



ADMINISTRATIVE AND CIVIL SANCTIONS

(Consultation Paper)

LRRD No. 7/2002

**LAW REFORM AND REVISION DIVISION
ATTORNEY-GENERAL'S CHAMBERS**

ADMINISTRATIVE AND CIVIL SANCTIONS

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CONTENTS

	<i>Paragraph</i>	<i>Page</i>
Executive Summary		5
Introduction	1	11
International Trends	2	14
Justification for Administrative and Civil Sanctions	3	16
Regulatory offences v. traditional crimes	3.2	16
Liberalisation of Singapore markets	3.6	17
Promoting entrepreneurship	3.9	18
Ease of enforcement	3.11	19
Extra-territorial jurisdiction	3.12	19
Administrative agencies as enforcement bodies	3.15	20
Factors Determining the Suitability of Non-Criminal Sanctions	4	22
Administrative Financial Penalties	5	28
Constitutional issues	5.1	28
Safeguards and enforcement mechanisms	5.9	30
Discussion of administrative financial penalty models	5.12	32
Civil Financial Penalties	6	36
Safeguards	6.5	37
Discussion of civil penalty financial models	6.7	37
Administrative Actions Supporting Criminal Regimes	7	40
Administrative charges	7.4	41
Withdrawal of benefits	7.8	42
Remedial action	7.16	43
Safeguards and enforcement mechanisms	7.17	43
Discussion of remedial action models	7.18	44

	<i>Paragraph</i>	<i>Page</i>
Enforcement of Composition Fines	8	47
Constitutional issues	8.2	47
Safeguards	8.5	47
Enforcement mechanisms	8.7	48
Conclusion	9	51
List of Questions		53
Annex A - Relevant Extracts of the UK Financial Services and Markets Act 2000		
Annex B - Telecommunications Act (Chapter 323)		
Annex C - Securities Industry Act (Chapter 289)		
Annex D - Relevant Extracts of the Australia Corporations Act 2001		
Annex E - Road Traffic (Electronic Road Pricing system) Rules (R 38)		
Annex F - Section 45 to 47 of the Road Traffic Act (Chapter 276)		
Annex G - Section 35(8) of the Road Traffic Act		
Annex H - Relevant Extracts of the Australia Trade Practices Act 1974		
Annex I - Relevant Extracts of the US Securities Exchange Act of 1934		
Annex J - Relevant Extracts of the Australia Magistrates' Court Act 1989		
Annex K - Acts that do not Provide Composition of Offences for Minor Offences		

EXECUTIVE SUMMARY

1. Introduction

1.1 The Law Reform and Revision Division has been tasked by the Attorney-General to study whether and in what circumstances criminal offences should be reclassified as non-criminal infringements, and to investigate the use of administrative and civil sanctions as enforcement mechanisms.

1.2 This paper discusses the use of administrative and civil sanctions in 2 major contexts:

First, as an *alternative* to criminal penalty regimes, where it is determined that a criminal offence should be reclassified as a non-criminal infringement of the law; and

Second, as a *complement* to the criminal penalty regime, where it is determined that it would be useful and appropriate to allow administrative or civil action to be taken before the criminal process is used.

2. International trends

2.1 Administrative and civil sanctions have gained recognition, and are increasingly being used in major common law jurisdictions such as the US, UK, Hong Kong and Australia.

3. Justification for administrative and civil sanction regimes

3.1 The use of administrative and civil sanctions can be justified on several grounds:

(a) There is no compelling need to criminalise every form of errant behavior. There should be a distinction between *mala in se* (conduct which is wrongful in itself, e.g. traditional crimes) and *mala prohibita* (conduct which is prohibited because it is the subject of specific proscription (e.g. regulatory offences)).

(b) The Government's efforts to liberalise Singapore markets to attract large international players and investors could be undermined by excessive criminalisation of errant behavior. International players and investors would be deterred by the

possible stigma of “criminal convictions” merely for a technical breach of the law especially where these convictions have to be disclosed to other foreign regulatory authorities and stock exchanges.

- (c) The reclassification of appropriate criminal offences as non-criminal infringements may aid the Government’s promotion of entrepreneurship and a more vibrant economy, by removing the stigma and practical disqualifications associated with criminal convictions.
- (d) The ease of enforcement associated with administrative or civil sanctions as compared with criminal prosecutions, increases the effectiveness of the law.
- (e) Increased cross-border “crime” necessitates extra-territorial application of our criminal laws. Yet, it would not be feasible to enact and enforce criminal provisions with worldwide jurisdiction. Business investors may be alarmed at the prospect of submitting to extra-territorial jurisdiction. The problem may be mitigated if the law uses non-criminal administrative or civil sanctions instead, to deal with cross-border transactions.
- (f) Administrative agencies have more experience and direct contact with potential offenders and may therefore be more equipped than the courts to deal with non-compliance with the laws.

3.2 This paper seeks feedback on these justification arguments.

4. Factors determining the suitability of non-criminal sanctions

4.1 Reclassification of criminal offences as non-criminal infringements should be done only where it is appropriate to do so. Principles should be developed to guide administrative agencies in deciding whether a contravention should attract an administrative or civil sanction instead of, or in addition to, a criminal conviction. Relevant considerations are described in the paper and feedback is sought on these proposed considerations.

5. Administrative financial penalties

- 5.1 Administrative financial penalties are imposed by an administrative agency on a person for breach of laws administered by such administrative agency.
- 5.2 An issue arises as to whether this contravenes Article 93 of our Constitution which vests judicial powers solely in the courts. There is judicial authority for the proposition that no judicial power is exercised when an administrative agency is empowered in a regulatory capacity to impose a financial penalty on a person whose status is derived from a contractual relationship (such as a licence) with the agency. Reclassification of the wrong as a non-criminal infringement would add even more clarity that this is not in contravention of Article 93.
- 5.3 Safeguards and enforcement mechanisms based on principles of fairness, transparency, accountability and efficiency are proposed for administrative financial penalties, and feedback is sought on them. Case studies are made of administrative financial penalties under the:
 - (a) UK Financial Services and Markets Act 2000; and
 - (b) Singapore Telecommunications Act (Cap.323)

6. Civil financial penalties

- 6.1 Civil financial penalties are imposed by a court during civil proceedings initiated by an administrative agency against a person for breach of the laws administered by such administrative agency.
- 6.2 Civil financial penalties have been used to complement criminal sanctions in situations where the high standard of proof required for a criminal conviction has inhibited successful prosecutions, thereby rendering the criminal law ineffective in deterring wrongful behavior. Alternatively, where different levels of mental intent for the same contravening behavior must be given due consideration, the civil financial penalty may be imposed for the less culpable mental intent.
- 6.3 Where civil financial sanctions exist alongside criminal sanctions, the issue of “double jeopardy” (rule against punishing a person twice for the same act) arises. Safeguards are proposed to ensure that the relationship between the criminal and civil proceedings is made clear. Feedback is sought on these proposed safeguards.

6.4 Case studies are made of civil financial penalties under the:

- (a) Singapore Securities Industry Act (Cap.289); and
- (b) Australia Corporations Act 2001

7. Administrative actions supporting criminal regimes

7.1 In many cases, the criminal penalty must remain to denounce the wrongful behavior on behalf of the State, and to serve as a deterrent. However, over-reliance on harsh criminal penalties may be counterproductive. Instead regulators could adopt a graduated enforcement strategy, starting with the use of non-criminal administrative actions which emphasize cooperation and trust, and then resorting to criminal sanctions only where necessary.

7.2 Administrative actions can therefore play a supportive role to existing criminal regimes. For example, the regulator could impose non-punitive administrative charges to recover costs incurred to deal with the wrongful behavior, or encourage compliance of criminal laws by withdrawing other benefits if the criminal laws are not complied with. Alternatively, the offender could be asked to take remedial action to cure the contravention.

7.3 Such supportive administrative actions are discussed and safeguards proposed for consultation.

7.4 Case studies are made of various administrative actions under existing legislation. These are the:

- (a) Non-punitive administrative charges under the Singapore Road Traffic (Electronic Road Pricing System) Rules;
- (b) Withdrawal of benefits under the Singapore Road Traffic Act (Cap.276); and
- (c) Remedial actions under the Australia Trade Practices Act and the US Securities Exchange Act 1934.

8. Enforcement of composition fines

- 8.1 The power to compound is used extensively in Singapore statutes and has been endorsed as an effective means to help relieve the workload of prosecutors and the courts. Safeguards are proposed for such powers and feedback is sought on them.
- 8.2 As regards enforceability, currently the law provides that if a composition fine is not paid, the administrative agency may refer the case for criminal prosecution. In view of the large number of warrants of arrests outstanding from such criminal prosecution, the issue arises as to whether there could be more effective methods to ensure payment of the composition fine. A case study is made of Australia's Procedure for Enforcement and Registration of Infringement Notices ("PERINS") under the Australia (Victoria) Magistrates' Courts Act 1989 (Vic).
- 8.3 Feedback is sought as to whether any features of the PERINS system could be incorporated into our system of composition notices of fines.

9. Conclusion

- 9.1 Our view is that there is no one-size-fits-all ideal method of regulatory enforcement. Instead, each method has its strengths and weaknesses, and should be deployed according to whether it is an appropriate regime for the particular type of wrong.
- 9.2 In view of all the considerations outlined in this paper, we recommend the following:
 - (a) That in enacting new legislation, all government agencies bear in mind that it is neither necessary nor appropriate to criminalise every form of errant behavior. There are alternative methods such as administrative and civil sanctions, which can be used in place of, or to complement criminal regimes. The use of these other methods may result in more effective regulation.
 - (b) That every government agency be encouraged to review its current regulatory regime to determine whether it would be appropriate to reclassify some criminal offences as non-criminal infringements, and even if not, to consider incorporating the use of administrative or civil sanctions before resorting to the criminal process. For example, we note that some agencies do not have the legislative

option to make offers of composition for relatively minor contravention.

- 9.3 To that end, we will resume our study on administrative and civil sanctions after receiving feedback on the issues raised in this paper. The goal of our study is to develop sound principles to serve as “building blocks” of good regulation. It is envisaged that these principles should then be entrenched in guidelines issued to all administrative agencies to ensure that the reclassification of criminal offences and introduction of administrative or civil sanctions are conducted in a fair and consistent manner in Singapore. These guidelines could conceivably be issued by PMO, MOF or Min Law.

Please send your feedback marked “Re: Administrative and Civil Sanctions (Attn: Ms Julie Huan) –

- via e-mail, at agc_LRRD@agc.gov.sg;
- via paper mail (a diskette with soft copy would be appreciated), to Law Reform and Revision Division, Attorney-General’s Chambers, 1 Coleman Street, #05-04 The Adelphi, Singapore 179803; or
- via fax, at 6332 4700.

The closing date for this consultation is 1st July 2002.

CONSULTATION PAPER

ADMINISTRATIVE AND CIVIL SANCTIONS

PART 1

INTRODUCTION

1.1 Singapore has more than 400 Acts and many more subsidiary legislation made under these Acts. In a vast majority of cases, an infringement of an Act or a subsidiary legislation is a criminal offence. A preliminary study of various Acts administered by Statutory Boards, Professional Bodies and Ministries¹ has revealed that other than the power to offer composition for offences, only a small minority of these Acts permit administrative action to be taken for breach of the law. Although not conclusive, this preliminary finding indicates that administrative and civil sanctions do not play a significant role in Singapore legislation as at today.

1.2 Against this background, the Law Reform and Revision Division (“LRRD”) has been tasked by the Attorney-General to study whether and in what circumstances criminal offences should be reclassified as non-criminal infringements, and to investigate the use of administrative and civil sanctions as enforcement mechanisms.

1.3 This paper discusses the use of administrative and civil sanctions in 2 major contexts —

First, as an *alternative* to criminal penalty regimes, where it is determined that a criminal offence should be reclassified as a non-criminal infringement of the law; and

Second, as a *complement* to the criminal penalty regime, where it is determined that it would be useful and appropriate to allow administrative or civil action to be taken before the criminal process is used.

1.4 For the purpose of the paper, the following terms are used with reference to specific meanings:

¹ This study which was conducted in 1999 involved a manual (non-exhaustive) search to locate statutes which permit statutory boards, professional bodies and ministries to impose “fines” and “monetary penalties”.

“administrative financial penalty” refers to a financial penalty imposed by an administrative agency on a person for breach of laws administered by such administrative agency;

“administrative action” refers to an action taken by an administrative agency other than imposition of a financial penalty for breach of the laws administered by such administrative agency;

“civil financial penalty” refers to a financial penalty imposed by a court during civil proceedings initiated by an administrative agency against a person for breach of the laws administered by such administrative agency;

“sanctions” refers to the whole range of punitive and non-punitive coercive measures and incentives, whether criminal, civil or administrative, which are used to ensure compliance with the law.

- 1.5 The paper first highlights the international trends in the use of administrative and civil sanctions. It then presents justifications for the use of such non-criminal sanctions. Following that, the discussion focuses on factors which must be considered to determine whether to reclassify a criminal offence as a non-criminal infringement, or to adopt a middle ground of retaining the criminal offence but using non-criminal sanctions before invoking the criminal process. The paper then investigates in detail the use of (a) administrative financial penalties (b) civil financial penalties (c) administrative actions and (d) composition fines. In each case, the constitutional issues (if any), enforcement issues and necessary safeguards are examined. Case studies are made of existing models in Singapore and foreign legislation. Issues are highlighted for consultation and a final recommendation is made on the action which should be taken on a national level.
- 1.6 The paper does not attempt to deal with every aspect of effective regulation. There are important methods other than using administrative and civil sanctions which help increase the effectiveness of regulation. These include the use of information technology to measure and evaluate non-compliance, education of the public and the facilitation of private actions by individuals,² all of which serve as powerful tools to encourage compliance with the law. In addition, there are numerous compliance strategies that focus systematically on providing “carrots”

² Part 6 of the Paper briefly examines how the Securities Industry Act (Cap.289) facilitates private suits for insider trading.

for compliance rather than sticks alone. The paper does not deal with these other aspects of regulation and acknowledges that effective regulation must encompass a consideration of all these other significant factors.

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- via fax, at 6332 4700.

The closing date for this consultation is 1st July 2002.

PART 2

INTERNATIONAL TRENDS

- 2.1 Administrative and civil sanction regimes have gained recognition in various major jurisdictions such as the US, UK, Hong Kong and Australia. We set out below a brief overview of the developments in these jurisdictions.
- 2.2 In the US, the growth of punitive civil sanctions has been tremendous since the middle of the 20th century. It has been observed that “Legislative adoption of civil sanctions ... has continued to expand in recent years.... in 1979 [it was] found that 27 federal departments and independent agencies enforced 348 civil statutory penalties ... Not only are there many new statutes on the books, but administrative agencies also tend to impose sanctions rather than refer cases for criminal prosecution.”³
- 2.3 Particularly in the field of US securities regulation, it has long been recognized that in order to have effective enforcement of laws, there is a need for a range of enforcement methods other than criminal prosecution. The US Securities and Exchange Commission was therefore established in 1934 and continues today to be the primary civil enforcement agency for breach of securities laws.⁴ In other areas, such as anti-pollution laws, the US Pollution Control Agency in the State of Minnesota has developed an administrative financial penalty regime that has been reported to be so effective that 90% of the violations never recurred.⁵
- 2.4 In the UK, it has been reported that “there have for many years been recognized civil penalties which were collected as civil debts by the State in civil courts”.⁶ For example, the UK Income Tax laws have for more than 100 years imposed civil financial penalties on taxpayers for failure to make correct tax returns and these are recoverable at the suit of the Board of Inland Revenue in the High Court. A recent and very significant development is the Financial Services and Markets Act 2000

³ Kenneth Mann, “Punitive Civil Sanctions: The Middleground Between Criminal and Civil Law” 101 Yale L.J. 1795 at 1844.

⁴ The SEC was established to enforce securities laws, to promote stability in the markets and, most importantly, to protect investors. Reported at the US SEC website at <http://www.sec.gov/about/whatwedo.shtml>.

⁵ Information obtained from the Program Evaluation Update on the Pollution Control Agency’s use of Administrative Penalty Orders, available at <http://www.auditor.leg.state.mn.us/ped/1995/pcal.htm>.

⁶ Michael Ashe, “Civil Penalties”, published in “The Regulation of Financial and Capital Markets”, Singapore Academy of Law, at 278.

where the UK Financial Services Authority has been empowered to impose administrative financial penalties for market abuse or for misconduct by licensees.

- 2.5 In Hong Kong, a civil penalty regime for insider dealing was created in 1999. The regime uses the civil standard of proof and civil procedure for hearings before a specially instituted Insider Dealing Tribunal. The civil regime has been reported to be effective, such that a proposal has been made for it to be extended to other market misconduct offences, namely false trading, price rigging, stock market manipulation, disclosing information about prohibited transactions in securities and futures contracts, and disclosing false or misleading information about securities or futures contracts. It has been observed that the current criminal regime for such offences has by itself, proven inadequate in effectively deterring market misconduct that are prejudicial to the interest of investors and market participants.⁷
- 2.6 Finally in Australia, it has been reported that federal legislation currently provides for administrative and civil penalties in areas as diverse as taxation, social security, trade practices, the provision of financial services, corporations law, the regulation of food technology, insurance, broadcasting, customs, immigration and the licensing of nursing homes, airlines, navigation and fishing.⁸
- 2.7 In view of the extensive use of such non-criminal sanctions, the Commonwealth (Federal) Attorney-General Daryl Williams has commissioned the Australian Law Reform Commission (“ALRC”) to consider the relationship between criminal, administrative and civil penalties and the principles that should guide the formulation and application of administrative and civil sanctions. To that end, the ALRC held a conference on “Penalties: Policy, Principles and Practice in Government Regulation” in June 2001 to consult leading Australian and internal experts in regulatory theory and practice. A final report to the Attorney-General is due in the later part of 2002.

⁷ See Report of the Bill Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000.

⁸ See ALRC Background Paper 7 entitled, “Review of civil and administrative penalties in federal jurisdiction “ which was prepared for the ALRC Conference on “Penalties: Policy, Principles and Practice in Government Regulation” at page 1, available at <http://www.alrc.gov.au/>.

PART 3

JUSTIFICATION FOR ADMINISTRATIVE AND CIVIL SANCTIONS

- 3.1 There are compelling arguments for the creation and use of administrative or civil sanctions. Some of these arguments have been canvassed successfully in the US, UK, Hong Kong and Australia. In the context of Singapore, there are good reasons arising from local circumstances which strongly support the creation of such regimes.

Regulatory offences v. traditional crimes

- 3.2 It has been observed that there is generally a distinction between *mala in se*, conduct which is wrongful in itself and which is thus treated as “criminal” in societies with very different social and economic values, and *mala prohibita*, conduct which cannot be so characterised and which is prohibited because it is the subject of specific proscription.⁹
- 3.3 The paradigm of criminal responsibility for traditional crimes involves the notion of culpability or *mala in se* and therefore, social condemnation. In contrast, the characteristic of laws which are aimed at regulating economic and social activity (Regulatory Law) is that a breach, often involving *mala prohibita*, does not normally attract the same degree of moral condemnation associated with traditional crimes. It is said that “Regulatory Law is primarily concerned to facilitate the achievement of collectivist goals by discouraging behavior which is considered inimical to those goals and thus detrimental to collective welfare. The punishment of regulatory offences is therefore a means of controlling an activity, without necessarily implying the element of social condemnation which is characteristic of traditional crimes.”¹⁰
- 3.4 Yet, an element of blame should still be attached to regulatory offences in so far as the commission of such offence amounts to a failure by the offender to take reasonable care in carrying out the regulated activity. In addition, while the stigma of moral reprehensibility is not naturally associated with regulatory law which protect economic interests (such as competition law or export controls), the same claim cannot be made

⁹ Anthony Ogus, *Regulation: Legal Form and Economic Theory* (1994) ch 2 as quoted in K Yeung, “Quantifying Regulatory Penalties: Australian Competition Law Penalties in Perspective” (1999) 23 Melbourne University Law review 440 at 458

¹⁰ Andrew Ashworth, *Principles of Criminal Law* (1995) 50-1 as quoted in K Yeung, “Quantifying Regulatory Penalties: Australian Competition Law Penalties in Perspective” (1999) 23 Melbourne University Law review 440 at 458

for regulatory law which protect other important social interests (such as public health or environment hygiene).¹¹

- 3.5 In view of this, a middle ground type of sanction is sought for regulatory offences. Criminal convictions which carry real negative stigmas and significant practical disabilities such as disqualification from holding public office or acting as company director may be unnecessary and too draconian. Administrative or civil sanctions on the other hand, which carry punitive and deterrent effects *without* the negative stigma, present a more appropriate means of dealing with regulatory offences.

Liberalisation of Singapore markets

- 3.6 In recent years, the Singapore Government has taken serious measures to liberalise certain sectors of the economy. For example, in the telecommunications and financial sectors, policies have been implemented to create a market-driven environment that promotes innovation, entrepreneurship, efficiency and business flexibility.¹² The overall objective is to transform Singapore into a truly international centre and a “business and talent hub” where large international players and investors converge in Singapore to tap regional and global markets.¹³
- 3.7 Criminal prosecution for *every* technical breach of the law will work directly against the creation of such an environment. International players and investors would be deterred by the possible stigma of “criminal convictions merely for a technical breach of the law especially

¹¹ Sanford Kadish, “Some Observations on the Use of Criminal Sanctions in Enforcing Economic Regulations” (1963) 30 University of Chicago Law Review 423 as quoted in K Yeung, “Quantifying Regulatory Penalties: Australian Competition Law Penalties in Perspective” (1999) 23 Melbourne University Law review 440 at 458

¹² A Financial Sector Review Group headed by Deputy Prime Minister Lee Hsien Loong was formed in August 1997 to embark on an introspective review of our financial sector and the complementary legal and regulatory framework. Pursuant to this, the Corporate Finance Committee was formed in December 1997 to recommend measures to make Singapore a key financial centre for international corporate fundraising activity. The above quotation is the first recommendation of the Corporate Finance Committee.

¹³ The Economic Review Committee (ERC) was convened in December 2001 to review Singapore’s development strategy and formulate a blueprint to restructure the economy. The Sub-Committee on Taxation, Wages, CPF and Land Economic Review Committee made specific recommendations in April 2002 on Singapore’s tax system to create this “business and talent hub”. For companies and businesses, lower taxes and the other proposed changes will encourage new investments, promote local enterprise, reduce business costs and enhance competitiveness. For individuals, lower tax burdens will reward hard work and enterprise, and hence help retain and attract talent.

where those convictions have to be disclosed to other foreign regulatory authorities and stock exchanges, which in other jurisdictions would at the very most, attract a civil fine or censure. Further, the practical disabilities associated with criminal convictions, such as disqualification from being a director or applying for professional or regulatory licences would severely cripple their ability to conduct business activities in Singapore and elsewhere. Overall, the indiscriminate imposition of criminal sanctions for regulatory breaches would only serve as a disincentive for professionals to base their operations in Singapore. If Singapore wants to attract and retain such talent, it is important to review our criminal law regime to determine if appropriate criminal offences could be reclassified as non-criminal infringements.

- 3.8 At the same time, the integrity of our markets must not be compromised as a result thereof. A strong and sound regulatory framework supported by effective enforcement mechanisms must still be in place to maintain high standards of conduct. Administrative or civil sanctions can fulfil this role.

Promoting entrepreneurship

- 3.9 As part of its new economic strategy for Singapore, the Government is promoting Singapore entrepreneurship to help Singapore-based companies internationalise and grow in the global market. In his National Day Rally 2001 speech, Prime Minister Goh Chok Tong highlighted the need to encourage entrepreneurship by developing a risk-taking culture. He stressed that Singaporeans had to learn to “accept failure”, and commented that “perhaps because of our dogged pursuit of excellence ... somebody who has failed find its difficult to start afresh. But whatever the reason, we must give a second, third and further chance to those who had failed, provided it was an honest failure.”.
- 3.10 Reclassification of appropriate criminal offences as non-criminal infringements will facilitate the drive towards a spirit of entrepreneurship which will result in a more vibrant economy. It will remove the social stigma associated with failure where such failure entails criminal convictions. It will also remove practical disqualifications resulting from criminal convictions such as acting as director or applying for new business licences. The entrepreneur who fails will thus find it less difficult to start afresh and embark on another business venture. A host of potential criminal sanctions will only inhibit the spirit of entrepreneurship. In order to develop a vibrant “enterprise ecosystem”, the Economic Review Committee (“ERC”) states that

Singapore needs to have more “pro-enterprise regulations” and in particular, the ERC stresses the importance of the “need to regulate with a light touch if we do not want to stifle creativity and innovation”.

Ease of enforcement

- 3.11 A deterrent works only if it is enforceable. The ease of enforcement associated with an administrative or a civil sanction, as compared to the criminal regime, is advantageous. For the civil penalty, civil claims are subject to a lower burden of proof requiring proof on a balance of probabilities as opposed to criminal prosecution which requires the more onerous proof beyond reasonable doubt. Civil actions avoid the stricter and more restrictive rules regarding the adducing of evidence in criminal trials. It has also been observed that civil law offers a more sophisticated variety of remedies such as *mareva* injunctions and the possibility of such orders being enforced overseas.¹⁴ As for administrative financial penalties, they are administered by the administrative agency itself, subject to certain safeguards. Thus efficiency and ease of enforcement may be easily achieved.

Extra-territorial jurisdiction

- 3.12 With advances in technology and sophistication of criminal strategies, it has been observed that criminal law by itself, may be inadequate to deal effectively with crime. Singapore courts do not assert extra-territorial criminal jurisdiction over offences committed outside Singapore unless legislation expressly confers extra-territorial jurisdiction.¹⁵ However, with technological advancement, offences such as market manipulation or money laundering which affect Singapore markets can originate from another jurisdiction and in the process involve many different markets in other jurisdictions.
- 3.13 Even if legislation confers extra-territorial jurisdiction, practical difficulties emerge. The futility of enforcement and potential negative impact on international relations would by themselves create more serious problems. The highly publicized decision of the US Supreme

¹⁴ See Margaret Chew, “The Securities Regulator in Civil Pursuit: *Quaere* A new Enforcement Option” [1999] SJLS 596 at 624. The author cites the case of *SIB v Pantell SA* (No 1) [1989 BCLC 590] where the court granted a *Mareva* injunction over assets of the defendant not only in the UK but also in the Channel Islands. The author uses this as an illustration of the possible extraterritorial effect of a *Mareva* injunction.

¹⁵ This is provided in section 15(1) of the Supreme Court of Judicature Act (Cap.322). Section 50(2) of the Subordinate Courts Act (Cap.321) is *para materia* with section 15(1) of the SCJA. See also *Taw Cheng Kong v. Public Prosecutor* [1998] 1 SLR 943.

Court in *United States v. Humberto Alvarez-Machain*¹⁶ serves as an illustration of this. In that case, the US Supreme Court held that a Mexican citizen could be tried in the US courts for a criminal offence which was committed in Mexico, notwithstanding that he had been forcibly abducted in Mexico and brought to the US by paid agents of the US Government.¹⁷ Many countries, especially in Latin America, condemned the US Supreme Court's ruling. Mexico announced that it was suspending a major part of its cooperation with the US to stop drug traffickers. Canada declared that it would not tolerate similar abductions from its soil. In August 1992, a special committee of the Organization of American States criticized the decision as ignoring "the fundamental principle of international law, namely, respect for the territorial sovereignty of states."¹⁸ Business interests may also be alarmed at the prospect of submitting to extra-territorial jurisdiction.

- 3.14 Yet, effective mechanisms to deal with cross-border transactions are necessary. Where cross-border transactions breach our laws, we must be equipped to enforce our laws to safeguard the integrity of our markets. One possibility is to impose non-criminal administrative or civil sanctions in lieu of criminal convictions. Conferring extra-territorial jurisdiction on such administrative or civil sanctions may not raise as many problems as doing so for criminal provisions.¹⁹

Administrative agencies as enforcement bodies

- 3.15 Finally, there is much to be argued for imposing enforcement duties on administrative agencies. The agency which administers the law has direct contact with potential offenders and first-hand experience as to current industry practices and compliance difficulties faced by industry players. This translates into a better understanding of the seriousness of each violation and the appropriate penalty which will best deter future violations. These factors point to the appropriateness of administrative agencies fulfilling the enforcement role. There remains of course, the fundamental issue whether every agency has the resources, means or capability to develop a fair and transparent system to mete out penalties. These factors will be further discussed below.

¹⁶ 112 S. Ct. 2188 (1992)

¹⁷ The Supreme Court then remanded the case for trial where the Alvarez-Machain was finally acquitted in the District Court. Litigation is however still on-going. Alvarez Machain brought a civil suit against the US Government and several other individuals for damages for the wrongful arrest.

¹⁸ Information obtained from the US Constitutional Rights Foundation website at <<http://www/crf-usa.org/bria/bria>>

¹⁹ It is acknowledged that difficulties also emerge in the extra-territorial application of civil sanctions.

Questions

- Q.1** Do you agree with the arguments justifying the use of administrative or civil sanctions?
- Q.2** Are there other compelling reasons which you think should be highlighted?
- Q.3** If you disagree with any of the above propositions, what are your views and concerns?

PART 4

FACTORS DETERMINING THE SUITABILITY OF NON-CRIMINAL SANCTIONS

- 4.1 Administrative and civil sanctions should be used with discrimination. At the extreme end where offences are reclassified as non-criminal infringements, care should be taken that it is done only after it is determined that criminalisation of the errant behavior is unnecessary for effective regulation. Even in the middle ground where administrative or civil sanctions are used to complement the criminal regime, it should be done only where it is appropriate to do so. Overall, principles must be developed to guide administrative agencies in determining whether a contravention should attract an administrative or a civil sanction.
- 4.2 The doctrinal basis for the use of non-criminal sanctions in regulatory law has traditionally been the criminal law and civil law paradigms. The criminal law paradigm focuses on violation of public norms and punishment of such violation through imprisonment, fines or negative stigma. The four classical principles of sentencing in criminal law have been identified by Lawton LJ in *R v Sargent* (1974) 60 Cr App R 74 as *retribution, deterrence, prevention and rehabilitation*.
- 4.3 In contrast, civil law is concerned with actual injury to private interests, and restitution or compensation through money payments or injunctions. Unlike criminal law, civil law is not concerned with subjective liability but focuses only on objective liability - either disregarding the mental element requirement or requiring only negligence.
- 4.4 Against this traditional framework, administrative and civil sanctions have emerged. These sanctions include financial penalties which seek to *punish* the offender and serve specific/general *deterrence* purposes, revocation of licenses which aim to *prevent* the offender from carrying out the regulated activity and the compelling of specific performance which arguably "*rehabilitates*" the offender. The sanctions therefore seek to achieve the aims of criminal law, but are imposed within a civil procedural setting. It has been observed that the use of such hybrid sanctions will lead to a new middle ground between the criminal law and civil law paradigms.²⁰

²⁰ See Kenneth Mann, "Punitive Civil Sanctions: The Middleground between Criminal and Civil Law" 101 Yale L.J. 1795 at 1813.

- 4.5 With the increased use of administrative and civil sanctions, academics have argued that criminal law should now be confined to “areas of clearly egregious behavior in which severely punitive civil monetary sanctions are ineffective”. In their view, wrongful conduct containing “wilful fraud, bribery or reckless endangerment should remain as crimes.” Optimally, proof of actual moral culpability should be an element of a criminal conviction.²¹
- 4.6 These arguments support the proposition that strict liability offences, in particular those for less serious contraventions, should attract non-criminal sanctions. An academic has summarised the arguments as follows: “The fact that in so many of these crimes a reasonable mistake of fact is not a defense has aided their enforcement but has greatly diminished, if not entirely removed the feeling that it is “wrong” to violate a statute merely because it provides for penal sanctions ... Such an indiscriminate use of the criminal law weakens its hold as the arbiter of respectable conduct”.²² More recently, during the ALRC Conference on “Penalties: Policy, Principles and Practice in Government Regulation” it was commented that the classic use of administrative penalties or “on the spot fines” is in straightforward situations where there can be no real doubt about contravention e.g. illegal parking.²³
- 4.7 The nature of the wrongful conduct should also be considered. Professor John C. Coffee Jr. of Columbia Law School proposes a “pricing/prohibiting” distinction between a crime and a civil wrong. He argues that criminal law should be reserved to **prohibiting** conduct that society believes lacks any social utility (e.g. murder, theft). Civil financial penalties should be used to deter or **price** many forms of misbehavior (e.g. negligence by industrial polluters) where the regulated activity has positive social utility but is imposing externalities on others. The pricing objective of civil penalties can be briefly explained as follows: A correctly calculated price forces an actor to internalise the social costs of an activity. Where the actor’s business imposes external costs on others (e.g. industrial pollution from defects in product) tort law often requires the actor to pay these external costs to the victims, thereby giving the actor a greater incentive to take precautions. In theory, the rational actor will take precautions up to the point where the

²¹ See John C. Coffee Jr., “Paradigms Lost: The Blurring of the Criminal and Civil Law Models – And What can be done about it” 101 Yale L.J. 1875 at 1881 and 1890.

²² Hall, “The Substantive Law of Crimes 1887-1936 (1937) 50 Harv L Rev 616 at 623

²³ This was a comment from the Hon Daryl Williams AM QC MP, Attorney-General of Australia at his Official Opening and Keynote Address at the ALRC Conference on “Penalties: Policy, Principles and Practice in Government Regulation” held from 7 June 2001 to 9 June 2001.

marginal costs of further precaution equals the marginal benefit from reducing the actor's expected liability. Legal rules that extract a "price" for the misbehavior therefore straddle deterrent and compensatory aims. The same incentive to take optimal precautions will result if the state extracts an equivalent civil penalty.²⁴

- 4.8 Delving deeper into the nature of the wrongful conduct, Associate Professor Chin Tet Yung, a member of the Parliament of Singapore, has argued that where it is evident that a person did not intend to cheat but was merely careless, and his act was "victimless" in that no one suffered directly from it, there was no reason why such carelessness should attract a criminal sanction. He cited the example of the Electronic Road Pricing System in Singapore and commented that no one with any sense would be trying deliberately to cheat such a sophisticated system with a simple method of not inserting a cashcard. He cautioned that "the use of criminal law should be carefully controlled", and recommended that in such a situation, the imposition of an administrative fee would be more appropriate.²⁵
- 4.9 The relationship between the regulator and regulated person is also a relevant factor. Where they enter into an on-going relationship (e.g. in the case where a licence issued by a regulator), it has been argued that dialogue and cooperation will enable regulators to understand why and how breaches occur in order to better structure rules, practices and restraints to encourage compliance. In such a situation, the use of criminal sanctions for every default could inhibit such dialogue and cooperation. What would be more useful would be an escalating series of sanctions and an escalating level of intrusiveness by the regulator in the form of an enforcement pyramid, with less serious non-criminal sanctions at the base of the pyramid (e.g. warning letters, civil penalties) extending to more draconian measures or criminal sanctions at the top of the pyramid. This is the "enforcement pyramid" model advocated by Ayers and Braithwaite in 1992, to achieve "responsive regulation".²⁶ Part 7 of this paper elaborates on this "enforcement pyramid" model.

²⁴ See Coffee, above n 21 at 1876 – 1883.

²⁵ Assoc. Prof Chin's recommendation was accepted and thereafter incorporated into legislation. This example of an effective administrative action will be elaborated further in Part 7 of this Paper. The discussion took place during the Singapore Budget Debate in March 2001. The full report can be obtained from The Singapore Parliament Reports.

²⁶ See ALRC Background Paper 7 entitled, "Review of civil and administrative penalties in federal jurisdiction" which was prepared for the ALRC Conference on "Penalties, Policy, Principles and Practice in Government Regulation" at pages 8-10, available at <http://www.alrc.gov.au/>

- 4.10 Conversely, if the potential offender is concerned only with profits and will only have a one-off encounter with the regulator, (e.g. people attempting to smuggle items across borders, or committing types of fraud) civil sanctions will not be effective and the threat of criminal convictions at the outset would be necessary. Ayers and Braithwaite had quoted this example as one situation where their proposed enforcement pyramid model would not be successful.²⁷
- 4.11 Finally, the need for public visibility of the censure should be considered. The public nature of court proceedings, whether civil or criminal may, in certain cases help the administrative agency communicate its image as a tough, no nonsense enforcer. The Australian Competition and Consumer Commission takes the view that “completed litigation invariably triggers information and liaison activities to maximise its deterrent and educative effect”.²⁸ While we agree with this view, it should also be noted that for certain industries, public announcements of administrative disciplinary action by authorities (e.g. the securities regulator in capital markets) may achieve the same desired effect.
- 4.12 Based on the above propositions, we propose that administrative agencies consider the following factors in determining whether to impose administrative or civil sanctions in lieu of, or as a complement to, criminal sanctions:
- (a) Is there an element of moral culpability?
 - (b) Is there an element of fraud, bad faith or reckless endangerment?
 - (c) Is the offence “victimless” in that it merely inconveniences the regulator but is not otherwise immoral or socially repugnant?
 - (d) Is it an offence of strict liability, i.e. irrespective of the mental state of the offender or what he intended by his action?
 - (e) Is the primary purpose of the legislation to punish, to deter or to compensate victims of the wrongdoing?

²⁷ See ALRC Background Paper 7 entitled, “Review of civil and administrative penalties in federal jurisdiction “ which was prepared for the ALRC Conference on “Penalties, Policy, Principles and Practice in Government Regulation” at pages 9-10, available at <http://www.alrc.gov.au/>.

²⁸ See *ibid* at page 23. See also *Coffee*, above n 21 at 1888.

- (f) Would the deterrent effect be strong enough if the stigma attached to a criminal conviction were removed?
- (g) Is the conduct in question one that lacks social utility and should be completely prohibited, (e.g. theft) or is a regulated activity that has positive utility but is imposing externalities on others by the way it is conducted (e.g. negligence in industrial production resulting in pollution)?
- (h) Is there any legislative option between the regulator and the potential offender such that the use of administrative measures (e.g. the threat of revocation of licences or imposition of an administrative financial penalty) without criminal sanctions would be effective?
- (i) Or is the potential offender a “stranger” to the regulator such that it would be practically difficult to enforce an administrative financial penalty, and therefore the threat of a criminal conviction is necessary?
- (j) Is there any legislative option between the regulator and the potential offender such that dialogue and cooperation is more useful than outright censure through criminal penalties?
- (k) Or is the potential offender someone who is concerned only about profits and who will only have a one-off encounter with the regulator, where dialogue and cooperation serve no useful purpose?
- (l) What is the nature of the breach? Is it useful for the regulators to understand why and how breaches occur and the practices and restraints that can be used to encourage compliance?
- (m) Is public visibility of the financial penalty crucial to achieving the purpose of the legislation? If so, would the public nature of court proceedings be necessary, or would public announcements of administrative actions be adequate?

Questions

- Q.4** Would you agree that the proposed factors are relevant in assessing whether an offence should be reclassified as a non-criminal infringement, or whether non-criminal sanctions should be used to complement the criminal sanction?
- Q.5** What other factors would you consider relevant to this issue?
- Q.6** Equally important, how should these factors be applied: Should there be a heavier weighting assigned to some factors? Should there be an overarching factor of social repugnance, the absence of which qualifies an offence as worthy of consideration for reclassification as a non-criminal infringement?

PART 5

ADMINISTRATIVE FINANCIAL PENALTIES

Constitutional issues

- 5.1 An administrative financial penalty is imposed by an administrative agency after its own independent determination of issues of fact and law. The issue arises as to whether this is an exercise of judicial power by the administrative agency and therefore in contravention of Article 93 of the Constitution of the Republic of Singapore.
- 5.2 Article 93 of the Constitution of the Republic of Singapore states —
- “The judicial power of Singapore shall be vested in a Supreme Court and in such subordinate courts as may be provided by written law for the time being in force.”*
- 5.3 It is generally accepted that the ability to determine the punishment for a criminal offence is a judicial function.²⁹ However, case law has demonstrated that it would be necessary to consider the context as a whole. Some quasi-judicial powers vested in administrative bodies have been upheld as being non-judicial.
- 5.4 In the case of Queen v White³⁰, the High Court of Australia held that the imposition of a fine by an administrative body for misconduct by an officer, was a non-judicial function. The relevant provision was section 55(1)(a) of the Public Service Act (1922-1960) which provides that an officer who wilfully disobeys any lawful order is guilty of an *offence* and liable to such punishment as determined according to the provisions. The officer was in fact fined. The court held that the term “offences” should be interpreted as wholly concerned with breaches of discipline by members of the public service with respect to their work for the Commonwealth Crown. Therefore, notwithstanding the use of that term, the provisions of the Act did not create offences punishable as crimes.
- 5.5 The case of Queen v White is good authority for the proposition that no judicial power is exercised when an administrative body is empowered

²⁹ *Ali v R* [1992] 2 All ER 1, Privy Council from Mauritius; *Deaton v AG and Revenue Commissioners* [1963] IR 170

³⁰ (1963) 109 CLR 665

in a regulatory capacity to deal with a body of persons whose status is derived from a contractual relationship. A simple example would be a regulator which issues licences, and which is empowered by law to impose a financial penalty for breach of terms and conditions of the licence. Such action would, on the authority of the Queen v White case, be deemed to be not involving the exercise of judicial power and therefore not in contravention of Article 93 of the Constitution.

- 5.6 While the High Court of Australia in Queen v White arrived at this conclusion in spite of the use of the term “offences”, it did so after careful consideration of the context in which the term was used. The position would have been clearer if the term “offences” were not used in the first place. For this reason, we recommend that a regulatory wrong, if currently termed a criminal offence, be reclassified as a non-criminal infringement first, before the power to impose an administrative financial penalty is allowed. The reclassification would make it clear that it is not punishment for a *criminal offence* and therefore not an exercise of judicial power.
- 5.7 Finally, there remains the issue of whether administrative financial penalties are objectionable in the context of the *contractual* relationship between the regulator and the licensee. A breach of the terms of the licence would usually result in loss to society as a whole rather than the regulatory body. At the most, the regulatory body may have had to incur administrative costs to deal with the errant behavior, but this is comparatively insignificant. Under the law of contract, damages are generally based on the loss suffered by the plaintiff. In the event of substantial loss to society, a regulatory body that works only under the law of contract would not be able to recover substantial damages. However, the concept of penalties is not foreign to the law of contract. There are recent judicial statements that suggest that modest contractual penalties can be provided for by contract.³¹ Case law is unfortunately not so mature that the matter is beyond doubt. It is therefore logical for legislation to expressly empower such bodies to require the payment of what would be non-compensatory sums in the sense of the law of contract, i.e. a penalty.
- 5.8 The above discussion focuses on administrative financial penalties levied on persons who have entered into a contractual relationship with the administrative agency. It does not deal with the imposition of

³¹ See e.g. Lordsvale Finance v. Bank of Zambia [1996] 3 AL ER 156 where a 1% uplift from all possible losses was upheld.

administrative financial penalties on strangers who have no relationship whatsoever with the administrative agency. Aside from practical difficulties in terms of enforcement, there are other constitutional issues which arise in that situation and which appear unresolved under our law as it stands today. In the discussion that follows, we have therefore continued to focus on administrative financial penalties which are levied on persons who have entered into a contractual relationship with the administrative agency.

Safeguards and enforcement mechanisms

- 5.9 Administrative financial penalties are adjudicated and imposed by the administrative agency independently. The administrative agency acts as prosecutor and judge. It decides on the relevant issues of fact and law and then determines the type or amount of penalty to be levied in each case. The risk of abuse or misuse of power is present. There is therefore a crucial need for transparency, both in the rules itself as well as in the decision making process. Opaqueness in either of these areas may lead to criticism from foreign investors, international bodies or partners of free trade agreements. As recently highlighted by a decision of our High Court, the lack of clarity in the rules may even be a justification for a criminal conviction to be set aside.³²
- 5.10 At the same time, there must be efficient enforcement mechanisms to aid in recovery of the administrative financial penalty. Such a penalty is effective only if the administrative agency can compel payment.
- 5.11 In light of the above, we propose that the following fundamental principles be applied in the use of administrative financial penalties. These principles can be broadly classified as **fairness, transparency, accountability and efficiency** —
- (a) *Decision making process must be fair and seen to be fair.*³³
(*Fairness and transparency*)
- (i) Those subject to the administrative financial penalty should be provided with sufficient information as to the reasons for the penalty, and the evidence on which the action is based

³² It was reported in the Straits Times of 22 April 2002, that in a High Court decision, the Chief Justice set aside a criminal conviction on the grounds that the application form issued by the Ministry of Manpower was not clear, thereby leading to confusion which resulted in the breach of the relevant law.

³³ Observed from the FSMA and the FSA paper on Response to Consultation Paper 17 : Financial services regulation : Enforcing the new regime.

so as to enable them to understand the grounds on which the administrative agency is proceeding with the action.³⁴

- (ii) Such persons should have a reasonable opportunity to effectively challenge the grounds for the proposed action and present any evidence and arguments that are relevant to the decision in question.³⁵
 - (iii) The decision by the administrative agency must be an impartial and dispassionate decision.³⁶
 - (iv) Circumstances under which a penalty will be imposed and the criteria for determining the amount of penalty for each particular case should be fair and clear.
- (b) *There must be a right of appeal or review of the decision by an independent body. (Accountability)*
- (i) There should be a right of appeal to an external independent body with adequate powers to consider the case on its merits and substitute its own decision for that of the administrative agency.
 - (ii) As with all other administrative actions, there should be a right of judicial review by the courts.
- (c) *There must be adequate means of enforcement. (Efficiency)*
- (i) The financial penalty should be deemed to be a civil debt due to the administrative agency and enforceable through civil proceedings in court. In this connection, the agency should be empowered to apply to court for ancillary relief, such as injunctions or restitution orders, to aid in recovery of the civil debt.
 - (ii) In addition, the administrative agency should also be empowered to take other forms of administrative action for failure to pay the financial penalty. For example, the agency could be allowed to suspend or revoke a licence, subject to reasonableness principles.

³⁴ See above, n33.

³⁵ See above, n33.

³⁶ See above, n33.

- (iii) To increase the effectiveness of this sanction, it has been suggested that consideration be given to the possibility of deeming the administrative financial penalty order as a court order, without need for commencement of civil proceedings. (This is the case for maintenance orders made by the Tribunal for the Maintenance of Parents established under the Maintenance of Parents Act (Cap.167B)³⁷). Failure to pay the penalty would then render the offender liable for contempt of court. While this would be highly efficient, our view is that it should only be implemented when strong policy reasons justify it. Such enforcement mechanisms have been used for composition fines in Australia, and will be discussed in Part 8 of this Paper.

Discussion of administrative financial penalty models

- 5.12 We have studied 2 different models of administrative financial penalties in this paper. These are the financial penalties imposed under the UK Financial Services Markets Act 2000 and the Singapore Telecommunications Act (Cap.323).
- 5.13 The UK Financial Services Markets Act 2000 (“FSMA”) empowers the Financial Services Authority (“FSA”) to impose financial penalties in a wide variety of situations. These include breach of FSMA provisions by “authorised persons” and misconduct by “approved persons”. The wide administrative powers conferred on the FSA was one reason for the huge public debate when the Bill was first introduced in the UK Parliament. After much deliberation, several amendments and refinements, the Bill was finally passed. The FSMA came into operation on 14 June 2000. Relevant extracts of the FSMA are reproduced and attached as Annex A.
- 5.14 Our discussion focuses on the financial penalty that the FSA may impose under section 206 of the FSMA on authorised person for contravention of requirements under the Act. An authorised person is one which holds a licence issued by the FSA to perform specified permitted activities.
- 5.15 The FSMA prescribes detailed requirements on the notices and right of hearing which must be given to the offender. Under sections 207 and

³⁷ See section 10 of the Maintenance of Parents Act (Cap. 167B)

387 of the FSMA, the FSA must issue a warning notice setting out the reasons for the proposed penalty. The offender is given a period of not less than 28 days to make representations to FSA. If the FSA decides to proceed with the proposed action, it must issue a decision notice under section 208. If the offender does not appeal, the FSA must then issue a final notice under section 390.

- 5.16 To ensure transparency in decision-making, section 210 of the FSMA prescribes guidelines which the FSA must comply with in exercising its discretion. In addition, the FSA is required to publish a policy statement (the draft of it being subject to public consultation) as to the factors it would consider in determining the amount of penalties to impose. In accordance with these requirements, the FSA issued an Enforcement Manual in [December 2001](#).
- 5.17 As regards accountability, sections 208(4) and 132 of the FSMA allow the offender to appeal to an independent Financial Services and Markets Tribunal appointed by the Lord Chancellor, which determination or direction is binding on the FSA. Section 137 further provides that a party to a reference to the Tribunal may with permission, further appeal on points of law arising from the Tribunal's decision to the Court of Appeal.
- 5.18 A financial penalty order is deemed, by virtue of section 390(9), to be a "debt due" to the FSA. The FSA may recover the penalty as a civil debt through civil proceedings in court. Further, the FSA may apply to court under section 380 for an injunction to restrain the offender from disposing of assets which he is reasonably likely to dispose of. It may also apply to court under section 382 for a restitution order. The advantage of obtaining court orders is that failure to comply renders the offender in contempt of court and liable to imprisonment if he fails to comply with such court orders. At the same time, the FSMA offers the FSA the convenient option of making restitution orders on its own accord in specified circumstances, under sections 384 to 386 of the FSA.
- 5.19 It is conceivable that failure to pay a financial penalty will justify the FSA in exercising its powers under section 45 to vary the permitted activities of the authorised person. In practical terms, this may be the most effective and expeditious method to secure payment of the penalty.
- 5.20 The FSMA approach with its many in-built safeguards is justified in view of the large penalties that may be imposed and the complexity of

the behaviour involved. Less complex cases may not justify such a system, which demands substantial resources and manpower. Indeed, one argument is that imposing excessively burdensome procedural requirements on the administrative agency may reduce the advantage and therefore viability of the administrative financial penalty regime. It may serve as a disincentive for agencies to adopt such a regime. Agencies should therefore consider their resources and manpower before deciding whether to set up an administrative financial penalty system.

- 5.21 The second example of a financial penalty system is that found in the Singapore Telecommunications Act (“TAS”). Relevant extracts of the TAS are reproduced and attached as Annex B.
- 5.22 Section 8 (1) of the TAS allows the Info-communications Development Authority of Singapore (“IDA”) to impose a financial penalty of up to S\$ 1 million as it thinks fit. Section 8(1) specifies that such power may be invoked if the IDA is satisfied that a licensee is contravening or has contravened any conditions of the licence, any provision of any code of practice or standard of performance or any direction given by the IDA. Where the IDA decides to impose such financial penalty, section 8(1) requires it to give notice in writing and specify the period within which it must be paid. Transparency and accountability is ensured by section 8(3), which allows any person aggrieved by the decision of the IDA to appeal to the Minister.
- 5.23 As regards enforceability of the penalty, section 8(7) states that the financial penalty shall be recoverable by the IDA as a debt due to it. The provision goes on to provide that the liability to pay is not affected even if the licence of the offender ceases for any reason to be in force.
- 5.24 It is important to note that the absence of prescribed procedures in legislation does not have any bearing on the constitutionality or legality of the power. The IDA is still bound to act reasonably and comply with the rules of natural justice. For that purpose, it is important that in the exercise of its discretion, it adheres to the principles enunciated in paragraph 5.11 above.

Questions

- Q.7** Do you agree with the principles of fairness, transparency, accountability and efficiency proposed for administrative financial penalties?
- Q.8** In particular, in what circumstances do you think the administrative financial penalty could be deemed a court order, in order to increase its effectiveness?
- Q.9** Are there other safeguards or enforcement mechanisms which should be incorporated for administrative financial penalties?

PART 6

CIVIL FINANCIAL PENALTIES

- 6.1 The civil financial penalty is unlike an administrative financial penalty in that the breach of law would have to be proven in court through civil proceedings initiated by the administrative agency, and the civil financial penalty imposed on the offender through a court order.
- 6.2 Regulators have justified civil financial penalties as a suitable complement to the criminal regime. In most of these cases, it is acknowledged that the criminal offence must remain to denounce on behalf of the state, the wrong behavior. The retention of criminal sanctions is therefore of great symbolic, if not practical, value.³⁸ In other cases, the criminal sanction is retained so that it can be pursued in cases where it is in the “public interest” to bring a prosecution.³⁹ The need for a second regulatory mechanism to complement the criminal sanction has been justified on the following grounds:
- (a) That securing a criminal conviction is difficult because the elements of the offence have to be proven “beyond a reasonable doubt”⁴⁰.
 - (b) That the restrictive rules of criminal evidence have inhibited successful criminal prosecutions of blatant acts of wrongdoing.⁴¹
 - (c) That the different levels of the mental intent of the offender must be given due consideration. If the offender contravenes a provision, he is liable for a civil financial penalty. However, if in contravening the provision, he acted recklessly or was intentionally dishonest, he should be guilty of a criminal offence.⁴²
- 6.3 The civil financial penalty is therefore appropriate in cases where due to the nature of the offence and the lack of readily discoverable

³⁸ Goldwassar, “CLERP 6-Implications and Ramifications for the Regulation of Australian Financial Markets”, 17 Comp and Sec LJ 206, 212.

³⁹ This was justification for the parallel civil and criminal regimes for market misconduct in Hong Kong legislation, given by the Hong Kong Bills Committee as reported in the “Report of the Bills Committee on Securities and Futures Bill and Banking (Amendment) Bill 2000” at p 35.

⁴⁰ This was cited by DPM Lee Hsien Loong, Chairman of MAS, at the second reading of the Securities Industry (Amendment) Bill 2000, as the reason for the introduction of the civil penalty regime for insider trading.

⁴¹ See above, n 39 at p 34.

⁴² See sections 180 and 184 of the Australian Corporations Act 2001. This will be discussed in detail later.

information there is great difficulty in proving an offence beyond a reasonable doubt. Or it could be cases where the requisite mental element of the crime is difficult to establish. An example is insider trading where it is precisely for these reasons that the US Securities and Exchange Commission and the Hongkong Securities and Futures Commission have created a civil financial penalty regime to complement the existing criminal regime.

- 6.4 On the other hand, there are also civil financial penalty regimes which exist independently. An example is the Australian Trade Practices Act where certain conduct infringing Part IV of the Act renders the offender liable to a civil financial penalty (called pecuniary penalty) without any criminal connotations.

Safeguards

- 6.5 As civil financial penalties may exist alongside criminal sanctions, the issue of “double jeopardy” (rule against punishing a person twice for the same act) arises. Moreover, the regulator (seeking the civil financial penalty) and the Public Prosecutor (prosecuting the criminal offence) may each have different interests in deciding whether and when to initiate proceedings. These interests may not always be aligned.

- 6.6 In view of the above, the following safeguards are necessary:
- (a) Legislation must state clearly the relationship between the criminal and civil proceedings.
 - (b) To facilitate decision-making by the different agencies, memoranda of understanding or protocols should be set up to deal with joint investigations or information sharing between the agencies.⁴³

Discussion of civil financial penalty models

- 6.7 Two examples of civil financial penalty models are examined here. They are section 104A of the Securities Industry Act (Cap.289)⁴⁴ which

⁴³ This was highlighted by the ALRC in its paper on “Civil and administrative penalties reference : An overview” available at <http://www.alrc.gov.au/current/civiladmin/overview.html>.

⁴⁴ The Securities and Futures Act 2001 (“SFA”) was passed by the Singapore Parliament in October 2001. The SFA deals inter alia with the regulation of activities and institutions in the securities industry and seeks to repeal the Securities Industry Act. However to date, only certain parts of the SFA have come into operation. The part dealing with insider trading has not come into operation yet. Therefore, section 104A of the Securities Industry Act is still applicable. In any event, the principles

is reproduced and attached as Annex C and the Australian civil financial penalty regime under its Corporations Act 2001.

- 6.8 Section 104A of the Securities Industry Act (“SIA”) allows the securities regulator in Singapore (the Monetary Authority of Singapore (“MAS”)) to commence civil action in court to impose a civil penalty on a person guilty of insider trading. If the court is satisfied on a balance of probabilities that there has been a contravention of section 103 of the SIA, it can impose a civil penalty of up to three times the amount of profit gained or loss avoided by the insider. By virtue of section 104A (5), this civil penalty is deemed to be a judgement debt. This will give MAS access to the whole array of civil remedies available for enforcement of judgment debts.
- 6.9 The relationship between the civil penalty and the existing criminal regime is also made clear in legislation. Under section 104B of the SIA, proceedings for the civil penalty cannot be commenced if the person has been convicted or acquitted in criminal proceedings for the same behavior, save for an acquittal due to a withdrawal of charges. If criminal proceedings are pending, the civil penalty provisions are stayed and may be continued only in specific prescribed situations.
- 6.10 It is interesting to note that aside from the civil and criminal penalties, the SIA also creates an independent civil action in section 104C, enforceable by contemporaneous investors who have suffered losses caused by the act of insider trading. Under section 104C, these investors can submit their claims on the coat-tail of a criminal conviction or successful civil penalty action by MAS. They do not need to prove the elements of the contravention. To facilitate these “cross-claims”, section 104G permits Rules of Court to be made specifically to regulate the procedure to be followed in respect of these private civil claims.
- 6.11 The second example is the Australian Corporation Act 2001, relevant extracts of which are attached as Annex D. Section 181 of the Australia Corporations Act 2001 imposes on directors of corporations a duty to exercise their powers and discharge their duties in good faith in the best interests of the corporation and for a proper purpose. Failure to discharge this duty attracts a civil penalty. However, if it is proven that the director was reckless or intentionally dishonest, he is guilty of a

of section 104A which are discussed in this paper have been incorporated into the corresponding section in the SFA.

criminal offence under section 184 of that Act. Sections 1317E to 1317S of the Corporations Act 2001 deal with the relationship between civil penalty proceedings and criminal proceedings. Under these provisions, the former cannot be brought if there has been a criminal conviction for substantially similar conduct. Criminal proceedings can however be commenced even if there have been civil penalty proceedings for substantially similar conduct. The qualification is that evidence adduced during civil proceedings is not admissible against the accused in criminal proceedings.

- 6.12 Our view is that the above 2 Acts serve as useful examples on how a civil financial penalty regime can co-exist with a criminal regime. In each case, the relationship between the 2 types of proceedings are made clear. The three pronged regime under the SIA serves as an example of how criminal and civil sanctions/actions can co-exist and complement each other to ensure overall effective regulation.

Questions

- Q.10** Do you agree with the safeguards proposed for civil financial penalty regimes?
- Q.11** Are there other safeguards which should be imposed?
- Q.12** What principles should be entrenched in legislation to govern the relationship between the civil and criminal regimes, if they exist as parallel regimes?
- Q.13** What principles should guide the agencies in setting up protocols concerning joint investigations and information sharing? Should these protocols be made known to the public for transparency?

PART 7

ADMINISTRATIVE ACTIONS SUPPORTING CRIMINAL REGIMES

- 7.1 The argument for a graduated enforcement strategy where regulators have access to a range of sanctions and impose a sanction commensurate with the gravity of the particular contravention, is compelling. This strategy underlines the authority of the regulator and supports the sense of fairness which is important to responsible persons who will comply if they know that only the dishonest will be punished.
- 7.2 Such arguments have been put forward and accepted by experts in regulation.⁴⁵ Ayers and Braithwaite coined the phrase “responsive regulation” in 1992 and elaborated the model of an “enforcement pyramid” which is essentially a cogent structure of cumulative sanctions incorporating administrative sanctions at the base, criminal sanctions at the apex and civil financial penalties filling the middle ground. The argument is that over reliance on harsh penalties is not only expensive to the regulator, it can be counterproductive and hinder compliance. Instead, trust builds the necessary goodwill to translate into improved voluntary compliance.⁴⁶ Therefore, regulators should start off softly, initially adopting a co-operative approach and respond to the firm’s actions in kind. The greater the non-compliance, the greater the sanction imposed.⁴⁷
- 7.3 This part of the paper highlights existing legislation which have incorporated such “co-operative” administrative actions, which support the final criminal sanction which may be imposed. The underlying principle is that while trust is a critical component in effective regulations, it works better when enforcement “lurks in the background”.⁴⁸

⁴⁵ J Scholtz, “Deterrence, Cooperation and the Ecology of Regulatory Enforcement” (1984) 18 *Law & Society Rev* 179; I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (Oxford University Press, 1992); C Dellit and B Fisse, “Civil Liability under Australian Securities Regulation: The Possibility of Strategic Enforcement” in G Walker and B Fisse (eds), *Securities Regulation in Australian and New Zealand* (Oxford University Press, 1994), p 570; H Bird, “The Problematic Nature of Civil Penalties in Corporations Law” (1996) 14 *C&SLJ* 405.

⁴⁶ See J Braithwaite & T Makkai ‘Trust and Compliance’ (1994) 4 *Policing and Society*, 1-12.

⁴⁷ I Ayres & J Braithwaite *Responsive Regulation: Transcending the Deregulation Debate* Oxford University Press New York 1992.

⁴⁸ V & J Braithwaite ‘An Evolving Compliance Model for Tax Enforcement’ in N Shover & P J Wright (eds) *Crimes of Privilege* Oxford University Press, 2000. <http://ctsi.anu.edu.au/publications.html>.

Administrative charges

- 7.4 The Singapore Road Traffic (Electronic Road Pricing System) Rules (R 38) (“ERP Rules”) which was enacted in 1999 allows the imposition of an administrative charge with no criminal connotations where it is evident that a contravention is due to mere carelessness and not due to a wilful disregard of the Rules. The relevant extracts of the ERP Rules are reproduced and attached as Annex E.
- 7.5 The ERP Rules are made by the Minister for Communications under section 34D of the Road Traffic Act (Cap.276), by virtue of his power under section 34 of the Act to prescribe road-user charges for the use of any specified road.
- 7.6 Under rule 8 of the ERP Rules, a person who drives a motor vehicle during the restricted hours into a specified entry point on a specified road is required to have an electronic road pricing card (“ERP card”) inserted into an in-vehicle unit installed in his vehicle. Failure to do so renders the offender guilty of an offence and liable on conviction to a fine or imprisonment. However, if the conduct leading to the contravention was a failure to insert or properly insert an ERP card, or insertion of a ERP card with insufficient stored value, rule 8(2) permits the Registrar of Vehicles to issue a notice for payment of the applicable road user charge and an administrative charge of \$10. If an offender complies with this notice, he is not guilty of any offence.
- 7.7 The justification for this scheme is that such conduct clearly shows forgetfulness or carelessness on the part of the offender, as opposed to an intention to commit fraud. As commented during a Parliamentary session, “no one with any sense would be trying deliberately to cheat a sophisticated electronic system such as the ERP, at least not with a simple method of not inserting a cashcard.”⁴⁹ The Ministry agreed that such carelessness should not attract a criminal conviction. Instead, an administrative charge is levied. As its name suggests, the charge is meant to cover the administrative costs of tracking the offender, ensuring payment of the applicable road user charge.

⁴⁹ This was raised by Assoc Prof Chin Tet Yung, a member of Parliament during the Budget debate in March 2001. See text accompanying n 25.

Withdrawal of benefits

- 7.8 The Road Traffic Act (Cap.276) (“RTA”) sets out traffic rules with criminal sanctions which are necessary to ensure safety on the roads. Aside from criminal sanctions, the RTA also empowers the Traffic Police to take administrative action aimed to encourage compliance with traffic rules through incentives or disincentives.
- 7.9 Sections 45 to 47 of the RTA and Road Traffic (Driver Improvement Points System) Rules create a demerit point system which illustrates how an administrative action of suspending licences encourages compliance with other road traffic rules. These provisions are reproduced and attached as Annex F.
- 7.10 Under section 45(1) of the RTA, the Deputy Commissioner of Police (“DC”) has power to suspend a driving licence where it would not be in the interests of public safety for a person to hold a licence. Subsections (2) to (4) allow the set up of a system of awarding points against a person for commission of offences under the Act, and the suspension of the licence after such person accumulates a specified number of points. This system has been set up under the traffic rules, termed as the Driver Improvement Points Systems (“DIPS”). DIPS provides clearly how many points a person is awarded for each conviction (or composition) of a road traffic offence and specifies the maximum number which will trigger a suspension of the licence.
- 7.11 Aside from the clear criteria set out under DIPS, the RTA provides transparency in decision making by requiring the DC through section 45(5), to notify the driver when his points reach 50% of the maximum number. Once the points hit the maximum number, section 46(1) of the RTA requires the DC to give the driver notice in writing of his intention to suspend the licence and 14 days to show cause why his driving licence should not be suspended. The DC is bound by section 46(1) to consider the representations made before making a final order.
- 7.12 The DC is held accountable for his decisions, from which appeals may be made to the Minister for Communications under section 46(3) of the RTA. A person who drives during the period in which his licence is suspended is guilty of an offence under section 47(5) of the RTA.⁵⁰

⁵⁰ It is also interesting to note that if the period of suspension is 1 year or longer, section 47A of the RTA requires the driver to pass a prescribed test of competence before he is permitted to resume driving after the period of suspension.

- 7.13 From 1984 to 2001, the Traffic Police suspended a total of 28,323 licences under DIPS. During this period, the largest figure per year was in 1991 where 3782 licences were suspended and the smallest figure in 2000 where 785 licences were suspended.
- 7.14 A second example in the RTA is the discretion concerning renewal of licences. Section 35(8) of the RTA empowers the DC to refuse to renew any driving licence, or to renew it for a period of one year only notwithstanding that the applicant has elected to renew it for 3 years in 2 circumstances. First, where he is satisfied that the applicant has not complied with any process of court issued against him in respect of any offence committed by him under the RTA or the rules made thereunder or the Parking Places Act (Cap.214). Second, where the applicant has, pursuant to a warrant of court, been arrested in connection with an offence under the RTA Act or the rules made thereunder or the Parking Places Act, and the offence has not been tried and determined by the court. The section is reproduced and attached as Annex G.
- 7.15 From August 1999 to March 2002, the Traffic Police sent out 3,850 letters denying renewal of licences on the grounds of outstanding summonses from the Land Transport Authority, Urban Development Authority, Housing & Development Board and the Traffic Police.

Remedial actions

- 7.16 In appropriate cases, the administrative agency acts independently to compel performance of certain obligations to “cure” the contravention, or issue an order for the prohibited conduct to cease immediately. This mechanism is appropriate for cases where an enforcement response needs to be tailored according to individual circumstances, taking personal and industry considerations into account.

Safeguards and enforcement mechanisms

- 7.17 An administrative agency taking remedial action would be exercising much discretion in determining the appropriate action to make. The order would impact directly on the offender’s business. Therefore, there should be safeguards in place to ensure fairness and accountability. At the same time the agency must be equipped to effectively enforce the remedial action order it has made. We would therefore recommend that

the following principles be adhered to in the making of administrative remedial orders:

- (a) Those subject to the administrative remedial action should be provided with sufficient information as to the reasons and the evidence on which the remedial action is based so as to enable them to understand the grounds on which the agency is proceeding.
- (b) Such persons should have a reasonable opportunity to effectively challenge the grounds of the proposed remedial action.
- (c) There should be a right to appeal or at least exposure of the administrative remedial action to scrutiny by an independent body, to ensure that it is fair and reasonable.
- (d) As with all other administrative actions, there should be a right of judicial review by the courts.
- (e) The administrative remedial action must be enforceable by the agency either through access to courts or through revocation or suspension of licences, if any.

Discussion of remedial action models

7.18 We have showcased 2 models here. They are the Australia Enforceable Undertaking provisions under the Trade Practices Act and the US Cease and Desist order under the Securities Exchange Act of 1934. Relevant extracts from these Acts are reproduced in *Annex B*. The salient points of each model are highlighted here.

7.19 Enforceable Undertakings (“EU”) are created under section 87B of the Australian Trade Practices Act (“TPA”). This section is reproduced and attached as Annex H.

7.20 Under section 87B(1) of the TPA, the Trade Practices Commission (“TPC”) of Australia is permitted to accept an EU from a person “in connection with a matter in relation to which it has a power or function under the Act”. Therefore, where there is evidence of a breach of the TPA, the TPC is empowered to discuss the breach with the offender with a view towards obtaining an EU from the wrongdoer to perform certain acts to cure the contravention. In exercising its discretion, the TPC adheres to principles enunciated in its “Guideline for administrative resolution”. These principles require the TPC to consider

whether the offender has taken steps to prevent future recurrences or whether compensation has been made.

- 7.21 In the event of a breach of the EU, section 87B(4) of the TPA permits the TPC to apply to court for a wide range of orders. These include orders directing the offender to comply with the terms of the EU, to pay to the Commonwealth the financial benefit attributable to the breach or to pay compensation to persons who have suffered losses as a result thereof. It is envisaged that court intervention at this stage will be a check on the sufficiency of evidence of the breach, the voluntariness of the undertaking and reasonableness of conditions imposed by the TPC.⁵¹ In addition, the requirement of publication of the EU in a public register maintained by TPC provides some public scrutiny and an additional check against abuse of power by the TPC. Finally, the decision of the TPC is subject to review by the Australian Federal Court under the Administrative Decisions (Judicial Review) Act 1977.
- 7.22 The TPC considers the EU to be an important part of its “integrated strategies approach”, which seeks to address the underlying market causes of the non-compliance. The EU enables the parties to work out an agreement which is “most likely to achieve the desired marketplace outcome and lasting compliance with the Act”.⁵² Indeed the TPC claims to have resolved substantially more cases through such administrative actions than through taking action in the courts. An academic study has revealed that EUs have been used to supplement, and also as a settlement of, court proceedings.⁵³ It has also been reported that as at June 2000, approximately 400 EUs were accepted under the TPA.⁵⁴
- 7.23 While it is generally acknowledged that the EU serves useful purposes, some academics have voiced concerns about the system. A competition law academic has commented that there are no statutory guidelines governing the exercise of discretion and no formal process of review.⁵⁵ As part of its review on administrative penalties, the Australian Law

⁵¹ K Yeung “The Public Enforcement of Australian Competition Law” ACCC 2000, 114 as reported in the ALRC Background paper, see above, n 26 at 31

⁵² See the Report 68 entitled “Compliance with the Trade Practices Act 1974” issued by the Australian Law Reform Commission, at 129.

⁵³ See K Yeung “The Public Enforcement of Australian Competition Law” ACCC 2000, 114 as reported in the ALRC Background paper, see above, n 26 at 30

⁵⁴ ALRC Background paper, see above, n 26 at 30

⁵⁵ F Zumbo “Section 87B Undertakings: There’s no accounting for such conduct!” (1997) 5 TPLJ 121, 122, as reported in the ALRC Background paper, see above, n 26 at 32.

Reform Commission has also highlighted the EU system and stated that it is examining amongst other things, the audit of such undertakings.

- 7.24 The US Securities and Exchange Commission (“SEC”) is empowered to make a cease and desist order under section 21C of the Securities Exchange Act of 1934 (“SEA”) where there is a violation of the SEA. This section is reproduced and attached as Annex I. It is pertinent to note that section 21Ca and b of the SEA requires SEC to give a right of hearing to the wrongdoer before making such an order. In addition, sections 21C and 25 of the SEA provide a right of appeal to the US Court of Appeal or US District Courts. The incorporation of this safeguard in legislation is important. As highlighted in the above paragraph, this appears to be lacking in the EU system under Australia law.

Questions

- Q.14** Do you agree with the safeguards and enforcement mechanisms proposed for administrative remedial actions?
- Q.15** Are there other safeguards or enforcement mechanisms which should be incorporated for administrative remedial actions?

PART 8

ENFORCEMENT OF COMPOSITION FINES

- 8.1 The power to compound an offence is found in many Singapore statutes. Here, the administrative agency is empowered to offer an alleged offender the opportunity to pay a fixed monetary sum in return for an undertaking by the agency not to commence or continue criminal proceedings.

Constitutional issues

- 8.2 The power to compound a criminal offence should be distinguished from the power to impose an administrative financial penalty. Although both allow an administrative body to extract a monetary penalty from an offender, the former retains the ultimate criminal sanction while the latter involves reclassification of the offence as a non-criminal infringement.
- 8.3 Notwithstanding that a criminal sanction remains, the power to compound is not an exercise of judicial power vested in the courts by Article 93 of the Constitution of the Republic of Singapore. Instead, the administrative agency receives an amount predetermined in law⁵⁶ according to the particular offence, in return for not taking further action to prosecute the offender in court. It has also been argued that such power does not offend Article 35(8) of the Constitution which provides that “The Attorney-General shall have the power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for any offence.” The fact that an offence is compoundable does not prevent the Attorney-General from instituting proceedings for the offence if, in the exercise of his discretion under Article 35(8), he finds it fit to do so.
- 8.4 The power to compound has been endorsed by Professor S Jayakumar, Second Minister of Law (as he then was) in 1986 as an effective means to help relieve the workload of the courts and permit the courts to deal with the more serious and important cases.⁵⁷

Safeguards

- 8.5 In exercising its powers to compound an offence, the administrative agency makes a finding of fact and a preliminary assessment as to

⁵⁶ In some cases, only the maximum composition sum is predetermined by legislation.

⁵⁷ This was stated in the second reading of the Statutes (Miscellaneous Amendments) Bill in Parliament in November 1986.

whether an offence has been committed in law. In most cases, this assessment is made without a right of hearing offered to the offender. The safeguard is that the offender retains the option at all times to dispute liability by claiming trial in court.

- 8.6 In view of this, transparency in the law and the decision making process is important. The statute should provide clearly which offences are compoundable, and the exact quantum (or if this is not possible, the maximum quantum) of composition fine which may be imposed for each specific offence. The composition notice should provide sufficient information to enable the offender to understand the grounds on which the agency is proceeding with the action. The offender should also be given sufficient notice that he may dispute liability by electing to go to court and claiming trial.

Enforcement mechanisms

- 8.7 To enhance the effectiveness of this mechanism, composition fines must be enforceable. Currently, under Singapore law, if the offender fails to pay the composition fine, the agency may exercise its right to refer the matter for criminal prosecution. The process is initiated by the issue of a summons by the court requiring the offender to appear in court to answer the charge against him. If the offender does not appear on the scheduled date, a warrant of arrest may be issued by the court.⁵⁸ It has been reported in Parliament that as of September 1999, a total of 54,604 traffic-warrants were outstanding. The observation from these statistics was that many motorists who had committed parking or traffic offences “simply ignore the notices requiring them to appear in court in connection with the offences”.⁵⁹
- 8.8 It would therefore appear that the threat of criminal prosecution may not by itself, be strong enough to ensure payment of composition fines.
- 8.9 In that regard, the Victoria state of Australia has developed a system, termed the Procedure for Enforcement and Registration of Infringement Notices (“PERINS”) to increase the enforceability of infringement notices, the equivalent of our composition notices.

⁵⁸ Generally, the court does not make an order unless the offender appears in court, although section 180(p) of the Criminal Procedure Court empowers the Magistrates’ Courts and District Courts to proceed ex parte to hear and determine the complaint.

⁵⁹ This was stated by Dr. John Chen Seow Phun, Minister of State for Communications and Information Technology in the second reading of the Road Traffic (Amendment) Bill on 24 November 1999.

- 8.10 The PERINS system is set out in Schedule 7 of the Magistrates' Courts Act 1989 (Vic), a copy of which is reproduced and attached as Annex J.
- 8.11 The unique feature of the PERINS system is that it enables infringement notices issued by certain enforcement agencies⁶⁰ to be registered with the Magistrates' court and enforced like a court order, without the offender having to appear in court, and without the court having to make a finding on his liability. This frees up substantial judicial time. Yet, since the infringement notice now acquires the force of a court order, failure to comply could result in the court issuing a warrant for seizure of property of the offender or the court imposing a custodial sentence.
- 8.12 The safeguard is that the enforcement agency is required to give sufficient time for payment and notice of the offence to the offender, including information that the offender is entitled to have liability for the penalty determined by the court. These are some of the preconditions for registration of the infringement notice with the Magistrates' court. The court will assess the merits of the case at any time that the person exercises a right to claim trial.
- 8.13 It has been reported that the number of cases initiated under the PERINS system has significantly increased since it began in 1994, thereby freeing up substantial judicial time to deal with more serious offences. During the financial year 1999/2000, the total number of cases initiated under the system was 516,000.⁶¹
- 8.14 It may be useful for us to study the PERINS system⁶² to determine whether our existing system for composition of fines could be further improved by incorporation of features found in the PERINS system.

⁶⁰ The Magistrates' Courts Act, Schedule 7, Clause 4(2) refers to infringement notices under the Road Safety Act 1986 and the Melbourne City Link Act 1995. See also, ALRC Background paper n ?? at 33 where it was stated that schemes of this style are built around summary offences with non-discretionary fines, such as traffic offences.

⁶¹ Magistrates' Court of Victoria Annual Report 1999-2000.

⁶² There is also a similar system used in Queensland, Australia, termed the "Self-enforcing ticketable offence notice system" or SETONS.

Questions

Q.16 Do you agree with the safeguards proposed for composition fines?

Q.17 To increase the enforceability of composition fines, should we adopt any features of the PERINS system? Are there other systems or ways by which we could improve the effectiveness of composition fines?

PART 9

CONCLUSION

- 9.1 Our view is that there is no one-size-fits-all ideal method of regulatory enforcement. Instead, each method has its strengths and weaknesses, and should be deployed according to whether it is an appropriate regime for the particular type of wrong.
- 9.2 In view of all the considerations outlined in this paper, we recommend the following:
- (a) That in enacting new legislation, all government agencies bear in mind that it is not necessary or appropriate to criminalise every form of errant behavior. There are alternative methods such as administrative and civil sanctions, which can be used in place of, or to complement criminal regimes. The use of these other methods may result in more effective regulation.
 - (b) That every government agency be encouraged to review its current regulatory regime to determine whether it would be appropriate to reclassify some criminal offences as non-criminal infringements, and even if not, to consider incorporating the use of administrative or civil sanctions before resorting to the criminal process. For example, we note that some agencies do not have the legislative option to make offers of composition for relatively minor contravention. The relevant extracts of those Acts are reproduced and attached as Annex K.
- 9.3 To that end, LRRD will continue the study on administrative and civil sanctions after we receive feedback on the issues raised in this paper. The goal of our study is to develop sound principles to serve as “building blocks” of good regulation.⁶³ It is envisaged that these principles should then be entrenched in guidelines issued to all administrative agencies to ensure that the reclassification of criminal offences and the introduction of administrative or civil sanctions are conducted in a fair and consistent manner in Singapore.

⁶³ As enunciated by Michael Mann, former director of the US SEC, and reported in the ALRC paper “Civil & Administrative Penalties”, *On the Bench: Perspectives on Judging Issue 77 2000* – page 51. The ALRC paper goes further to propose that such safeguards should be “enunciated by Parliament” for application to all regulators.

Please send your feedback marked “Re: Administrative and Civil Sanctions (Attn: Ms Julie Huan) –

- via e-mail, at agc_LRRD@agc.gov.sg;
- via paper mail (a diskette with soft copy would be appreciated), to Law Reform and Revision Division, Attorney-General’s Chambers, 1 Coleman Street, #05-04 The Adelphi, Singapore 179803; or
- via fax, at 6332 4700.

The closing date for this consultation is 1st July 2002.

Please see overleaf for the consolidated list of questions.

LIST OF QUESTIONS

- Question 1: Do you agree with the arguments justifying the use of administrative or civil sanctions?
- Question 2: Are there other compelling reasons which you think should be highlighted?
- Question 3: If you disagree with any of the above propositions, what are your views and concerns?
- Question 4: Would you agree that the proposed factors are relevant in assessing whether an offence should be reclassified as a non-criminal infringement, or whether non-criminal sanctions should be used to complement the criminal sanction?
- Question 5: What other factors would you consider relevant to this issue?
- Question 6: Equally important, how should these factors be applied: Should there be a heavier weighting assigned to some factors? Should there be an overarching factor of social repugnance, the absence of which qualifies an offence as worthy of consideration for reclassification as a non-criminal infringement?
- Question 7: Do you agree with the principles of fairness, transparency, accountability and efficiency proposed for administrative financial penalties?
- Question 8: In particular, in what circumstances do you think the administrative financial penalty could be deemed a court order, in order to increase its effectiveness?
- Question 9: Are there other safeguards or enforcement mechanisms which should be incorporated for administrative financial penalties?
- Question 10: Do you agree with the safeguards proposed for civil financial penalty regimes?
- Question 11: Are there other safeguards which should be imposed?

- Question 12: What principles should be entrenched in legislation to govern the relationship between the civil and criminal regimes, if they exist as parallel regimes?
- Question 13: What principles should guide the agencies in setting up protocols concerning joint investigations and information sharing? Should these protocols be made known to the public for transparency?
- Question 14: Do you agree with the safeguards and enforcement mechanisms proposed for administrative remedial actions?
- Question 15: Are there other safeguards or enforcement mechanisms which should be incorporated for administrative remedial actions?
- Question 16: Do you agree with the safeguards proposed for composition fines?
- Question 17: To increase the enforceability of composition fines, should we adopt any features of the PERINS system? Are there other systems or ways by which we could improve the effectiveness of composition fines?

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ANNEX A

RELEVANT EXTRACTS OF THE UK FINANCIAL SERVICES AND MARKETS ACT 2000

Financial Services and Markets Act 2000

2000 Chapter c.8

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The Financial Services and Markets Tribunal.

132. - (1) For the purposes of this Act, there is to be a tribunal known as the Financial Services and Markets Tribunal (but referred to in this Act as "the Tribunal").

(2) The Tribunal is to have the functions conferred on it by or under this Act.

(3) The Lord Chancellor may by rules make such provision as appears to him to be necessary or expedient in respect of the conduct of proceedings before the Tribunal.

(4) Schedule 13 is to have effect as respects the Tribunal and its proceedings (but does not limit the Lord Chancellor's powers under this section).

Appeals Appeal on a point of law.

137. - (1) A party to a reference to the Tribunal may with permission appeal-

- (a) to the Court of Appeal, or
- (b) in Scotland, to the Court of Session,

on a point of law arising from a decision of the Tribunal disposing of the reference.

(2) "Permission" means permission given by the Tribunal or by the Court of Appeal or (in Scotland) the Court of Session.

(3) If, on an appeal under subsection (1), the court considers that the decision of the Tribunal was wrong in law, it may-

- (a) remit the matter to the Tribunal for rehearing and determination by it; or
- (b) itself make a determination.

(4) An appeal may not be brought from a decision of the Court of Appeal under subsection (3) except with the leave of-

- (a) the Court of Appeal; or
- (b) the House of Lords.

(5) An appeal lies, with the leave of the Court of Session or the House of Lords, from any decision of the Court of Session under this section, and such leave may be given on such terms as to costs, expenses or otherwise as the Court of Session or the House of Lords may determine.

(6) Rules made under section 132 may make provision for regulating or prescribing any matters incidental to or consequential on an appeal under this section.

Financial penalties.

206. - (1) If the Authority considers that an authorised person has contravened a requirement imposed on him by or under this Act, it may impose on him a penalty, in respect of the contravention, of such amount as it considers appropriate.

(2) The Authority may not in respect of any contravention both require a person to pay a penalty under this section and withdraw his authorisation under section 33.

(3) A penalty under this section is payable to the Authority.

Proposal to take disciplinary measures.

207. - (1) If the Authority proposes-

- (a) to publish a statement in respect of an authorised person (under section 205), or
- (b) to impose a penalty on an authorised person (under section 206),

it must give the authorised person a warning notice.

(2) A warning notice about a proposal to publish a statement must set out the terms of the statement.

(3) A warning notice about a proposal to impose a penalty, must state the amount of the penalty.

Decision notice.

208. - (1) If the Authority decides-

- (a) to publish a statement under section 205 (whether or not in the terms proposed), or
- (b) to impose a penalty under section 206 (whether or not of the amount proposed),

it must without delay give the authorised person concerned a decision notice.

(2) In the case of a statement, the decision notice must set out the terms of the statement.

(3) In the case of a penalty, the decision notice must state the amount of the penalty.

(4) If the Authority decides to-

- (a) publish a statement in respect of an authorised person under section 205, or
- (b) impose a penalty on an authorised person under section 206,

the authorised person may refer the matter to the Tribunal.

Statements of policy.

210. - (1) The Authority must prepare and issue a statement of its policy with respect to-

- (a) the imposition of penalties under this Part; and
- (b) the amount of penalties under this Part.

(2) The Authority's policy in determining what the amount of a penalty should be must include having regard to-

- (a) the seriousness of the contravention in question in relation to the nature of the requirement contravened;
- (b) the extent to which that contravention was deliberate or reckless; and
- (c) whether the person on whom the penalty is to be imposed is an individual.

(3) The Authority may at any time alter or replace a statement issued under this section.

(4) If a statement issued under this section is altered or replaced, the Authority must issue the altered or replacement statement.

(5) The Authority must, without delay, give the Treasury a copy of any statement which it publishes under this section.

(6) A statement issued under this section must be published by the Authority in the way appearing to the Authority to be best calculated to bring it to the attention of the public.

(7) In exercising, or deciding whether to exercise, its power under section 206 in the case of any particular contravention, the Authority must have regard to any statement published under this section and in force at the time when the contravention in question occurred.

(8) The Authority may charge a reasonable fee for providing a person with a copy of the statement.

Power of Authority to require restitution.

384. - (1) The Authority may exercise the power in subsection (5) if it is satisfied that an authorised person ("the person concerned") has contravened a relevant requirement, or been knowingly concerned in the contravention of such a requirement, and-

- (a) that profits have accrued to him as a result of the contravention; or
- (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the contravention.

(2) The Authority may exercise the power in subsection (5) if it is satisfied that a person ("the person concerned")-

- (a) has engaged in market abuse, or
- (b) by taking or refraining from taking any action has required or encouraged another person or persons to engage in behaviour which, if engaged in by the person concerned, would amount to market abuse,

and the condition mentioned in subsection (3) is fulfilled.

(3) The condition is-

- (a) that profits have accrued to the person concerned as a result of the market abuse; or
 - (b) that one or more persons have suffered loss or been otherwise adversely affected as a result of the market abuse.
- (4) But the Authority may not exercise that power as a result of subsection (2) if, having considered any representations made to it in response to a warning notice, there are reasonable grounds for it to be satisfied that-
- (a) the person concerned believed, on reasonable grounds, that his behaviour did not fall within paragraph (a) or (b) of that subsection; or
 - (b) he took all reasonable precautions and exercised all due diligence to avoid behaving in a way which fell within paragraph (a) or (b) of that subsection.
- (5) The power referred to in subsections (1) and (2) is a power to require the person concerned, in accordance with such arrangements as the Authority considers appropriate, to pay to the appropriate person or distribute among the appropriate persons such amount as appears to the Authority to be just having regard-
- (a) in a case within paragraph (a) of subsection (1) or (3), to the profits appearing to the Authority to have accrued;
 - (b) in a case within paragraph (b) of subsection (1) or (3), to the extent of the loss or other adverse effect;
 - (c) in a case within paragraphs (a) and (b) of subsection (1) or (3), to the profits appearing to the Authority to have accrued and to the extent of the loss or other adverse effect.
- (6) "Appropriate person" means a person appearing to the Authority to be someone-
- (a) to whom the profits mentioned in paragraph (a) of subsection (1) or (3) are attributable; or
 - (b) who has suffered the loss or adverse effect mentioned in paragraph (b) of subsection (1) or (3).
- (7) "Relevant requirement" means-
- (a) a requirement imposed by or under this Act; and
 - (b) a requirement which is imposed by or under any other Act and whose contravention constitutes an offence in relation to which this Act confers power to prosecute on the Authority.
- (8) In the application of subsection (7) to Scotland, in paragraph (b) for "in relation to which this Act confers power to prosecute on the Authority" substitute "mentioned in paragraph (a) or (b) of section 402(1)".

Warning notices.

385. - (1) If the Authority proposes to exercise the power under section 384(5) in relation to a person, it must give him a warning notice.

(2) A warning notice under this section must specify the amount which the Authority proposes to require the person concerned to pay or distribute as mentioned in section 384(5).

Decision notices.

386. - (1) If the Authority decides to exercise the power under section 384(5), it must give a decision notice to the person in relation to whom the power is exercised.

- (2) The decision notice must-
- (a) state the amount that he is to pay or distribute as mentioned in section 384(5);
 - (b) identify the person or persons to whom that amount is to be paid or among whom that amount is to be distributed; and
 - (c) state the arrangements in accordance with which the payment or distribution is to be made.
- (3) If the Authority decides to exercise the power under section 384(5), the person in relation to whom it is exercised may refer the matter to the Tribunal.

Warning notices.

- 387.** - (1) A warning notice must-
- (a) state the action which the Authority proposes to take;
 - (b) be in writing;
 - (c) give reasons for the proposed action;
 - (d) state whether section 394 applies; and
 - (e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it.
- (2) The warning notice must specify a reasonable period (which may not be less than 28 days) within which the person to whom it is given may make representations to the Authority.
- (3) The Authority may extend the period specified in the notice.
- (4) The Authority must then decide, within a reasonable period, whether to give the person concerned a decision notice.

Final notices.

- 390.** - (1) If the Authority has given a person a decision notice and the matter was not referred to the Tribunal within the period mentioned in section 133(1), the Authority must, on taking the action to which the decision notice relates, give the person concerned and any person to whom the decision notice was copied a final notice.
- (2) If the Authority has given a person a decision notice and the matter was referred to the Tribunal, the Authority must, on taking action in accordance with any directions given by-
- (a) the Tribunal, or
 - (b) the court under section 137,
- give that person and any person to whom the decision notice was copied a final notice.
- (3) A final notice about a statement must-
- (a) set out the terms of the statement;
 - (b) give details of the manner in which, and the date on which, the statement will be published.
- (4) A final notice about an order must-
- (a) set out the terms of the order;
 - (b) state the date from which the order has effect.

- (5) A final notice about a penalty must-
- (a) state the amount of the penalty;
 - (b) state the manner in which, and the period within which, the penalty is to be paid;
 - (c) give details of the way in which the penalty will be recovered if it is not paid by the date stated in the notice.
- (6) A final notice about a requirement to make a payment or distribution in accordance with section 384(5) must state-
- (a) the persons to whom,
 - (b) the manner in which, and
 - (c) the period within which,
- it must be made.
- (7) In any other case, the final notice must-
- (a) give details of the action being taken;
 - (b) state the date on which the action is to be taken.
- (8) The period stated under subsection (5)(b) or (6)(c) may not be less than 14 days beginning with the date on which the final notice is given.
- (9) If all or any of the amount of a penalty payable under a final notice is outstanding at the end of the period stated under subsection (5)(b), the Authority may recover the outstanding amount as a debt due to it.
- (10) If all or any of a required payment or distribution has not been made at the end of a period stated in a final notice under subsection (6)(c), the obligation to make the payment is enforceable, on the application of the Authority, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

ANNEX B

**TELECOMMUNICATIONS ACT
(CHAPTER 323)**

Section 8:**Suspension or cancellation of licence, etc.**

8.—(1) If the Authority is satisfied that a person who is granted a licence under section 5 or any regulations made under this Act is contravening, or has contravened, whether by act or omission —

- (a) any of the conditions of the licence or part thereof;
- (b) any provision of any code of practice or standard of performance; or
- (c) any direction of the Authority given under section 27,

the Authority may, by notice in writing, do either or both of the following:

- (i) issue such written order to the person as it considers requisite for the purpose of securing compliance thereof;
- (ii) require the payment, within a specified period, of a financial penalty of such amount not exceeding \$1 million as it thinks fit.

(2) Where the Authority is satisfied that the person mentioned in subsection (1) is again likely to so contravene, whether by act or omission, the Authority may (in lieu of an order or financial penalty under subsection (1) (i) or (ii) or both) by notice in writing and without any compensation, do all or any of the following:

- (a) cancel the licence or part thereof;
- (b) suspend the licence or part thereof for such period as it thinks fit;
- (c) reduce the period for which the licence is to be in force.

(3) Any person who is aggrieved by any decision of the Authority under subsection (1) may, within 14 days after such person has been given the notice in writing referred to in subsection (1), appeal to the Minister whose decision shall be final.

(4) An order under subsection (1) (i) —

- (a) shall require the person concerned (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified therein;
- (b) shall take effect at such time, being the earliest practicable time, as is determined by or under that order; and

(c) may be revoked at any time by the Authority.

(5) Any person who fails to comply with any order under subsection (1) (i) shall be guilty of an offence.

(6) In any proceedings brought against any person for an offence under subsection (5), it shall be a defence for him to prove that he took all reasonable steps and exercised all due diligence to avoid contravening the order.

(7) Any financial penalty payable by any person under subsection (1) (ii) shall be recoverable by the Authority as a debt due to the Authority from that person; and the person's liability to pay shall not be affected by his licence ceasing (for any reason) to be in force.

ANNEX C

**SECURITIES INDUSTRY ACT
(CHAPTER 289)**

Sections 104A to G:**Civil penalty for insider dealing**

104A. —(1) Whenever it appears to the Authority that any person has contravened section 103, the Authority may, with the consent of the Public Prosecutor, bring an action in a court against him to seek an order for a civil penalty in respect of that contravention.

(2) If the court is satisfied on a balance of probabilities that the person has contravened section 103 (1), (2), (3) or (6), the court may make an order against him for the payment of a civil penalty of a sum —

(a) not exceeding 3 times —

(i) the amount of the profit that the person gained; or

(ii) the amount of the loss that he avoided,

as a result of the contravention; or

(b) equal to \$50,000 if the person is not a body corporate, or \$100,000 if the person is a body corporate,

whichever is the greater.

(3) If the court is satisfied on a balance of probabilities that the person has contravened section 103 (4) or (5), the court may make an order against him for the payment of a civil penalty of a sum not less than \$50,000 and not more than \$250,000.

(4) A civil penalty imposed under this section shall be payable to the Authority.

(5) If the person fails to pay the civil penalty imposed on him within the time specified in the court order, the Authority may sue for and recover the civil penalty as though the civil penalty were a judgment debt due to the Authority.

Action under section 104A not to commence, etc., in certain situations

104B. —(1) An action under section 104A shall not be commenced after the expiration of 6 years from the date of the contravention of section 103.

(2) An action under section 104A shall not be commenced if the person has been convicted or acquitted in criminal proceedings for the contravention of section 103, except where he has been acquitted on the ground of the withdrawal of the charge against him.

(3) An action under section 104A shall be stayed after criminal proceedings under section 104 have been commenced against the person for the contravention of section 103, and may thereafter be continued only if —

- (a) that person has been discharged in respect of that contravention and the discharge does not amount to an acquittal; or
- (b) the charge against him in respect of that contravention has been withdrawn.

Civil liability for insider dealing

104C. —(1) A person who has acted in contravention of section 103 (1), (2), (3) or (6) (referred to in this section and sections 104D and 104E as the insider) shall, whether or not he had been convicted or had a civil penalty imposed on him in respect of that contravention, be liable to pay compensation to any person (referred to in this section and sections 104D and 104E as the claimant) who —

- (a) contemporaneously with the dealing in securities that is the subject of the contravention (referred to in this section as the insider dealing in securities), had purchased (where the insider dealing in securities consisted of a sale of the securities) or sold (where the insider dealing in securities consisted of a purchase of the securities) securities of the same description; and
- (b) had suffered loss by reason of the difference between —
 - (i) the price at which the securities were dealt in in the contemporaneous dealing; and
 - (ii) the price at which the securities would have been likely to have been so dealt in at the time of the contemporaneous dealing if the contravention had not occurred.

(2) The amount of compensation that the insider is liable to pay to the claimant is the amount of the loss suffered by the claimant, up to the maximum recoverable amount.

(3) An action under this section shall not be commenced after the expiration of 6 years from the date of completion of the contemporaneous dealing in which the loss occurred.

(4) In determining whether a dealing in securities took place contemporaneously with the insider dealing in securities under subsection (1), the court shall take into account the following matters:

- (a) the volume of securities of the same description traded between the date and time of the insider dealing in securities and the date and time of the dealing in securities;
- (b) the date and time the insider dealing in securities was cleared and settled;
- (c) whether the dealing in securities took place before or after the insider dealing in securities;

- (d) whether the dealing in securities took place before or after the information to which the contravention of section 103 (1), (2), (3) or (6), as the case may be, relates became generally known;
- (e) such other factors and developments, whether in Singapore or elsewhere, as the court may consider relevant.

(5) For the purposes of this section and section 104E, “maximum recoverable amount”, in respect of each contravention by an insider of section 103 (1), (2), (3) or (6), means —

- (a) the amount of the profit that the insider gained; or
- (b) the amount of the loss that he avoided,

as a result of the contravention, after deducting all amounts of compensation that the insider had previously been ordered by a court to pay to other claimants under this section because of the same contravention.

Action under section 104C not to commence, etc., in certain situations

104D. —(1) Except with the leave of court, no action under section 104C may be brought against the insider in respect of a contravention of section 103 (1), (2), (3) or (6) after the commencement of —

- (a) criminal proceedings under section 104 against the insider for the same contravention; or
- (b) an action under section 104A against the insider for the same contravention.

(2) Any action under section 104C against the insider in respect of a contravention of section 103 (1), (2), (3) or (6), being an action that is pending on the date of commencement of —

- (a) criminal proceedings under section 104 against the insider for the same contravention; or
- (b) an action under section 104A against the insider for the same contravention,

shall be stayed, and may not thereafter be continued except with the leave of court.

(3) Leave under subsection (1) or (2) may not be granted if a date has been fixed by a court under section 104E (1) for the filing of claims, and in that event the claimant to the proposed action or the action that has been stayed, as the case may be, shall comply with such directions relating to the filing and proof of his claim under section 104E as that court may issue in his case.

Civil liability for insider dealing in event of conviction, etc.

104E. —(1) Notwithstanding section 104C, where the insider —

- (a) has been convicted of an offence under section 104; or
- (b) has an order for the payment of a civil penalty made against him under section 104A,

in respect of the contravention of section 103 (1), (2), (3) or (6), as the case may be, the court which convicted him or made the order against him (referred to in this section as the relevant court) may, after the conviction or the order imposing the civil penalty has been made final, fix a date on or before which all claimants have to file and prove their claims for compensation in respect of that contravention.

(2) For the purposes of subsection (1), the relevant court shall not fix a date that is earlier than 3 months from the date the conviction or the order imposing the civil penalty, as the case may be, has been made final.

(3) The relevant court may, after the expiry of the date fixed under subsection (1), make an order against the insider to pay to each claimant who has filed and proven his claim for compensation an amount —

- (a) equal to the amount of compensation which that claimant has proven to the satisfaction of the court that he would have been entitled to if he had brought an action under section 104C against the insider himself; or
- (b) equal to the pro-rated portion of the maximum recoverable amount, calculated according to the relationship which the amount referred to in paragraph (a) bears to all amounts proved to the court,

whichever is the lesser.

(4) For the purposes of this section, a conviction is made final if —

- (a) the conviction is upheld on appeal, revision or otherwise;
- (b) the conviction is not subject to further appeal;
- (c) no notice of appeal against the conviction is lodged within the time prescribed by section 247 of the Criminal Procedure Code (Cap. 68); or
- (d) any appeal against the conviction is withdrawn.

(5) For the purposes of this section, an order imposing a civil penalty is made final if —

- (a) the order is not set aside on appeal or revision or is varied only as to the amount of the civil penalty to be imposed;
- (b) the order is not subject to further appeal;
- (c) no notice of appeal against the imposition of the penalty is lodged within the time prescribed by Rules of Court made under section 104G; or

(d) any appeal against the imposition of the penalty is withdrawn.

(6) For the purposes of this section, “maximum recoverable amount” has the same meaning given to that expression in section 104C (5).

Jurisdiction of District Court

104F. A District Court shall have jurisdiction to hear and determine any action under section 104A, 104C or 104E regardless of the monetary amount.

Rules of Court

104G. —(1) Rules of Court may be made —

(a) to regulate and prescribe the procedure and practice to be followed in respect of proceedings under sections 104A, 104C and 104E; and

(b) to provide for costs and fees of such proceedings, and for regulating any matter relating to the costs of such proceedings.

(2) Without prejudice to the generality of subsection (1), Rules of Court may, in relation to proceedings under section 104E —

(a) provide for the advertisement of a notice for the filing and proof of claims under that section;

(b) prescribe the procedure for the filing, proof and hearing of those claims; and

(c) provide for the payment of the costs and fees of an action that has been stayed under section 104D (2).

ANNEX D

RELEVANT EXTRACTS OF THE AUSTRALIA CORPORATIONS ACT 2001
(Obtained from <http://www.austlii.edu.au>, Commonwealth Consolidated Acts)

CORPORATIONS ACT 2001

181 Good faith--civil obligations

Good faith—directors and other officers

(1) A director or other officer of a corporation must exercise their powers and discharge their duties:

- (a) in good faith in the best interests of the corporation; and
- (b) for a proper purpose.

Note 1: This subsection is a civil penalty provision (see [section 1317E](#)).

Note 2: [Section 187](#) deals with the situation of directors of wholly-owned subsidiaries.

(2) A person who is involved in a contravention of subsection (1) contravenes this subsection.

Note 1: [Section 79](#) defines *involved*.

Note 2: This subsection is a civil penalty provision (see [section 1317E](#)).

184 Good faith, use of position and use of information--criminal offences

Good faith—directors and other officers

(1) A director or other officer of a corporation commits an offence if they:

- (a) are reckless; or
- (b) are intentionally dishonest;
and fail to exercise their powers and discharge their duties:
- (c) in good faith in the best interests of the corporation; or
- (d) for a proper purpose.

Note: [Section 187](#) deals with the situation of directors of wholly-owned subsidiaries.

Use of position—directors, other officers and employees

(2) A director, other officer or employee of a corporation commits an offence if they use their position dishonestly:

- (a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

Use of information—directors, other officers and employees

(3) A person who obtains information because they are, or have been, a director or other officer or employee of a corporation commits an offence if they use the information dishonestly:

(a) with the intention of directly or indirectly gaining an advantage for themselves, or someone else, or causing detriment to the corporation; or

(b) recklessly as to whether the use may result in themselves or someone else directly or indirectly gaining an advantage, or in causing detriment to the corporation.

1317E Declarations of contravention

(1) If a Court is satisfied that a person has contravened 1 of the following provisions, it must make a declaration of contravention:

(a) subsections 180(1) and 181(1) and (2), 182(1) and (2), 183(1) and (2) (officers' duties);

(b) subsection 209(2) (related parties rules);

(c) subsections 254L(2), 256D(3), 259F(2) and 260D(2) (share capital transactions);

(d) subsection 344(1) (requirements for financial reports);

(e) subsection 588G(2) (insolvent trading);

(f) subsection 601FC(1);

(g) subsection 601FD(1);

(h) subsection 601FE(1);

(i) section 601FG;

(j) subsection 601JD(1);

(k) subclause 29(6) of Schedule 4.

These provisions are the *civil penalty provisions* .

Note: Once a declaration has been made ASIC can then seek a pecuniary penalty order (section 1317G) or a disqualification order (section 206C).

(2) A declaration of contravention must specify the following:

- (a) the Court that made the declaration;
- (b) the civil penalty provision that was contravened;
- (c) the person who contravened the provision;
- (d) the conduct that constituted the contravention;
- (e) the corporation or registered scheme to which the conduct related.

1317F Declaration of contravention is conclusive evidence

A declaration of contravention is conclusive evidence of the matters referred to in [subsection 1317E\(2\)](#).

1317G Pecuniary penalty orders

(1) A Court may order a person to pay the Commonwealth a pecuniary penalty of up to \$200,000 if:

- (a) a declaration of contravention by the person has been made under [section 1317E](#); and
- (b) the contravention:
 - (i) materially prejudices the interests of the corporation or scheme, or its members; or
 - (ii) materially prejudices the corporation's ability to pay its creditors; or
 - (iii) is serious.

(2) The penalty is a civil debt payable to ASIC on the Commonwealth's behalf. ASIC or the Commonwealth may enforce the order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

1317H Compensation orders

Compensation for damage suffered

(1) A Court may order a person to compensate a corporation or registered scheme for damage suffered by the corporation or scheme if:

- (a) the person has contravened a civil penalty provision in relation to the corporation or scheme; and
- (b) the damage resulted from the contravention.

The order must specify the amount of the compensation.

Damage includes profits

(2) In determining the damage suffered by the corporation or scheme for the purposes of making a compensation order, include profits made by any person resulting from the contravention or the offence.

Damage includes diminution of value of scheme property

(3) In determining the damage suffered by the scheme for the purposes of making a compensation order, include any diminution in the value of the property of the scheme.

(4) If the responsible entity for a registered scheme is ordered to compensate the scheme, the responsible entity must transfer the amount of the compensation to scheme property. If anyone else is ordered to compensate the scheme, the responsible entity may recover the compensation on behalf of the scheme.

Recovery of damage

(5) A compensation order may be enforced as if it were a judgment of the Court.

1317J Who may apply for a declaration or order*Application by ASIC*

(1) ASIC may apply for a declaration of contravention, a pecuniary penalty order or a compensation order.

Application by corporation

(2) The corporation, or the responsible entity for the registered scheme, may apply for a compensation order.

(3) The corporation, or the responsible entity for the registered scheme, may intervene in an application for a declaration of contravention or a pecuniary penalty order in relation to the corporation or scheme. The corporation or responsible entity is entitled to be heard on all matters other than whether the declaration or order should be made.

No one else may apply

(4) No person may apply for a declaration of contravention, a pecuniary penalty order or a compensation order unless permitted by this section.

(5) Subsection (4) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

1317K Time limit for application for a declaration or order

Proceedings for a declaration of contravention, a pecuniary penalty order, or a compensation order, may be started no later than 6 years after the contravention.

1317L Civil evidence and procedure rules for declarations of contravention and civil penalty orders

The Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for:

- (a) a declaration of contravention; or
- (b) a pecuniary penalty order.

1317M Civil proceedings after criminal proceedings

A court must not make a declaration of contravention or a pecuniary penalty order against a person for a contravention if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

1317N Criminal proceedings during civil proceedings

(1) Proceedings for a declaration of contravention or pecuniary penalty order against a person are stayed if:

- (a) criminal proceedings are started or have already been started against the person for an offence; and
- (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.

(2) The proceedings for the declaration or order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the declaration or order are dismissed.

1317P Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether:

- (a) a declaration of contravention has been made against the person; or
- (b) a pecuniary penalty order has been made against the person; or
- (c) a compensation order has been made against the person; or
- (d) the person has been disqualified from managing a corporation under Part 2D.6.

1317Q Evidence given in proceedings for penalty not admissible in criminal proceedings

Evidence of information [given](#) or evidence of production of documents by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a pecuniary penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence [given](#) by the individual in the proceedings for the pecuniary penalty order.

1317R ASIC requiring person to assist

(1) ASIC may require a person to [give](#) all reasonable assistance in connection with:

- (a) an application for a declaration of contravention or a pecuniary penalty order; or
- (b) criminal proceedings for an offence against [this Act](#).

(2) ASIC can require the person to assist in connection with an application for a declaration or order if, and only if:

- (a) it appears to ASIC that someone other than the person required to assist may have contravened a civil penalty provision; and
- (b) ASIC suspects or believes that the person required to assist can [give](#) information relevant to the application.

(3) ASIC can require the person to assist in connection with criminal proceedings if, and only if:

- (a) it appears to ASIC that the person required to assist is unlikely to be a defendant in the proceedings; and
- (b) the person required to assist is, in relation to a person who is or should be a defendant in the proceedings:
 - (i) an employee or agent (including a banker or auditor) of the other person; or
 - (ii) if the other person is a corporation—an officer of the other person; or
 - (iii) if the other person is an individual—a partner of the other person.

(4) ASIC can require the person to assist regardless of whether:

(a) an application for the declaration or penalty order has actually been made;
or

(b) criminal proceedings for the offence have actually begun.

(5) The person cannot be required to assist if they are or have been a lawyer for:

(a) in an application for a declaration or penalty order—the person suspected of the contravention; or

(b) in criminal proceedings—a defendant or likely defendant in the proceedings.

(6) The requirement to assist must be [given](#) in writing.

(7) The Court may order the person to comply with the requirement in a specified way. Only ASIC may apply to the Court for an order under this subsection.

Note: The person must comply with the requirement and may commit an offence if they do not, even if there is no order under this subsection (see [section 104](#) and [subsection 1311\(1\)](#)).

(8) This section does not limit and is not limited by [section 49](#) of the ASIC Act.

1317S Relief from liability for contravention of civil penalty provision

(1) In this section:

eligible proceedings :

(a) means proceedings for a contravention of a civil penalty provision (including proceedings under [section 588M](#), [588W](#) or [1317H](#)); and

(b) does not include proceedings for an offence (except so far as the proceedings relate to the question whether the court should make an order under [section 588K](#) or [1317H](#)).

(2) If:

(a) eligible proceedings are brought against a person; and

(b) in the proceedings it appears to the court that the person has, or may have, contravened a civil penalty provision but that:

(i) the person has acted honestly; and

(ii) having regard to all the circumstances of the case (including, where applicable, those connected with the person's appointment as an officer of a corporation or of a Part 5.7 body), the person ought fairly to be excused for the contravention;

the court may relieve the person either wholly or partly from a liability to which the person would otherwise be subject, or that might otherwise be imposed on the person, because of the contravention.

(3) In determining under subsection (2) whether a person ought fairly to be excused for a contravention of [section 588G](#), the matters to which regard is to be had include, but are not limited to:

- (a) any action the person took with a view to appointing an administrator of the company or Part 5.7 body; and
- (b) when that action was taken; and
- (c) the results of that action.

(4) If a person thinks that eligible proceedings will or may be begun against them, they may apply to the Court for relief.

(5) On an application under subsection (4), the Court may grant relief under subsection (2) as if the eligible proceedings had been begun in the Court.

(6) For the purposes of subsection (2) as applying for the purposes of a case tried by a judge with a jury:

- (a) a reference in that subsection to the court is a reference to the judge; and
- (b) the relief that may be granted includes withdrawing the case in whole or in part from the jury and directing judgment to be entered for the defendant on such terms as to costs as the judge thinks appropriate.

(7) Nothing in this section limits, or is limited by, [section 1318](#).

ANNEX E

**ROAD TRAFFIC ACT
(CHAPTER 276, SECTIONS 34D AND 140 (1))**

**ROAD TRAFFIC (ELECTRONIC ROAD PRICING SYSTEM) RULES
(R 38)**

Rule 8:**Unlawful entry into specified entry point**

8. —(1) Subject to paragraphs (2) and (4), any person who during the restricted hours rides, drives or moves a motor vehicle into a specified entry point on a specified road when —

- (a) there is no in-vehicle unit installed in the vehicle;
- (b) the in-vehicle unit therein has not been properly installed in accordance with the Second Schedule;
- (c) the in-vehicle unit installed therein is defective;
- (d) the in-vehicle unit installed therein has been unlawfully taken from another motor vehicle;
- (e) the in-vehicle unit therein has been installed, repaired, tampered with, adjusted, altered or modified in contravention of rule 4;
- (f) no ERP card has been inserted in the in-vehicle unit;
- (g) the ERP card has not been properly inserted in the in-vehicle unit;
- (h) the ERP card being used by him with the in-vehicle unit has a stored value of an amount that is insufficient to pay for any road user charge incurred by him; or
- (i) the ERP card being used by him with the in-vehicle unit is a forgery or is defective,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding 3 months or to both.

(2) Where the Registrar has reason to believe that a person has committed an offence under paragraph (1) (f), (g) or (h) —

- (a) the Registrar may by notice in writing require the person to pay, within such time and in such manner as may be specified in the notice, the road user charge incurred by him and an administrative charge of \$10; and
- (b) if the person to whom the notice is given complies with it, he shall not be guilty of the offence under paragraph (1) (f), (g) or (h), as the case may be.

(3) Any person who, during the restricted hours, rides, drives or moves a motor vehicle from an area outside a specified entry point on a specified road to an area within the specified entry point in such a manner as to avoid riding, driving or moving the motor vehicle into the specified entry point and thereby evades payment of the road user charge levied in respect of that specified entry point shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 6 months or to both.

(4) It shall be a defence in any prosecution for a contravention or non-compliance with —

- (a) paragraph (1) (b), (c), (d), (e), (g), (h) or (i) for the person charged to prove to the satisfaction of the court that he did not know nor could reasonably have discovered the contravention or non-compliance referred to in the charge; or
- (b) paragraph (1) (c), (e) or (i) involving the use of a defective in-vehicle unit or a defective ERP card, as the case may be, for the person charged to prove to the satisfaction of the court that the defect in the in-vehicle unit or ERP card occurred through no fault of his in the course of the journey during which the offence was committed.

ANNEX F

**ROAD TRAFFIC ACT
(CHAPTER 276)*****Sections 45 to 47:*****Power of Deputy Commissioner of Police to suspend driving licence**

45. —(1) Notwithstanding anything in this Act, the Deputy Commissioner of Police may suspend a driving licence of a person for a period not exceeding 3 years if the person's record (as kept by the Deputy Commissioner of Police) as a driver of motor vehicles or his conduct or habits as such driver establishes that it would not be in the interests of public safety for him to hold a valid driving licence or that such person is not competent to drive a motor vehicle.

(2) For the purpose of establishing that it would not be in the interests of public safety for a person to hold a valid driving licence or that such person is not competent to drive a motor vehicle, the Minister may make rules establishing a system of awarding points against a person for the commission of an offence under this Act or the rules.

(3) The rules made under subsection (2) shall specify the maximum number of points to be awarded against a person before it may be established that it would not be in the interests of public safety for him to hold a valid driving licence or that such person is not competent to drive a motor vehicle.

(4) The power conferred upon the Deputy Commissioner of Police by this section to suspend the driving licence of a person may be exercised at such time after the maximum number of points, referred to in subsection (3), has been awarded against such person as the Deputy Commissioner of Police thinks fit.

(5) Where the points awarded against a person under the rules made under subsection (2) reach 50% of the maximum number at which the Deputy Commissioner of Police may suspend the driving licence of such person under this section, the Deputy Commissioner of Police shall give notice thereof in writing to the person.

(6) Where a person is disqualified by an order of a court from holding or obtaining a driving licence for such period of time as may be specified in the order, every point awarded against him under the rules made under subsection (2) shall thereupon be cancelled.

(7) Where a holder of a valid driving licence commits on a single occasion more than one offence under this Act or the rules, points shall be awarded against him only for the offence committed by him and in respect of which the largest number of points may be awarded against a person.

(8) For the purposes of this section, a person shall be deemed to have committed an offence under this Act or the rules if he pays the prescribed penalty for that offence under section 132.

Licensee may show cause why driving licence should not be suspended

46. —(1) The Deputy Commissioner of Police shall, before suspending a driving licence of a person under section 45, give the person concerned notice in writing of his intention to do so, specifying a date, not less than 14 days after the date of the notice, upon which such suspension shall be made and calling upon the person to show cause to the Deputy Commissioner of Police why such driving licence should not be suspended.

(2) Upon the person failing to show cause within the period referred to in subsection (1) and if the Deputy Commissioner of Police decides to suspend the driving licence of such person pursuant to section 45, the Deputy Commissioner of Police shall forthwith inform the person by notice in writing of the suspension.

(3) A person may, within 14 days of the receipt of the notice referred to in subsection (2), or within such extended period of time as the Minister may allow, appeal in writing against the suspension to the Minister whose decision shall be final.

(4) An order of suspension under section 45 shall not take effect until the expiration of a period of 14 days after the Deputy Commissioner of Police has informed the person concerned of the order.

(5) If within that period the person concerned appeals to the Minister, the order shall not take effect unless the order is confirmed by the Minister or the appeal is for any reason dismissed by the Minister.

Surrender and return of driving licence

47. —(1) The Deputy Commissioner of Police shall, upon suspending a driving licence under section 45, require the licence to be surrendered to and retained by him.

(2) Any person whose driving licence has been suspended under section 45 shall forthwith surrender the driving licence to the Deputy Commissioner of Police.

(3) At the end of a period of suspension, a driving licence surrendered to the Deputy Commissioner of Police under subsection (2) shall be returned to the holder thereof and the points awarded against him shall be cancelled.

(4) Any person whose driving licence has been suspended under section 45 shall not during the period of suspension drive a motor vehicle on a road under any other driving licence issued by any authority or otherwise.

(5) Any person who drives a motor vehicle on a road when his driving licence is suspended under section 45 shall be guilty of an offence.

**ROAD TRAFFIC ACT
(CHAPTER 276, SECTION 45 (2))**

**ROAD TRAFFIC (DRIVER IMPROVEMENT
POINTS SYSTEM) RULES
(R 25)**

[1st March 1983]

Citation

1. These Rules may be cited as the Road Traffic (Driver Improvement Points System) Rules.

Definitions

2. In these Rules, unless the context otherwise requires —

"driving licence" means a licence to drive a vehicle granted under Part II of the Act;

"foreign motorist" has the same meaning as in section 47F (4) of the Act;

"scheduled offence" means an offence listed in the Schedule.

Award of demerit points

3. —(1) Demerit points as set out in the Schedule shall be awarded to the holder of a driving licence or to a foreign motorist who has been convicted of a scheduled offence or has paid the prescribed penalty for the offence.

(2) Any demerit points awarded under paragraph (1) shall take effect from the date of the commission of the offence.

(3) The Deputy Commissioner of Police shall keep a register setting out the names and other particulars of all holders of driving licences and foreign motorists who have been awarded demerit points.

Suspension of driving licence

4. —(1) The Deputy Commissioner of Police may suspend, for a period not exceeding 36 months, the driving licence of any person who has been awarded within a period of 24 months a total number of 24 or more demerit points.

(2) Subject to paragraph (3), where the driving licence of a person has been suspended or is liable to suspension under paragraph (1), then notwithstanding paragraph (1), whenever subsequently such person has been awarded within a period of 12 months a total number of 12 or more demerit points, the Deputy Commissioner of Police may suspend the driving licence of that person for a period not exceeding 36 months.

(3) Paragraph (2) shall not apply where the person referred to in that paragraph does not commit any scheduled offence for a period of 24 consecutive months subsequent to the date his licence is liable to suspension or the date of expiry of the suspension or the date of expiry of the period for which he is disqualified by an order of court made on or after 1st March 1983 from holding or obtaining a driving licence, as the case may be.

(4) In calculating the number of demerit points which will render such person's driving licence liable to suspension under paragraph (1) or (2), only such demerit points shall be taken into account as have been awarded against that person within a total period of 24 consecutive months or 12 consecutive months, as the case may be, calculated from the date of the first award of demerit points within that period and all demerit points awarded before that period shall be disregarded.

(5) Notwithstanding paragraphs (1) and (2), where the holder of a driving licence does not commit any scheduled offence for any period of 12 consecutive months, excluding any period for which his driving licence is suspended under these Rules or any period for which he is disqualified by an order of court made on or after 1st March 1983 from holding or obtaining a driving licence, every demerit point awarded against him before that period shall be disregarded in calculating the number of demerit points which will render his driving licence liable to suspension.

(6) Paragraph (5) shall not apply where the demerit points are awarded to the holder of a driving licence after the 12-month period mentioned in that paragraph for a scheduled offence committed before that period and such demerit points would, if taken into account with other demerit points awarded before that period, render the driving licence of that person liable to suspension under these Rules.

Deputy Commissioner of Police to send notice

5. —(1) The Deputy Commissioner of Police shall notify the holder of the driving licence by notice in writing of the date on which he intends to suspend his driving licence and shall require him to show cause within 14 days from the date of the notice as to why his licence should not be suspended.

(2) On the date specified in the notice, the Deputy Commissioner of Police shall, after taking into consideration the facts in mitigation, if any, which may be submitted by the holder of the driving licence concerned, make an order as the Deputy Commissioner of Police thinks fit.

(3) The Deputy Commissioner of Police shall, by notice in writing, inform any holder of a driving licence of the provisions of rule 4 (1), where such holder of the driving licence has already been awarded a total of not less than 12 but not more than 24 demerit points or of the provisions of rule 4 (2), if that rule applies to the holder of the driving licence and he has already been awarded a total of not less than 6 but not more than 12 demerit points.

Notice of suspension of driving licence

6. —(1) The Deputy Commissioner of Police shall, upon making an order to suspend the driving licence of a person, notify him in writing of the suspension of his driving licence and shall require him to surrender the driving licence forthwith to him.

(2) Such a person shall not drive or obtain a provisional licence to drive a vehicle of any class as long as the order of suspension is in force.

Prohibition order against foreign motorist

7. —(1) The Deputy Commissioner of Police may by order (referred to in these Rules as a prohibition order) prohibit a foreign motorist who has been awarded a total of 24 or more demerit points within a period of 24 consecutive months from driving all classes of vehicles in Singapore for a period not exceeding 36 months.

(2) Subject to paragraph (3), where —

- (a) a prohibition order has been made against a foreign motorist; or
- (b) an order has been made by a court on or after 1st November 1999 prohibiting a foreign motorist from driving any motor vehicle in Singapore,

then, whenever subsequently the foreign motorist has been awarded a total of 12 or more demerit points within a period of 12 consecutive months, the Deputy Commissioner of Police may make a prohibition order against him for a period not exceeding 36 months.

(3) Paragraph (2) does not apply to a foreign motorist who has not committed any scheduled offence for a period of 24 consecutive months from —

- (a) the date of expiry of the prohibition order; or
- (b) the date of expiry of an order made by a court on or after 1st November 1999 prohibiting him from driving any motor vehicle in Singapore,

as the case may be.

(4) In calculating the number of demerit points for the purposes of paragraph (1) or (2), only such demerit points shall be taken into account as have been awarded against the foreign motorist within the period of 24 consecutive months or 12 consecutive months, as the case may be, calculated from the date of the first award of demerit points within that period; and all demerit points awarded before that period shall be disregarded.

(5) Where the foreign motorist has not committed any scheduled offence for any period of 12 consecutive months (referred to in this rule as the relevant period), every demerit point awarded against him before the relevant period shall be disregarded for the purposes of calculating the total number of demerit points under paragraph (1) or (2).

(6) The relevant period excludes the period any prohibition order against the foreign motorist, or any court order made on or after 1st November 1999 prohibiting him from driving any motor vehicle in Singapore, is in force.

(7) Paragraph (5) does not apply if —

- (a) the foreign motorist has committed a scheduled offence before the relevant period for which he has been awarded demerit points during or after the relevant period; and

(b) such demerit points, if added to the total number of demerit points awarded against him before the relevant period, would render him liable to have a prohibition order made against him.

Deputy Commissioner of Police to send notice

8. —(1) The Deputy Commissioner of Police shall —

(a) notify the foreign motorist concerned by notice in writing of the date on which the Deputy Commissioner of Police intends to make a prohibition order against him; and

(b) require the foreign motorist to show cause within 14 days from the date of the notice as to why a prohibition order should not be made against him.

(2) On the date specified in the notice, the Deputy Commissioner of Police shall, after taking into consideration such facts in mitigation as may be submitted by the foreign motorist, make such order as the Deputy Commissioner of Police thinks fit.

(3) The Deputy Commissioner of Police shall, by notice in writing, inform a foreign motorist of —

(a) the provisions of rule 7 (1) if the foreign motorist has been awarded a total of not less than 12 but not more than 24 demerit points; or

(b) the provisions of rule 7 (2) —

(i) if a prohibition order has been made against the foreign motorist, or a court order has been made on or after 1st November 1999 prohibiting him from driving any motor vehicle in Singapore; and

(ii) he has subsequently been awarded a total of not less than 6 but not more than 12 demerit points.

Notice of prohibition order

9. —(1) The Deputy Commissioner of Police shall, upon making a prohibition order against a foreign motorist, serve on him a notice of the order.

(2) A notice of the order shall be deemed to have been duly served if it is addressed to the foreign motorist and sent by registered post to the foreign motorist's last known address in Singapore, if available, or to his last known address in another country.

THE SCHEDULE

Rule 3
(1)

SCHEDULED OFFENCES

Offences committed	Demerit points to be awarded
(1) Exceeding speed limit for vehicle —	
(a) by 1 to 20 kilometres per hour	4
(b) by 21 to 30 kilometre per hour	6
(c) by 31 to 40 kilometres per hour	8
(d) by 41 to 50 kilometres per hour	12
(e) by 51 to 60 kilometres per hour	18
(f) by more than 60 kilometres per hour	24
[Section 63 (1) of the Act]	
(2) Exceeding speed limit on a road —	
(a) by 1 to 20 kilometres per hour	4
(b) by 21 to 30 kilometres per hour	6
(c) by 31 to 40 kilometres per hour	8
(d) by 41 to 50 kilometres per hour	12
(e) by 51 to 60 kilometres per hour	18
(f) by more than 60 kilometres per hour	24
[Section 63 (4) of the Act]	
(3) Carrying excess pillion or carrying pillion sitting not astride	3
[Section 73 (1) of the Act]	
(4) Rider failing to wear or wear insecurely on his head a protective helmet	3
[Section 74 (1) of the Act]	
(5) Disobeying traffic direction of police officer	3
[Section 120 (1) (a) of the Act]	
(6) Carrying passengers on a goods vehicle without a permit	3
[Section 126 (1) (c) of the Act]	
(7) Failing to give way to oncoming traffic at controlled junction	4
[Rule 8, Road Traffic Rules]	

R 20

(8) Failing to give way at uncontrolled junction	4	
[Rule 11 (1), Road Traffic Rules]		
(9) Failing to give way at junction	4	
[Rule 11 (2), Road Traffic Rules]		
(10) Failing to give way at roundabout	4	
[Rule 11 (3), Road Traffic Rules]		
(11) Conveying load not properly secured	3	
[Rule 18, Road Traffic Rules]		
(12) Crossing double white lines	4	
[Rules 7 (1) (l) and 7 (11), Road Traffic (Traffic Signs) Rules 1991]		R 33
(13) Crossing road divider	4	
[Rule 9, Road Traffic (Traffic Signs) Rules]		R 33
(14) Driving on the shoulder of an expressway	6	
[Rule 8, Road Traffic (Expressway Traffic) Rules]		R 23
(15) Using tyres with ply or cord carcass exposed	3	
[Rule 105 (1) (e), Road Traffic (Motor Vehicles, Construction and Use) Rules]		R 9
(16) Driver failing to wear seat belt	3	
[Rule 4 (1), Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules]		R 34
(17) Obstructing flow of traffic	4	
[Rule 5, Road Traffic Rules]		R 20
(18) Forming up incorrectly when turning left or right	4	
[Rule 7, Road Traffic Rules]		
(19) Failing to give way to ambulance, fire brigade or police vehicle	4	

[Rule 12 (2), Road Traffic Rules]		
(20) Driving while carrying load on a motor vehicle in a dangerous manner	4	
[Rule 97 (4), Road Traffic (Motor Vehicles, Construction and Use) Rules]		
(21) Load falling from vehicle	6	
[Rule 101 (7), Road Traffic (Motor Vehicles, Construction and Use) Rules]		
(22) Driving or leaving a vehicle in a bus lane during restricted hours	4	
[Rule 8 (1), Road Traffic (Traffic Signs) Rules 1991]		
(23) Offences committed by motorists at pedestrian crossing	6	
[Rule 4, 5, 6, and 7, Road Traffic (Pedestrian Crossings) Rules]		R 24.
(24) Driving or riding against the flow of traffic	6	
[Rule 3, Road Traffic Rules]		R 20
(25) Driving without due care or reasonable consideration for other road users	9	
[Section 65 of the Act]		
(26) Failing to conform to traffic light signals	12	
[Section 120 (1) (b) of the Act]		
(27) Careless driving	6	
[Rule 29, Road Traffic Rules]		
(28) Carrying passengers on a goods vehicle in a dangerous manner	6	
[Rule 4, Road Traffic (Carriage of Persons in Goods Vehicles) (Consolidation) Rules]		R 1
(29) Carrying passengers on a motor vehicle or trailer in a dangerous manner	6	
[Rule 101 (1), Road Traffic (Motor Vehicles, Construction and Use) Rules]		R 9

(30) Reckless or dangerous driving	24
[Section 64 (1) of the Act]	
(31) Parking abreast of another vehicle	3
[Rule 10, Road Traffic Rules]	
(32) Parking within a pedestrian crossing	3
[Rule 22 (e), Road Traffic Rules]	
(33) Stopping on the shoulder or verge of an expressway	4
[Rule 8, Road Traffic (Expressway Traffic) Rules]	
	R 23
(34) Stopping in a zebra controlled area	3
[Rule 10 (1), Road Traffic (Pedestrian Crossings) Rules]	
	R 24
(35) Driver failing to ensure that every front seat passenger wears a seat belt	3
[Rule 5, Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules]	
	R 34
(36) Driver failing to ensure that every rear seat passenger wears a seat belt where there is one available for the use of such passenger	3
[Rule 7, Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules]	
	R 34
(37) Using a motor vehicle where a child below 8 years of age who is a front seat passenger is not properly secured by an approved child restraint	3
[Rule 10, Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules]	
(38) Using a motor vehicle where a child below 8 years of age who is a rear seat passenger is not properly secured by an approved child restraint when there is seat belt available for the use of such passenger	3
[Rule 11, Road Traffic (Motor Vehicles, Wearing of Seat Belts) Rules]	
(39) Stopping or remaining at rest on the carriage way of expressway	4
[Rule 6, Road Traffic (Expressway Traffic) Rules]	

(40) Parking within a Demerit Points No Parking Zone	3
[Rule 24A, Road Traffic Rules]	
(41) Stopping within a Demerit Points No Stopping Zone	3
[Rule 24B, Road Traffic Rules]	
(42) Use of mobile telephone while driving	12
[Section 65B(1) of the Act]	
(43) Reversing unnecessarily along an expressway	
[Rule 7, Road Traffic (Expressway Traffic) Rules]	6

ANNEX G

**ROAD TRAFFIC ACT
(CHAPTER 276)*****Section 35(8):*****Licensing of drivers, etc.**

35(8) The Deputy Commissioner of Police may refuse to renew any driving licence, or may renew it for a period of one year only notwithstanding that the applicant has elected to renew it for 3 years, if he is satisfied —

- (a) that the holder of the driving licence has not complied with any process of court issued against him in respect of any offence committed by him under this Act or the rules or any written law specified in Part II of the First Schedule; or
- (b) that the holder of the driving licence has, pursuant to a warrant of court, been arrested in connection with an offence under this Act or the rules or any written law specified in Part II of the First Schedule and the offence has not been tried and determined by the court.

ANNEX H

Relevant extracts of the Australia Trade Practices Act 1974
(Obtained from the Reprint prepared by the Office of Legislative Drafting, Attorney-
General's Department, Canberra, Published by AusInfo, Canberra,
© Commonwealth of Australia 2000, ISBN 0 642 41975 2)

Trade Practices Act 1974

Part VI Section 87B

87B. —(1) The Commission may accept a written undertaking given by a person for the purposes of this section in connection with a matter in relation to which the Commission has a power or function under this Act (other than Part X).

(2) The person may withdraw or vary the undertaking at any time, but only with the consent of the Commission.

(3) If the Commission considers that the person who gave the undertaking has breached any of its terms, the Commission may apply to the court for an order under subsection (4).

(4) If the court is satisfied that the person has breached a term of the undertaking, the court may make all or any of the following orders:

- (a) an order directing the person to comply with that term of the undertaking;
- (b) an order directing the person to pay to the Commonwealth an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
- (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
- (d) any other order that the court considers appropriate.

ANNEX I

RELEVANT EXTRACTS OF THE US SECURITIES EXCHANGE ACT OF 1934
(Obtained from <http://www.law.uc.edu>)**SECURITIES EXCHANGE ACT OF 1934****Section 21C -- Cease-and-Desist Proceedings****a. Authority of Commission**

If the Commission finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this chapter, or any rule or regulation thereunder, the Commission may publish its findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision, rule, or regulation, upon such terms and conditions and within such time as the Commission may specify in such order. Any such order may, as the Commission deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Commission may specify, with such provision, rule, or regulation with respect to any security, any issuer, or any other person.

b. Hearing

The notice instituting proceedings pursuant to subsection (a) of this section shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Commission with the consent of any respondent so served.

c. Temporary order**1. In general**

Whenever the Commission determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to subsection (a) of this section, or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest, including, but not limited to, losses to the Securities Investor Protection Corporation, prior to the completion of the proceedings, the Commission may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to investors, or substantial harm to the public interest as the Commission deems appropriate pending completion of such proceedings. Such an order

shall be entered only after notice and opportunity for a hearing, unless the Commission determines that notice and hearing prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

2. **Applicability**

This subsection shall apply only to a respondent that acts, or, at the time of the alleged misconduct acted, as a broker, dealer, investment adviser, investment company, municipal securities dealer, government securities broker, government securities dealer, or transfer agent, or is, or was at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with, any of the foregoing.

d. Review of temporary orders

1. **Commission review**

At any time after the respondent has been served with a temporary cease and-desist order pursuant to subsection (c) of this section, the respondent may apply to the Commission to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Commission shall hold a hearing and render a decision on such application at the earliest possible time.

2. **Judicial review**

Within--

- A. 10 days after the date the respondent was served with a temporary cease- and-desist order entered with a prior Commission hearing, or
- B. 10 days after the Commission renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and desist order entered without a prior Commission hearing,

the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior Commission hearing may not apply to the court except after hearing and decision by the Commission on the respondent's application under paragraph (1) of this subsection.

3. **No automatic stay of temporary order**

The commencement of proceedings under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

4. **Exclusive review**

[Section 25](#) shall not apply to a temporary order entered pursuant to this section.

e. **Authority to enter order requiring accounting and disgorgement**

In any cease-and-desist proceeding under [subsection \(a\)](#), the Commission may enter an order requiring accounting and disgorgement, including reasonable interest. The Commission is authorized to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate to implement this subsection.

ANNEX J

RELEVANT EXTRACTS OF THE AUSTRALIA MAGISTRATES' COURT ACT 1989**(Obtained from <http://www.austlii.edu.au>, Commonwealth Consolidated Acts)****MAGISTRATES' COURT ACT 1989 - SCHEDULE 7****Section 99****PROCEDURE FOR ENFORCEMENT OF INFRINGEMENT PENALTIES
PART****1-INTRODUCTORY****1. Application of Schedule**

(1) The procedures set out in this Schedule may be used for the enforcement of infringement penalties and penalties imposed by penalty notices.

(2) If the procedures set out in this Schedule are used, they apply without prejudice to the application of so much of any other procedure as is consistent with this Schedule.

(3) The procedures set out in [Part 2](#) may be used in relation to any infringement notice, whenever issued.

(4) The procedures set out in [Part 3](#) apply to penalty notices and [prescribed](#) offences despite anything to the contrary in a Code.

2. Definitions

In this Schedule-

"appropriate officer" means the holder of a [prescribed](#) office or the holder of an office in a [prescribed](#) class of offices;

"certificate" means a certificate under clause 4(1)(b); "Code" means a Code within the meaning of [section 32](#) of the [Interpretation of Legislation Act 1984](#);

"continuing offence provision" means a [prescribed](#) provision of an Act or a Code;

"courtesy letter" means a notice served under clause 3(1);

"enforcement agency", in relation to an infringement notice, means a person or body authorised by or under an Act to take [proceedings](#) for the offence in respect of which the infringement notice was issued;

"enforcement order" means an [order](#) under clause 5(1);

"fine" includes any costs required to be paid under this Schedule by the person on whom the infringement notice was served and any fee included under clause 7(3)xliii;

"infringement notice" means an infringement notice under a [prescribed](#) provision of any Act or statutory rule or local law made under the [Local Government Act 1989](#)xliv;

"infringement penalty" means the amount specified in an infringement notice as payable in respect of the offence for which the infringement notice was issued;

"penalty notice" means a penalty notice under a [prescribed](#) provision of an Act or a Code;

"prescribed offence" means an offence within the meaning of, or [prescribed](#) under, a [prescribed](#) provision of an Act or a Code;

"registrar" means a [registrar](#) at a venue of the [Court prescribed](#) under section 140(1)(i);

"statutory rule" has the same meaning as in the [Subordinate Legislation Act 1994](#).

PART 2-INFRINGEMENT NOTICES

3. Courtesy letters

(1) If it appears to an appropriate officer that an infringement penalty has not been paid before the end of the time specified in the infringement notice, the officer may serve a notice (a "courtesy letter") on the person on whom the infringement notice was served.

(2) A [courtesy](#) letter must state-

- (a) that the person on whom it is served has a further 28 days in which to pay the infringement penalty together with any [prescribed](#) costs; and
- (b) that in default of payment, the person may be dealt with under this Part.

(3) A [courtesy](#) letter may contain any other information that is [prescribed](#) for

the purposes of this sub-clause.

(4) If a person is served with a [courtesy](#) letter in relation to an infringement notice, the time for payment of the infringement penalty is extended until the end of 28 days after service of the [courtesy](#) letter.

(5) The infringement penalty together with the [prescribed](#) costs may be paid within the extended period as if the infringement notice or law under which the notice was served also required the payment of those costs.

(6) A person who has been served with a [courtesy](#) letter may decline to be dealt with under this Part by serving a written statement to that effect on the officer or person specified for that purpose in the letter within 28 days after service of the letter.

4. Registration of infringement penalties

(1) An enforcement agency may seek to have an infringement penalty registered by providing to a [registrar](#)-

- (a) a document in the [prescribed](#) form containing the [prescribed](#) particulars in relation to persons who have not paid infringement penalties; and
- (b) a certificate in the [prescribed](#) form signed by an appropriate officer and certifying that in respect of each person listed in the document the requirements set out in sub-clause (2), and any other [prescribed](#) requirements, have been satisfied.

(2) A certificate under sub-clause (1)(b) must certify that-

- (a) an infringement notice has been served on the person; and
- (b) a [courtesy](#) letter has been served on the person after the end of the time specified in the infringement notice as the time within which the infringement penalty may be paid; and
- (c) a period of at least 28 days has passed since the [courtesy](#) letter was served; and
- (d) the infringement penalty and any [prescribed](#) costs had not been paid before the certificate was issued; and
- (e) the person has not, under clause 3(6), declined to be dealt with under this Part; and

- (f) a charge in relation to the offence has not been filed; and
 - (g) a charge may still be filed in relation to the offence, having regard to the time when the offence is alleged to have been committed; and
 - (h) if the infringement notice was served under [section 87](#) of the [Road Safety Act 1986](#), the person was at the time of the alleged offence-
 - (i) the owner of the vehicle within the meaning of Part 7 of that Act; or
 - (ii) the person in charge of the vehicle as shown in a statement or declaration supplied in accordance with section 86(3)(a) of that Act; and
 - (i) if the infringement notice was issued in respect of an offence to which [section 66](#) of the [Road Safety Act 1986](#) applies, the person was at the time of the alleged offence-
 - (i) the owner of the [motor vehicle](#) within the meaning of section 66 of that Act; or
 - (ii) the driver of the [motor vehicle](#) as shown in a statement or declaration supplied in accordance with section 66(3)(a) of that Act; and
 - (j) if the infringement notice was issued in respect of an offence against [section 73\(1\)](#) of the [Melbourne City Link Act 1995](#), the person was at the time of the alleged offence-
 - (i) the owner of the vehicle within the meaning of Part 4 of that Act; or
 - (ii) the driver of the vehicle as shown in a statement or declaration supplied in accordance with section 87(3)(a) of that Act.
- (3) If it appears to the [registrar](#) from the certificate provided under sub-clause (1)(b) that the requirements listed in sub-clause (2) and any other [prescribed](#) requirements have been satisfied in relation to a person listed in the document provided with the certificate, the [registrar](#) may register the infringement penalty together with any [prescribed](#) costs for the purpose of enforcement under this Part.
- (4) The enforcement agency may, by notice in the [prescribed](#) form filed with the [registrar](#) at any time before an infringement penalty is registered under sub-clause (3) in relation to a person, request the [registrar](#) not to register the infringement penalty.

- (5) A [registrar](#) must comply with a request made in accordance with sub-clause (4).

5. Enforcement orders

- (1) On registering an infringement penalty together with any [prescribed](#) costs, the [registrar](#) must make an [order](#)-

- (a) in the case of a natural person, that the person pay to the [Court](#) the amount of the infringement penalty and the [prescribed](#) amount for costs and that in default of payment the amount is to be levied under a penalty enforcement warrant or the person is to be imprisoned under that warrant^{1vi} for a period of 1 day in respect of each \$100 or part of \$100 of the amount then remaining unpaid; or
- (b) in the case of a corporation, that the corporation pay to the [Court](#) the amount of the infringement penalty and the [prescribed](#) amount for costs and that in default of payment the amount is to be levied under a warrant to seize property.

- (2) An enforcement [order](#) is deemed to be an [order](#) of the [Court](#).

- (3) In this clause the [prescribed](#) amount for costs is the sum of-

- (a) the amount of costs (if any) registered together with the infringement penalty; and
- (b) the [prescribed](#) costs of the enforcement [order](#); and
- (c) any other costs required to be charged in relation to the enforcement [order](#) under this or any other Act.

6. Notice of enforcement order

- (1) On the making of an enforcement [order](#), the [registrar](#) must cause a notice in the [prescribed](#) form to be sent by post to the person against whom the [order](#) is made at the address contained in the document provided under clause 4(1)(a) or any other address given by that person.

- (2) The notice must state that if the person against whom the [order](#) is made defaults for a period of more than 28 days in the payment of the [fine](#) or of any instalment under an instalment [order](#)-

- (a) in the case of a natural person, a penalty enforcement warrant will be

issued^{xlvi}; or

- (b) in the case of a corporation, a warrant to seize property will be issued.

7. Applications concerning payment of fine

(1) A person against whom an enforcement [order](#) is made may apply to the [registrar](#) personally or in writing or in any other manner approved by the [registrar](#) for either or both of the following^{xlviii}:

- (a) An [order](#) that the time within which the [fine](#) is to be paid be extended; or
- (b) An [order](#) that the [fine](#) be paid by instalments.

(2) On receipt of an application under sub-clause (1), the [registrar](#) may do one or more of the following:

- (a) Allow additional time for the payment of the [fine](#) or the balance of the [fine](#);
- (b) Direct payment of the [fine](#) to be made by instalments;
- (c) Direct payment of the [fine](#) or instalments to be made at the time or times specified by the [registrar](#).

(3) If at any time after the issue of a warrant under clause 8(1) the [registrar](#) makes an [order](#) of a kind referred to in sub-clause (1) in respect of the [fine](#) and recalls and cancels the warrant, the [registrar](#) must include in the amount of the [fine](#) the fee payable under clause 8(1A) in respect of the cancelled warrant.

(3A) Despite anything to the contrary in this Act, the [registrar](#), if satisfied that there are sufficient grounds for doing so, may determine not to include the fee referred to in sub-clause (3) in the amount of the [fine](#).

(4) While an instalment [order](#) is in force and is being complied with^{xlix}-

- (a) the enforcement [order](#) operates subject to it; and
- (b) the instalment [order](#) operates as a stay of enforcement or execution of the enforcement [order](#).

8. Issue of warrants

(1) If a person to whom a notice under clause 6 is posted defaults for a period of more than 28 days in the payment of the [fine](#) or of any instalment under an instalment [order](#)-

- (a) in the case of a natural person, the [registrar](#) must issue a penalty enforcement warrant against that person; and
- (b) in the case of a corporation, the [registrar](#) must issue a warrant to seize property against that corporation.

(1A) On the issue of a warrant under sub-clause (1), the [prescribed](#) fee is payable by the person or corporation against whom the warrant is issued and may be included in the sums named in the warrant.

(1B) Any fee [prescribed](#) under this Act in respect of the execution of a warrant issued under sub-clause (1) forms part of the lawful costs of execution of the warrant.

(2) No step may be taken in execution of a penalty enforcement warrant unless a person authorised to execute this warrant has-

- (a) made a demand on the person in default; and
- (b) delivered to the person in default a statement in writing in the [prescribed](#) form setting out a summary of the provisions of this Part with respect to-
 - (i) the allowance of time to pay; and
 - (ii) payment by instalments; and
 - (iii) applications for revocation of enforcement [orders](#).

(3) During the period of 7 days after sub-clause (2) has been complied with, a person authorised to execute the penalty enforcement warrant may seize and take possession of the personal property of the person in default but may not remove it from the residential or business property in which it is situated unless the person executing the warrant believes on reasonable grounds that it is necessary to do so to avoid it being disposed of or removed.

(3A) The person who executes a penalty enforcement warrant by removing property during the period referred to in sub-clause (3) must-

- (a) by statutory declaration state the reason for so doing; and

(b) file the statutory declaration with the [registrar](#).

(3B) After the expiry of the period referred to in sub-clause (3), any step may be taken in execution of the penalty enforcement warrant (including selling any personal property seized during that period) if the [fine](#) or instalment or any part of the [fine](#) or instalment remains unpaid unless the person in default has obtained an instalment [order](#) or time to pay [order](#)^{vi}.

(4) Without affecting the operation of any other provision of this Act, a warrant issued under sub-clause (1)(b) may be directed to the sheriff^{lvii}.

(5) Section 111(4) to (7) applies to a warrant to seize property issued under sub-clause (1)(b) and directed to the sheriff.

(6) A person authorised to execute a warrant issued under sub-clause (1)(a) that is directed to the sheriff may also execute any unexecuted warrant issued under that sub-clause against the same person that is not directed to the sheriff.

8A. Enforcement against bodies corporate^{lviii}

(1) In this clause "director" has the same meaning as in section 98.

(2) If-

(a) the person executing a warrant issued under clause 8(1)(b) returns that he or she cannot find sufficient personal property of the body corporate on which to levy the sums named in the warrant together with all lawful costs of execution; and

(b) the [registrar](#) receives from the person executing the warrant a certificate purporting to be signed by a [prescribed](#) person stating that it appears from a return or returns lodged under the relevant law relating to companies that a person was a director of the body corporate in default at the time of the commission of the offence for which the infringement notice was issued- the [registrar](#) may declare that any person who was a director of the body corporate at the time of the commission of the offence for which the infringement notice was issued is jointly and severally liable for the payment of the [fine](#) and issue a penalty enforcement warrant against that person.

(3) The [registrar](#) must not make a declaration under sub-clause (2) in respect of, or issue a penalty enforcement warrant against, a director until the [registrar](#) has given 28 days' notice in writing by post to the director of his or her intention to make the declaration and issue the warrant.

(4) At the end of 28 days after the date of the notice the [registrar](#) must make the declaration under sub-clause (2) in respect of, and issue a penalty enforcement warrant against, the director unless-

- (a) the amount then outstanding is paid; or
- (b) the director satisfies the [registrar](#) that-
 - (i) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the body corporate would be able to meet any liabilities that it incurred at that time; and
 - (ii) he or she had taken all reasonable steps in carrying on the business of the body corporate to ensure that it would be able to meet its liabilities as and when they became due; or
- (c) the director applies to the [registrar](#) to have the matter referred to the [Court](#).

(5) If the director applies to the [registrar](#) under sub-clause (4)(c) to have the matter referred to the [Court](#), the [registrar](#) must thereupon refer the matter to the [Court](#) and cause a notice of the time and place of hearing to be given or sent to the director and the [Court](#) must, on the hearing of the matter, make the declaration that the [registrar](#) could have made under sub-clause (2) in respect of, and issue a penalty enforcement warrant against, the director unless-

- (a) the amount then outstanding is paid; or
- (b) the director satisfies the [Court](#) that-
 - (i) at the time of the commission of the offence he or she had reasonable grounds for believing and did believe that the body corporate would be able to meet any liabilities that it incurred at that time; and
 - (ii) he or she had taken all reasonable steps in carrying on the business of the body corporate to ensure that it would be able to meet its liabilities as and when they became due.

(6) If under this clause more than one person is obliged to pay a [fine](#), the obligation must be taken to have been discharged if it is discharged by any one of them.

9. Effect of enforcement order

(1) Subject to clause 10, if an enforcement [order](#) is made in relation to an offence alleged to have been committed by a person-

- (a) the person is not thereby to be taken to have been convicted of the offence; and
- (b) the person is not liable to any further [proceedings](#) for the alleged offence; and
- (c) the making of the [order](#) does not in any way affect or prejudice any civil claim, action or [proceeding](#) arising out of the same occurrence; and
- (d) payment in accordance with the [order](#) is not an admission of liability for the purpose of, and does not in any way affect or prejudice, any civil claim, action or [proceeding](#) arising out of the same occurrence.

(2) Any amount recovered as a result of the making of an enforcement [order](#) is to be dealt with in the same way as an amount recovered as a result of a conviction.

10. Revocation of enforcement orders

(1) An enforcement agency or any person against whom an enforcement [order](#) has been made may apply to the [registrar](#) at the venue of the [Court](#) at which the [order](#) was made for the revocation of the enforcement [order](#), unless-

- (a) in the case of a natural person, a penalty enforcement warrant has been issued under this Part in enforcement of the [order](#) and-
 - (i) a step has been taken as mentioned in clause 8(3) and the period referred to in that clause has expired; or
 - (ii) no step has been taken as mentioned in clause 8(3) but the warrant is executed after the expiration of that period; or
- (b) in the case of a corporation, a warrant to seize property issued under this Part in enforcement of the [order](#) has been executed.

(2) An application under sub-clause (1) must-

- (a) be filed with the [registrar](#); and
 - (b) if filed by the person against whom the enforcement [order](#) has been made, be accompanied by a sworn statement in writing or by a statutory declaration setting out the grounds on which the revocation is sought.
- (3) If an enforcement agency applies for the revocation of an enforcement [order](#), the [registrar](#) must revoke the enforcement [order](#) and, on its revocation, the enforcement [order](#) ceases to have effect.
- (4) If the person against whom the enforcement [order](#) has been made applies for its revocation and the [registrar](#)-
- (a) is satisfied that there are sufficient grounds for revocation, the [registrar](#) must revoke the enforcement [order](#) and, on its revocation, the enforcement [order](#) ceases to have effect; or
 - (b) is satisfied that there are sufficient grounds to vary the [prescribed](#) amount for costs within the meaning of clause 5, the [registrar](#) must vary the costs and notify the applicant that the amount of the infringement penalty together with costs as varied must be paid within 28 days after the date of the notice; or
 - (c) is not satisfied that there are sufficient grounds for revocation or variation of costs, the [registrar](#) must notify the applicant that the [order](#) has not been revoked because of insufficient grounds to justify its revocation.
- (5) If the [registrar](#) revokes an enforcement [order](#) under sub-clause (3) or (4), the [registrar](#) must notify the enforcement agency and the person against whom the [order](#) was made that-
- (a) the [order](#) has been revoked; and
 - (b) the matter of the alleged offence will be referred to the [Court](#) for hearing and determination.
- (6) A person who receives a notice under sub-clause (4)(b) or (c) may, within 28 days after the date of the notice, apply to the [registrar](#) to have the application for revocation referred to the [Court](#), and the [registrar](#) must thereupon refer the matter to the [Court](#) under clause 11.

11. Procedure after revocation or making of application under clause 10(6)

- (1) If an enforcement [order](#) is revoked or an application is made under clause 10(6), the [registrar](#) must-
- (a) cause a notice of the time and place of hearing to be given or sent to the enforcement agency and to the person against whom the enforcement [order](#) was made; and
 - (b) unless a notice has been received under clause 12(1) before the date of the hearing, file in the [Court](#) for the purpose of the hearing-
 - (i) a copy of the certificate on which the enforcement [order](#) was made; and
 - (ii) a copy of the part of the document provided under clause 4(1)(a) that relates to the person against whom the [order](#) was made.
- (2) For the purpose of the hearing of the alleged offence the copy documents filed under sub-clause (1)(b) are deemed to be a charge in relation to the alleged offence that was filed-
- (a) with the [appropriate registrar](#) on the date on which the certificate was provided under clause 4(1); and
 - (b) by the appropriate officer who signed the certificate.

12. Non-prosecution of offence

- (1) An enforcement agency may, by notice in the [prescribed](#) form filed with the [registrar](#), request the [registrar](#) not to refer the matter to the [Court](#).
- (2) If a request is made under sub-clause (1) the [registrar](#) must-
- (a) if the enforcement [order](#) has not been revoked-
 - (i) revoke the enforcement [order](#) and, on its revocation, the enforcement [order](#) ceases to have effect; and
 - (ii) not refer the matter to the [Court](#); or
 - (b) if the enforcement [order](#) has been revoked, not refer the matter to the [Court](#)- and notify the person against whom the [order](#) had been made-
 - (c) of the revocation of the [order](#), if it was revoked under sub-clause (2)(a)(i); and

(d) that the matter will not be referred to the [Court](#).

13. Hearing by Court

(1) If the matter has been referred to the [Court](#) as a result of the making of an application under clause 10(6), the [Court](#) may revoke the enforcement [order](#), which then ceases to have effect, and proceed to hear and determine the matter of the alleged offence.

(2) If the matter has been referred to the [Court](#) as a result of the revocation of an enforcement [order](#), the [Court](#) may proceed to hear and determine the matter of the alleged offence.

(3) The [Court](#) may proceed under sub-clause (1) or (2) to hear and determine the matter of an alleged offence even though a charge-sheet has not been served on the [defendant](#).

(4) If, but for this sub-clause, the hearing of an alleged offence under this clause may not proceed only because-

(a) the [defendant](#) was not served with a notice of the time and place of the hearing; and

(b) the [Court](#) is not satisfied that-

(i) the [defendant](#) had knowledge of the time and place of the hearing; or

(ii) if the [Court](#) is satisfied that the [defendant](#) had that knowledge, the [defendant](#) would not be prejudiced by the non-service- the hearing of the alleged offence may proceed if the [Court](#) is satisfied that the [defendant](#) is avoiding service of the notice or cannot be found after reasonable search and inquiry.

14. Service of documents

(1) All documents required or permitted by this Part to be given or served, may be served personally or by post or in any other [prescribed](#) manner.

(2) If a [courtesy](#) letter is served by post it must be addressed-

(a) to the last known place of residence or business of the person alleged to have committed the offence; or

(b) if the infringement notice was served under [section 87](#) of the

Road Safety Act 1986-

- (i) to the last address of the owner of the vehicle within the meaning of Part 7 of that Act; or
 - (ii) if a statement or declaration has been supplied by the owner of the vehicle under section 86(3)(a) of that Act, to the last address of the person alleged in that statement or declaration to have been in charge of the vehicle; or
- (c) if the infringement notice was issued in respect of an offence to which [section 66](#) of the [Road Safety Act 1986](#) applies-
- (i) to the last address of the owner of the [motor vehicle](#) within the meaning of section 66 of that Act; or
 - (ii) if a statement or declaration has been supplied by the owner of the [motor vehicle](#) under section 66(3)(a) of that Act, to the last address of the person alleged in that statement or declaration to have been the driver of the [motor vehicle](#); or
- (d) if the infringement notice was issued in respect of an offence against [section 73\(1\)](#) of the [Melbourne City Link Act 1995](#)-
- (i) to the last address of the owner of the vehicle within the meaning of Part 4 of that Act; or
 - (ii) if a statement or declaration has been supplied by the owner of the vehicle under section 87(3)(a) of that Act, to the last address of the person alleged in that statement or declaration to have been the driver of the vehicle.
- (3) Any other document served by post under this Part must be addressed-
- (a) to the address for service given by the person on whom the document is to be served; or
 - (b) if no address for service has been given, to the address contained in the document provided under clause 4(1)(a).

PART 3-PENALTY NOTICES**15. Application of Part 2 to penalty notices**

Clauses 3 to 9, with any necessary modifications, apply to penalty notices and [prescribed](#) offences as if-

- (a) any reference in those clauses to an infringement notice were a reference to a penalty notice; and
- (b) for clause 9(1)(a) there were substituted the following:

"(a) the person is not thereby to be taken to have been convicted of the offence, except as provided in clause 16;"

16. Deemed conviction where failure to do act or thing

If a penalty notice has been served on a person in relation to a [prescribed](#) offence constituted by a failure to do a particular act or thing and-

- (a) the person pays the infringement penalty together with any [prescribed](#) costs after the end of the period specified in the penalty notice but before an enforcement [order](#) is made under this Part in relation to the [prescribed](#) offence but does not do the act or thing and at the date of payment that act or thing was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do the act or thing as if, on the day on which the person made the payment, the person had been convicted of an offence constituted by a failure to do the act or thing; or
- (b) an enforcement [order](#) is made and at the date on which the enforcement [order](#) was made that act or thing had not been done and was still able to be done, the obligation to do that act or thing continues and the relevant continuing offence provision applies in relation to the continued failure to do that act or thing as if, on the day on which the enforcement [order](#) was made, the person had been convicted of an offence constituted by a failure to do the act or thing.

17. Application for revocation of enforcement order

(1) An enforcement agency or any person against whom an enforcement [order](#) has been made in relation to a [prescribed](#) offence may apply to the [registrar](#) at the venue of the [Court](#) at which the [order](#) was made for the revocation of the [order](#), unless-

- (a) in the case of a natural person, a penalty enforcement warrant has been issued under this Part in enforcement of the [order](#) and-

- (i) a step has been taken as mentioned in clause 8(3) and the period referred to in that clause has expired; or
 - (ii) no step has been taken as mentioned in clause 8(3) but the warrant is executed after the expiration of that period; or
- (b) in the case of a corporation, a warrant to seize property issued under this Part in enforcement of the [order](#) has been executed.
- (2) An application under sub-clause (1) must-
- (a) be filed with the [registrar](#); and
 - (b) if filed by the person against whom the enforcement [order](#) has been made, be accompanied by a statutory declaration setting out the grounds on which the revocation is sought.
- (3) If an enforcement agency applies for the revocation of an enforcement [order](#), the [registrar](#) must revoke the enforcement [order](#) and, on its revocation, the enforcement [order](#) ceases to have effect.

18. Referral to the Court of application by person against whom order made

If an application is made under clause 17(1) by the person against whom the enforcement [order](#) has been made, the [registrar](#) must-

- (a) refer the application to the [Court](#) and cause a notice of the time and place of hearing to be given or sent to the enforcement agency and to the person against whom the enforcement [order](#) was made; and
- (b) file in the [Court](#) for the purpose of the hearing-
 - (i) a copy of the certificate on which the enforcement [order](#) was made; and
 - (ii) a copy of the part of the document provided under clause 4(1)(a) that relates to the person against whom the [order](#) was made.

19. Hearing by Court

(1) On the hearing of an application referred to the [Court](#) under clause 18(a), the [Court](#) may-

- (a) refuse to revoke the enforcement [order](#); or
 - (b) revoke the enforcement [order](#), which then ceases to have effect, and proceed to hear and determine the matter of the alleged offence.
- (2) For the purpose of the hearing of the alleged offence the copy documents filed under clause 18(b) are deemed to be a charge in relation to the alleged offence that was filed-
- (a) with the [appropriate registrar](#) on the date on which the certificate was provided under clause 4(1)(b); and
 - (b) by the appropriate officer who signed the certificate.
- (3) The [Court](#) may proceed under sub-clause (1)(b) to hear and determine the matter of an alleged offence even though a charge-sheet has not been served on the [defendant](#).
- (4) Clause 13(4) applies to the hearing of an alleged offence under sub-clause (1)(b) of this clause in the same way as it applies to a hearing under that clause.

20. Service of documents

Clause 14 applies to the service of documents under this Part as if after sub-clause (2)(a) of that clause there were inserted-

"(aa) if the infringement notice was served under a prescribed provision of a Code-

- (i) to the address of the registered office of the company alleged to have committed the offence notice of which has been lodged with the National Companies and Securities Commission; or
- (ii) to the last address of the person alleged to have committed the offence notice of which has been lodged with the National Companies and Securities Commission or the particulars of which appear from documents so lodged; or".

ANNEX K

**ACTS THAT DO NOT PROVIDE COMPOSITION OF
OFFENCES FOR MINOR OFFENCES**

**CHILD CARE CENTRES ACT
(CHAPTER 37A)**

Display of licence

8. —(1) Every licensee shall cause his licence to be permanently displayed in some conspicuous place where it can readily be seen by all persons having access to the child care centre to which the licence relates.

(2) Every licensee who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and to a further fine not exceeding \$100 for every day during which the offence continues after conviction.

**CHIT FUNDS ACT
(CHAPTER 39)**

Exhibition of licence

16. The licence issued under section 7 (3), or a certified copy thereof, shall, so long as it remains valid, be exhibited in a conspicuous position at the principal place of business of the chit fund company and in the event of revocation under section 14, the licence and all certified copies thereof shall be surrendered forthwith to the Authority.

General penalty

56. Any chit fund company which, or any person who being a director, officer, employee or agent of a chit fund company, contravenes or fails to comply with any of the provisions of this Act for which no penalty is expressly provided shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

**HOMES FOR THE AGED ACT
(CHAPTER 126A)**

Display of licence

9. —(1) Every licensee shall cause his current licence to be permanently exhibited in some conspicuous place where it can readily be seen by all persons having access to the premises to which the licence relates.

(2) Every licensee who contravenes or fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1,000 and, in the case of a continuing offence, to a further fine not exceeding \$100 for every day during which the offence continues after conviction.

HOTELS ACT (CHAPTER 127)

Powers of entry and inspection

15. —(1) The chairman or any member of the Board or any person duly authorised by the chairman in writing may, subject to such regulations as may be made by the Minister, at any time of the day or night without previous notice enter and inspect any hotel or any premises reasonably suspected of being used for the purposes of a hotel.

(2) Any person who refuses to allow the chairman or any member of the Board or any such person to enter and inspect any hotel or any such premises or obstructs the entry or inspection in any way shall be guilty of an offence.

[16

Penalties

16. —(1) Any person who keeps or manages any premises as a hotel in respect of which no certificate of registration under this Act is in force shall be guilty of an offence.

(2) Any person who, being the owner or occupier of any premises in respect of which no certificate of registration under this Act is in force, permits the premises to be used as a hotel shall be guilty of an offence.

(3) Any person who keeps or manages any hotel in respect of which he holds no valid licence shall be guilty of an offence.

(4) Any person who, being the owner or occupier of any premises, permits any other person (in respect of whom no licence granted under section 7 is in force) to manage or keep the premises as a hotel shall be guilty of an offence.

(5) Any hotel-keeper who fails to comply with or contravenes any of the conditions set out in his licence shall be guilty of an offence.

(6) Any person who, for the purpose of obtaining whether for himself or for any other person the grant or renewal of any certificate of registration or licence under the provisions of this Act, makes any declaration or statement which is false in any material particular or knowingly utters, produces, or makes use of, any such declaration or statement or any document containing the same shall be guilty of an offence.

(7) Any person guilty of an offence shall be liable on conviction to a fine not exceeding \$2,000 and, in the case of a second or subsequent offence, to such fine or to imprisonment for a term not exceeding 6 months or to both.

(8) In addition to any other penalty imposed, the court may cancel or suspend any certificate of registration and may cancel any licence granted under this Act.

[17

**MARTIAL ARTS INSTRUCTION ACT
(CHAPTER 171)**

Exhibition of certificate

28. An instructor’s certificate or a certified copy thereof shall, so long as it remains valid, be exhibited by the instructor to whom such a certificate has been granted in a conspicuous position at every place of instruction at which he instructs any other person in any form of martial art.

General penalty

36. A person who contravenes or fails to comply with any of the provisions of this Act or any regulations made thereunder for which no penalty is expressly provided shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000.

**PRICE CONTROL ACT
(CHAPTER 244)**

Seller to display list of prices

7. Any person who deals in any price-regulated goods shall display in English and in any other language ordered by the Price Controller, in a prominent manner and in a conspicuous position so that it can be easily read and is clearly legible to customers in those parts of his business premises where price-regulated goods are dealt in, a list of the current maximum prices of the price-regulated goods in which he deals and any such person who fails to do so shall be guilty of an offence.

Controller may order display of prices of any goods or class of goods

8. The Price Controller may by order published in the Gazette from time to time require any person who sells by retail any goods or class of goods specified in the order to exhibit clearly and conspicuously in such manner as may be prescribed the price demanded by him for the sale of those goods and any person failing to comply with any such order shall be guilty of an offence.

Penalties.

16. —(1) Any person, other than a body corporate, but including a director or officer of a body corporate, who commits an offence under this Act shall be liable, where no other penalty is specifically provided for such an offence, to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 2 years or to both, and in the case of a second or subsequent offence to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 5 years or to both.

(2) Any body corporate which commits an offence under this Act shall be liable on conviction to a fine not exceeding \$10,000 and in the case of a second or subsequent offence to a fine not exceeding \$20,000.

(3) Where a trader or commission agent is convicted of an offence under this Act the court by which he is so convicted may, in addition to any other penalty, make an order debarring him or any firm of which he is a partner or any corporation of which he is an officer, from carrying on business for such period as the court may determine. Any person who fails to comply with any such order shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding one year or to both.

(4) Where a person charged with an offence under this Act is a body corporate every person who, at the time of the commission of the offence, was a director or officer of the body corporate may be charged jointly in the same proceedings with the body corporate, and where the body corporate is convicted of the offence, every such director or officer shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence.

(5) In any proceedings under subsection (4) jointly against a body corporate and a director or officer thereof for an offence under this Act any evidence that the body corporate was guilty of the offence shall be deemed to be evidence that the director or officer was guilty of that offence.

(6) Any person who would have been liable under any of the provisions of this Act to any penalty for anything done or omitted if the thing had been done or omitted by him personally shall be liable to the same penalty if the thing has been done or omitted by his partner, agent or servant, unless he proves to the satisfaction of the court that he took all reasonable precautions to prevent the doing or omission of the thing.

(7) A District Court shall have power to try any offence under this Act and may impose the full penalty provided by this Act or by any order or rule made under this Act.

**PRIVATE INVESTIGATION AND SECURITY AGENCIES ACT
(CHAPTER 249)**

Display of licence

9. —(1) Every licensee shall exhibit his licence or a certified copy in a conspicuous place at his principal place of business and at every branch where the licensee carries on the business of a private investigator or of a security guard agency.

(2) Any person —

(a) who contravenes or fails to comply with subsection (1); or

(b) who not being the holder of a licence keeps up or exhibits on or near his office, house or place of business or exhibits anywhere or allows to remain unobliterated any sign, writing, painting or other mark implying that such office, house or place of business is that of a person licensed to carry on the business of a private investigator or of a security guard agency,

shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both.
