

# Government Investigations

*Contributing editors*

David M Zornow and Jocelyn E Strauber



2019

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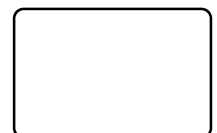


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# Malaysia

Chong Yee Leong

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## Enforcement agencies and corporate liability

### 1 What government agencies are principally responsible for the enforcement of civil and criminal laws and regulations applicable to businesses?

The responsible government agencies include the Securities Commission Malaysia (SC), the Companies Commission of Malaysia (CCM), the Malaysian Anti-Corruption Commission (MACC) and the Central Bank of Malaysia (the Central Bank).

### 2 What is the scope of each agency's enforcement authority? Can the agencies pursue actions against corporate employees as well as the company itself? Do they typically do this?

The SC's powers of enforcement are over offences related to the issuance of securities or financial instruments, while the CCM has sole jurisdiction over the Companies Act 2016 (the Companies Act), namely the fiduciary duties of the directors of companies. The Central Bank conducts surveillance and investigates illegal financial schemes, while the MACC investigates and prosecutes corruption in the public and private sectors pursuant to the Malaysian Anti-Corruption Commission Act 2009 (the MACC Act). In some cases, the question remains open as to whether the offenders are the bodies corporate or the personnel; therefore, it is up to the enforcement officers to strategise about whether to select the personnel or bodies corporate as the targets of the prosecution based on the likely chances of success. Agencies can pursue actions against corporate employees as well as the company. For instance, under section 46 of the Employees Provident Fund Act 1991, the directors and the company may be held jointly liable for unpaid contributions by the company. However, agencies will usually pursue actions against corporate employees rather than the company itself, as the chances of a successful prosecution are higher and because most of the statutory provisions in Malaysia appear to target the personnel rather than the bodies corporate.

Under the Malaysian Anti-Corruption Commission (Amendment) Act 2018 (MACC Amendment Act), which was gazetted on 4 May 2018, but has yet to come into force, an additional section 17A will be inserted into the MACC Act. The new section 17A will allow a commercial organisation to be held liable where a person associated with the organisation corruptly gives, agrees to give, promises or offers to any person any gratification, whether for the benefit of that person or another person, with the intent to obtain or retain business for the commercial organisation, or to obtain or retain an advantage in the conduct of business for the commercial organisation. Where an offence is committed by a commercial organisation, a person who is its director, controller, officer or partner, or is concerned in the management of its affairs at the time of the commission of the offence, is deemed to have committed that offence.

Any commercial organisation that commits an offence under this section shall be liable on conviction to a fine of no less than 10 times the sum or value of gratification, where such gratification is capable of being valued or is of a pecuniary nature, or 1 million ringgit, whichever is higher; or to imprisonment for a term not exceeding 20 years; or to both.

### 3 Can multiple government entities simultaneously investigate the same target business? Must they coordinate their investigations? May they share information obtained from the target and on what terms?

Multiple government entities can simultaneously investigate the same target business. The relevant enforcement agencies usually have in place formal and informal mechanisms to ensure coordinated enforcement. These mechanisms usually include joint investigations, sharing of investigation findings and instituting joint charges where offences cut across two or more enforcement agencies.

### 4 In what fora can civil charges be brought? In what fora can criminal charges be brought?

Both civil and criminal charges can be brought in court. Civil actions can be brought in the commercial courts, while 14 dedicated sessions courts have been assigned to hear cases involving criminal charges, with a view to expediting prosecution involving white-collar crimes, corruption and market misconduct offences.

### 5 Is there a legal concept of corporate criminal liability? How does the government prove that a corporation is criminally liable for the acts of its officers, directors or employees?

It is possible for corporations to be prosecuted for criminal offences. First, as a company is recognised as a separate legal entity, it can be prosecuted. Second, case law suggests that a corporation can be convicted of a criminal act. In *Yue Sang Cheong Sdn Bhd v Public Prosecutor* (1973) 2 MLJ 77, the Federal Court followed the UK approach and held that the persons whose knowledge may be imputed to the company are those who have been entrusted with the exercise of the powers of the company. Therefore, before a company can be convicted of a criminal act, a person who is entrusted with the exercise of the powers of the company must first be shown to be guilty of the crime. However, it appears that prosecutions against individuals are preferred, as the chances of success are higher. Furthermore, although some statutes, such as the Securities Commission Malaysia Act 1993 (the SC Act), contain a provision on offences by bodies corporate, most enforcement measures in the legislation – particularly the previous MACC Act and the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFA) – refer to persons, rather than corporations. It is arguable, however, that both Acts apply to companies as well, because the Interpretation Acts of 1948 and 1967 define 'person' as 'a body of persons corporate or incorporate', indicating that corporations can be prosecuted where the provision refers to 'person'.

The MACC Amendment Act incorporates into the MACC Act legal provisions for corporate liability that are in line with international anti-corruption practices, such as the US Foreign Corrupt Practices Act 1977 (FCPA) and the UK Bribery Act 2010 (UKBA). 'Commercial organisation' under the MACC Amendment Act means a company incorporated under the Companies Act that carries out business in Malaysia or elsewhere; a company incorporated outside Malaysia that carries out business or part of a business in Malaysia; a partnership under the relevant Malaysian acts that carries out business in Malaysia or elsewhere; as well as a partnership formed outside of Malaysia that carries out business or part of a business in Malaysia. This commercial organisation provision brings Malaysia's anti-bribery laws in line with those of the United Kingdom and the United States, as the FCPA and UKBA

both have extraterritorial jurisdiction, which holds their multinational companies operating abroad liable for acts of corruption committed not only by their employees, but also by employees of their overseas subsidiaries. Upon enforcement of the MACC Amendment Act, a company can be made accountable if its employees committed an act of corruption, unless the company involved can prove it has in place adequate procedures intended to prevent persons associated with the commercial organisation from undertaking such conduct.

Besides that, the Companies Act was also recently amended to include provisions relating to the investigation of companies.

## **6 Must the government evaluate any particular factors in deciding whether to bring criminal charges against a corporation?**

In cases of criminal charges against a corporation, the prosecution has discretion in deciding whether or not to prosecute a corporation. The prosecution may take into account factors such as the strength of the evidence, public policy considerations, the availability of witnesses and the knowledge to be imputed to the company itself.

The government or prosecution might have specific concerns in initiating criminal charges against a corporation depending on the type of criminal charges involved. For example, in the criminalisation of corporate liability for corruption, the government must observe its obligations and factors under the UN Convention against Corruption (UNCAC), as Malaysia has been a signatory to the UNCAC since 9 December 2003. Among other things, article 26 of UNCAC provides that a state party shall adopt measures consistent with its legal principles to establish the liability of legal persons for participation in the offences established in accordance with the UNCAC.

### **Initiation of an investigation**

## **7 What requirements must be met before a government entity can commence a civil or criminal investigation?**

The requirements that must be met before an investigation commences differ between the various government entities. According to section 57 of the Securities Industry (Central Depositories) Act 1991, the SC has the power to investigate where it has reason to suspect that a person has committed an offence under the Act or is about to commit an offence under the Act. Under section 128 of the SC Act, the SC may also search any person whom it has reason to believe has on his or her person any object, article, material, thing, property, book, minute book, account, register or other document including any travel or other personal document necessary, in the SC's opinion, for the purpose of investigating any offence under any securities law. The MACC's powers of investigation on the other hand, appear to be triggered only when a report under section 29 of the MACC Act is made. Under section 29 of the MACC Act, an officer of the MACC has the power to begin an investigation when, following a report being made relating to a commission of an offence, he or she suspects that an offence has been committed.

The Companies Act 2016 replaced the Companies Act 1965 with effect from 31 January 2017. It contains provisions that are relevant to the investigation of companies. Under section 590 of the new Companies Act, the investigation of a company's affairs is at the direction of the Minister for Domestic Trade, Co-operatives and Consumerism (the Minister), either by his or her own motion or on the application of members or debenture holders of the company.

The Minister may make a declaration on his or her own motion that the affairs of a company or foreign company are to be investigated if he or she is satisfied that:

- prima facie evidence has been established that an investigation is necessary for the protection of the public, the interest holders of a scheme under the Interest Schemes Act 2015, or the members or creditors of a company or a foreign company;
- it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of a company or a foreign company be investigated;
- for any other reason it is in the public interest that the affairs of the company or foreign company be investigated; or
- in the case of a foreign company, the appropriate authority of another country has requested that a declaration be made under this section.

Where the Minister makes a declaration that the affairs of a company or foreign company are to be investigated upon the application of members or debenture members, the Minister may require the applicants to provide security for the costs of the investigation.

Further, section 598 provides that, where a moratorium has been obtained for a company or the approval of a voluntary arrangement in relation to a company has taken effect, a report may be made to the Registrar of Companies pursuant to which the Registrar may require that an investigation be carried out.

## **8 What events commonly trigger a government investigation? Do different enforcement entities have different triggering events?**

Different enforcement entities have different triggering events. For instance, the SC and the Central Bank provide guidelines on what constitutes a suspicious transaction. The SC has published on its website a non-exhaustive list of suspicious transactions that indicates how money can be laundered through the market. The list includes unusual transactions, such as the buying and selling of a security with no discernible purpose or an unusually short period of holding securities, large cash transactions, transactions incompatible with the customer's financial standing, irregular account movement and suspicious behaviour or demeanour. The SC may also commence investigations where companies fail to comply with certain statutory requirements on disclosure. The trigger event for the MACC, on the other hand, is when it receives a report concerning the commission of an offence, such as the offence of accepting gratification, corruptly procuring the withdrawal of a tender or bribery of a public official.

For the circumstances in which an investigation of a company or foreign company may be triggered under the Companies Act, see question 7.

## **9 What protections are whistle-blowers entitled to?**

Under the Whistleblower Protection Act 2010, whistle-blowers are entitled to protection of confidential information, immunity from civil and criminal action and protection against detrimental action. However, the whistle-blower's immunity from civil and criminal action may be revoked in some instances, such as where the enforcement agency discovers in the course of its investigation that the whistle-blower has participated in the improper conduct disclosed, or that the whistle-blower's disclosure is frivolous or vexatious. In 2015, the government revealed its intention to amend the Whistleblower Protection Act 2010 to improve the integrity of enforcement officers, and amend the channel for the public to lodge reports in order to better protect the identities of the whistle-blowers. To date, there have been no concrete details published in relation to the actual contents of the proposed amendment.

Under section 587 of the Companies Act, protection exists for certain officers who make a disclosure to the Registrar of Companies regarding any matter that constitutes a breach of the Companies Act or its regulations, or a serious offence involving fraud or dishonesty that is being, or likely to be, committed against the company. The company is not allowed to discriminate against any officer who makes such disclosures under the section.

Section 65 of the MACC Act also provides protection for informers and information, mandating secrecy as regards the identities of the persons from whom MACC officers receive information referred to in a complaint. The existing MACC Act under section 30(7) also grants protection from prosecution to any person who discloses information to an investigating officer who orders such information to be disclosed. However, section 30(7) will be repealed by the MACC Amendment Act once it comes into force.

## **10 At what stage will a government entity typically publicly acknowledge an investigation? How may a business under investigation seek anonymity or otherwise protect its reputation?**

The SC's policy is to conduct its investigation on a confidential basis to preserve the integrity of its investigative process and to protect persons against whom unfounded charges may be made. Furthermore, under section 148 of the SC Act, an obligation of secrecy is imposed on the SC; therefore, the SC cannot disclose the existence or non-existence of an investigation. However, other government entities such as the Central Bank regularly update the status of their investigations on their

website. They will usually publicly acknowledge an investigation when a raid is executed, when a case has been mentioned in court or when a trial is ongoing against the company. Under section 29(4) of the MACC Act, the MACC cannot publicly comment on an investigation until the accused person has been charged in court, unless the comment is made with the consent of the Public Prosecutor or an officer with the rank of Commissioner or above. The best way for a business to seek anonymity is to try to resolve the investigation as soon as possible by cooperating with the relevant government entities and by settling out of court if possible.

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### Evidence gathering and investigative techniques

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#### 11 Is there a covert phase of the investigation, before the target business is approached by the government? Approximately how long does that phase last?

According to the Chief Commissioner of the MACC, the MACC investigates corruption in several stages. In order to verify a complaint of corruption, the MACC's investigation begins with a covert phase, before it moves on to an open investigation where it will approach the target business directly. It is common for the covert phase to take a long time. The Central Bank also investigates covertly first before approaching the target company. The length of this covert phase depends on the facts and circumstances of the case.

#### 12 What investigative techniques are used during the covert phase?

Government entities have refrained from disclosing the investigative techniques used during the covert phase, as such techniques are confidential.

#### 13 After a target business becomes aware of the government's investigation, what steps should it take to develop its own understanding of the facts?

A target business should hold an internal investigation into misconduct in order for it to be adequately prepared to respond to inquiries made by the government, to facilitate a successful defence for claims and to attempt to resolve the conflict. The target business should try to ascertain through its internal investigation the facts and circumstances underlying allegations of misconduct. Through its internal investigation, the target business should determine its potential liability and attempt to maintain and improve its public reputation.

#### 14 Must the target business preserve documents, recorded communications and any other materials in connection with a government investigation? At what stage of the investigation does that duty arise?

The target business should preserve any documents or recorded communications that it has been ordered to produce by government entities. Section 135 of the SC Act states that any person who destroys, conceals, mutilates or alters any record or account in his or her possession that is required to be produced under the Act with the intent to defraud any person or to prevent or delay the carrying out of an examination, audit or investigation is guilty of an offence. Although a business that destroys its documents in good faith or without the intent to delay investigations may not fall foul of this section, it is best to err on the side of caution and preserve such documents. Failure of a target business to preserve documents in connection with a government investigation may also fall foul of section 48 of the MACC Act, as it may be deemed to be obstructing or delaying an officer of the MACC in the execution of his or her duty.

Section 590(7) of the Companies Act provides that any person who, with intent to defeat the purposes of this section, or to delay or obstruct the carrying out of an investigation under this section (i) destroys or alters any book, document or record of or relating to a company or foreign company declared under this section, or (ii) sends, attempts to send or conspires with any other person to send out of Malaysia any such book, document or record or any property of any description belonging to or in the disposition or under the control of the company or foreign company, commits an offence punishable by imprisonment for a term not exceeding five years, a fine not exceeding 1 million ringgit, or both.

#### 15 During the course of an investigation, what materials – for example, documents, records, recorded communications – can the government entity require the target business to provide? What limitations do data protection and privacy laws impose and how are those limitations addressed?

Government entities such as the SC and the MACC can require the target business to provide access to a wide range of materials. According to section 127 of the SC Act, an officer carrying out an examination of a person is entitled to access all books, documents, accounts, documents of title to its assets, all securities held by it in respect of securities transactions and any other information and facilities that may be required. The reference to 'any other information and facilities' can be interpreted very widely and can encompass a broad range of materials. Under sections 2G and 2H of the SC Act, the SC can seize and gain access to electronic records. Under section 30 of the MACC Act, an officer investigating an offence can also order any person to produce any book, document, record, account or computerised data or any other article that in his or her opinion may assist in his or her investigation. Under section 48 of the Companies Act, any document or record that is to be made available for inspection under the Companies Act is to be made available for inspection by any person who is entitled to inspect such document or record at the registered office of a company or any other place allowed by the Companies Act. The disclosure of such materials prima facie is subject to the disclosure principles of the Personal Data Protection Act 2010 (PDPA). However, section 45 of the PDPA exempts personal data from the disclosure principles if it is processed for the purposes of an investigation.

#### 16 On what legal grounds can the target business oppose the government's demand for materials? Can corporate documents be privileged? Can advice from an in-house attorney be privileged?

Generally, the target business cannot oppose the government's demand for materials in the face of a court order or a warrant, except on grounds of privilege. Under section 46 of the MACC Act, a High Court judge may make an order for an advocate and solicitor to disclose information available to him or her in respect of any transaction. However, the advocate and solicitor can refuse to disclose privileged information. Legal professional privilege is safeguarded under section 126 of the Evidence Act 1950. Such privilege attaches to documentary communications between a client and his or her lawyer that are made for the purpose of obtaining or receiving legal advice, and documentary communications that are made in the contemplation of legal proceedings. Unless the corporate documents fall within these criteria, they are not subject to privilege. As remarked by the High Court judge in *Toralf Mueller v Alcim Holding Sdn Bhd* (2015) MLJU 779, section 126 does not apply to communications between an in-house legal counsel and his or her employer. Section 126 of the Evidence Act 1950 applies only to practising advocates, and an advocate in Malaysia is a person who holds a certificate to practise as an advocate, or as an advocate and solicitor. In-house counsel are not covered by legal professional privilege, as they are not practising advocates or solicitors.

#### 17 May the government compel testimony of employees of the target business? What rights against incrimination, if any, do employees have? If testimony cannot be compelled, what other means does the government typically use to obtain information from corporate employees?

The government may compel the testimony of employees of the target business. For instance, section 134 of the SC Act allows an investigating officer carrying out an investigation to compel any person to assist him or her or to appear before a specified investigating officer to be examined orally if the investigating officer suspects or believes on reasonable grounds that the person can provide information relevant to the matter he or she is investigating. Although the right against self-incrimination during a police investigation is provided for under section 112 of the Criminal Procedure Code, section 134(2) of the SC Act expressly states that a person cannot refuse to answer on the grounds of self-incrimination.

**18 Under what circumstances should employees obtain their own legal counsel? Under what circumstances can they be represented by counsel for the target business?**

Currently, the right to legal representation is not preserved in any of the relevant legislation on government investigation. Employees may request a lawyer to be present when they are called for examination by the government entity, though they should be aware that the agency can deny them this right. It is ill-advised for counsel for the target business to represent an employee, as there could be a conflict of interest, particularly where there is an allegation of misconduct on the employee's part.

Section 580 of the Companies Act provides that any person summoned for examination under section 502 or 503 of the Companies Act may, at his or her own cost, appoint a lawyer to represent him or her. Sections 502 and 503 deal with the court's power to summon and examine officers or persons in the context of a court winding up.

**19 Where the government is investigating multiple target businesses, may the targets share information to assist in their defence? Can shared materials remain privileged? What are the potential negative consequences of sharing information?**

At present, there is no law that prevents target businesses from sharing information to assist in their defence. If the shared materials are materials that attract legal professional privilege, it is possible for such materials to remain privileged if they are shared between advocates of target businesses in the context of assisting their clients during litigation proceedings. In *Public Prosecutor v Dato' Seri Anwar bin Ibrahim* (No. 3) (1999) 2 MLJ 1, the court stated that as both solicitors assisted each other with mutual offers of further assistance in the affairs of their respective clients, they were made agents of each other. This was because section 127 of the Evidence Act 1950 states that section 126 applies to servants of advocates. Therefore, the court held that in such a situation, legal professional privilege still applies. A potential negative consequence of sharing such information, however, is that the target business may risk revealing confidential information about its business to its competitor.

**20 At what stage must the target notify investors about the investigation? What should be considered in developing the content of those disclosures?**

At present, neither case law nor legislation imposes an obligation on the target business to notify investors about an investigation by a government agency. However, the Central Bank regularly updates the status of investigations against companies on its website, which can be viewed by the public and investors. Instead of imposing a duty on the target business, section 152A of the SC Act states that the SC may publish information in the interest of the public or for the protection of investors. Unlike in other jurisdictions such as the US, the federal securities laws provide that a company must disclose when an investigation has grown to the point where there is a 'material pending legal proceeding' or where such a proceeding is 'known to be contemplated' by a government authority, or where a director of an issuer is a defendant in a pending criminal proceeding. Also, a company must alert investors if it determines that they cannot rely on previously issued financial statements. In the absence of such specific circumstances, the assessment of whether to disclose the existence of a government investigation depends on whether, under the facts and circumstances of the situation, there is 'a substantial likelihood that the . . . fact [of the investigation] would have been viewed by the reasonable investor as having significantly altered the "total mix" of information made available'.

**Cooperation**

**21 Is there a mechanism by which a target business can cooperate with the investigation? Can a target notify the government of potential wrongdoing before a government investigation has started?**

The main mechanisms through which a target business can cooperate with the investigation are by fulfilling its obligations to disclose all books, records and accounts that it has been ordered to produce, to provide access to the investigating officer who is carrying out an investigation at the business's premises and to answer all questions by an investigating officer relating to a particular investigation. Although the target business may notify the government of potential wrongdoing before a

government investigation has started, not all government agencies will grant immunity to the target business for cooperating early.

**22 Do the principal government enforcement entities have formal voluntary disclosure programmes that can qualify a business for amnesty or reduced sanctions?**

Not all government entities have formal disclosure programmes qualifying a business for amnesty or reduced sanctions as such, but they do have mechanisms that encourage disclosure by anyone who may have committed an offence. Under section 5 of the AMLATFA, a person who commits an offence under the Act is deemed not to have committed the offence if he or she discloses it to the enforcement agency on his or her own initiative and as soon as it is reasonable for him or her to make it. The word 'person' is not defined in the AMLATFA, but as mentioned above, it is defined in the Interpretation Acts as including a body corporate; thus, arguably this section should apply to businesses as well. Immunity is also provided under section 63(3) of the MACC Act to those who give evidence as witnesses for the prosecution. Section 63(3) of the MACC Act states that where, in the court's opinion, the person giving evidence makes a true and full discovery of the things that he or she is lawfully examined on, that person is entitled to receive a certificate of indemnity that will act as a bar to all legal proceedings against him or her in respect of the things that he or she has been examined on.

**23 Can a target business commence cooperation at any stage of the investigation?**

Yes, it can, although cooperation does not necessarily guarantee immunity or reduced sanctions, particularly in the context of investigations by the Central Bank. A target business is legally required to cooperate at certain stages of the investigation, such as when it has been ordered to disclose all of its books and records.

**24 What is a target business generally required to do to fulfil its obligation to cooperate?**

In order to fulfil its obligation to cooperate, the target business must disclose all of the books, records and accounts it has been ordered to produce. Furthermore, any person who has been called for examination is legally bound to answer all questions relating to a particular investigation, and to state the truth. Certain requirements govern a person's obligation to disclose information to the SC. Under section 152(3) of the SC Act, any person who is bound to disclose information to the SC under the same action cannot disclose information that is false or misleading, or disclose any information from which there is a material omission. Under section 47 of the MACC Act, every person required by an officer of the MACC to give any information on any subject shall be legally bound to give the information which it is in his or her power to give.

**25 When a target business is cooperating, what can it require of its employees? Can it pay attorneys' fees for its employees? Can the government entity consider whether a business is paying employees' (or former employees') attorneys' fees in evaluating a target's cooperation?**

The target business can require an employee to answer the questions posed by the investigating officer honestly, as long as the questions are within the employee's knowledge. The target business can also require an employee to cooperate with the investigating officer when the officer conducts a search of the business's premises. Legally, there is nothing that prevents the business from paying attorneys' fees for its employees, so long as it is made clear that the attorney is acting for the employee, and is acting in the employee's best interests rather than those of the business. It is not clear whether the government entity will consider the payment of an employee's attorneys' fees in evaluating a target's cooperation.

**26 What considerations are relevant to an individual employee's decision whether to cooperate with a government investigation in this context? What legal protections, if any, does an employee have?**

If an individual employee has been called for examination by a government entity, he or she does not have the right to refuse to be examined. Refusal to cooperate with a government investigation will not only amount to a valid ground for termination of an employee's employment,

but could also lead to the employee being found guilty of an offence. However, if an individual employee has chosen of his or her own volition to cooperate with a government investigation, he or she is entitled to protection against detrimental action, whereby the target business is not allowed to terminate the employee's contract, withhold a payment that is due and payable to the employee under a contract or refuse to enter into a subsequent contract with the employee for the sole reason that the employee has made a disclosure of improper conduct to any enforcement agency.

**27 How does cooperation affect the target business's ability to assert that certain documents and communications are privileged in other contexts, such as related civil litigation?**

The target business should still be able to assert that certain documents and communications are privileged. Under section 126 of the Evidence Act 1950, legal professional privilege can only be waived with the client's express consent. The Federal Court in *Dato' Anthony See Teow Guan v See Teow Chuan & Anor* (2009) 3 MLJ 14 held that there was no waiver of legal professional privilege even though the legal advice had been disclosed to third parties. The Federal Court stated that the words 'express consent' in section 126 mean that there must be an intentional and deliberate act to waive the legal privilege by the client. The Federal Court also stated that a document cannot be admitted as evidence if it is privileged, even if it is in the hands of the opposite party. As such, although the target business may disclose documents to the government in the interests of cooperation, it cannot be held to be waiving consent by implication. However, it is good practice to stipulate in writing that the target business is not waiving privilege by disclosing such documents to the government.

**Resolution**

**28 What mechanisms are available to resolve a government investigation?**

A guilty plea is sufficient to resolve a government investigation. In some instances, where the government is only pursuing an administrative action, it may choose not to engage in a full-blown investigation and may instead send a letter to the company requiring an explanation for certain events or transactions. In such a case, an adequate explanation will be enough to resolve a government investigation. Other ways of resolving a government investigation include entering into a regulatory settlement with the entity involved or accepting an offer to compound the offence in lieu of prosecution.

**29 Is an admission of wrongdoing by the target business required? Can that admission be used against the target in other contexts, such as related civil litigation?**

For certain government enforcement agencies, it appears that an admission of wrongdoing by the target business is not required. The SC's website, for instance, lists the various regulatory settlements it has entered into with particular businesses, in which the businesses have agreed to settle a civil claim without admission or denial of liability. Therefore, it is possible for the target business to avoid having to make an admission of wrongdoing. The Central Bank, on the other hand, does not enter into settlements with target businesses and tends to pursue civil or criminal action, in which the business may admit to the wrongdoing.

**30 What civil penalties can be imposed on businesses?**

Civil regulatory sanctions may be imposed on businesses in the form of disqualification and winding-up proceedings initiated by the Registrar of Companies. Administrative sanctions may also be imposed on businesses, often in the form of warning letters or an offer to compound any infringement where the regulator makes a written offer for a sum of money to be paid within a particular time frame.

**31 What criminal penalties can be imposed on businesses?**

Although a business is a separate legal entity, and is capable of being criminally prosecuted, criminal penalties usually take the form of a fine, as companies cannot be imprisoned. Some laws, such as the SC Act, expressly state that only a fine can be imposed for offences committed by a body corporate.

**32 What is the applicable sentencing regime for businesses?**

The sentences imposed will depend on the particular provision for the offence in the relevant legislation.

**33 What does an admission of wrongdoing mean for the business's future participation in particular ventures or industries?**

An admission of wrongdoing will adversely affect the business's future participation in particular ventures. It is likely that the business will suffer a severe loss of reputation. The business will also suffer when applying for licences from government entities such as the SC or the Central Bank, as these agencies will take the admission of wrongdoing into account when approving or rejecting a licence application.

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