WHITE-COLLAR CRIME IN SINGAPORE

Then and Now

This article attempts to give an overview of what constitutes white-collar crime, highlighting some of the more significant milestones of such in Singapore's history, and perhaps also attempting to describe the trends which can be observed. It is perhaps a timely review, because the incidence of white-collar crime is escalating, as newspaper headlines bear this out regularly.

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I. Concept – What is white-collar crime?

1 Let's start off with getting the concept in focus. What is white-collar crime? The term "white-collar crime" itself has not been defined by judicial decisions in Singapore. It is also a term which has been used almost interchangeably with "corporate crime" or "business crime".

2 Academics have their differences in trying to define what constitutes corporate or white-collar crime. An American sociologist Edwin H Sutherland tried to define "'white-collar crime" as "crime committed by person of respectability and high social status in the course of his occupation".[1] The deficiency in this approach is that it seems to concentrate on the social status of the criminal instead of the nature and context of the offences concerned; such a definition would appear to suggest that all offences committed by persons of high social standing could, therefore, be classified as "white-collar crime", a proposition which presents obvious logical and semantic difficulties,[2] for an accountant or lawyer may also commit murder but no one would call such an act white-collar or corporate crime.

1 Edwin H Sutherland "White Collar Criminality" (1940) ASR 5 (February), as quoted by Amarjeet Singh SC in his article "White Collar Crime" (2002) 14 SAcLJ 231 at 231–232.

2 A difficulty also recognised by Amarjeet Singh SC in "White Collar Crime" (2002) 14 SAcLJ 231 at 231.

3 In 1970, a sociologist, Edelhertz,[3] proposed another definition as "illegal acts committed by non-physical means and concealment in order to obtain money or property or to obtain business or personal advantage". This is submitted to be a better working definition of what is otherwise an amorphous or over-broad concept.

4 One could, therefore, identify the crucial characteristics of white-collar crime as follows:

(a) Perpetrators: white-collar crimes are crimes committed by persons who are either the *directors, officers and employees of a corporation*,[4] or *professionals* serving such corporations.

(b) Context: white-collar crimes are crimes committed within a *predominantly corporate or business context*, and exclude those involving physical violence.

(c) Motivation: white-collar crimes are primarily motivated by and committed for the individual's quest for *illicit economic gains or business advantages*,[5] or to *conceal* either business losses or other forms of defalcations or non-compliance with regulations.

(d) Offences: white-collar crimes usually involve *offences* which involve the element of *dishonesty or fraud*, as it is through such dishonesty or fraud that property or business advantages are sought. This would be consistent with the fact that the predominant underlying motives of white-collar criminals are primarily economic.

II. Different types of white-collar crime

5 A study of cases falling within the above definition of white-collar crime would reveal that white-collar criminals may weave highly

3 Herbert Edelhertz, *The Nature, Impact and Prosecution of White Collar Crime* (1990), as quoted by Amarjeet Singh SC in "White Collar Crime" (2002) 14 SAcLJ 231 at 232.

4 Corporations, *ie*, commercial undertakings, as opposed to political office, public service or governmental milieu. As such, this discussion would necessarily exclude discussion of bribery and corruption.

5 We thus further exclude from this discussion offences *by corporations as such* against competition laws, anti-trust laws, customs and tax evasion, contraventions of import/export laws, duties evasion, failure to file returns, evasion of industrial safety, health, pharmaceutical or environmental regulations, cost/quality-cutting, engaging in false product/service descriptions or unrealistic promises, fraudulent advertising, "mis-selling" of high risk financial instruments, spurious product claims, money-laundering. *etc. Ie*, these are misdeeds committed by the corporations themselves against society's regulations, and are thus, ironically, not usually considered as "corporate crime" or "white collar-crime".

complex schemes, and employ even more highly sophisticated means of concealing their wrong-doings and even creating deliberate misdirection for the investigators. White-collar crimes in Singapore as such usually entail one (or are complexes of more than one) of the following offences: "classic" Penal Code[6] offences such as forgery, cheating and criminal misappropriation ("CBT"), followed by Securities and Futures Act,[7] Companies Act[8] and Computer Misuse Act[9] offences.

III. Prevalence of white-collar crime

6 With economic development and the lure of living the high life, it comes as perhaps no surprise that a significant number of companies have been victims of white-collar crime. In 2007, nearly one in four of Singapore's larger companies was hit by fraud.[10] The amounts involved were also increasing – from an average of S$1.4m per incident in 2004 to S$4.4m per incident by 2007.[11] The majority of the perpetrators appear to do so for materialistic reasons: about 70% committed their crimes to fuel a lifestyle beyond their means.[12] It is, therefore, vital for all stakeholders in corporate governance to appreciate what constitutes white-collar crime, draw lessons from the historical examples, strengthen the systems and institutions of prevention, and have an effective risk management culture.

IV. Offences underlying white-collar crime

7 This article shall attempt to survey the types of offences entailed in white-collar crimes in Singapore's legal history by discussing such crimes according to the categories of offences under which they fall.

A. Forgery, false entries and cheating

8 In numerous instances, creating forged or false documentation and/or false entries in accounts are required to defraud or evade internal or external scrutiny or audit of corporate undertakings. Such false documents or entries serve to conceal or divert attention from dishonest

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6 Cap 224, 2008 Rev Ed.
7 Cap 289, 2006 Rev Ed.
8 Cap 50, 2006 Rev Ed.
9 Cap 50A, 2007 Rev Ed.
10 KPMG, "Singapore Fraud Survey Report 2008", *The Straits Times* (25 July 2008) at p H38.
11 KPMG, "Singapore Fraud Survey Report 2008", *The Straits Times* (25 July 2008) at p H38.
12 KPMG, "Singapore Fraud Survey Report 2008", *The Straits Times* (25 July 2008) at p H38.

deeds undertaken with the aim to siphon monies out of a business or concern. Forgery and cheating – both dishonest acts by themselves – are arguably the most common denominator of corporate crime. The "dishonesty" consists of intentionally causing wrongful loss to others or wrongful gain for oneself. It is, therefore, only proper to begin our discussion by focusing on the related concepts of forgery, false account entries and cheating.

B. Related concepts – False entries in accounts

9 Whilst it is true that the making of a false document as such without the intent to cause damage to the public or to a person would not amount to forgery, the making of false entries in accounts (defined comprehensively in s 477A of the Penal Code)[13] constitutes a complete offence in itself, punishable with up to ten years imprisonment or fine or both.

10 It should be noted that the falsification of accounts constitutes a complete offence by itself, whether or not the falsifications were used or intended for the purposes of carrying out further acts of either cheating or criminal breach of trust.

C. Cheating

11 Since one of overwhelming motives of corporate crime is to achieve illicit personal gain, the offence of cheating may be said to be one of the central motives underpinning or explaining corporate crimes.

D. Criminal breach of trust

12 Together with cheating (discussed above), criminal breach of trust – conveniently and commonly abbreviated as "CBT" – is also an offence often encountered in any discussion of white-collar crime.

13 Wrongful loss in CBT usually entails an outright appropriation of company assets or property. However, disposal of company property at a deliberate undervalue to relatives,[14] or intentionally discarding or abandoning property belonging to another,[15] have also been held to be wrongful loss constituting dishonest misappropriation.

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13 Cap 224, 2008 Rev Ed.
14 *Tay Choo Wah v PP* [1976] 2 MLJ 95.
15 *Tong Keng Wah v PP* [1979] 2 MLJ 152.

14 One of the ways in which CBT may be committed, even without wrongful gain enjoyed on the part of the accused, is for the accused to dispose of the property otherwise than in the manner or purpose for which the property had been entrusted to him. There should be some degree of specificity or exactitude in the definition of such prescribed manner or purpose.[16] A general breach of director's duties under the Companies Act[17] or even negligence[18] need not necessarily amount to CBT. On the other hand, a director or shareholder may be entitled to profits, but if the monies were to be withdrawn in a manner or procedure contrary to the procedures laid down by the Companies Act, CBT may well be committed.[19]

E. Other common offences involved in white-collar crime

15 With the development of Singapore's economy and with the attendant rise in the level of sophistication of commercial life, the Legislature was constrained to keep pace. This resulted in the enactment of numerous new statutes (as well as the refinement/amendment of existing statutes) to regulate many new areas of commercial activities. This is usually achieved by the criminalisation of certain acts or misdeeds perceived as socially undesirable.

16 Thus, eventually, the other common offences involved in white-collar crimes have come to include contravention of various provisions of the following statutes:

(a) Bankruptcy Act;[20]

(b) Commodity Trading Act;[21]

(c) Companies Act;[22]

(d) Computer Misuse Act;[23]

(e) Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act;[24]

(f) Financial Advisers Act;[25]

16 See, for illustration of this principle, *Mohamed Adil v PP* [1967] 1 MLJ 151.
17 *Cheam Tat Pang v PP* [1996] 1 SLR 541. For a more detailed discussion of this issue see *Butterworths Annotated Statutes of Singapore* vol 2 (Butterworths, 2001 Ed) at pp 616–617.
18 *PP v Mohd bin Abdul Jabbar* [1948–9] MLJ Supp 74.
19 *Lai Ah Kau v PP* [1988] 3 MLJ 391.
20 Cap 20, 2000 Rev Ed.
21 Cap 48A, 1993 Rev Ed.
22 Cap 50, 2006 Rev Ed.
23 Cap 50A, 2007 Rev Ed.
24 Cap 65A, 2000 Rev Ed.
25 Cap 110, 2007 Rev Ed.

(g) Multi-Level Marketing and Pyramid Selling (Prohibition) Act;[26]

(h) Securities and Futures Act.[27]

V. Significant cases

17 Some of the more historically significant cases of white-collar crimes in Singapore include the following.

A. Gemini Chit Fund case – Criminal breach of trust

18 Very few people below the age of 60 now will remember this saga. However, it represents a seminal moment in the modern history of white-collar crime in Singapore and it would serve us well to commence our overview with this case.

19 In 1964, an enterprising man called Abdul Gaffar Mohamed Ibrahim founded the by now infamous Gemini Chit Fund Corporation Ltd as a private limited company. Such schemes are historically practised in rural societies.

20 A Chit Fund is an informal or primitive system of micro-financing (in modern parlance). It acts as both a loans and deposits scheme in which members are both investors and borrowers. Members put their savings into a common pool, within prescribed or agreed periods. At the end of each period or credit cycle, the pooled funds are auctioned and the bidder with the lowest bid wins. Such schemes in its historical context usually operated at a personal level, as a quasi-credit co-op between friends or villagers. However, the Gemini Chit Fund attracted public subscription and in the end enrolled up to 40,000–50,000 members. The lure was the promise of unusually high returns on investment. In 1973, Abdul Gaffar was charged with three counts of criminal breach of trust amounting to $3.2m. The loss resulting from his crimes was estimated at $50m. In sentencing Gaffar to life imprisonment, Choor Singh J then dubbed the case "the swindle of the century". This case marked the biggest white-collar crime – the pioneer, as it were, in Singapore's White-Collar Crime Roll of Infamy – in the 1970s. It has been cited as a sentencing precedent as recently as 2002: in *PP v Lam Chen Fong*,[28] Tay J commented:

> Various cases decided here and elsewhere were cited for my guidance. The Gemini Chit Fund case in 1973, described by Choor Singh J as the

26 Cap 190, 2000 Rev Ed.
27 Cap 289, 2006 Rev Ed.
28 [2002] 4 SLR 887 at [22].

'swindle of the century', was one of them. There Abdul Gaffar Mohamed Ibrahim, the managing director of Gemini Chit Fund Corp Ltd, pleaded guilty to three charges of criminal breach of trust of S$3.2m under s 409 of the Penal Code and was sentenced to life imprisonment. There were 40 to 50 thousand members of the public participating in the chit fund and the loss was estimated at S$50m.

21 The Gemini Chit Fund case was the Big Bang in the dawn of the modern history of white-collar crime in Singapore. In terms of its massive and sudden social impact, of the sheer quantity involved, the number of small individual depositors ruined, the public unrest (even panic) which it engendered, and the severity of the sentence meted out to the accused involved, it was unprecedented. Conservatively, S$50m in 1973 would probably amount to S$117.50m in 2007,[29] making it one of the all-time largest criminal debacles in Singapore history even when compared with more modern examples.

B. Tan Koon Swan v PP[30] *(the historic shut down of the Stock Exchange of Singapore)*

22 Pan-Electric was listed on the local exchange in 1968. Its main business was then the manufacture of refrigerators. It also diversified into shipbuilding, salvaging and property businesses. In March 1985, through share swaps with Sigma Metal and Grand United Holdings, Pan-Electric joined the Malaysian tycoon-politician Mr Tan Koon Swan's ("TKS") business empire. Incidentally, TKS was the then Chairman of the Malayan Chinese Association, a leading Chinese-based political party in Malaysia and a component of ruling Barisan-Nasional coalition. Pan-Electric was a controversial company whose stock was nevertheless followed closely by punters. It had wildly swinging earnings figures caused by the uncertainties and vagaries of the salvaging industry, on the back of worsening debt-equity ratio. On 18 November 1985, Pan-El finally defaulted on a S$7.3m loan, and on the next day, Pan-El voluntarily requested SES and KSE to suspend its shares. Receivers were soon appointed, and SES officials on 2 December 1985 made the historic decision to suspend all trading on SES to forestall panic dumping which threatened to wipe hundreds of millions off the exchange. *The SES was not to open its portals for trading until three days later.*

23 Tan's case was the first ever case of stock manipulation in Singapore which went to the extent of shutting down the said stock

29 According to the official MAS consumer price index inflation calculator <http://www.mas.gov.sg/eco_research/Inflation_Calculator.html> (accessed 2 February 2009).

30 [1986] SLR 126; [1986] SLR 401.

exchange, and is representative of the trend of white-collar crimes becoming increasingly sophisticated and dramatic.

24 Initially slapped with 15 charges, in the end an agreement was reached whereby only one count was proceeded upon (*ie*, of TKS charged with abetting Pan-El finance director Tan Kok Liang to commit CBT of about S$145,000 which belonged to Pan-El), with TKS sentenced in the High Court by Justice Lai Kew Chai to two years' imprisonment and a $500,000 fine. The remaining 14 charges were withdrawn. The amount embezzled was applied to pay the interest on 3 million Grand United Holding shares bought by a Pan-El subsidiary, Orchard Hotel. The purchase of the shares by Orchard Hotel was in turn part of a scheme to artificially boost the Grand United Holding share price. The sentencing judge, Justice Lai Kew Chai, ruled that he could not view the offence as such in isolation, but in the wider context of stock market manipulation. Justice Lai held that such market manipulation struck at the very heart of integrity, reputation and confidence of Singapore as a commercial city and financial centre, thus justifying the hefty custodial term.

C. Teo Cheng Kiat (the famous SIA heist)

25 Teo Cheng Kiat was then a 47-year-old former employee of Singapore Airlines Ltd ("SIA"). He joined SIA in 1975 as a clerk, and eventually rose to be a Supervisor in the Cabin Crew Division, Administration Services Department, drawing a relatively modest monthly salary of almost $3,000.

26 Teo's case was the first major (as in involving huge amounts) white-collar crime case involving computers, which had by the 1980s become essential to the operations of big corporations. However, though the technological aspects of computerisation are well known and well applied, Teo's case presented a painful lesson to all involved in corporate governance: the more sophisticated a computer system, the less one can rely on a single person to run it.

27 He was entrusted with the authority to process and cause payments to be made in respect of such cabin crew flight allowances through a computer program. Teo was responsible for the data processing operations of his four subordinates so that allowances for the airlines cabin crew could be paid on time. He had access and was authorised to make adjustments to the Cabin Crew Allowance System, a computer program. He could determine the name of the crew member who was to be paid, the amount payable and the receiving bank account number. A particular type of allowance (the Meal and Overnight Allowance), which was tax-free and payable only to cabin crew, was processed and paid directly to the cabin crew by the accused's

department. Each crew member maintained a bank account with Overseas Union Bank Ltd ("OUB") and the money paid would be transferred by the bank from the airlines account to the respective crew member's account directly.

28 By means of his authority over the computerised payment system, he dishonestly misappropriated numerous amounts from the airlines bank account with OUB by causing them to be paid to bank accounts which were in his name or controlled by him. The bank accounts which were controlled by the accused included a joint account in the names of the accused and his wife, Tan Lay Bee, one in the names of his wife and her sister, Tan Leh Kheng, and one account in the name of his wife. The 25 CBT charges covered a time span of 13 years from February 1987 to January 2000 and involved a total sum of $34,955.064.55. The ten CBT charges on which the accused was convicted involved a total sum of $31,019,452.10.

29 The accused's work was supposed to be checked and verified by the accused's two immediate supervisors, but as the reports were voluminous, it was impractical to check all the payments.

30 Random checks were expected to be made. However, even if checks had been made, there was no way the supervisors could verify all the details keyed in by the accused. His supervisors were also blindsided because the accused falsely altered a computer-generated report printed daily which contained all the adjustments made to crew allowances for that day. The altered report would not reflect the fictitious adjustments made, the total number of adjustments made or the total amount involved in the adjustments. It was as if he held his private key to SIA's exchequer.

31 Using the above method, the accused systematically channelled money into his OUB accounts.

32 He pleaded guilty to ten charges of CBT under s 408 of the Penal Code. Fifteen other similar charges and one charge under s 43A of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act were admitted by him and taken into consideration for the purpose of sentencing.

33 At the conclusion of investigations, S$14m remained unrecovered. He was sentenced to be imprisoned for a total of 24 years. Statistically, for every $3,424.65 he stole from SIA (he took a total of some $30m) he has been made to serve a day in prison.

D. PP v Chia Teck Leng *(Asia Pacific Brewery case)*[31]

34 Chia was the Finance Manager of Asia Pacific Breweries (Singapore) Pte Ltd ("APBS"'), a wholly-owned subsidiary of the listed company, Asia Pacific Breweries Limited. Sometime between 1998 and early 1999, before he joined APBS, the accused lost heavily in gambling and accumulated gambling debts amounting to more than S$1m. In order to open bank facilities in the name of his employer with various commercial and merchant banks, Chia forged numerous documents including certified extracts of directors' resolutions which purportedly authorised him, as sole signatory, to receive the credit and loan facilities provided by the said banks, sign all transactions and operate the bank accounts, on behalf of APBS. Chia also forged the signatures of various directors of APBS by obtaining their signature specimens from APBS annual reports and other internal documents. The accused obtained, by using forged documents and signatures, loan and credit facilities amounting to S$159m collectively from these banks, out of which he made withdrawals of US$73m (approximately S$116m).

35 The Prosecution preferred 46 charges against Chia, amongst which six counts under s 467 of the Penal Code (forgery of a valuable security) and eight counts under s 420 (for cheating) were proceeded with. Another 32 charges were taken into consideration.

36 Less the amount which the Commercial Affairs Department ("CAD") could trace and retrieve, the final, irrecoverable loss to the victims amounted to S$62m. Chia was sentenced to a total of 42 years' imprisonment.

37 Chia's crimes held the record as the worst case of corporate fraud (measured in terms of the amount of money involved and lost) until the Citiraya and EC-Asia cases (discussed below).

E. *Nick Leeson (the man who broke the Barings Bank)*[32]

38 Barings plc was the English incorporated company of the group. It is one of the oldest banks in Britain, and a venerable financial institution which supposedly enjoyed the Queen's patronage. In addition to its business of banking and asset management, Barings plc, through its direct and indirect subsidiaries, conducted securities and

31 [2004] SGHC 68.

32 As there is no reported judgment of the Nick Leeson case in the official reports, the account of this infamous incident is taken from the law report of a subsequent civil suit, *Baring Futures (Singapore) Pte Ltd (in liquidation) v Deloitte & Touche (a firm)* [1997] 3 SLR 312, as well as from *Sentencing Practice in the Subordinate Courts* (LexisNexis, 2nd Ed, 2003) at pp 475–476.

futures trading. Barings Securities Ltd ("BSL") was an indirect subsidiary of Barings plc. BSL and its subsidiaries carried on securities and futures trading. It engaged in agency trading and trading on its own account or "proprietary" trading. Baring Futures (Singapore) Pte Ltd was an indirect subsidiary of BSL and was the employer of one Nicholas Leeson ("Leeson"), better known now as Nick Leeson.

39 Leeson was employed in April 1992. By early 1993, he was appointed as BFS's general manager. He was alleged to be in charge of trading as well as the "back office" of BFS which was responsible for settlements by or in favour of BFS in its trading. In that position, he could, as he did, manipulate the accounting and reporting records. Leeson resigned a few days before the collapse of the Barings group on 26 February 1995.

40 Leeson had over a period of time indulged in unauthorised trading, betting on the Nikkei Stock Average, which resulted in losses for three years from 1992 to 1994 of £2.1m, £24.4 and £215.5m respectively. Spectacularly the losses mounted, especially following the collapse of the Nikkei after the Kobe earthquake on 7 January 1995. The losses ballooned to £248.6m by 31 January 1995 and then £848.5m by 26 February 1995. The losses exceeded the value of Baring plc's shareholders' funds. Apparently, BSL and Baring Securities (London) Limited (BSLL), a subsidiary of BSL, also funded the trading of BFS.

41 Leeson hid his losses in an account which was purportedly started as an error account. From 26 August 1992, the account was entered with Simex as a BSL account. It was further alleged that Leeson caused BFS's computer consultant to delete all references to the account in all the computer feeds sent to London, except the margin file. To induce London to remit funds he needed, it has been alleged that he falsely claimed that they were for "additional margin calls".

42 As a result of the colossal losses, the principal companies in the Barings Group were put into administration in England. As it turned out, the entirety of Baring's business in banking, asset management, securities and futures were sold to Internationale Nederlanden Groep NV ("ING") for a nominal consideration upon ING's undertaking to discharge certain specified liabilities. In this case, the Prosecution elected to proceed on:

> (a) one charge under s 417 of the Penal Code for the accused cheating Barings' external auditors by deceiving the latter into believing that Barings was paid ¥7.778b by another party by presenting altered documents to Barings' said external auditors, who as a consequence was misled into granting Barings an unqualified audit clearance in Barings' annual audit.

(b) One charge under s 420 of the Penal Code involved the accused misrepresenting (by grossly under-declaring by an order of almost 4.5 times) to SIMEX the "final long position" held by Barings on a particular date, and by such deception caused SIMEX to pay Barings US$11.4m.

43 Nine other charges (a mixture of s 420, s 468 and s 417 of the Penal Code) were taken into consideration in sentencing. The Prosecution also levied costs of S$150,000. Leeson was sentenced to a total of six and a half years' imprisonment. The court accepted that he did not profit financially directly from the offences.

44 Although the final charges preferred against Leeson involved relatively modest sums, the effect of what Leeson wrought was drastic: the demise of one of England's oldest banks. This case was a spectacular example of how one single miscreant's misdeeds – relatively unchecked by his superiors who are supposed to supervise him - can in a relatively short period of time destroy a highly respected and apparently viable enterprise, giving rise to – in a manner of speaking – a negative example of the David and Goliath scenario.

F. The Citiraya case (criminal breach of trust)

45 The company in question was in the business of recycling electronic and industrial waste materials and extracting usable metals from the said waste. The corruption charges involved the accused assisting his brother (who was the general manager of the said company) by bribing the employees of suppliers of such waste/condemned electronic scrap so that the said scrap due for crushing was diverted from the crushing process and resold to overseas syndicates, which then repackaged the said scrap as *bona fide* products and distributed them to overseas markets for sale. The bribery served to neutralise the highly elaborate procedures which the suppliers of the scrap (most of which were electronic chip manufacturers) had put in place to ensure that chips declared as scrap were properly crushed and not resold onto the market as such chips. In respect of the CBT charges, the accused had abetted his said brother by intentionally aiding him to commit CBT of Citiraya's property, to wit, by diverting scrap in the possession of the said company to Taiwan and Hong Kong buyers. The portion of highly valuable scrap was exported to overseas buyers in 27 shipments, weighing a total of about 25,600kg and with a total invoice value of about US$22m. Finally, in respect of the falsification charges, the accused was persuaded by his said brother to create false sales invoices in order to, *inter alia*, meet sales targets, conceal the profit from the sale of illegally retained electronic chips to others, create a series of false sales, *etc*. This was done with the intention to, firstly,

inflate Citiraya's deteriorating sales figures, and secondly, camouflage the sale of diverted electronic scrap.

46 In consequence, Citiraya was put into jeopardy. Trading of Citiraya's shares on the SGX Mainboard was suspended for a time, and the company's share price plummeted. This was detrimental to shareholders' value and the investing public. The client companies' reputations were also adversely affected when their defective products, which ought to be have been scrapped by Citiraya, were instead repackaged and sold as *bona fide* products.

47 This is another case of corporate wrong-doing on a grand scale which occurred in the recent history of Singapore. The accused, Ng Teck Boon, was the assistant general manager of Citiraya Industries Ltd ("Citiraya"), a listed company. He faced a total of 193 charges, including abetting corruption, CBT as a servant, abetting theft as a servant and abetting falsification of accounts under the Penal Code. He was sentenced to a total of eight years' imprisonment.

48 Ng's elder brother, Teck Lee, who was the general manager, became a fugitive from justice from the moment the matter came to light in January 2005. He is believed to have taken as much as S$72m from Citiraya, being proceeds of the sale of electronic scrap sent to the said company for recycling but which was then resold as aforesaid to foreign buyers. At the time of writing, Teck Lee remains at large.[33] The amount involved meant that this was the largest case of white-collar crime ever committed in Singapore, a record which it would hold until the EC-Asia case in 2008 (see below).

49 This case also vividly illustrates that white-collar crimes are seldom simple in the sense of involving only one type of charge. This case is almost a perfect example of the fact that, in the attempt to achieve the criminal's aims, which may be anything from depriving the company of its just profits and withdrawing it illegally, creating false accounts to obfuscate the foregoing misappropriation, creating a false impression to shareholders and the public, corruption being used to cover up the misdeeds, *etc*, a wide variety of offences would be committed to that end. This case also highlights the unfortunate fact that if a sufficient number of persons occupying senior positions in a company – even a listed company such as Citiraya with more elaborate audit, reporting and corporate governance systems in place – are determined to commit serious offences such as forgery and corruption to achieve their illegal aims, all such audit, reporting and corporate governance systems can and were in fact circumvented.

33 *The Straits Times* (15 August 2008).

VI. Pending cases to watch out for

50 As the worldwide banking and financial crisis worsens, the economy continues its present tailspin and the general business environment deteriorates, one can be sure that more and more such crimes would surface as the degree of desperation worsens. Experience tells us that, sadly, it is only to be expected that when the water level in a pond descends, the junk and debris at the bottom of the lake would surface in the light of day. So, too, when general market liquidity dries up and businesses begin to falter, crimes and misdeeds would begin to show up, as the recent case of Bernard L Madoff Investment Securities LLC in the US so aptly illustrates. We wrap up this article by highlighting for the reader's notice three cases in which there may be interesting developments in the months to come.

A. Sunshine Empire case[34]

51 In November 2007, the news broke in *The Straits Times* that the CAD had commenced investigations into multi-level marketing company, Sunshine Empire, which is believed to have attracted 20,000 participants since 2006. The said firm invites participants to become vendors of goods ranging from electronics to health supplements, promising potentially large "rebates" purportedly based on the participants' cash outlay as well as the firm's global performance. On 3 February 2009, after long investigations, a very interesting cocktail of charges involving rather exotic and rarely seen charges were preferred against the main protagonists of Sunshine Empire and its related companies. James Phang, the consultant and manager, was charged with 20 charges which included – in addition to the more "traditional" or common charges of criminal breach of trust and making false accounts – offences under respectively:

(a) s 340(5) of the Companies Act[35] – carrying on the business of the company with intent to defraud creditors of the company or creditors of any other person or for any fraudulent purpose;

(b) s 199 of the Companies Act – failure to maintain proper accounts and records of the company;

(c) s 401(2A)(*b*) of the Companies Act – authorising another person to lodge or file with or submit to the Registrar of a document which is false or misleading in a material respect.

34 <http://www.cad.gov.sg/topNav/faq/Sunshine+Empire+Pte+Ltd.htm> (accessed 2 February 2009), and also *The Straits Times* (November 2007 and 12 April 2008).

35 Cap 50, 2006 Rev Ed.

52 *The Straits Times* on 4 February 2009 reported the Prosecution as claiming that Sunshine generated revenue of up to $189m between August 2006 when it was set up and November 2007. The same report alleged that "central figures [of the said company] were running a Ponzi-like scheme involving many millions of dollars raised from members of the public".[36] Phang's wife, Sunshine's President (Asia Pacific) and a director of Empire Investment Group, also faced an assortment of related or similar charges.

B. OilPods[37] sale case

53 On 10 October 2008, the *Today* newspaper reported that the Consumer Association of Singapore is writing to MAS and CAD to request an inquiry into the OilPods case. It was reported that there may be some 2,000 investors in Singapore and surrounding countries who have invested – *vide* OilPods – US$46m in "working interests" in oil and gas leases by a US company named Powder River Petroleum International, which has since gone into receivership. The US Official Receiver's initial report in August 2008 alleged that Powder River had misled OilPods and others by making monthly payments to investors *using fresh funds received from new investors* and not from profits generated from oil and gas as expected. This appears to be the usual characteristic of what is known in the market as a pyramid scheme. Powder River is currently under investigation by the Oklahoma Department of Securities and the Receiver's report dated 7 August claimed that the firm's chief executive, Brian Fox, had acted in a fraudulent manner: "During 2007, a total of US$4.4 million in interest payments were made to those investors, of which US$3.3m came from funds received from subsequent investors, not profits generated by the company from oil and gas production."

54 A pyramid scheme – as it is understood by local law[38] – is:

> …. any scheme or arrangement for the distribution or the purported distribution of a commodity whereby –
>
> (a) a person may in any manner acquire a commodity or a right or a licence to acquire the commodity for sale, lease, licence or other distribution;
>
> (b) that person receives any benefit, directly or indirectly, as a result of –

36 *The Straits Times* (4 February 2009) at p A4.
37 *Today* (29 August 2008 and 10 October 2008) at p B5.
38 Multi-Level Marketing and Pyramid Selling (Prohibition) Act (Cap 190, 2000 Rev Ed) s 2.

(i) the recruitment, acquisition, action or performance of one or more additional participants in the scheme or arrangement; or

(ii) the sale, lease, licence or other distribution of the commodity by one or more additional participants in the scheme or arrangement; and

(c) any benefit is or may be received by any other person who promotes, or participates in, the scheme or arrangement (other than a person referred to in paragraph (a) or an additional participant referred to in paragraph (b)).

55 At the time of writing, OilPods and Powder River Petroleum International appear to be exchanging recriminations: OilPods chief executive, Mark Chang, alleges in his firm's petition that Powder River made false and misleading statements about its securities in oil and gas leases since 2003, which convinced the Singapore firm to market these securities to investors here. When asked what it is doing to assure investors, OilPods said: "The investors had entered into contract with Powder River directly to purchase working interest from Powder River. OilPods is in no position to assure investors of Powder River's obligation to [them]."

B. EC-Asia case ("Largest" corporate fraud case in Singapore history)

56 On 9 October 2008, it was reported[39] that Kelvin Ang Ah Peng, the chief of delisted memory chip recycler, EC-Asia, was charged with a record number of 687 charges[40] involving an astonishing US$372.2m (S$545m) – making this one of the biggest corporate scandals here to date.

57 If the allegations are proved to be true, it would mean that it is the first case to exceed the half billion dollar mark, a new high watermark in the history of white-collar crime in Singapore.

58 Ang is being charged with pretending to buy and sell integrated circuit chips, and inducing banks to deliver sums of money for these purchases or sales. He was also charged with allegedly conspiring with another person to remit US$81.7m of the company's ill-gotten gains from Hong Kong to Singapore; as well as charged with falsifying revenues in EC-Asia's initial public offering ("IPO") prospectus in 2003.

39 *The Straits Times* (9 October 2008).

40 Six-hundred and seventy-two charges of cheating various banks, 13 charges of instigating EC-Asia to cheat various banks, one charge of overstating revenue of the company in its IPO prospectus, and a charge of conspiring to "remit ill-gotten gains".

He is alleged by the Prosecution to have overstated the company's revenue by 40% for the 2002 financial year and by 10% for the previous financial year.

59 EC-Asia's troubles came to light only last year when KPMG was appointed to look at restructuring its debts after one of the company's bankers, HSBC, sued it for US$3.2m. KPMG found that the firm made three-quarters of its purchases from only three Hong Kong firms. Similarly, 93% of its sales were made to just three firms – two of which were also its suppliers. According to the aforesaid report,[41] Mr Neo, who has since joined another firm, said EC-Asia's operations consisted of passing the same stocks back and forth between Singapore and Hong Kong without any reprocessing.

VII. CONCLUSION

60 Common experience has shown us that white-collar crime is an all seasons crime. The larger scams of astounding proportions are a product of bubble economies, like the present one unfolding in the US in which Bernard Madoff, a well known and trusted Wall Street confidante to the rich and influential, seeking high returns, ruthlessly gulled them all of some US$50b through slick schemes. A big name it is said, who has a good story to tell, will attract the greedy, who only belatedly learn that greed impairs judgment and that there are enough con-men in different uniforms waiting in a make-believe world to exploit them. With global reach available today, such influence can extend to every financial market.

61 Is there a solution then to containing white-collar crimes involving large sums? What about the comparatively smaller sums? Will anything work at all? What has the Singapore experience of white-collar crime taught us in Singapore? These are difficult questions because the white-collar criminal presents us with an imponderable as he is usually regarded as a trusted person by his peers. Nevertheless, some suggested solutions may be voiced:

(a) The CAD with its history and investigative knowledge of white-collar criminal activity should undertake a thorough threat assessment study of the crime with accountants and criminal practitioners in the field participating.

(b) Additionally, an Association of Certified Fraud Examiners, a trade body for fraud investigation (as in the US), should be formed by accountants practising in the area to constantly pool and disseminate their knowledge to the

41 *The Straits Times* (9 October 2008).

corporate world. In the US, the Association has reported, for instance, that only half the companies they studied are taking preventive fraud measures. Such a body can help attain a higher level of vigilance in Singapore.

(c) There should be regulation for transparency and greater oversight of the yet nascent hedge-fund activity in Singapore which, unchecked, can harm us as a major reputable financial centre in Asia. No doubt hedge funds will seek new strategies in the present testing times. Therefore, valuations must be substantiated properly.

(d) Institutions and financial advisers that sell sophisticated financial products should be required by law to practise due diligence, *ie*, know exactly what they are selling before passing on inherent risks to the less worldly but trusting investor, and be made accountable if scams emerge. The licensing status of the provider of the products and services is, alone, an insufficient safeguard. There must also be established conduct standards specific to the different products and services sold, with oversight and enforcement by dedicated departments set up in perhaps the Monetary Authority of Singapore. Financial services should not be allowed to degenerate into something akin to selling snake oil.

(e) Companies should follow the trend of fraudulent practices and defalcations exposed in other companies, wherever situate, with similar businesses and learn from the mistakes of those companies.

(f) The Singapore experience shows, on the face of most cases, that false invoices, false purchase orders and false records are the prevalent cause of fraud. The senior officers who approve these and similar documents need to take considerable care towards ensuring that the documents are dealing with genuine transactions. Accountants should do sample studies where the facts or trends in business appear suspicious.

(g) Business schools in the West are beginning to get serious about instructing graduates undergoing business studies in such schools on ethics. Apart from regular subjects on ethics, they have asked convicted white-collar criminals to address such classes. Nick Leeson, for example, recently gave a lecture at the School of Business at the University of Western Ontario, Canada. The idea additionally is to get the criminals to tell of their ordeals and the lessons they have learned from their mistakes in the hope of moulding the business students' mind-set towards ethical practices in a telling way. Our business schools could follow suit.

(h) To complement these, the undertaking of financial education through lectures, discussion and other courses should be undertaken as a priority. A regular journal or paper on financial education should be introduced for the community, perhaps by Securities Investors Association (Singapore) ("SIAS").

62 All too often, the current regulatory regime suffers massive failings and fraud, ruining numerous sundry investors and causing untold suffering not just to the investors but also their children, families and dependants. In the final analysis, society itself may be compelled to bear the cost of such failings. It is, therefore, hoped that some of the above suggestions may be looked at by the authorities with a view to reforming the regulations underpinning corporate governance and financial services.