as auditors, actuaries and credit rating agencies are specialists in assessing the inherent risks and adequacy of internal control and risk management systems. The regulator leverages on these parties and works closely with stakeholders including the home supervisors, Singapore Exchange (SGX), auditors, industry associations, professional bodies and government agencies to complement its supervisory activities of financial institutions. MAS also cooperates with stakeholders such as the Accounting and Corporate Regulatory Authority and the Council on Corporate Disclosures and Governance, to enhance corporate governance and disclosure standards.

### *Disclosure-based supervisory approach*

Another key principle that guides the regulator's supervisory approach is the reliance on timely, accurate and adequate disclosure by institutions, rather than on extensive and merit-based regulation to protect customers. Under the merit-based regime, the regulator assesses the suitability of a product before it is allowed to be introduced to the market place. Under the disclosure-based regime, the principle of *caveat emptor* prevails and the consumer makes well-informed decisions when purchasing financial products and services based on material information being made available to him.

The role of the regulator in this regime is to establish a regulatory framework that facilitates accurate, timely and meaningful disclosure of material information that market participants could reasonably rely on in making financial decisions. Along with this, Singapore has moved towards higher standards of corporate governance, promoted greater standards of transparency and disclosure, enhanced market discipline and empowered consumers to make financial decisions.

### *Pillars for good corporate governance*

Singapore recognises that high standards of corporate governance are needed in the financial and corporate sector to foster greater transparency, better internal controls, and a strong risk management culture. In this regard, Singapore has taken the approach of setting fundamental mandatory standards, codifying some corporate governance principles into legislation and regulation, and encouraging the voluntary adoption of appropriate best practices.

Singapore embarked on a comprehensive review of the corporate regulatory framework, disclosure, accounting standards and corporate governance. Compliance with accounting standards was mandated. The objective is to give investors the confidence that companies registered in Singapore present true and fair financial statements that are in accordance with internationally accepted accounting standards.

A Singapore Code of Corporate Governance was introduced in 2001. The Code adopts a balanced approach, which specifies corporate governance principles and best practices but allows listed companies to depart from these practices subject to appropriate disclosure. The Code spans four main areas of governance, namely, board matters, remuneration, accountability and audit, and communication with shareholders.

To ensure that there is a standing mechanism to continuously review and improve Singapore's corporate governance and regulatory framework, the Government set up the Council on Corporate Disclosure and Governance (CCDG) in 2002. The CCDG prescribes accounting standards in Singapore, and advises the government on corporate governance and disclosure matters. Like many countries, the CCDG is an independent private-sector body. It comprises members from businesses, professional organisations, academic institutions and government. This allows key stakeholders to have a direct say on how accounting standards and corporate governance are set.

Singapore recognises that strengthening of corporate governance and adapting international best practices to suit Singapore's context are ongoing efforts. The corporate governance framework is hence periodically reviewed. In 2005, a revised Code which superseded the 2001 Code was issued. To enhance corporate governance requirements of financial institutions, MAS also issued regulations on corporate governance to locally incorporated banks, financial holding companies and significant direct life insurers. Corporate governance regulations, modeled on those for banks and significant insurers, will also apply to the SGX group of listed companies regulated by the SGX.

#### *Business-friendly supervisory approach*

The business-friendly supervisory approach minimises the unintended consequences of well-intended supervisory and regulatory action. The MAS endeavours to undertake supervision in a manner that does not unnecessarily impair the competitiveness and dynamism of individual institutions and Singapore's financial services sector. Business and operational concerns of the institutions and industry are taken into account, as long as the risks are adequately managed. In this regard, MAS adopts a consultative approach to regulating the industry. Feedback from market practitioners and the public is actively sought so as to develop regulations that take into account market realities and industry practices.<sup>19</sup>

Singapore's efforts in this domain have not gone unnoticed. The World Bank's "Doing Business in 2007" report ranked Singapore as the world's most business-friendly economy.<sup>20</sup> The IMD World Competitiveness Yearbook 2006 ranked Singapore's legal and regulatory framework and her bureaucracy as one of the best in the world for encouraging the competitiveness of enterprise and not hindering business activity.<sup>21</sup>

## **The enforcement regime**

### *Philosophy*

A disclosure-based environment demands a robust enforcement regime, where swift, impartial and professional enforcement of laws and regulations is critical to maintaining integrity of the regime and the effect of deterrence. The significance of institutions as trusted custodians of the interest of market participants is emphasised at the highest echelons. Singapore's Deputy Prime Minister, Wong Kan Seng, in his speech to the International Economic Crime Conference in 2001, stressed that "An effective enforcement system is crucial to protect the integrity of our financial market and business environment".<sup>22</sup>

### *Trusted custodians*

Singapore's enforcement regime has been well rated. Senior Counsel Davinder Singh, who has been consistently listed by various international publications as Asia's top litigation lawyer and by the Euromoney Legal Media Group as a leading insolvency and restructure lawyer, said:

"The Singapore authorities are respected all over the world as trusted custodians of the interests of market participants. One good example is the Commercial Affairs Department. Another is the Corrupt Practices Investigation Bureau. As enforcement agencies, they are among the world's best in terms of their professionalism, knowledge, integrity and

fairness. They have done an admirable job and have justly earned their sterling, albeit formidable, reputation."<sup>23</sup>

The Managing Director of MAS, Heng Swee Keat, lauded the swift and timely enforcement action taken in recent corporate scandals in Singapore. He said:

"Let me take this opportunity to compliment the CAD for their thorough work in the investigation into these cases. Our enforcement and regulatory agencies have shown the willingness and ability to take timely enforcement action when laws are breached."<sup>24</sup>

An international investor, Michael Coleman, was quoted in the *International Herald Tribune's* report on the prosecutions involving the Singapore listed Chinese firm, China Aviation Oil (Singapore) Corporation Ltd corporate scandal<sup>25</sup>:

"What's going on is good because here is a Chinese company where the Chinese senior management is being exposed to Singapore law. It's a lesson for Chinese companies that are listed here that Singapore won't shy away from putting you on trial."<sup>26</sup>

### *The Commercial Affairs Department*

The CAD, in its current form, was the result of a policy response to strengthen Singapore's ability to tackle economic crime. To proactively surmount the imminent challenges posed by economic crime, the Government created a single premier economic crime investigative authority in 2000. The Commercial Affairs Department, then under the Ministry of Finance, was merged with the Commercial Crime Division of the police. This pooled the resources and the enforcement capabilities of the two crime fighting agencies. It positioned the new CAD under the Singapore Police

Force as the de facto and premier investigative authority on white-collar crimes in Singapore.

### *Strategic and organisation review*

The reconstituted CAD conducted a fundamental organisational and strategic review to whet its operational effectiveness in its mission to safeguard Singapore's integrity as a world-class financial and commercial centre through the vigilant and professional enforcement of the laws. The bare bones and some byproducts of the review are mentioned in this section.

### *Structural reorganization*

A key byproduct of the review is the creation of a cluster of dedicated and specialised investigation divisions within CAD's organisational structure. The divisions are sufficiently resourced with specialists corporate fraud, securities and futures fraud, money laundering, financial and other serious economic crime expertise. The streamlined organisational structure also meant that a central agency for the receipt and analysis of Suspicious Transaction Reports was created. The Proceeds of Crime Unit was also created in recognition of the key role that the identification and confiscation of the proceeds and assets of crime has in the enforcement regime. The proactive enforcement capability of CAD was further augmented by the creation of a CAD Intelligence Division, and by the recently created Operations Management and Development Division.

The organisational review resulted in enhanced overall institutional capabilities in targeting economic criminals, disrupting their activity, and seizing their assets. For example, of the numerous economic crimes prosecuted, some were the result of the preemptive detection of crimes that may have otherwise been undetected by the victims. A case in point is the CAD's detection of a S\$12.6 million internal employee bank fraud that might

have otherwise gone undetected by the financial institution. The new structure also resulted in enhanced quality and quantity of STR information. It is also telling that more than S\$105 million in proceeds and assets of crime has been recovered since the establishment of the Proceeds of Crime Unit.

### *Specialised training*

Another significant byproduct of the review was the development of a highly specialised training curriculum for CAD investigators. The series of joint training programmes with world-renowned economic crime enforcement agencies and industry leaders that CAD embarked upon have been entrenched as an integral part of the training diet. Training via video-conferencing with specialist agencies around the world has also become a regular feature in the department's module.

The investment ploughed into the calibrated training curriculum has reaped abundant benefits. CAD has been accredited with national standards for the professionalism, skills, knowledge and expertise of its officers.<sup>27</sup> The curriculum has also produced a league of highly trained and qualified experts who are regularly invited to share their experiences at world renowned economic crime forums as resource persons, experts or trainers.

### *Enhanced investigation timelines and quality*

In introducing robust investigation timelines for cases investigated by CAD, the CAD director, Tan Siong Thye, explained:

"The time taken to complete investigations is an important yardstick of our efficiency and service. That is why it is important for us to monitor and improve on the time taken to complete our investigation while ensuring that the investigations are carried out thoroughly and meticulously."<sup>28</sup>

CAD shortened the investigation timelines to six months for complex investigations and to three months for less complex investigations. Over 90 per cent of the cases investigated have met the timelines and most investigations involving high public interest were completed well within the timelines. The fact that overall conviction rates have remained very high albeit the robust investigation timelines is testimony to the philosophy of swift, credible and effective enforcement of economic crime transgression that Singapore subscribes to.

#### *Technologising operations and business processes*

CAD embarked on a programme to extensively leverage on the progress of technology to enhance its operational capabilities against economic crimes. Apart from computerised investigation, case management and intelligence systems, there is an extensive operational deployment of technology to aid complex economic crime investigations, particularly in cases that involve the analysis of voluminous data, documents or records.

A conscious effort to integrate info-communication technology into key business processes is also undertaken. A case in point is the Suspicious Transaction OnLine Lodging System (STROLLS), the integrated electronic platform introduced in 2005 to allow for a more cost-effective and seamless electronic reporting of suspicious transactions by the industry.

#### *Revamp of the Attorney-General Chambers*

The reconstitution of CAD was complemented with a revamp of the Attorney-General's Chambers (AGC). A specialised directorate within the AGC, staffed with Deputy Public Prosecutors (DPPs) who specialise in commercial offences, was set up to handle the prosecution of complex economic crimes. Some DPPs are based in CAD. This arrangement is mutually beneficial to CAD and AGC as investigators enjoy a close working rapport with the DPPs while the DPPs benefit from first-hand knowledge of the intricacies and complexities of

economic crimes. The relationship has sharpened the overall institutional capabilities in unraveling and prosecuting complex economic crimes.

#### *Alternative enforcement mechanisms – civil penalty regime*

The civil penalty regime complements the criminal regime as an additional enforcement tool for market misconduct infractions. The civil penalty regime provides a calibrated approach that punishes and deters market misconduct, without impeding the growth of the securities markets in Singapore. This is where the civil penalty regime packs a punch since it is the MAS, backed by the CAD and the AGC, which can readily marshal the resources and the expertise to take legal action. That said, the concept of civil penalties under the SFA does not imply that the penalties are meant to be “soft” punishments. The substantial financial penalties to be paid by the individuals send a clear message that market misconduct is not tolerated.

#### *A coordinated multi-agency approach*

Singapore’s seamless multi-agency enforcement framework facilitates the knitting of the enforcement community into a unified whole. A case in point is the enforcement framework for market misconduct infractions. Under the SGX's continuous disclosure obligations, if there is a false or misleading statement by directors of listed companies, SGX will deliberate if the erroneous information had materially affected the share price or established a false impression of the price or volume in the issuer's securities.

Depending on the facts, SGX may warn or reprimand offenders or refer the matter to MAS, if the aforesaid statement could have induced dealing in or affected the market price of securities, or was fraudulent and had induced others to deal in securities, in breach of the SFA. Where adequate basis for investigation exists, and depending on the severity of the contravention, the case may either be subject to criminal enforcement action by CAD or civil penalty action by the MAS. Under this multi-agency framework, Singapore

has taken swift criminal and civil penalty enforcement actions against several individuals and entities for market misconduct infractions.

A multi-agency approach is particularly relevant where perpetrators seek to avoid detection through the use of cross border transactions. As financial transactions become increasingly global in nature, wrongdoings in capital markets will inevitably span multiple jurisdictions. Therein lies the importance of international regulatory co-operation in ensuring market integrity. In 2006, MAS took civil penalty action against two individuals who used a share trading account located in Hong Kong to carry out insider trading in shares of a company listed in Singapore. The action was the outcome of investigation work carried out by MAS in Singapore, and in Hong Kong with the assistance of the Hong Kong authorities using prevailing mutual co-operation arrangements. The enforcement action is a clear signal that Singapore is prepared and able to pursue infractions of Singapore's securities law, even where perpetrators seek to avoid detection and enforcement through the use of cross border transactions.

## **The framework of partnership**

### *Philosophy*

Mutual help and a shared responsibility form the basic conceptual framework of the partnership with the financial community to combat economic crime. In his opening speech at the 2001 International Economic Crime Conference in Singapore, the Singapore Minister of Home Affairs, Wong Kan Seng, advised:

“as with all crime, Singapore's commercial and financial integrity cannot be safeguarded by dependence only on appropriate laws and effective enforcement. It must be a joint effort with the community.”

One of the best defences against economic crime is for market players and participants to be aware, to identify and to preempt problems. Hence, market participants are persuaded and encouraged to take personal responsibility, both individually and in partnership with others to safeguard their interest and sensitise themselves to the risks of economic crime.

The philosophy of mutual help and shared responsibility is operationalised through various institutional structures and platforms. At the national level, these include the National Crime Prevention Council that was set up to act as a catalyst, advisor and partner to mobilise the support of groups and individuals from the community to work closely with the Police to prevent crime. The Council comprises influential representatives from the private commercial and industrial sectors, as well as from the public sector.

At the organisational level, the departmental structures within relevant government agencies work with various stakeholders, such as the business and financial community, the industry associations and the media, to help shape the significant role that the market players and participants can play to safeguard themselves.

#### *Financial and business fraternity partnership*

Given the complexities involved, a partnership with the business and financial community is indispensable in the area of economic crime prevention, education, exchange of information and policy development. With the community focus concept and structures firmly in place, and strategic networks established with stakeholders, it becomes possible to leverage on the co-operation and expertise of stakeholders. Against this backdrop, initiatives to engage and mobilise the business and financial community have been initiated on several fronts.

#### *Conferences and symposiums*

Since its reconstitution in 2000, the CAD has spearheaded at least seven large-scale economic crime conferences and symposiums. These events were attended by a large and varied number of private and public industry participants from more than 33 countries. The events treat a multiplicity of issues such as corporate governance, money-laundering, e-commerce fraud, accounting and auditing fraud and credit card fraud, from myriad and diverse perspectives. The initiatives underpin the broad-based efforts by public and private sector institutions in Singapore to mitigate the cost of economic crime and more importantly, recapitulate the primary message that all stakeholders hold a shared responsibility to achieve a safe, sound and progressive financial and business sector.

#### *Open communication lines*

Open lines of communication and institutionalised dialogue with the industry are effective platforms to promote industry education and exchange of information. CAD has institutionalised industry dialogue forums and conducts regular outreach programs with members of the business, financial, legal and auditing and accounting community as part of its regime against money laundering, corporate fraud, credit card fraud and other economic crimes.

CAD's Suspicious Transaction Reporting Office has also set up a dedicated hotline and electronic platform to assist members of the financial community who may encounter difficulties dealing with suspicious transactions. These engagement initiatives have generated better awareness among the members of the financial community on the value of detecting, reporting and preventing money laundering and accounting related scandals.

At the regulatory front, MAS's initiatives include the continual development of win-win partnerships with industry stakeholders. As part of MAS' consultative approach, MAS constantly seeks feedback and comments from licensees through various channels. This is achieved through the regular dialogues MAS conducts with industry associations. For example, on the

securities front, MAS organised the annual Compliance Roundtable to discuss and gather feedback on industry-wide regulatory and compliance issues. These dialogues strengthened ties between MAS and the industry, and enabled MAS to implement regulations that are both relevant and practical.

### *Leveraging on industry expertise*

It is imperative to leverage on the expertise of industry stakeholders who hold a shared and vested interest in safeguarding the integrity of the financial and business landscape. This approach also reduces the dependency on limited government resources as it enables the tapping of the industry's knowledge, expertise and resources to complement the government's efforts, and attain win-win outcomes.

The formation of the CAD Panel of Experts embodies CAD's efforts to tap on the industry's expertise. Investigation and prosecution of economic crimes involving elements of market or business practices, often require the reliance of the experts' testimony. In marking the official formation of CAD's Panel of Experts in 2002, the director of CAD, Tan Siong Thye advised: "it is imperative that in the collaboration with the business community, an official panel of experts be formed to enhance the stature of the expert's role". The CAD Panel of Experts comprises a league of about two dozen carefully selected professionals from varied disciplines.<sup>29</sup> The experts are readily available to assist the state in investigation and prosecution of serious economic crimes such as market misconduct and corporate infractions.

CAD also leverages on the expertise of the Credit Card Security Group, a group comprising experts from banks and credit card issuers in Singapore. CAD's membership in the Group facilitates development of strategies and counter-measures against credit card fraud. The Group also supports CAD's effort to educate more than 1400 credit card merchants, businesses and customers on fraud prevention. The symbiotic arrangement is one of the reasons Singapore is able to attain the lowest credit card fraud rates in the

Asia-Pacific region, and the dollar value losses attributed to credit card fraud in Singapore have been relatively low.

### *Thematic Publications*

Thematic publications provide an effective conduit to educate market players and participants. Since the publication of the inaugural CAD Annual Report in 2004, the market better understands CAD's work and the types of economic crimes in Singapore. Another CAD publication, *How Not To Make Money*, which made the list of "10 good local reads" in 2005,<sup>30</sup> has helped raise the awareness among the business community of fraud control measures and enhanced vigilance to detect and prevent fraud. A third publication, *Corporate Ethics*, a book published as part of CAD's collaboration with the media, contributes to the development of a culture of good corporate governance in Singapore.<sup>31</sup> Other CAD publications address thematic topics such as anti-money laundering and counter-terrorism financing.

CAD opened the files of some of her cases in a weekly media series in the *Business Times*. In expounding the rationale for the media collaboration, Tan Siong Thye explained in the *Business Times*:

"While we spare no efforts in investigating and solving commercial crime cases, it is imperative that we also reach out regularly to the public, especially the business community, to educate and generate awareness on preventive measures against commercial crime. We hope that companies, businesses, merchants as well as members of the public will get a better understanding of the various types of commercial crime cases in Singapore and exercise greater caution to prevent such crimes. We also hope to send out a strong deterrent message to those inclined towards crime that it does not pay."

### *National consumer education*

The liberalisation of financial markets and shift towards a disclosure-based regime mean consumers need to understand the pitfalls faced as a result of a growing array of financial products and services. Under the MoneySENSE national financial education programme, MAS acts as a catalyst for consumer education in Singapore by working closely with industry associations and consumer groups to identify the main areas of focus for consumer education efforts. A case in point is the MoneySENSE guides on tips about how to foil phishers, bogus investment opportunities and the pitfalls of dealing with unregulated persons.

To meet the challenges posed by economic crimes in the years ahead, the Government continues to involve the stakeholders and fine-tune the system of stakeholder engagement. The engagement focal areas, infrastructures and programmes are periodically reviewed and enhanced to better meet the increasingly intricacies of economic crime in the years to come.

## **The international arena**

### *Philosophy*

The philosophy that drives the international dimension of the energy against economic crime may be encapsulated in the words of the Singapore Minister for Home Affairs, Wong Kan Seng:

“To fight crime effectively on the local, regional and global level, we need the co-operation of all our partners from foreign enforcement agencies. As criminals leverage on the new economy initiatives to perpetrate their criminal acts, so must we be ahead of the most sophisticated of them.”<sup>32</sup>

In this regard, Singapore also continues to play an active role in promoting a stable global financial system. In the words of the Singapore Senior Minister, Goh Chok Tong:

“We are already engaged in and contributing to many diverse fora, covering areas like monetary policy, regulation and supervision, financial stability, corporate governance, anti-money laundering and counter terrorist financing. As a good global citizen, Singapore will continue to work with like-minded jurisdictions to keep the international financial system stable and safe.”<sup>33</sup>

Two key elements of Singapore’s commitment to control economic crime at the global level are her efforts towards strengthening enforcement and regulatory cooperation, and facilitating information exchange and technical co-operation.

#### *Strengthening enforcement and regulatory co-operation*

Co-operation in enforcement is provided within a structured framework, in accordance with Singapore’s domestic laws. The amendments to MACMA in 2005 were significant in that they avoid a situation where Singapore is unable to give timely assistance to a non-treaty country which needs Singapore’s assistance to prosecute a major international criminal or a terrorist. The amendments are also advantageous for Singapore when she seeks assistance from a country with whom she does not have a treaty, if they invoke the reciprocity principle.

CAD and the MAS have also signed various memoranda of understanding with relevant foreign agencies to provide a formal basis for cooperation between the two authorities in several fields, including money laundering and securities and futures. The agreements pave the way for the enhanced sharing of information and bilateral co-operation. Singapore’s law enforcement authorities also enjoy good working relationships and co-

operate closely with their foreign counterparts, including co-operation within the ASEAN framework of co-operation.

On the regulatory front, Singapore plays a forefront role in various regional forums. Singapore's membership in the Asia Pacific Regional Committee, a regional committee of regulators, seeks to promote sound and consistent securities regulation across the region. Singapore also participates in the ASEAN Capital Market Forum (ACMF). The ACMF was convened to provide a high-level meeting place for ASEAN capital markets regulators to discuss issues such as disclosure, accounting and auditing standards.

Beyond the immediate region, Singapore continues to contribute to the global efforts to control economic crime. Of significance, is her anti-terrorism and anti-money laundering efforts through the FATF, the APG on Money Laundering and the Egmont Group of FIUs. Singapore hosted a plenary meeting of the FATF in 2005. She also plays an important role in contributing to formulation of global regulatory standards in the financial sector through her participation in banking supervision and financial system stability forums.

#### *Facilitating technical assistance*

Singapore sends experts and trainers to regional and international programmes as part of her many technical assistance initiatives. CAD for instance, regularly contributes experts and speakers to regional and international economic crime control forums. The MAS also regularly sends speakers to conduct training sessions at regional central banks or in programmes organised by regional training providers such as the Asian Development Bank and the International Monetary Fund-Singapore Training Institute. In addition, Singapore provides resource persons to the FSAP, and regularly host study visits by economic crime enforcement agencies.

In the realm of technical training, CAD is able to leverage on her experience in developing and conducting functional training for economic

crime, to conduct the International Economic Crime Course annually. Participants from Australia, China and the ASEAN economies attend the course regularly. In response to increasing training requests from regional regulators, MAS launched a regional banking supervisors' training programme. The programme aims to introduce MAS's supervisory approaches and practices, to share her experience in key aspects of banking supervision and to provide an opportunity for exchange of views.

## **The substratum of ethical conduct**

### *The tone*

There are some schools of thought that believe the pendulum of corporate culture and attitudes towards integrity and ethical conduct will swing back and forth. There may be few incidents of corporate fraud in the next few years, but another boom-and-bust economic period may kindle another wave of financial scandals. Indeed, economic crime is known to thrive in a social and business environment where low ethical standards prevail and moral flexibility reigns.

Singapore places a high premium in molding a substratum of ethical conduct and corporate integrity. Indeed, the World Economic Forum's "Global Competitiveness Report 2005-2006" rating of corporate ethics of Singapore firms to be among the best in the world bears resonance to this commitment. In *Corporate Ethics*, a recent book published by the *Business Times* in partnership with the CAD, then Member of Parliament, Davinder Singh posed the challenge of replicating lessons from exemplary political governance to corporate governance:

"The Singapore Government behaves like a true trustee. It is universally accepted that the executive, legislative and judicial branches of the Singapore Government are built on a solid base of integrity and accountability. These core values, more than anything

else, account for billions of dollars of capital inflows. The fact that the Singapore Government and its institutions remain true to their role as trustees generates a confidence which no amount of money can buy. .... The challenge is to replicate in the corporate world what has been painstakingly achieved politically and socially in Singapore....”

In a September 22, 2005 interview with the *Business Times*, the director of CAD, Tan Siong Thye indicated that “Singapore is moving towards a disclosure-based regime with the onus on senior management of corporations to keep stakeholders informed of matters which they ought to know”, and that “a high standard of ethics in senior management must be encouraged for this regime to be successful”.

Integrity and ethics are cornerstones of good corporate governance. A sound supervisory and enforcement regime and market discipline are external disciplines on organisations to observe good corporate governance. For corporate governance to be effective, the external disciplines must be complemented by the software aspects of corporate governance – the internal discipline of the organisations and how organisations apply the substance of the requirements and codes.<sup>34</sup> It is recognised that to internalise a culture of integrity and ethical behaviour at all levels of the organisation, its day-to-day decision-making and operating processes, its assessment and compensation of staff, and other systems must all reflect the values.<sup>35</sup> The ethical values and corporate governance practices need to be entrenched into the organisation, and not be left as a human resource or a compliance function. The key message was unequivocally espoused by the Singapore Prime Minister, Lee Hsien Loong:

“As we strive to raise our standards of corporate governance and disclosure, let me sound a cautionary note. What is critical is less the rules themselves, than the spirit behind the rules. ...There needs to be a supportive corporate culture, and executives and directors who act with integrity and possess good commercial sense. Having more

elaborate rules is not always better. The US corporate scandals have shown that a prescriptive approach with many rules does not necessarily prevent dishonesty and fraud."<sup>36</sup>

### *Entrenching a culture of integrity and ethical behaviour*

Singapore companies have begun making positive initiatives towards rooting and branching out a culture of integrity and ethical behaviour in their organisations. The IMD World Competitiveness Yearbook 2006 ranked Singapore highly for ethical practices implemented in companies.<sup>37</sup> Several listed companies in Singapore have started whistle-blowing policies. A 2006 survey spearheaded by the Singapore Institute of Directors found that 6 out of 10 listed firms in Singapore have put in place whistle-blowing procedures. A number of firms featured in the survey had also introduced formalised measures to protect in-house whistle-blowers from reprisals.<sup>38</sup> The recent revision of the Code of Corporate Governance included, inter alia, the empowerment of the Audit Committee to ensure that adequate arrangements are in place to facilitate whistle-blowing that is done in good faith.

## **Conclusion**

### *Economic crime in context*

Economic crime in Singapore must be seen in context. The major corporate scandals surrounding listed entities such as China Aviation Oil (Singapore) Corporation Ltd (CAO) and Accord Customer Care Solution (ACCS), lead some to wonder if Singapore's overarching framework is sufficiently robust. There is no doubt that the framework is fundamentally robust. The corporate scandals are a minority out of the hundreds of listed companies in Singapore. No system can pretend to be the panacea. No regime can prevent all economic crimes or fraud. That the corporate scandals had surfaced and the cases brought to the courts and dealt with expeditiously suggests that the system is working. It also suggests the existence of a strong will to

protect the interests of the honest law abiding market players and participants, and to make it difficult for those who turn to crime.

Indeed, law enforcement's involvement in corporate scandals may be the best thing to happen to a company. In a recent *Business Times* corporate analysis report, the CAD's involvement in two major corporate scandals involving CAO and ACCS was analysed. The analysis found that the investing public may sometimes not be aware that something is amiss with a company until the white-collar-crime enforcement agency shows up. Thus the news of a criminal probe into the company may sometimes sound the death knell for the company as the stock prices take a beating.

But as the CAO and ACCS's saga showed, it was CAD's involvement that allowed the two companies to get back on their feet. Alongside an independent audit investigation, CAD was able to piece together what went wrong in the companies. The guilty parties were expeditiously prosecuted and incarcerated, removing them from positions of power, and sending a clear message that Singapore does not tolerate such behaviour. As a result, changes could be made within the company to improve its corporate governance process and operations. These developments allowed the companies shares to resume trading to the delight of many shareholders who tellingly, had chosen to hold on their investment instead of cashing out.<sup>39</sup>

### *Striking a Balance*

The role of the Government as a regulator and facilitator of business growth and development involves a delicate balancing act. Along with the move towards a disclosure-based regime, is the push for caveat emptor, higher standards of corporate governance, greater market discipline, and swift and professional dealing of any infraction of the law. There is, however, a constant need to grapple and balance higher compliance costs and regulatory burden with the pursuit to raise corporate governance standards and promote good regulatory practices.

Singapore endeavours to ensure that the regulatory requirements are not too onerous and costly for all businesses. Hence Singapore's move away from the prescriptive "one-size-fits-all" approach in regulation to undertake supervision in a way that gives due regard to competitiveness, business efficiency and innovation without undermining the basic tenets of good supervision and compromising industry best practices. To this end, it is the combined efforts of the government and stakeholders that contribute to the continued financial stability, resilience and integrity of Singapore's financial and business landscape, while promoting enterprise and innovation

In the final analysis, the policies and strategies vis-à-vis the control of economic crimes recognise the need to balance enterprise and accountability. It is recognised at the threshold that criminal infiltration of the commercial infrastructure of society is one of the fastest ways of undermining the fabric of society and the nation. Understandably, any infraction of laws and rules are dealt with swiftly, firmly and professionally. The energy against economic crime however, is not at the expense of imposing impractical burdens on commerce and industry. It is a matter of "fine tuning and striking a balance", which Tan Siong Thye appositely espoused in his paper presented to the International Symposium on Economic Crime in Cambridge.

Indeed, Singapore's unfaltering energy to fine-tune the system and judiciously strike a balance between enterprise and accountability has not gone unnoticed. International surveys, reports and rankings attest to the leading standards Singapore has achieved in containing economic crime, and to the premium she places on tenaciously preserving her integrity and reputation as a renowned international financial and business hub. Those very same international rankings highly extol, inter alia, Singapore's bureaucracy and her legal and regulatory framework for encouraging the competitiveness of enterprise and not hindering business activity.

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<sup>1</sup> Generally, the term “economic crime” in this article refers to serious offences that come about in business, trade or commercial transactions.

<sup>2</sup> The biennial survey was based on interviews of over 3,634 executives globally, 75 of whom were Singapore based.

<sup>3</sup> Sutherland, “White Collar Criminality” (Feb 1940) *American Sociological Review*, quoted in Amarjeet Singh S.C., “White-Collar Crime” (2004) 2 *Insight*, p3.

<sup>4</sup> A.Granitsas, “White-Collar Crime: Are your Employees Ripping you off?”, *Far Eastern Economic Review*, March 8, 2001, p.42, quoted in Singh, above fn.3.

<sup>5</sup> [www.economist.com](http://www.economist.com), “Insider Trading”.

<sup>6</sup> See Brent L. Bartlett, “Economic Research Report: The Negative Effects of Money Laundering on Economic Development”.

<sup>7</sup> “The Consequences of Money Laundering and Financial Crime”, by John McDowell, Senior Policy Adviser, and Gary Novis, Program Analyst, Bureau of International Narcotics and Law Enforcement Affairs, U.S Department of State.

<sup>8</sup> Address by the managing director of Monetary Authority of Singapore, Heng Swee Keat, at CAD Corporate Governance Conference on November 23, 2005.

<sup>9</sup> 75 Singapore-based executives were interviewed.

<sup>10</sup> The GCR 2005-2006 ranked Singapore in sixth position out of 117 countries, where the top ranking denotes an extremely rare degree of pervasiveness of money laundering through banks. The GCR 2004-2005 ranked Singapore in sixth position out of 104 countries, where again, the top position denotes an extremely rare degree of pervasiveness of money laundering through non-bank and informal financial channels.

<sup>11</sup> World Bank, *Doing Business in 2006: Creating Jobs* (International Finance Corporation, World Bank Group, 2006), pp 39.

<sup>12</sup> The SFA provides that if the act is partly committed in Singapore and partly committed outside Singapore, or if the act committed outside Singapore, has a substantial and reasonably foreseeable effect in Singapore, and if the act is an offence if it is committed in Singapore, the person who committed the act would be guilty of an offence.

<sup>13</sup> Singapore has made it mandatory for all persons to report to the authorities suspicious transactions that come to their attention in the course of their trade, profession, business or employment.

<sup>14</sup> The measures include the requirement for the casino operator to put in place a robust anti-money laundering programme which shall include know-your-customer due diligence, mandatory reporting for transactions above S\$10,000, record keeping for transactions above S\$5,000, mandatory reporting of suspicious transactions, and anti-money laundering training for the employees.

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<sup>15</sup> See *PP vs Chai Teck Leng* in <http://agclwb.agc.gov.sg>.

<sup>16</sup> The term “supervision” in this article, when used in isolation is intended to mean the broad oversight that includes both regulation and supervision.

<sup>17</sup> See Objectives and Principles of Financial Supervision in Singapore, Monetary Authority of Singapore (April 2004)

<sup>18</sup> *ibid.*

<sup>19</sup> *ibid.*

<sup>20</sup> World Bank, *Doing Business in 2007: How To Reform*, (International Finance Corporation, World Bank Group, 2006) p.6.

<sup>21</sup> In the category “Legal and regulatory framework encourages the competitiveness of enterprises”, Singapore was ranked second out of 61 economies surveyed. In the category “Bureaucracy does not hinder business activity”, Singapore was again ranked second out of the 61 economies surveyed.

<sup>22</sup> Opening address delivered by Singapore’s Minister for Home Affairs, Wong Kan Seng, at the International Economic Crime Conference in Singapore in 2001.

<sup>23</sup> See “Corporate Ethics, Emerging Challenges and Responses”, *Business Times*, p.34.

<sup>24</sup> *ibid.* p.18.

<sup>25</sup> In June 2005, five accused persons were prosecuted for various offences under the Companies Act, Penal Code and the Securities and Futures Act in relation to the saga. All five accused persons pleaded guilty to the charges and were punished with fines ranging between S\$150,000 and S\$400,000 and sentenced to imprisonment terms ranging between 24 and 51 months. In addition, China Aviation Oil Holding Company entered into a civil penalty settlement of S\$8 million with the MAS for breaching the SFA.

<sup>26</sup> “Singapore levies fines after firm hides loss”, *International Herald Tribune*, March 3, 2006.

<sup>27</sup> CAD was successfully awarded the People Developer Standard (PDS) in 2003. The PDS is Singapore’s national Standard for human resource and development. It is a quality Standard that gives recognition to organisations that invest in their people and have a comprehensive system for developing their staff. It is a three-year certification scheme that gives recognition to organisations that bring out the best in people for better business result.

<sup>28</sup> *Business Times*, July 14, 2003.

<sup>29</sup> The CAD Panel of Experts comprises, inter alia, experienced fund managers, investment advisers, industry practitioners in banking, finance, accountancy, captains of industry and academics.

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<sup>30</sup> *Straits Times*, December 17, 2005.

<sup>31</sup> *Corporate Ethics, Emerging Challenges and Response* is a compilation of speeches from the corporate governance conference organised by CAD in 2005.

<sup>32</sup> Opening Speech by Minister for Home Affairs, Wong Kan Seng, at the International Economic Crime Conference held in Singapore in 2001.

<sup>33</sup> Address by Senior Minister and Chairman of Monetary Authority of Singapore, Goh Chok Tong, at MAS Staff Seminar, on November 30, 2004.

<sup>34</sup> Speech by the Chairman of the Singapore Institute of Directors and Deputy Speaker of Parliament, Chew Heng Ching, at the Conference "Navigate your Company through the intricacies of Corporate Governance" on October 6, 2004.

<sup>35</sup> Address by the managing director of Monetary Authority of Singapore, Heng Swee Keat, at CAD Corporate Governance Conference on November 23, 2005.

<sup>36</sup> Speech by the then Deputy Prime Minister, Lee Hsien Loong, at the launch of the Council On Corporate Disclosure And Governance on August 16, 2002.

<sup>37</sup> Singapore was ranked 11 out of 61 countries surveyed.

<sup>38</sup> *Straits Times*, July 26, 2006.

<sup>39</sup> 'When CAD spells hope for better future', *Business Times*, Weekend Edition, July 8-9, 2006.

<sup>40</sup> Assistant director of Commercial Affairs Department. The views expressed in this article are entirely the author's personal views and they do not necessarily reflect the views of his office.