

■ COMMENTARY

Financial crime: Leaders can instil spirit of compliance

Enforcement of laws and regulations alone, however, is insufficient. The fight against financial crime in Singapore also requires a spirit of compliance that guides behaviour.

By **VK Rajah**

CRIMINAL conduct in the finance industry and the corporate world can cause serious damage to the economy and the lives of Singaporeans. Recent financial debacles in Singapore, such as the Sunshine Empire and Profitable Plots cases, caused many to lose investments and life savings.

Singapore's business-friendly legal and regulatory frameworks facilitate business development, innovation, investment and economic growth. However, constant tending and close attention are necessary to ensure that fraud or sharp practices are not allowed to take root. Singapore's strong and vibrant economy and its sterling reputation as a financial, commercial and investment hub can only be maintained if it continues to have a robust and effective enforcement regime that deals with breaches of the law swiftly and firmly. The certainty of detection of wrongdoing and promptness of effective sanctions play a crucial role in maintaining the Republic's standing as a financial centre.

In Singapore, both individuals and corporate entities can expect to face prompt enforcement action for financial misconduct. The emphasis, if there is one, is placed on holding accountable the individuals who perpetrated the misconduct. Persons involved in financial misconduct should expect that they would be subject to en-

forcement action. The threat of personal criminal sanctions for misconduct in Singapore is real. There is no certainty of escape from liability by hiding behind corporate structures or the corporate veil.

Significant attention is also given to the culpability of corporations. Enforcement measures being taken against corporate entities have their merits, especially if the offending conduct is institutionalised and developed into an established practice in an entity over time.

However, the decision to take action against a corporate entity requires careful consideration in order to ensure that disproportionate collateral damage is not inflicted on innocent parties such as employees and their families, as well as shareholders. A careful assessment of all competing interests has to be made when considering whether to prosecute a corporate entity and the level or type of punishment to seek if it is found guilty.

Singapore may be contrasted with the United States, where the recent trend appears to be for enforcement action to be focused at the corporate level. In the United States, enforcement action has been taken against a number of financial institutions in connection with the recent financial crisis, but few Wall Street executives were prosecuted for misconduct, and only one was convicted and sent to prison. There may,

however, be more of a focus on individuals in the future. In September, the US Department of Justice published a memorandum announcing that the prosecution of individuals – not just corporations – will be prioritised.

Regardless of whether enforcement action is taken at an individual or corporate level, investigations in Singapore are thorough, fair and robust. If evidence points to guilt for an offence, prosecutors will carefully apply their minds in deciding whether to charge the party concerned. All decisions to charge an individual and/or organisation have to be consistent and principled, and, above all, in the public interest and taken with a firm commitment to the rule of law. Upon guilt being established by the courts, fair punishments will be sought by prosecutors in order to effectively deter similar criminal behaviour; this would often include the imposition of custodial sentences where individuals are concerned.

Fines cannot be generally regarded as an effective deterrent for individuals who are well-resourced. As the findings of a survey carried out for the United Kingdom's Office of Fair Trading reportedly showed, the punishment that would have the greatest deterrent effect on executives would be imprisonment – not fines.

Enforcement of laws and regulations alone, however, is insufficient. The fight against finan-

cial crime in Singapore also requires a spirit of compliance that guides behaviour. Without the prevalence of this spirit of compliance, no enforcement regime, no matter how competent, can avoid being inundated and overwhelmed – even, perhaps, to the point of becoming dysfunctional.

Persons in leadership roles in the public and private spheres have crucial roles to play for the spirit of compliance to flourish in Singapore. They have the responsibility and power to influence individual behaviour and preferences and the culture of organisations and society as a whole. That having been said, the proper enforcement of laws is essential to underpin the spirit of compliance.

Enforcement that is fair, effective and well-understood can clearly and directly communicate to individuals and organisations the need to comply with laws and regulations. Ultimately, it can also help individuals and organisations to commit to law-abiding behaviour, not because of fear of specific laws and of being caught, but because of a deeper motivation to act correctly and an acceptance that such conduct must be right. This in the long run, would be more sustainable, and could prove to be one of Singapore's competitive advantages.

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