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The art of deterrence: Singapore's anti-money laundering regimes

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(I) INTRODUCTION:

The concept of white-collar crime involves the examination of criminal activity in corporate, commercial, professional, and political life (Sutherland, 1939).^[1] Although criminologists have often argued that white-collar crime is more widespread, and more damaging to society than many other common crimes such as robbery, burglary or theft, it has been suggested that white-collar crime is not generally regarded as part of the 'crime problem' (Croall, 1994).^[2] This is because the public are more afraid of being mugged or robbed by a stranger, than being exploited by powerful corporations.^[3] Moreover, despite the damaging effect that white-collar crime can have on society, it has been observed that most economists are only well-acquainted with business methods, but are not accustomed to consider such business methods from a criminal perspective; and many sociologists are well acquainted with crime, but are not accustomed to consider it in the business context (Sutherland, 1939).^[4] This arguably means that it would be easier for many well-educated and socially successful business executives in legitimate businesses to break the law and get away with it (Gobert and Punch, 2003).^[5]

Despite the lack of attention given to white-collar crime in the past, in recent years, white-collar crime has often been associated with scandals in the financial and business industries (Croall, 1994).^[6] These scandals often include the activities of powerful corporations which exploit powerless individuals such as consumers, workers, and citizens.^[7] Even so, it is submitted that many white-collar criminals frequently escape sanctions, and those who were exposed for illegal violations rarely suffered the stigma attached to ordinary criminals (Gobert and Punch, 2003).^[8] This arguably means that many modern-day white-collar criminals, who are more suave and deceptive, are able to avoid both civil and criminal sanctions that have been implemented to punish those who make unscrupulous gains from corporate crime.

Although white-collar criminality in business is most frequently expressed in the forms of commercial bribery, embezzlement, and misapplication of funds,^[9] it is submitted that the laundering of dirty money is often the lubricant of crime (Lloyd, 1997).^[10] This is because many organized crimes are dependent upon the availability of funding, and the laundering of the proceeds of earlier exploits are frequently used to facilitate such crimes.^[11]

This suggests that even a country like Singapore, which was recently ranked the 7th least corrupt country in the world, ^[12] remains vulnerable towards the ever-increasing acts of money laundering. This vulnerability is reflected in the recent 1Malaysia Development Berhad ('1MDB') scandal, which revealed lapses in the Anti-Money Laundering ('AML') regimes of The Development Bank of Singapore ('DBS'), UBS AG Bank Singapore ('UBS'), BSI Bank Singapore ('BSI'), and Falcon Private Bank Singapore ('Falcon'). In light of the proliferation of money laundering in Singapore, this dissertation aims to examine why money laundering remains a pertinent issue within the Financial Institutions ('FI') in Singapore, and whether sanctions imposed by the Monetary Authority of Singapore ('MAS') act as effective deterrence against AML violations.

(II) THESIS:

In light of the recent 1MDB scandal in Singapore, this dissertation serves to examine the deterrent effect of sanctions against AML violations in FIs. In doing so, the following sub-issues will be addressed, namely: (i) whether there is a relationship between the theory of "deterrence-based thinking" and the effectiveness of sanctions against deliberate and non-deliberate AML violations within a FI; (ii) whether the nature of sanctions (i.e. criminal, civil, financial, or non-financial) affect the degree of deterrence against AML violations; and (iii) whether economic factors affect the deterrent effect of sanctions against AML violations. Prior to examining these issues, this dissertation will establish the following conceptual background, namely: (i) the money laundering process; (ii) the 1MDB scandal; (iii) the meaning of AML violations; (iv) the purpose of regulation; (v) the

meaning of sanctions; (vi) the distinction between “criminal” and “civil” sanctions; (vii) the distinction between “financial” and “non-financial” sanction; (viii) the regulator in Singapore; (ix) the courts’ role in Singapore; (x) the FIs in Singapore; and (xi) the AML regimes.

(III) BACKGROUND

(1) The purpose and process of money laundering:

The primary purpose of money laundering is to conceal the origins of ill-gotten gains because often, it is the spending or general disposal of illicit gains that leads to the detection of the original crime (Lloyd, 1997).^[13] There are three stages to money laundering.^[14] The first stage is known as the “placement stage”. The placement stage arguably entails the greatest risk as it often requires the deposit of substantial sums of illicit gains across banks and other FIs.^[15] The second stage is known as the “layering or agitation stage”. At this stage, the deposited illicit gains are fragmented using a variety of transactions which act as a “smoke screen” to disguise the true origins of the illicit gains.^[16] Often, money launderers make use of gold to disguise the true origins of dirty money because its value remains constant.^[17] The final stage is known as the “integration or re-integration stage”. At this stage, the illicit gains have been safely placed and layered to the extent that such gains have been “cleaned”, and that it is safe to return the “cleaned money” to the money launderers through a legitimate financial system.^[18] Although money laundering is often described as a three-stage process, its process is highly complexed as many money launderers have implemented new ways of disguising the origins of “cleaned” money.^[19] In light of the sophisticated nature of money laundering, it is inevitable that even the financial system of Singapore (which is often described as corrupt-free) may be preyed upon.

(2) The 1MDB scandal in Singapore:

In July 2016, the U.S. Department of Justice filed lawsuits to seize properties tied to 1MDB, which is the subject of money laundering investigations in at least six countries,

including Singapore and the United States.^[20] Following the U.S. lawsuit, the MAS in Singapore seized about SGD\$240 million worth of assets in relation to various 1MDB-related fund flows. Moreover, the MAS found that DBS, UBS, and Falcon had weaknesses in their processes for accepting clients and monitoring transactions, as well as undue delays in detecting and reporting suspicious transactions. Although the lapses in DBS and UBS were “serious in their own right,” the MAS stated that there was no “pervasive control weaknesses or staff misconduct”.^[21] In contrast, BSI had its merchant bank status withdrawn by the MAS in May 2016 after breaches of AML regimes as well as gross misconduct by its staff.^[22] As for Falcon, the MAS ceased Falcon’s operations and imposed a SGD\$4.3 million fine on it for 14 breaches of MAS Notice 1014 (Prevention of Money Laundering and Countering the Financing of Terrorism). In contrast, a SGD\$1 million and SGD\$1.3 million fine were imposed on DBS and UBS respectively for 10 and 13 breaches of the same regulation. These breaches include the failure to implement an efficient Customer Due Diligence (‘CDD’) system, and the failure to file Suspicious Transaction Reports (‘STR’).^[23] On 2nd December 2016, Standard Chartered Bank and Coutts & Co Private Bank were fined SGD\$5.2 million and SGD\$2.4 million respectively for 28 and 24 breaches of AML regulations in relation to 1MDB-related fund flows.^[24] In light of space constraints, this dissertation will focus on comparing the sanctions imposed against Falcon and BSI to that of those imposed against DBS and UBS.

(3) The meaning of “AML Violations”:

In this dissertation, the term “AML violations” constitutes deliberate and non-deliberate breaches of AML regimes. On the one hand, there is deliberate AML violation where an individual within a FI *knowingly* engages in such a violation. This may occur where an individual perceives greater financial benefit from AML violations, due to the belief that sanctions imposed would be relatively lenient (Macrory, 2006).^[25] On the other hand, there is non-deliberate AML violation where an individual within a FI *negligently* fails to implement efficient CDD systems and/or STR systems as required by respective statutory

regimes (discussed later). There is an interesting debate in relation to deterring *deliberate* and *non-deliberate* AML violations, which is discussed in part (iv).

(4) The purpose of regulation:

It has been observed that it is a widely-known fact that risk is inherent in activities undertaken by FIs. Hence, "regulation" is perceived as a means of managing unavoidable risk (Hodges, 2015).^[26] Moreover, it has been suggested that "regulation" is the sustained and focused attempt by the state to alter behaviour thought to be of value to the community in accordance with achieving behaviour that corresponds with defined standards (Yeung and Parker, 2015).^[27] In this dissertation, the definition of "regulation" will draw upon what was suggested by Hodges, Yeung, and Parker, and that in the context of money laundering, AML regimes (discussed below) are implemented to regulate against AML violations.

(5) The meaning of sanctions:

Before examining the effects that different types of sanctions have against AML violations, it is essential to examine the general meaning of "sanctions". It has been suggested that the word "punishment" is replaced when corporations are the object of criminal enforcement by the altogether less emotive "sanction" (Wells, 2001).^[28] This gives the impression that "sanction" is synonymous with "punishing corporations".^[29] Further, it has been observed that sanctions are enforced by the authority of a state, and that there are two types of sanctions, namely: (i) criminal; and (ii) non-criminal (civil) sanctions (Hodges, 2015).^[30] It is therefore necessary to examine the different types of sanctions that can be enforced by regulators, namely: (i) criminal; (ii) civil; (iii) financial; and (iv) non-financial.

(6) The purpose of "criminal" and "civil" sanctions:

It has been observed that there are four reasons for sanctioning, namely: (i) sanctions can assist in ensuring that those in breach provide proper recompense for damage or

costs to the society; (ii) sanctions represent a societal condemnation of the regulatory breach; (iii) sanctions act as deterrence to the sanctioned business against future breaches; and (iv) sanctions send a wider message to the regulated sector (Macrory, 2006).^[31] Indeed, an effective sanctioning regime ensures successful regulatory regimes as its very existence may act as an inducement to compliance without the need to invoke the formal sanctions.^[32] On the one hand, since criminal law is often invoked to censure the most serious instances of morally reprehensible conduct, traditionally, the response of a state to breach of its public criminal law is to impose criminal sanction against either or both the individuals or corporate entities (Hodges, 2015).^[33] Even so, the heavy reliance on criminal sanctions results in criminal sanctions being an insufficient deterrent to “truly” criminal operators (Macrory, 2006).^[34] The issue as to whether the heavy reliance on criminal sanctions dilutes the deterrent effect against AML violations will be dealt in part (v).

On the other hand, where there is an infringement of requirements of public administrative or regulatory law (i.e. civil law), it has been observed that regulators do not rely on criminal sanctions, but instead, rely extensively on “civil sanctions”, which entails civil law responses to the infringement of public administrative or regulatory law (Hodges, 2015).^[35] These civil sanctions are therefore less serious than criminal sanctions, and can be imposed by both the public authorities and the courts.^[36] Even so, it has been suggested that regulators often lack transparency when imposing civil sanctions (Macrory, 2006).^[37] The issue as to whether the lack of transparency by regulators affects the deterrent effect of civil sanctions against AML violations is discussed in part (v).

(7) The distinction between “financial” and “non-financial” sanctions:

It has been suggested that financial sanctions in terms of criminal law constitute fines,^[38] and financial sanctions in terms of civil law constitute administrative fines or direct compensation orders for non-compliance of a regulation that can be enforced either by

public authorities or the courts (Hodges, 2015).^[39] In the context of this dissertation, financial sanctions are applied directly by a regulator, and that the courts do not play any part.^[40] There is an interesting debate in relation to the effectiveness of financial sanctions (both in the civil and criminal context), and this will be discussed in part (v). In terms of non-financial criminal sanctions, it has been suggested that such sanctions constitute imprisonment, probation, and community service (Wells, 2001).^[41] In terms of non-financial civil sanctions, apart from direct compensation orders in the form of fines, there is a spectrum of possible sanctions, which runs from incapacitation in the form of corporate dissolution to punitive injunctions.^[42] It has been suggested that non-financial sanctions are promising as they circumvent some of the major limitations of financial sanctions (Wells, 2001),^[43] and that non-financial sanctions may be appropriate for offenders who may not be able to pay even small fines (Macrory, 2006).^[44] The validity of this suggestion will be examined in part (v).

(8) The regulators in Singapore:

The single regulator in Singapore is the MAS. Under Section 27B MAS Act (Chapter 186), the MAS has the power to issue Directions or Regulations to prevent AML violations within FIs in Singapore. A Direction or Regulation issued by the MAS has the force of the law, and a FI that fails to comply with such Direction or Regulation would be guilty of an offence, and liable on conviction to fines (see below).^[45] The MAS is not part of the Singapore Government. The Government in Singapore is made up of the President and Cabinet Members (i.e. Ministers),^[46] whereas the MAS is a statutory board which acts as the central bank of Singapore, and serves as banker to and financial agent of the Government.^[47] It has been suggested that since the MAS is not a part of the Government, it has greater independence and flexibility in its operations.^[48] However, it is argued that many of the MAS' acts and policies are influenced by the Government. The lack of flexibility within the MAS's operations arguably result in the MAS being ineffective in deterring AML violations within FIs that the Government own shares in. The validity of this argument will be examined in part (vi).

(9) The role of the Courts in Singapore:

Although Section 30(1) AAO MAS Act empowers the MAS to make an order to prohibit a specified FI from carrying on its business, Section 30(2) AAO MAS Act gives the High Court the power to make orders against the orders made by the MAS. For example, the High Court has the power to make an order that no resolution should be passed for winding up of a specified FI. Even so, Section 30(5) AAO MAS Act stipulates that so long as the order under Section 30(a) AAO of the MAS Act has not been ordered against by the High Court, the MAS may, by notice in writing to the specified FI, suspend or revoke the approval, authorization, designation, recognition, registration, or licence of the specified FI under the relevant Act. Although it has been suggested that the dissolution of a FI is “the most drastic sanction” available (Wells, 2001),^[49] the author of this dissertation was unable to find any evidence which shows that the High Court intervenes the orders made by the MAS. The drawbacks of the MAS having too much discretion in exercising such a draconian power (i.e. dissolution of a FI) will be discussed in part (vi).

(10) The FIs in Singapore:

The four FIs that this dissertation serves to examine in relation to the deterrent effects of sanctions against AML violations are: (i) DBS; (ii) UBS; (iii) BSI; and (iv) Falcon. The following paragraph will examine both the nature of the FI, as well as whether the Government in Singapore owns any shares in each FI. The rationale for examining the Government’s shareholdings in each FIs will be useful when the issue of the MAS’s differential treatment towards different FIs is discussed in part (vi). As a note of caution, this author submits that the following discussion is premised on the *impressionistic* observations of the author herself, and the discussion may not reflect the true state of affairs within the Government of Singapore. Indeed, more empirical evidence is required to establish the validity of the following arguments.

Firstly, DBS is a public FI as it offers shares to the public.^[50] As of 1st March 2016, its two largest shareholders are: (i) Maju Holdings Pte. Ltd. (18.32% of its shareholdings); and (ii) Temasek Holdings Pte. Ltd. (11.34% of its shareholdings).^[51] On the one hand, Temasek Holdings is a company that is wholly-owned by the Minister of Finance, a body corporate,^[52] that functions within the Government of Singapore.^[53] On the other hand, Temasek Holdings wholly-owns Maju Holdings, which gives the impression that Temasek Holdings has an interest in the ordinary shares held by Maju Holdings. Although more empirical evidence is required to establish that Temasek Holdings does indeed own an interest in the ordinary shares held by Maju Holdings, it is submitted that in the context of this essay, this author makes the presumption that Temasek Holdings holds a total of 29.66% of the total share capital in DBS. Since Temasek Holdings is wholly-owned by the Minister of Finance (who is part of the Singapore Government), this author further makes the assumption that the impression that the Government itself obtains financial benefits in the form of dividends from DBS (albeit the validity of this assumption is subject to the need for more evidence).

Secondly, UBS is a public Swiss FI which has subsidiaries in Singapore.^[54] As of 1st January 2016, the Government of Singapore, who is the beneficial owner of GIC Pte. Ltd., disclosed a holding of 6.38% of the total share capital of UBS Group.^[55] This translates to an estimated value of SGD\$5.94 billion,^[56] which this author believes gives the impression that the Government of Singapore benefits significantly from UBS. Whether the significant number of shares owned by the Government impacts the deterrent effect of sanctions against AML violations in UBS and DBS will be discussed in part (vi). Lastly, BSI and Falcon are private Swiss FIs which have subsidiaries in Singapore.^[57] As private FIs, they do not issue any shares. This gives the impression that the Government of Singapore does not receive any financial benefits (i.e. dividends) from BSI and Falcon. The impact of the Government's lack of shareholdings in Falcon and BSI will be examined in part (vi).

(11) The AML regimes governing AML violations in Singapore:

As Singapore's FIs grow in scale and sophistication, it is submitted that this arguably leads to an increase of criminal elements abusing its financial system. For example, the latest 1MDB scandal revealed AML violations within DBS, UBS, Falcon, and BSI. Before going into specific issues about the effectiveness of Singapore's AML regimes, it is necessary to examine the two sources of law which provide sanctions against AML violations, namely: (i) legislation; and (ii) Directions and Regulations issued by the MAS.

(11)(i) Legislation in Singapore (Criminal Sanctions):

The primary criminal legislation criminalizing AML violations within Singapore is the Corruption, Drug Trafficking, and Other Serious Crimes (Confiscation of Benefits) Act ('CDSA') (Chapter 65A).

(11)(i)(a) Offences in the CDSA relating to non-deliberate AML violations:

The CDSA contains criminal sanctions which regulate non-deliberate AML violations. On the one hand, Section 39(1) CDSA stipulates that a person has a duty to report to a STR Officer where he or she knows or reasonably suspects that proceeds are being used for criminal conducts such as drug dealing. Any person (whether an individual or body corporate) who fails to report is punishable with a fine of up to SGD\$20,000 (Section 39(2) CDSA). On the other hand, Section 48I CDSA stipulates that CDD and internal control measures must be prescribed from time to time, and must be carried out before entering into cash transactions with customers. Any prescribed person (whether an individual or body corporate) who fails to comply with CDD requirements will be liable to a fine not exceeding SGD\$20,000. Arguably, the CDSA only provides financial criminal sanctions, and not non-financial criminal sanctions, against any persons for any non-deliberate AML violations. This arguably give rise to several problems, which will be discussed in part (iv).

(11)(ii)(b) Offences in the CDSA relating to deliberate AML violations:

Before examining the CDSA provisions which govern deliberate AML violations, it is necessary to understand the concept of “mens rea”. In criminal law, the term “mens rea” is defined as criminal intention or knowledge that an act is wrong (Child and Ormerod, 2017).^[58] In the absence of “mens rea” being stated within a statutory provision, the courts in the United Kingdom would usually begin with the presumption in favour of mens rea.^[59] In determining whether the presumption is to be displaced, the courts are required to reference to the whole statute in which the offences appears.^[60] It seems that the presumption remains relevant as Rix LJ in *M* said that: “Only a compelling case for implying the exclusion of such an ingredient [*mens rea*] as a matter of necessity will suffice.”^[61]

However, unlike the United Kingdom, this author was unable to find any case law in Singapore which presumes “mens rea” in statutory provisions. Due to the lack of clarity, the author of this dissertation makes the assumption that the following four provisions within the CDSA contain criminal sanctions which regulate deliberate AML violations. This is because they contain the word “knowingly”, which arguably indicates deliberate acts (putting willful blindness aside). Firstly, Sections 43(1) and Section 44(1) CDSA stipulate that it is an offence to knowingly assist another to retain benefits from criminal conduct. Where these provisions are contravened, any person who is not an individual (i.e. a FI) is liable to a fine not exceeding SGD\$1 million (Section 43(5)(b) CDSA), whereas any person who is an individual is liable to a fine not exceeding SGD\$500,000, or to imprisonment for a term not exceeding 10 years, or both (Section 43(5)(a) CDSA).

Secondly, Sections 46(2)(a) and 47(2)(a) CDSA stipulate that it is an offence to knowingly conceal or disguise benefits of drug dealing or other criminal conduct. Lastly, Sections 46(2)(b) and 47(2)(b) CDSA stipulate that it is an offence to knowingly convert or transfer benefits of drug dealing or other criminal conduct, or remove them from the jurisdiction. Where Sections 46(2) or 47(2) are contravened, any person who is not an individual is liable to a fine not exceeding SGD\$1 million (Section 46(6)(b); Section

47(6)(b) CDSA), whereas any person who is an individual is liable to a fine not exceeding SGD\$500,000, or to imprisonment for a term not exceeding 10 years, or both (Section 46(6)(a); Section 47(6)(a) CDSA). Arguably, the CDSA only provides financial sanctions against FIs for deliberate AML violations, whereas a "directing mind and will" ("DMAW" as defined below) of FI can be subjected to both financial and non-financial sanctions. This gives rise to several issues, which will be discussed in part (iv).

(11)(i)(c) Other criminal sanctions against deliberate or non-deliberate AML violations:

It is submitted that other than the CDSA, the MAS Act, as well as the Banking Act (Chapter 19), provide criminal sanctions against FIs for AML violations. On the one hand, Section 27A MAS Act stipulates that a FI that contravenes any MAS Regulations (discussed below) is guilty of an offence, and will be liable on conviction to a fine not exceeding SGD\$1 million. On the other hand, three provisions within the Banking Act are relevant in relation to regulating AML violations, namely: (i) Section 55 empowers the MAS to give directions or impose requirements on relating to the operations and activities and standards to be maintained by banks; (ii) Section 55(3) stipulates that FIs have to comply with any direction or requirement imposed by the MAS; and (iii) Section 71 stipulates that the non-compliance of any provisions within the Banking Act makes the FI guilty of an offence, and liable to a fine not exceeding SGD\$10,000. It is submitted that the relevant provisions within the MAS and Banking Act give the impression that Regulations and Directions imposed by the MAS lean towards holding the *FI* rather than *DMAWs* within the FI responsible for AML violations. The issue as to whether the institutional-centric approach taken by the MAS dilutes the deterrent effect of sanctions against AML violations will be discussed in part (iv).

(11)(ii) Legislation in Singapore (Civil Sanctions):

The main legislation within Singapore which contains civil sanctions against AML violations is the MAS Act. It empowers the MAS with specific authorities, namely: (i)

Section 28(5) empowers the MAS to withdraw the licence of concerned FI for failure to comply with any direction or guideline; (ii) Section 30AAO(1) empowers the MAS to prohibit a FI from carrying on with its business; and (iii) Section 30AAI empowers the MAS to disqualify individuals. Clearly, the MAS has enforced sanctions (i) and (ii) against FIS such as Falcon and BSI for failure to comply with its guidelines. However, at the time of writing, this author finds no evidence of disqualification orders being made by the MAS against DMAWs in DBS, UBS, Falcon, or BSI, who may have been responsible for AML violations. The issue as to whether the MAS's lack of action to enforce disqualification orders against the DMAWs of FIs gives rise to problems will be discussed in part (iv).

(11)(iii) MAS Directions and Regulations:

There are two types of AML regimes implemented by the MAS which impose financial criminal sanctions on FIs, namely: (i) MAS Directions (Notices on Prevention of Money Laundering); and (ii) MAS Regulations. The Directions and Regulations imposed by the MAS has legal force in Singapore, and any non-compliance (whether deliberate or non-deliberate) by a FI will make it guilty of an offence and liable for a fine on conviction.^[62]

(11)(iii)(a) MAS Directions (Notices on Prevention of Money Laundering):

In light of the 1MDB scandal, the relevant notice that is the subject of discussion is MAS Notice 1014 and 626. Notice 1014 sets out three relevant principles which serve as a guide for all FIs in the conduct of their operations, namely: (i) FIs shall exercise due diligence when dealing with customers; (ii) FIs shall guard against establishing business relations or undertaking transactions which may be connected with or may facilitate money laundering; and (iii) a FI shall, to the full extent, assist and cooperate with the relevant law enforcement authorities in Singapore to prevent money laundering. Notice 626 stipulates that FIs in Singapore have the ultimate responsibility to ensure that there is compliance with AML regimes, which includes: (i) an effective CDD system which assist with the identification of customers and the periodic reviews as to the adequacy of

customer information; and (ii) an effective STR system which implements efficient and effective procedures for reporting suspicious transactions.^[63]

It is submitted that arguably, the MAS has a wide discretion to decide the value of the financial sanction to be imposed on a FI for contravening the Notices. For instance, DBS and UBS were fined SGD\$1 million and SGD\$ 1.3 million for 10 and 13 breaches of Notice 1014, whereas Falcon was fined SGD\$4.3 million for 14 breaches of Notice 1014. It is questionable why Falcon was fined significantly more than DBS and UBS. This gives the impression that the wide discretion that the MAS (without any judicial intervention by the courts) gives rise to several problems – which will be discussed in part (vi).

(b) MAS Regulations:

The MAS gives effect to targeted financial sanctions through MAS Regulations issued pursuant to Section 27A MAS Act, which stipulates that a FI that contravenes any MAS Regulation is guilty of an offence and will be liable on conviction to a fine not exceeding SGD\$1 million. In particular, Section 27B stipulates that Regulations may stipulate for CDD systems to be implemented within FIs.

(IV) RELATIONSHIP BETWEEN SANCTIONS, DETERRENCE, AND DELIBERATE AND NON-DELIBERATE AML VIOLATIONS WITHIN FIs:

(1) Introduction:

As there is an interesting debate in relation to deterring deliberate and non-deliberate AML violations within FIs, part (iv) of this dissertation serves to examine whether the theory of “Deterrence-Based Thinking” (“DBT”) should be the underlying principle in sanctioning against such violations. It is in this author’s view that DBT should not be the only underlying principle for sanctions. Before addressing various issues pertaining to DBT, it is necessary to understand the following concepts, namely: (i) the theory of DBT and how it applies in the context of DMAWs and FIs as body corporates; (ii) the

difference between deliberate and non-deliberate AML violations; and (iii) the sanctions regulating AML violations.

(2) What is the theory of DBT?

Most law and economic literature on DBT assume that people are deterred from choosing to act based on the $pD > U$ equation (or variants thereof). It has been suggested that " p is the perceived likelihood of having the contravention identified and a penalty imposed, D is the perceived level of detriment that results from the contravention, and U is the perceived benefit from contravention (Cartwright, 2014)."^[64] It has been further observed that the equation reflects the general view that white-collar criminals are more "deterable" than others, as offences such as money laundering are assumed to be economically motivated and involve calculated risks by rational actors (Croall, 1994).^[65] It is thus submitted that the $pD > U$ equation presumes that if an individual perceives that the detrimental effects, which arise from sanctions, outweigh the benefits of AML violations, it arguably means that the imposition of sanctions may suffice in deterring AML violations. The validity of this argument remains to be seen at the later part of this dissertation.

As for now, it is submitted that the applicability of the theory of DBT differs when applied in the context of individuals and FIs as body corporates. On the one hand, when it is applied in the context of individuals, the $pD > U$ equation simply presumes that when an individual is deciding whether to violate AML regimes, he or she would consider whether the benefit of AML violations outweighs the perceived likelihood of getting caught as well as the sanctions imposed, which include (but not limited to) the loss of their employment, reputation, high incomes, and comfortable lifestyles (Croall, 1994).^[66]

On the other hand, in the context of FIs as bodies corporate, the equation simply assumes that corporations are namely: (i) future-oriented; (ii) are concerned about their reputation; and (iii) are 'quintessentially rational'.^[67] Hence, when a FI is deciding

whether to violate AML regimes, arguably, the unfavourable publicity and the harrowing experience of investigation, prosecution and trial may act as deterrence.^[68] However, since a FI is a corporation with no mind of its own,^[69] it is not possible for a FI to consider the benefits or detriments of AML violations without the help of an individual. It is therefore necessary to examine how AML violations can be attributed to a FI via the rule of attribution.

(3) The Rule of Attribution:

Since a FI, as a body corporate, has no mind of its own, its active and directing will must consequently be sought in the person of somebody who is the directing mind and will of the corporation.^[70] Hence, according to the rule of attribution, where an individual is the DMAW of a FI, his act of AML violation must, unless a FI is not liable at all, have been an action which was the action of the FI itself.^[71] In the alternative, where an individual is not the DMAW of a FI, his knowledge, act, or state of mind may be attributable to the FI via the purposive approach, if it is necessary to address the mischief that a statutory rule is trying to address.^[72] All in all, AML violations committed by an individual may be attributable to the FI via the purposive or the DMAW approach. This dissertation will focus only on the latter approach.

(4) Rationale of Deliberate and Non-Deliberate AML Violations:

There are different levels of culpability, which ranges from “intentional acts” through “willful blindness”, “subjective recklessness”, and “negligence”. In light of page constraints, this dissertation will focus on the two extreme ends of culpability, namely: (i) non-deliberate (i.e. negligent) AML violations where the DMAW of a FI genuinely

wanted to comply with AML regimes but negligently failed to implement effective CDD or STR systems; and (ii) deliberate (i.e. intentional) AML violations where the DMAW of a FI knowingly or intentionally committed AML violations.

(5) Sanctions against Deliberate and Non-Deliberate AML Violations:

Sections 39(1) and 48I CDSA, alongside MAS Notice 1014, 626, and MAS Regulations, are relevant in sanctioning against both the FI and DMAWs of FIs for non-deliberate AML violations. For deliberate AML violations, there is a distinction between sanctions imposed. Sections 43(5)(b), 46(6)(b), and 47(6)(b) CDSA are the provisions which sanction against the FIs itself, whereas Sections 43(5)(a), 46(6)(a), and 47(6)(a) CDSA are the provisions which sanction against the DMAWs. Despite the presence of sanctions, the rise in AML violations within FIs in Singapore raises three issues, namely: (i) whether DBT is relevant in assessing the deterrent effect of sanctions against deliberate and non-deliberate AML violations; (ii) whether psychological factors render DBT limited in utility; and (iii) whether the MAS is too institutional-centric when imposing sanctions for AML violations.

(6) Whether DBT is relevant in assessing the deterrent effect of sanctions against deliberate AML violations in Singapore:

The starting point is that DBT is relevant in the context of deliberate AML violations. Since the $pD > U$ equation presumes that the DMAW of a FI would calculate whether the benefit outweighs the detrimental impact of AML violations, arguably, this gives the impression that the MAS might be able to deter DMAWs from committing deliberate AML violations within FIs, by making them think that they are likely to be caught and given a hefty fine (even if the actual effect is less severe than what was perceived). Taking into context the theory of DBT, there are three reasons why sanctions may deter deliberate AML violations. Firstly, it has been observed that companies are prime examples of rational cost-benefit calculators (Gobert and Punch, 2003).^[73] This arguably means that based on the theory of DBT, the DMAW of a FI would strive to avoid deliberate AML

violations as being sanctioned as a criminal offender can damage a FI's reputation, and the threat of such denunciation may prove to be a powerful lever for affecting a FI's behaviour, as well as that of its DMAW.^[74]

Secondly, it has been observed that the temptation to break the law is often a disturbing experience, and that the threat of punishment may provide the additional pressure towards conformity (Zimring and Hawkins, 1973).^[75] Therefore, the imposition of sanctions is a demonstration to society that the legal system is serious in its attempt to prohibit criminal behaviour,^[76] which in turn pressurizes the DMAW of a FI to conform with AML regimes.

Lastly, it has been observed that since businesses exist to make profits, it follows that a rational DMAW of a FI would be induced to police employees and prevent them from deliberate AML violations, where the expected financial consequences (e.g. fines) equal or exceed the expected gain from the violation (Hodges, 2015).^[77] In the alternative, based on the $pD > U$ equation, there are four reasons why sanctions in Singapore may not deter deliberate AML violations. Firstly, in considering the 'p' element, there are two suggestions as to why DMAWs of FIs may perceive a low probability of getting caught. On the one hand, the MAS's lack of expertise in cross-border cases of AML violations may suggest that the DMAW of a FI may perceive that transnational AML violations are undetectable by the MAS. As indicated in the 2016 Financial Action Task Force's Mutual Report: "Singapore has not undertaken adequate money laundering risk assessment of all forms of legal persons and legal arrangements," and that "legal persons and arrangements created in Singapore, and those registered or operating in Singapore from foreign jurisdiction, can be used to facilitate predicate crimes and money laundering offences."^[78] Clearly, the report indicates that the MAS needs to "aggressively target" more complex cross-border AML violations rather than domestic issues.^[79] Only then would sanctions against deliberate AML violations be arguably effective in deterring the DMAWs of FIs from deliberate AML violations.

On the other hand, it has been suggested that the deterrent potential of sanctions can be undermined by the low rates of detection (Croall, 1994),^[80] which may be due to the rise in technology. As observed by Mr Kwok Wui San, a regulator at PwC Singapore: "It is...more difficult than before to launder money through Singapore because of the increased sophistication of our authorities and controls at financial institutions, (but) criminals will continue to find innovative and more complex ways to do so."^[81] Hence, considering the emergence of new technologies, and increasing sophistication of transactional AML violations, many culprits would have shifted their illicit gains into unregulated sectors such as metals trading, charities and even schools.^[82] This in turn gives the DMAWs of FIs the impression that the benefit of AML violations outweighs any potential detriment, due to the low rates of detection where such violations are shifted to unregulated sectors. Secondly, it has been suggested that the 'fall from grace' effect may be exaggerated as some offenders may lose their occupational status, but may be able to pursue alternative careers, and may even indirectly benefit from their offences (Levi, 1987).^[83] It is submitted that Levi's argument^[83] is applicable in the context of Singapore. Although Section 30AAI MAS Act permits the MAS to disqualify DMAWs of FIs for AML violations, arguably, even if such persons were to lose their occupational status within a FI in Singapore, they may be able to benefit from alternative careers such as being an in-house counsel in a foreign company. This arguably means that the threat of losing one's occupation may not deter one from committing deliberate AML violations.

Thirdly, although the threat of imprisonment arguably deters DMAWs of FIs from deliberately violating AML regimes, it has been observed that even with the regularity of major corporations breaching civil or criminal laws, many regulatory agencies rarely exercise the power to prosecute (Wells, 2001).^[84] In Singapore, despite the MAS and the white-collar police banding together in 2015, the first case of white-collar criminal prosecution only took place on the 10th of March 2017.^[85] The fact that it took approximately 2 years for the first white-collar prosecution to take place gives the

impression that the power to prosecute is rarely exercised. Since the real effectiveness of legal sanctions depend on the degree of their practical implementation,^[86] the lack of prosecution by the MAS and police arguably dilutes the deterrent effect against deliberate AML violations. Lastly, although the imposition of fines may be regarded as the most serious formal sanctioning step, such fines are symbolic as they are often lenient and lack deterrence (Hodges, 2015).^[87] This is discussed at part (v).

All in all, regardless of whether the theory of DBT works in practice to deter deliberate AML violations, it is submitted that DBT is not, and should not be, the only principle underlying the use of sanctions against a DMAW and the FI itself.^[88] Instead, psychological factors such as “intuition” and “delusional optimism” should be factored in when assessing the deterrent effect of sanctions against deliberate AML violations in FIs.

(7) Whether psychological factors render DBT of limited utility (deliberate AML violations):

It is submitted that the theory of DBT may be of limited utility in relation to deliberate AML violations. This is because many academics have suggested that contrary to the general assumption that individuals make decisions based on rational weight of gains, losses, and probabilities,^[89] there are psychological factors such as “intuition” and “delusional optimism” that may influence deliberate AML violations. On the one hand, it has been observed that individuals often rely on intuition, and not deliberative reasoned calculations, when making decisions (Soltes, 2016). In the words of Soltes: “When we think we’re employing effortful analytical reasoning to reach a judgement, we are actually just searching for additional evidence in support of an earlier intuitive judgement.”^[90]

For instance, Soltes cited Norman Maier, a psychologist at the University of Chicago, who demonstrated how people can mistakenly believe that a judgment which they have made arose based on a deliberative balancing of costs and benefits. In Maier's demonstration, he hung two ropes from the ceiling of a large room, and challenged participants to tie the ends together by providing materials such as poles, clamps, and extension cords. After watching the participants for ten minutes, Maier gently put a rope in motion without saying a word. Quickly, many participants tied a weight to one rope so that it could be swung closer to the other.^[91] Many participants offered explanations as to how they figured out the solution, which included: "It just dawned on me," and "I had imagery of monkeys swinging from trees."^[92] Clearly, the participants were attributing their actions to their own intellectual capabilities, whereas the gentle swing that Maier had started remained inaccessible and unidentifiable.^[93] Maier's experiment thus illustrates how individuals may not be as rational as the theory of DBT prescribes them to be.

On the other hand, it has been suggested that executives often make decisions based on "delusional optimism" rather than on rational weighting of gains, losses, and probabilities (Hodges, 2015).^[94] Evidence has shown that risk takers may misread the risks, and that the confidence in their future success sustains a positive mood that helps them to obtain resources from others, and enhances their prospects of prevailing.^[95] In this regard, it is submitted that a DMAW's confidence, alongside his lack of thought about the dire consequences that may arise from deliberate AML violations, may arguably mean that even the harshest sanction may not deter him from committing deliberate AML violations. As put forth by Scott London, an ex-Senior Partner at KPMG who provided trading information about his clients to his friend: "The money was really nominal. I was on three charitable boards and I had to step off of all of them. I never once thought about the costs versus rewards."^[96] That said, London concluded that he would not have shared the confidential information had he taken the time to stand back and think about the ramifications on his professional life.^[97]

All in all, rational reasoning may not always be the impetus for decisions made (Soltes, 2016).^[98] This gives the impression that regardless of how harsh sanctions are against deliberate AML violations, arguably, such sanctions may be ineffective against DMAWs of FIs who deliberately violate AML regimes based on intuition or delusional optimism. This in turn challenges the validity of the theory of DBT, which is arguably restrictive in demanding the strict adherence to the rules of logic (which the finite mind is not able to implement).^[99] In the alternative, despite the likelihood of sanctions being ineffective in deterring certain DMAWs who deliberately violate AML regimes based on intuition or delusion optimism, arguably, the DBT theory may still be relevant in deterring other DMAWs who balance the cost versus the benefit of violating AML regimes. This in turn suggests that sanctions should still be in place as deterring some DMAWs is better than deterring none at all.

(8) Whether DBT is relevant in assessing the deterrent effect of sanctions against non-deliberate AML violations in Singapore:

Pursuant to MAS Notice 1014 and 626, alongside Sections 39 and 48I CDSA, FIs in Singapore have the ultimate responsibility and accountability in ensuring that there is compliance with AML regimes. This includes the implementation of two systems, namely: (i) an effective CDD system; and (ii) an effective STR system which implements efficient and effective procedures for reporting suspicious transactions.^[100] Hence, in the context of this dissertation, “non-deliberate AML violations” within FIs consist of the ineffective implementation of either (i) and/or (ii). Sanctions for the lack of an effective CDD system are stipulated in Section 48I CDSA as well as MAS Notice 1014 and 626, whereas sanctions for the lack of an effective STR system are stipulated within Section 39 CDSA.

As to whether DBT is relevant in assessing the deterrent effect of sanctions against non-deliberate AML violations, it is submitted that the view that AML violations arise from rational decision-making is questionable where the DMAWs of FIs may not have intended to violate AML regimes.^[101] Hence, instead of using DBT to rationalize non-deliberate AML

violations, it is submitted that three factors are relevant in assessing the effectiveness of sanctions against non-deliberate AML violations.

Firstly, as contemplation can enhance decision making,^[102] it is submitted that the lack of thought by the DMAWs of FIs in Singapore may lead to non-deliberate AML violations. Since DMAWs cannot be deterred if they do not even evaluate the cost versus the benefit of such violations, this arguably means that DBT should not be the underlying principle of sanctions against non-deliberate AML violations. As observed by Hodges (2015): "Findings show why a theory that people will obey a rule because of fear of potentially adverse consequence, or because they make calculations about the potential costs and benefits of disobedience, are not major causes of compliance."^[103] Since the DMAWs of FIs may not think about the downside of sanctions, it is submitted that conditions suggested by Hodges may be more appropriate in encouraging more thought. Hodges suggested that to maximize compliance with the law, conditions such as "internalized moral values of individuals", "legitimacy and fairness of rules", and "group culture" should be applied, as there is considerable evidence to show that humans are motivated to obey rules where such conditions are applied.^[104] Moreover, in terms of strict liability offences, the author of this dissertation suggests that the defence of due diligence may also motivate DMAWs of FI to put in more thought towards complying with AML regimes, which in turn deters non-deliberate AML violations (discussed below).

Secondly, it is submitted that "availability bias" may also be a contributing factor towards non-deliberate AML violations. "Availability bias" happens where people use heuristics, or mental shortcuts, when assessing risks. For instance, where an event is cognitively "available", people may overestimate the risk. If an event is not cognitively available, people might underestimate the risk (Hodges, 2015).^[105] Hence, instead of balancing cost versus benefit, the DMAWs of FIs may function based on "availability bias", which may arguably lead to an inaccurate judgement about the probability of outcomes. This gives the impression that regardless of how harsh sanctions are against non-deliberate

AML violations, such sanctions may not deter the DMAWs of FIs from being complacent in implementing effective CDD and/or STR systems where an event of AML violations is not cognitively "available". Even so, taking into consideration the "p" in the $pD > U$ equation, it can be argued that given the rise in AML violations within FIs in Singapore (e.g. DBS and UBS), the perceived probability of convictions would increase based on the theory of "availability bias". This suggests that non-deliberate AML violations may reduce as the DMAWs of FIs in Singapore may not show an unrealistic optimism of non-violations of AML regimes, which in turn means that DMAWs may heighten the effectiveness of CDD and STR systems within the FIs.

Lastly, it is submitted that sanctions against non-deliberate AML violations are arguably too institutional-centric. For example, although the deficiencies observed in DBS and UBS were related to AML violations by "individual officers", the violations were met by firm regulatory actions by the MAS against *DBS and UBS*, instead of the officers responsible for the violations. Hence, although the MAS is empowered to impose sanctions against DMAWs of FI responsible for non-deliberate AML violations (i.e. Sections 39 and 48I CDSA), the institutional-centric approach by the MAS may result in the DMAWs of FIs being complacent towards the implementation of efficient CDD or STR systems within FIs (since it is the FIs that would be heavily penalized for non-deliberate AML violations). In view of the institutional-centric approach, it is submitted that the conditions suggested by Hodges (2015) above, and the defence of due diligence, may be more effective in motivating DMAWs of FIs against non-deliberate AML violations.

(9) Whether the conditions suggested by Hodges, and the defence of due diligence, deters DMAWs of FIs against non-deliberate AML violations:

It is submitted that the conditions suggested by Hodges (2015) may arguably deter non-deliberate AML violations, as such conditions may "encourage" the DMAWs of FIs to put in more thought into implementing effective CDD or STR systems. Since evidence have suggested that humans can be motivated to obey rules where one or more of the

conditions apply,^[106] it is necessary to address the following issues addressing the various conditions which may encourage compliance, namely: (i) whether rules should align with the internalized moral values of the DMAWs of FIs; (ii) whether the DMAWs of FIs must be of the view that rules are legitimate and fair; and (iii) whether group culture influences DMAWs of FIs to comply with rules. In terms of strict liability offences, the issue as to whether the defence of due diligence motivates the DMAW of FIs to put in more thought towards compliance will be assessed.

(9)(a) Whether rules should align with the internalized moral values of an individual:

Hodges (2015) suggested that: "Moral values are a source of motivation to support or oppose the law because they are based on the internalized feelings of responsibility to follow certain personally held moral principles."^[107] Since moral values are based on the idea of right and wrong, arguably, where the moral principle of individuals dictates that it is wrong to launder money, such individuals may feel a sense of guilt if they fail to adhere to such a moral principle.^[108] This arguably means that the "moral principles" of the DMAWs of FIs may encourage them to prevent non-deliberate AML violations. Hence, instead of using statutory instruments (e.g. Section 39 and 48I CDSA) to penalize FIs and/or the DMAWs of FIs for non-deliberate AML violations, it is submitted that the MAS should *encourage* the DMAWs of FIs to "self-regulate" against non-deliberate AML violations.

DMAWs of FIs can self-regulate by attempting to understand the moral values of the FIs' employees, and then incorporating those moral values when implementing policies governing the effectiveness of CDD or STR systems. Because, if employees believe that the organization's values are congruent with their own moral values, this may make them feel that they ought to support the organization (i.e. preventing AML violations),^[109] which in turn ensures that employees (including the DMAWs) within FIs are driven to fight against AML violations. In the alternative, although it may be favourable for the MAS to try to encourage FIs to self-regulate, it has been observed that

if the encouragement to self-regulate is seen as a method of control imposed upon companies by the state, it will either be resisted, or else not implemented with any enthusiasm; regulators (such as the MAS) should create a system where self-regulation is embraced rather than resisted (Gobert and Punch, 2003).^[110] In which case, there should not only be the carrot of being able to avoid prosecutions and minimize sanctions in the case of conviction, but also a stick of meaningful sanctions for a FI's failure through on its self-regulatory responsibilities.^[111]

(9)(b) Whether rules must be legitimate and fair to encourage compliance:

The starting point is that in order to encourage DMAWs of FIs to follow rules governing non-deliberate AML violations, it is submitted that such rules should be legitimate and fair. Rules are deemed to be legitimate where such rules are made, applied, observed, enforced, and sanctioned fairly.^[112] Rules are deemed to be fair where they are fair in fact (i.e. in line with the internalized moral values of individuals) and in practice (i.e. transparency in the procedures).^[113] Further, legitimacy shapes everyday compliance with the law, and that perceived legitimacy has more influence on compliance than subjective assessments of the risk of punishment (i.e. DBT approach).^[114] Hence, applying the concept of legitimacy into the rules governing non-deliberate AML violations in Singapore (i.e. Sections 39 and 48I CDSA), it is submitted that the MAS should ensure that its process of making and applying those rules are perceived to be fair so as to encourage DMAWs of FIs to implement efficient CDD and STR systems.

In the alternative, although procedural fairness plays a crucial role in supporting both legitimacy of authority and moral cohesion of society,^[115] it can be argued that fairness should not be the single unitary and comprehensive justification for all rules governing non-deliberate AML violations. Contrary to what certain academics have observed, there is no need to "make a dogmatic stop somewhere or else go on *ad infinitum*,"^[116] because, even if a rule is deemed to be fair, it may still not encourage the DMAW of a FI to comply with it. Even so, it is suggested that the legitimacy of rules may decrease the

probability of AML violations as arguably, DMAWs of FIs may feel less defiant towards legitimate rules which are portrayed as fair. In the alternative, even if a rule is perceived to be unfair (arguably in the context of strict liability offences), the defence of due diligence may be useful in mitigating its unfairness.

(9)(c) Whether rules should be in line with group culture to encourage compliance:

Hodges (2015) observed that: "Humans tend to follow paths that they believe others have previously taken in similar situations" (i.e. a herd instinct).^[117] Further, it was suggested that: "Delinquency is not just a conglomeration of individual acts," but "mainly the product of the interaction between members of the groups."^[118] This arguably means that effective regulation requires imaginative cooperation as much or even more than it requires government monitoring and legal coercion,^[119] which may suggest that corporate culture plays a crucial role within FIs when tackling non-deliberate AML violation. In the alternative, although it seems that certain academics disagree about the role that culture has to play within groups,^[120] it has been suggested that there is a general agreement that a vast majority of non-compliance is carried out in groups.^[121] In this regard, since the primary function of most enforcement action is consciousness raising and reminding business managers to try harder to achieve the regulatory goals that they have already promised to work towards,^[122] it is submitted that organizational cultures are important in supporting moral congruence, as well as motivating adherence and reducing deviancy towards AML regimes.^[123]

(9)(d) Whether the defence of due diligence encourages DMAWs to put in more thought:

It is submitted that since a FI does not have a 'mind' of its own, the imposition of liability onto FIs for AML violations is based on an *objective* rather than *subjective* test.^[124] This means that so long as the MAS can prove that the DMAW of a FI had failed to conform to the standard that the law has set for it, the FI itself is prima facie strictly liable through the rules of attribution; the degree of blameworthiness of the FI remains irrelevant.^[125] However, the rule of attribution has been criticized for blaming a FI whenever its DMAW

is at fault, even in the absence of corporate fault.^[126] Hence, it is submitted that the FI should be able to defend on the ground that it has conducted its business operation with “due diligence”, which in turn prevents sanctions from being imposed onto it.^[127] Hence, the defence arguably encourages FIs to implement preventive measures (i.e. monitoring and record-keeping of CDD and STR systems) to deter future AML violations, and to implement policing measures that investigate the misconduct of the DMAWs of FIs.^[128] Moreover, since corporate liability for AML violations assumes that both the FI and the DMAW of the FI would be liable,^[129] the presence of the defence of due diligence may in turn encourage DMAWs of FIs to put in more thought into complying with respective AML regimes so as to avoid being sanctioned for any AML violations.

In the alternative, although the defence of due diligence may encourage compliance, Wells observed that an affirmative due diligence regime may under-deter as firms might avoid the full costs of its employees’ actions simply by showing that they have acted “reasonably” or have taken “due care”.^[130] Even so, it is submitted that the defence of due diligence mitigates the harshness of strict liability offences (which may arguable be too harsh on FIs who are potentially not at fault). It mitigates by providing the FI the opportunity to avoid liability by showing that, on a balance of probabilities, all reasonable steps have been taken to avoid the AML violation.^[131] In this regard, it is submitted that the opportunity to avoid liability may in turn encourage the FIs to implement preventive and policing measures, as well as motivate the DMAWs of FIs to put in more thought into complying with respective AML regimes so as to avoid being sanctioned for any AML violations.

(10) Overall conclusion for Part (IV):

In terms of deliberate AML violations, the theory of DBT should not be the underlying principle for sanctions. Instead, psychological factors such as “intuition” and “delusional optimism” should be considered. In terms of non-deliberate AML violations, empirical research suggest that there is maximum compliance with rules when conditions such as

moral values, legitimacy, fairness, and culture are considered.^[132] Hence, although it may be tempting to focus on sanctioning against non-deliberate AML violations, it is submitted that a wholly authoritative structure by the MAS may arguably be counter-productive against deterring non-deliberate AML violations within FIs.^[133] Instead, aside from imposing sanctions to deter AML violations, it is suggested that the conditions suggested by Hodges, and defence of due diligence, may encourage the DMAWs of FIs to put in more thought into implementing effective CDD and STRs systems to deter non-deliberate AML violations.

(V) RELATIONSHIP BETWEEN THE NATURE OF SANCTIONS AND DETERRENCE:

(1) Introduction:

Although sanctions are often used as a catalyst to deter non-compliance of regulations,^[134] the increase in AML violations in Singapore gives the impression that sanctions may not be effective against AML violations. Hence, part (V) of this dissertation serves to examine whether the nature of sanctions (i.e. criminal, civil, financial, and non-financial) affect the deterrent effect against AML violations in Singapore.

(2) Whether civil sanctions lack deterrent effect against AML violations:

It is submitted that there are two issues that need to be addressed in order to establish whether civil sanctions lack deterrent effect against AML violations, namely: (i) whether there is a lack of transparency when the MAS imposes civil sanctions; and (ii) whether the MAS lacks action in imposing civil sanctions (i.e. disqualification orders) against DMAWs of FIs. These issues would be discussed in light of two civil sanctions that were mentioned in part (ii) of this dissertation, namely: (i) Section 28(5) MAS Act which empowers the MAS to withdraw the licence of a FI; and (ii) Section 30AAO (1) MAS Act which empowers the MAS to prohibit a FI from carrying on with its business.

(2)(a) Whether there is a lack of transparency when the MAS imposes civil sanctions:

Although it has been observed regulators often lack transparency when imposing civil sanctions (Macrory, 2006),^[135] it is submitted that this view is embedded towards the “public law perspective”, and that the lack of transparency in terms of the “deterrent perspective” may arguably be beneficial in deterring AML violations. On the one hand, a number of studies have shown that strict enforcement and specificity can harm cooperation.^[136]

On the other hand, other studies have shown that risk-seeking individuals were only deterred by higher certainty if an act of crime (such as stealing) does not pay.^[137] This gives the impression that where it is highly probable that profits can be made from AML violations, transparency does not deter AML violations. Moreover, the lack of transparency arguably induces people to prepare more intensely due to the uncertainty as to what adverse consequence may arise from AML violations,^[138] which in turn deters such violations. In the alternative, it can be argued that the lack of transparency may allow the MAS to have a wide discretion in deciding when to impose civil sanctions, which may promote differential treatment towards FIs that provides financial benefits to the Government (e.g. DBS and UBS provide dividends). Even so, the presence of transparency arguably does not eliminate differential treatment as there are other contributing factors such as “powerful perpetrators” and “corruption” (discussed below). Ultimately, the lack of transparency may arguably be beneficial in deterring AML violations, as the DMAWs of FIs are unable to foresee the adverse consequence that may arise from such violations, which may encourage them to prepare more intensely in avoiding AML violations.

(2)(b) Whether the MAS lacks action in imposing civil sanctions against DMAWs:

Where a FI or DMAW fails to comply with the guidelines implemented by the MAS, non-financial civil sanctions may be imposed. Sections 28 and 30AAO (1) MAS Act empower the MAS to withdraw licences or prohibited operations of FIs, whereas Section 30AAI empowers the MAS to disqualify a DMAW of a FI. At the time of writing, this author found

no evidence of the MAS disqualifying DMAWs for AML violations. This gives the impression that the MAS does not regard “disqualification” as an appropriate tool for such violations. However, aside from disqualification orders, arguably, the MAS has limited civil sanctions against DMAWs. This arguably leads to “compliance deficit”, where AML violations are identified, but no enforcement action is taken because the appropriate tool may not be available to the MAS.^[139]

In the alternative, even though there may be criminal sanctions available against the DMAWs of FIs, it is submitted that the heavy reliance on criminal sanctions may arguably lead to some non-compliance not being addressed. This is because the cost or expense to engage in criminal proceedings may deter regulators (such as the MAS) to use their limited resources to take action, which yet again leads to “compliance deficit”.^[140] In order to address the circular effect of “compliance deficit”, it is submitted that an enforcement pyramid (discussed below) should be used alongside criminal sanctions, so as to neutralize the effects of “compliance deficit”, and to ensure that sanctions do act as a deterrent against both deliberate and non-deliberate AML violations.

(3) Whether criminal sanctions lack deterrent effect against AML violations:

Traditionally, the response of a state to breach of its public criminal law is to impose criminal sanction against either or both the individuals or corporate entities.^[141] In Singapore, the relevant criminal sanctions against both the FIs and DMAWs of FIs for non-deliberate AML violations are Sections 39 and 48I CDSA Act. As for deliberate AML violations, Sections 43 to 47 CDSA, alongside Section 27A MAS Act, and Sections 55 and 71 Banking Act, are relevant against both the FIs and DMAWs of FIs. However, it has been suggested by Macrory (2006) that the heavy reliance on criminal sanctions lead to three potential problems, namely: (i) criminal financial sanctions imposed in some criminal cases may not be sufficient deterrent; (ii) regulators (such as the MAS) may have a limited range of criminal sanctioning options available beyond a fine and imprisonment; and (iii) the cost or expense of bringing criminal proceedings may deter

regulators from using their limited resources to take action.^[142] Although Macrory's suggestions are aimed towards less serious offences, arguably, it is submitted that they are equally applicable in the context of serious offences such as AML violations. This suggests that the MAS should not heavily rely on criminal sanctions.

In the alternative, it has been suggested that criminal sanctions may be more effective in restraining behaviours of white-collar criminals, rather than non-commercial criminals such as rapists (Geis and Meier, 1997).^[143] This is because corporations abhor the idea of being branded as a "criminal", as they are a large, respectable, and influential class in society. In contrast, society does not care whether a rapist likes being branded as a "criminal".^[144] Even so, the abhorrence of being labelled as a "criminal" is arguably not a strong justification to support the heavy use of criminal sanctions. The heavy use may not be the appropriate route to achieve a change in behaviour and improve the deterrence against AML violations, where non-compliance by FIs and/or DMAWs of FIs may not truly be criminal in their intentions.^[145]

(4) Whether financial sanctions lack deterrent effect against AML violations:

Although financial sanctions continue to be regarded as the most serious formal sanctioning step, it is submitted that financial sanctions (whether criminal or civil) are symbolic as they are often lenient and lack deterrence.^[146] Firstly, fines may not reflect the financial gain a firm may have made from failing to comply with an obligation (Macrory, 2006).^[147] Moreover, financial sanctions for the very rich can be of limited value as they may have to be very high to be sufficiently deterrent, and may arguably perpetuate the situation in which the rich can pay for their crimes, but the poor are less able to do so (Cook, 1989).^[148] In the context of Singapore, it is submitted that financial sanctions against AML violations are merely a slap on the wrists of the FIs in question. For instance, DBS and UBS were only fined SGD\$1 million and SGD\$1.3 million respectively for AML violations. Taking into account their net worth of SGD\$41.2 billion

(DBS)^[149] and SGD\$89.5 billion (UBS),^[150] the level of fines imposed against them are arguably derisory.^[151]

Secondly, the effectiveness of financial sanctions as deterrence is questionable, as fines incur undesirable secondary harmful efforts (Wells, 2001). For instance, the costs of financial sanctions may be passed onto a corporation's consumers by reducing the finance available to provide better customer services.^[152] In the context of FIs in Singapore, arguably, fines imposed on FIs may be superseded by increasing the rates of loans or other financial assistance. In this way, arguably, whatever financial sanction that is imposed onto a FI may arguably lack deterrent effect against AML violations, as it may be possible to pass on the social cost of violating AML regimes to a whole or to particular segments of the public.^[153]

Thirdly, although the deterrent effect of financial sanctions are often assumed to be greater in white-collar crime because potential offenders are assumed to make decisions by calculating the costs of compliance or offending against the costs of sanctions, it has been suggested that such financial sanctions often lack a "sting".^[154] This is because, arguably, most corporations do not always behave rationally, and that not all non-compliance is based on economic-reasoning.^[155] This argument is arguably convincing as it was established in the earlier part of this dissertation that DMAWs of FIs who commit AML violations may act in accordance with their intuition or optimism, rather than taking into account the gain versus the loss of committing such violations. Hence, regardless of how high the value of a financial sanction is (e.g. Section 27 MAS Act imposes a fine not exceeding SGD\$1 million), it is submitted that even an amount such as SGD\$1 million might lack a "sting".

All in all, it is submitted that financial sanctions, such as fines, arguably do not act as sufficient deterrence against AML violations. As observed by Fisse (1990): "Fines do not emphatically convey the message that serious corporate offences are intolerable. Rather,

they create the impression that corporate crime is permissible provided the offender merely pays the going price.”^[156] In the alternative, it can be argued that financial sanctions provide flexibility. For instance, financial sanctions can take a more customized approach in dealing with regulatory non-compliance so as to ensure that the amount of fine imposed is appropriate to reflect the various aggravating and mitigating factors, as well as to encourage future compliance and be proportionate to the size of the business.^[157] Even so, it is submitted that financial sanctions alone may not always achieve the best regulatory outcomes,^[158] and that perhaps a more effective way of ensuring that sanctions do deter AML violations is to be less reliant on financial censure, and to include non-financial sanctions such as probations.^[159]

(5) Whether non-financial sanctions lack deterrent effect against AML violations:

Since there is a spectrum of possible non-financial sanctions ranging from incapacitation in the form of corporate dissolution, to corporate ‘imprisonment’ such as probation, Wells (2001) suggested that non-financial sanctions are promising as they circumvent some of the major limitations of financial sanctions by increasing the variety of deterrent, retributive, and rehabilitative measures available against corporations.^[160] Although the spectrum of sanctions is beneficial as the anatomy of corporate crime is so diverse that effective sentencing requires a range of sanctions (Wells, 2001),^[161] it is submitted that the limited variety of non-financial sanctions in Singapore may lack deterrence against AML violations, and may fail to circumvent some of the major limitations of financial sanctions mentioned in the previous paragraphs. In this regard, it is necessary to examine the following, namely: (i) non-financial criminal sanctions; and (ii) non-financial civil sanctions.

(5)(a) Non-Financial Criminal Sanctions:

There are two types of non-financial criminal sanctions, namely: (i) against the FI itself; and (ii) against DMAWs of FIs. In relation to (i), it is submitted that unlike in Canada or the United States which imposes non-financial criminal sanctions such as corporate

probation orders,^[162] legislations in Singapore (e.g. CDSA, Banking Act, and MAS Act) do not impose probations on FIs. However, it is submitted that probations are “potentially powerful instruments” as they can include punitive and rehabilitation such as the imposition of probation conditions that require corporate decision-making to be restructured.^[163] Aside from probation orders, Braithwaite (1990) observed that: “Business regulation would be more effective if instead of a bipartite game between the state and a regulated industry, regulators make use of an enforcement pyramid through which regulators can signal that they have a range of sanctioning possibilities; the first level being that of “persuasion” and the ultimate level being “license revocation”, with warning letters, civil penalty, criminal penalty, and licence suspensions in between.”^[164]

In Singapore, the criminal legislations lack the array of non-financial criminal sanctions such as “warning letters” and “persuasion”. Instead, criminal financial sanctions are often imposed. Arguably, the lack of an array of non-financial criminal sanctions in Singapore may fail to circumvent some of the major limitations of financial sanctions, as the MAS may not be able to signal to potential perpetrators of AML violations that aside from financial sanctions, it has a range of sanctioning possibilities. In the alternative, despite the lack of an array of non-financial sanctions, it is suggested that adverse publicity could be used to deter FIs from AML violations.^[165] For instance, the adverse publicity of DBS and UBS locally (e.g. The Straits Times) and internationally (e.g. Bloomberg and BBC News) may arguably deter future AML violations by FIs in Singapore. This is because prestige and status are of great importance to such FIs (as evident from the extensive use of brand-image in advertising).^[166]

In relation to (ii), it is submitted that in Singapore, the most common non-financial criminal sanction is imprisonment. For example, Section 43(5)(a) CDSA imposes an imprisonment term of not more than 10 years where an individual had assisted another in retaining benefits from criminal conduct (such as money laundering). However, as argued above, the lack of criminal prosecution by the MAS and the police renders

imprisonment an insufficient deterrent against AML violations. Instead, alongside imprisonment, the conditions suggested by Hodges (discussed above) should be considered as they may encourage compliance through rewarding, monitoring, and punitive bite; conventional enforcement such as imprisonment often ignores the possibility of negotiation.^[167]

(5)(b) Non-Financial Civil Sanctions:

There are two types of non-financial civil sanctions, namely: (i) against the FI itself; and (ii) against DMAWs of FIs. In relation to (i), the MAS is empowered to withdraw licences (Section 28(5) MAS Act) or prohibit business (Section 30 AAO (1) MAS Act) of FIs who fail to comply with the MAS's guidelines and conditions. Although it can be argued that licence withdrawal act as sufficient deterrence against AML violations as it threatens a business's survival, Croall (2003) observed that regulators have too much discretion in deciding not to withdraw licences.^[168] Moreover, she observed that it is extremely costly to cease business operations as the proceedings are complex, and that there is a risk of putting innocent employees out of work.^[169] This gives the impression that sanctions that credibly deter AML violations may be too disproportionate. As Cartwright (2014) observed: "It might have to be so high that it seems disproportionate to the wrongdoing," and that "there is a danger of what has been labelled the 'deterrence trap' where to be an effective deterrent, a penalty may be so high as to put a firm out of business, a result which will frequently not be justified."^[170]

Hence, a plausible reason as to why the MAS ceased the operations of Falcon and BSI is because each only has a total of 201-500 employees,^[171] whereas DBS and UBS each has a total of 18,000^[172] and 7,300^[173] employees. In this regard, the ceasing of DBS and UBS' operations may arguably be disproportionate to any AML violations committed, as it would put many employees out of jobs. However, the failure to impose impactful sanctions on large FIs such as DBS and UBS may in turn promote, rather than deter, future AML violations. Even so, Cartwright (2014) observed that: "The balance between

providing a penalty that is likely to deter, and ensuring that any such penalty is not disproportionate to the wrongdoing, is frequently difficult to find.”^[174] This arguably means that the frequency of AML violations within large FIs will remain a concern.

In relation to (ii), it is submitted that, similar to Britain, Section 30AAI MAS Act permits the MAS to disqualify DMAWs for AML violations. Even so, disqualification orders do not act as effective deterrent as the MAS rarely disqualifies DMAWs. Moreover, even if the MAS disqualifies DMAWs, disqualified individuals can set up new companies under a front person who has not been disqualified.^[175] Instead, it is submitted that an enforcement pyramid could be implemented, where the first level could be “persuasion”, and the ultimate level of enforcement could be “disqualification”, with “warning letter, dismissal, and work suspension” in between.^[176] Arguably, the presence of an enforcement pyramid, alongside financial sanctions such as fines, may be more effective in deterring DMAWs of FIs from violating AML regimes.

(VI) ECONOMIC ANALYSIS OF SANCTIONS AND DETERRENCE:

(1) Introduction:

It is submitted that sanctions (whether criminal, civil, financial, or non-financial) may arguably be insufficient deterrent against AML violations due to the following factors, namely: (i) powerful perpetrators which may lead to preferential treatment; (ii) corruption within regulators; (iii) Government’s stockholdings in FIs; (iv) scapegoating; and (v) the lack of courts’ intervention. The following paragraphs will examine these factors in detail.

(2) Powerful perpetrators of economic crime:

Since real world laws and regulations are structured and then implemented in the interests of powerful social groups, it is submitted that where AML violations occur, the

social positions of the powerful may arguably lead to them being less prone to being discovered.^[177] This is because they are better protected in litigation, which means that they may even escape justice.^[178] As observed by Barry Rider (2015): “Those who are in the positions of influence and have amassed power and wealth for themselves are unlikely to play by the rules.”^[179] Moreover, the failure of societies to recognize the risks faced by those taking on those in power and authority is one of the greatest threats to the efficacy of the law.^[180] Hence, it is arguably rare that primary perpetrators can effectively be brought to justice in conventional terms, because they are arguably in a position to protect themselves due to their power and/or ability to corrupt others.^[181]

Although the powerful may not always be untouchable, it is submitted that arguably, only a few can be effectively pursued during the currency of their power.^[182] For example, it is argued that UBS and DBS may be in the position to influence the MAS. Since the Government of Singapore owns a significant number of shares in UBS and DBS, and 69% of the MAS’s Board of Directors comprises of Cabinet Members such as Tharman Shanmugaratnam (Deputy Prime Minister and Coordinating Minister for Economic and Social Policies; MAS chairman) and Mr. Heng Swee Keat (Minister of Finance; MAS Board member),^[183] this gives the impression that in contrast to Falcon (where the Government owns no shares, and which was fined SGD\$4.3 million for 14 AML violations), the lenient financial sanctions imposed by the MAS against DBS (SGD\$1 million for 10 AML violations) and UBS (SGD\$1.3 million for 13 AML violations) may arguably be to protect the financial interests of DBS and UBS. Protecting the financial interests of DBS and UBS would ensure that the shares within DBS and UBS remain profitable; and that the Government would continue to receive substantial amounts of dividends annually.

In the alternative, it can be argued that the harsher treatment towards Falcon may be due to its “persistent lack of understanding of MAS’ AML requirements.”^[184] Even so, it is submitted that this is not a convincing argument because DBS and UBS was described to have “weakness in corroborating source of funds” and “inadequate scrutiny of customers’

transactions”, and yet, the MAS felt that there was “no pervasive control weaknesses.”^[185] The ambiguous explanation by the MAS leads to the assumption that the lenient treatment towards DBS and UBS may be due to their position to influence the MAS; the lack of financial benefit from Falcon may have led to harsher sanctions imposed against it. All in all, it is submitted that since the MAS has upheld itself as an impartial regulator for years, the above assumptions and arguments are not conclusive as to the true state of affairs within the MAS. These assumptions and arguments are merely the views of this author, and that essentially, further evidence is required to establish whether these views are valid.

(3) Corruption within regulators:

It is submitted that corruption is a close relative of money laundering in that it is facilitative in design, object, and purpose; and attempts to inhibit and interdict corrupt activity may throw up a host of issues (in particular, abuse, which is motivated by economic factors).^[186] As observed by Rider (2015), in certain forms of economically motivated activity (such as the regulation of FIs), we are all susceptible to the temptation to meet unrealistic short term expectations.^[187] This in turn result in regulators bending rules and procedures to achieve what appears to be just results.^[188] Moreover, Jackie Harvey (2015) argued that the tightening of regulatory structures will not prevent the continued occurrence of financial crimes, and that what is important is how regulators are managed.^[189]

In this regard, it is submitted that arguably, there may potentially be corruption within the MAS. As observed by Rider (2015): “Many elite agencies which were specifically set up to spearhead the fight against corruption and economic crime have themselves been tainted by the very ills that they are addressing.”^[190] For example, in Singapore, the Corrupt Practices Investigation Bureau, which was established to fight corruption, had an officer who misappropriated SGD\$1.7 million.^[191] This may suggest that there may be corruption within the MAS. For instance, similar to how the Securities and Exchange

Commission in the United States colluded with Bank of America (who was liable for departing from normal company practices) with a settlement offer that amounted to a slap to Bank of America's wrist,^[192] the MAS may have arguably formed a collusion with major public FIs such as DBS and UBS, in which the MAS may gain monetary benefits from FIs if it imposes lenient fines on them for any AML violations. In the alternative, although it can be argued that Singapore, which was voted the 7th least corrupt country in the world,^[193] would strive to deter corrupt acts within the MAS, Rider (2015) observed that: "Many countries today willingly prostitute their sovereignty by deliberating facilitating money launderers."^[194] This arguably means that no matter how harsh a sanction is, it may not deter AML violations within FIs in which the MAS had colluded with. However, the validity of this argument is not conclusive as to the state of affairs within the MAS, and more evidence is required to prove that there is indeed collusion between the MAS and FIs. Fundamentally, Singapore has recently been voted the 7th least corrupted country in the world. This thereby dilute the possibility that the above arguments reflect the current state of the MAS's affairs.

(4) Government's stockholdings in a public FI:

Since it is assumed that the Government of Singapore has significant shareholdings in DBS (29.66%) and UBS (6.38%), and that the MAS's Board of Directors comprise of Cabinet Members, it is suggested that the MAS may have imposed lenient fines against DBS and UBS to ensure that its actions would not undermine the financial interests of the Government. This arguably dilutes the deterrent effect of sanctions against AML violations within FIs in which the Government own shares in. As observed by Croall (2003), large corporations (e.g. DBS and UBS) often present problems as they may be able to impede the work of external regulators (e.g. the MAS), and influence regulatory agendas by exerting their influence (e.g. DBS and UBS exerting their financial influence on the MAS) over the law and rule-making process.^[195] Moreover, Croall (1994) observed that regulations are often symbolic as they often reflect capitalist interest.^[196]

Although it can be argued that the lenient fine imposed on DBS and UBS may not be due to the Government's shareholdings, and that more evidence is required to show that the Government's shareholdings have influenced the MAS's decision, this author believes that an alternative argument which may rationalize the MAS's leniency towards DBS and UBS is that Singapore's economy is dependent upon the financial industry. For instance, 13% of Singapore's Gross Domestic Product ('GDP') in 2016 was made up by the financial and insurance industry.^[197] Arguably, public FIs such as DBS and UBS contribute more to the GDP of Singapore (as compared to private banks such as Falcon and BSI) as they offer shares to the public. Economic research has shown that public offering of shares is critical to how an economy can generate wealth and innovation.^[198] Since it may not be desirable to impose harsh sanctions against DBS and UBS due to the economic damage that might be caused,^[199] arguably, sanctions do not act as effective deterrent against AML violations within public FIs as regulators may be hesitant to imposed harsh sanctions against them.

(5) Scapegoating:

It is submitted that sanctions against AML violations may not be effective deterrent as the top management and/or senior executives of FIs (i.e. the DMAWs) in Singapore may arguably push the blame of AML violations to individuals at a lower level of management. As observed by Croall (1994): "Senior employees are generally more trusted and have more opportunity to cover up their offences."^[200] In contrast, lower level employees are more subject to immediate supervision.^[201]

Since the DMAWs are more trusted than lower level management, arguably, the DMAWs of FIs may push the blame of AML violations to lower level individuals, which in turn gives the impression that sanctions do not deter the DMAWs of FI from AML violations. Moreover, similar to how lawyers and accountants can be employed to specifically advise wealth clients on how to avoid paying taxes without resorting to illegal evasion,^[202] the DMAWs of FIs may employ accountants and lawyers to conceal figures as well as to twist

facts so as to scapegoat lower level individuals (who may lack financial resources to hire lawyers or accountants) for any AML violations. In the alternative, it can be argued that FIs are likely to have internal legal and accounting departments to detect the true perpetrators of AML violations,^[203] which arguably serves to prevent scapegoating from happening. However, even if these departments prevent scapegoating, DMAWS of FIs may choose to conduct AML violations in countries where regulation is less strict,^[204] and their considerable resources allows them to stay on the right side of the law.^[205]

(6) Lack of Court's Intervention:

Although sanctions such as the withdrawal of licences and the imposition of fines may threaten the survival of a FI, it is submitted that the MAS has too much discretion, and can act as a judge and jury in deciding whether to use sanctions against a FI in question.^[206] Despite Section 30(2) AAO MAS Act giving the High Court the power to make orders against the MAS's order to prohibit the carrying on of businesses, the author of this dissertation found no evidence of the High Court exercising this power. For instance, when the MAS ceased the business operations of BSI and Falcon, there were no official reports of the High Court's intervention; medias such as The Straits Times only reported what the MAS had done. Moreover, the legislations, Directions, and Regulations discussed in part (II) only empowers the MAS, and not the courts, to impose sanctions for AML violations. The lack of judicial intervention arguably leads to ambiguous assessments as to how much fine should be imposed. For instance, it is questionable why DBS and UBS were only fined SGD\$1 million and SGD\$1.3 million for 10 and 13 AML violations, whereas Falcon was fined SGD\$4.3 million for 14 of the same AML violations.

In the alternative, it can be argued that judges may not possess expertise in economics to assess the soundness and accuracy of regulatory decisions,^[207] and that a centralized authority with expertise would deal with AML violations more effectively.^[208] Even so, it is submitted that similar to the United Kingdom's Competition Appeal Tribunal, there could be a tribunal in Singapore which specializes in regulatory matters so as to allow FIs to

challenge the MAS's economic assessments.^[209] The presence of a tribunal may in turn prevent blatant preferential treatment by MAS towards FIs that provides economic benefits (which arguably means that the MAS's lack of transparency in exercising its powers may not lead to favouritism).^[210]

(VII) CONCLUSION – SANCTIONS AND DETERRENCE AGAINST AML VIOLATIONS:

It is submitted that sanctions in Singapore may not effectively deter AML violations in that state. Firstly, part (iv) established that the underlying principle governing most sanctions in Singapore is that of the theory of "DBT". However, it is submitted that not all perpetrators of deliberate AML violations make rational decisions, and that psychological factors such as "intuition" and "delusional optimism" may in turn dilute the deterrent effect of sanctions against deliberate AML violations. Moreover, the theory of DBT should not be the underlying principle of sanctions against non-deliberate AML violations as perpetrators may not have intended to violate AML regimes. Instead, conditions (suggested by Hodges) such as "internalized moral values", "group culture", and "legitimacy of rules", as well as the "defence of due diligence" may arguably be more effective in deterring non-deliberate AML violations.

Secondly, although sanctions are often used as a catalyst in Singapore to deter AML violations, part (v) established that sanctions do not deter AML violations regardless of their nature. In relation to civil sanctions, although the lack of transparency in the way the MAS imposes civil sanctions may deter certain AML violations, it is suggested that the lack of action on the part of the MAS to impose disqualification orders against DMAWs of FIs (notwithstanding the presence of criminal sanctions) arguably do not deter DMAWs of FIs from AML violations. Despite how it was suggested that the lack of deterrent effect of civil sanctions may be offset by the presence of criminal sanctions, it is submitted that

the heavy use of criminal sanctions may arguably fail to deter AML violations where non-compliance by FIs and/or DMAWs of FIs in Singapore may not truly be criminal in their intentions. In relation to financial sanctions, it was established that financial sanctions such as fines do not act as sufficient deterrent against AML violations as they are often lenient, and that they may in turn incur undesirable secondary harmful effects to the society at large. Although it was suggested that non-financial sanctions may circumvent the limitations of financial sanctions, arguably, the lack of a variety of non-financial sanctions, as well as the wide discretion of the MAS in exercising its power to impose non-financial sanctions against DMAWs of FIs and/or FIs in Singapore, undermines the deterrent effect against AML violations.

Lastly, part (vi) established that sanctions may not deter AML violations due to the following economic factors (for which the validity of these factors require more evidence): (i) the likelihood that MAS has preferential treatment towards FIs which the Government of Singapore has significant shareholdings in; (ii) the possibility of corruption within the MAS in the form of collusions with FIs in Singapore; (iii) the lack of the courts' interventions which arguably allows the MAS to exercise its powers in ways that benefit the Government; and (iv) the likelihood of the DMAWs of FIs making lower level individuals scapegoats for any AML violations.

All in all, the sanctions in Singapore arguably do not act as effective deterrence against AML violations due to the following reasons, namely: (i) the tendency for the MAS to use the theory of DBT as the underlying principle for sanctioning against DMAWs and/or FIs of Singapore ignores factors such as intuition, delusional optimism, and the conditions for compliance, which may be beneficial towards deterring non-deliberate AML violations; (ii) the lack of an "enforcement pyramid" despite the potential drawbacks of different natures of sanctions against AML violations; and (iii) economic factors which have the potential to influence the MAS to exercise their sanctioning powers in a way that is lenient towards FIs that provide economic benefits both to the MAS and/or the

Government. In the alternative, despite the likelihood that sanctions may not act as deterrent against AML violations in Singapore, sanctions should still be implemented in that it may still deter certain individuals from committing deliberate and non-deliberate AML violations; being able to deter certain individuals is better than deterring none at all.

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