



Rise of post-pandemic insolvency-related criminal prosecutions in Singapore?

1 In an article titled "*Bankruptcy fraud prosecutions may increase post-pandemic*"¹, some US lawyers have predicted that company directors and officers may face prosecution under USA's insolvency fraud statutes as a result of the Covid19 crisis and the resulting disruption to business.

2 While the authors of the above article note that there has not been extensive historical application of these statutes in the USA, they predict that prosecutors invariably "*follow the money*" in their pursuit of potential criminal liability for fraudulent related actions related to insolvency situations.

3 For example, this could arise when shareholders or directors utilize insolvency proceedings to hide assets or to defraud creditors.

4 As such, the opportunities for prosecutors to pursue insolvency-related criminal prosecutions are significant.

Insolvency-related criminal prosecutions in Singapore

5 Like the US, Singapore also has statutory laws for insolvency-related criminal offences.

6 Whilst Singapore's Companies Act ("**CA**") contains provisions allowing criminal prosecution to be brought against companies and their officers for various insolvency-related offences, the lack of published caselaw on such offences suggests that the Attorney-General Chambers ("**AGC**") may not be invoking such provisions very often.

7 However, this may change in the post-pandemic future.

8 The Covid-19 (Temporary Measures) Act 2020 provides crucial protection to business affected by the pandemic but one corollary is that insolvent business are allowed to trade and transact for longer.

9 Once the dust settles, there may be a pressing need for the AGC to hold offending businesses and their directors accountable. The AGC may wish to send a strong message to company directors and officers that they should behave properly when dealing with their insolvent or soon-to-be-insolvent companies.

10 Here are some of the possible criminal actions that the AGC can take against errant directors and officers:

A) Arrest of absconding contributory, director or former director (Section 287 of the CA)

11 If there is proof of probable cause for believing that a contributory, director or former director of an insolvent company is about to abscond from Singapore or remove or conceal any of his property for the purpose of evading payment of calls or avoid examination respecting the affairs of the company, the Court can issue an arrest warrant to arrest him and seize his books, papers and moveable personal property until such time as the Court orders.

¹ [https://www.law360.com/corporate/articles/1274774/bankruptcy-fraud-prosecutions-may-increase-post-](https://www.law360.com/corporate/articles/1274774/bankruptcy-fraud-prosecutions-may-increase-post-pandemic?nl_pk=48ff76d1-0304-4d19-b5c4-07184491322e&utm_source=newsletter&utm_medium=email&utm_campaign=corporate)

[pandemic?nl_pk=48ff76d1-0304-4d19-b5c4-07184491322e&utm_source=newsletter&utm_medium=email&utm_campaign=corporate](https://www.law360.com/corporate/articles/1274774/bankruptcy-fraud-prosecutions-may-increase-post-pandemic?nl_pk=48ff76d1-0304-4d19-b5c4-07184491322e&utm_source=newsletter&utm_medium=email&utm_campaign=corporate)

B) Non-disclosure and non-delivery of company property to liquidator (Section 336(a) and (b) of the CA)

12 Every past or present officer or a contributory of a company which is being wound up is obliged to:

- disclose to the liquidator all moveable and immoveable property of the company, and how, to whom, for what consideration and when the company disposed of any part thereof (otherwise than in the ordinary course of business); and
- deliver to the liquidator all moveable and immoveable property, and books and papers of the company in his custody or under his control.

13 The failure to do so will be an offence which is punishable by a fine of up to \$10,000 or an imprisonment term of up to 2 years.

C) Defrauding of liquidator (Section 336(c) – (g), 338 of CA)

Every past or present officer or a contributory of a company which is being wound up who:

- has concealed any company property valued at over \$200;
- has concealed any debt due to and from the company;
- has fraudulently removed any company property valued at over \$200;
- has concealed, destroyed, mutilated or falsified any book or paper affecting or relating to the property or affairs of the company or has been privy to the same;
- has made or has been privy to the making of any false entry in any book or paper affecting or relating to the property or affairs of the company;

- has fraudulently parted with, altered or made any omission in any document affecting or relating to the property or affairs of the company or has been privy to the same;
- has obtained any property for and on behalf of the company on credit which the company has not subsequently paid for by way of false representation or fraud;
- has obtained on credit for and on behalf of the company any property which the company has not subsequently paid for under the false pretence that the company is carrying on its business;
- has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid of (otherwise than in the ordinary course of business)
- makes any material omission in any statement relating to the affairs of the company;
- fails to inform the liquidator of any false debt proved by a person;
- prevents the production of any book or paper affecting or relating to the property or affairs of the company;
- has attempted to account for any part of the property by fictitious losses or expense;
- has destroyed, mutilated, altered or falsified any books or papers or is privy to the same

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

**D) Defrauding of creditors
(Section 336(h), 339(3) and 340(5) of CA)**

14 Every past or present officer or a contributory of a company which is being wound up who false represents or commits any fraud for the purpose of obtaining the consent of creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or imprisonment for a term not exceeding 2 years.

15 Further, every officer of the company who was knowingly a party to the contracting of a debt by company, and who had no reasonable or probable ground of expectation that the company would be able to pay the debt, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding 3 months. If the incurrence of the debt was done with the intent to defraud creditors, then the penalty is a fine of up to \$15,000 or imprisonment for a term not exceeding 7 years or both.

E) Failure to keep proper accounts for 2 years before winding up (Section 339 of CA)

16 Every officer of the company who fails to keep proper books of account for the company throughout the period of 2 years immediately preceding the winding up order shall, unless he has acted honestly and shows that the default was excusable, be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months.

Conclusion

17 In light of the potential risk of criminal penalties arising from offences committed in the course of a business' insolvency period, directors and officers of companies facing

financial difficulties are reminded of their obligations to act responsibly and in a manner which also appreciates the concerns of current and future creditors. Should the AGC desire to ramp up prosecution in this area of the law, directors and officers would do well to behave properly.

If you would like more information on this area of the law, please contact:



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