



Smart decisions. Lasting value.

Uncovering Corporate Fraud

Forensic Audit & Investigations



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1. Introduction

As businesses grow bigger, the span of control lengthens and the supervision of staff becomes more tenuous. When Management is unable to directly monitor and approve all transactions, much is left to senior management. This may lead to oversight and company officials being tempted to engage in fraudulent behavior due to unhealthy desires or situations such as immediate gratification, emergencies at home, high performance targets set by the employer, revenge on the employer, keeping up with the Joneses, etc.

It is a fact that fraud is not easily detected especially if there is collusion between staff and other parties, or the fraud is well concealed. Usually, fraud discovery is due to whistleblower action or when a company encounters an unusual event e.g. a cash crunch. By this time, it may be too late to gain restitution except to ascertain the level of fraud, salvage whatever had been defrauded and bring the culprits to justice.

All of this takes time, effort and professional expertise, not to mention the amount of pain and anguish along the way for all parties involved. Fraud will require forensic audits to uncover the extent of the fraud and to search for evidence. Forensic audits may lead to disputes that require resolution which in turn requires the expertise of lawyers, experts and availability of documents such as those obtained in a forensic audit.

We empathise with these situations and are well aware of the work involved in solving these cases. If you are facing a situation which requires forensic investigations, talk to us – we will be glad to offer clarity and shed light on your predicament.



James Chan
Partner, Audit & Assurance

2. What are the Types of Fraud

Fraud can severely impact an organization, causing not only financial repercussions but also irreparable reputational damage. Here are some of the common types of corporate fraud:

Financial reporting fraud

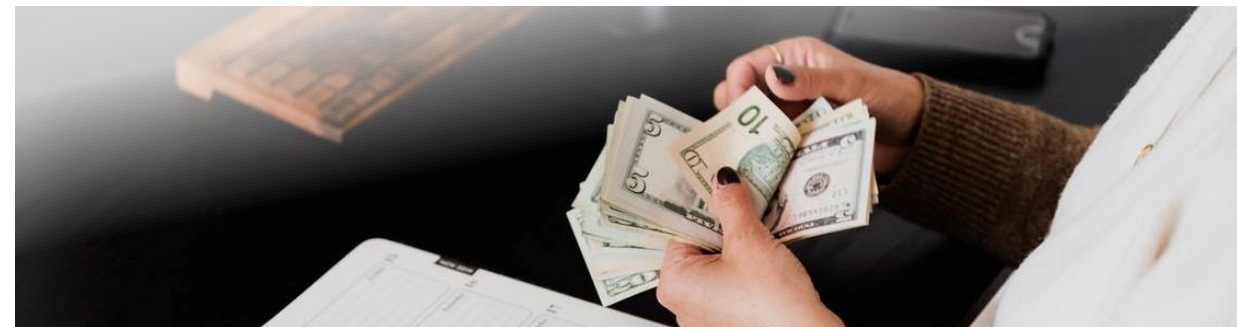
Financial reporting fraud occurs when companies manipulate their financial statements to show a false financial position and financial results of the company. Some of the ways of achieving these nefarious ends are by:

- i. Capturing expenses as capital expenditure and thereby increasing the profit and net asset position of the company
- ii. Overstatement of assets via various methods e.g. by parking expenses or losses in offshore entities
- iii. Understatement of liabilities via various methods in the financial statements
- iv. Inclusion of fictitious assets in the financial statements such as fictitious bank balances or non-existent inventory or property, plant and equipment
- v. Shifting debt to special purpose entities

Misappropriation of assets

Fraud is commonly perpetrated via misappropriation of the assets of the company. Fraud of this nature occurs due to lax internal controls, lack of supervision of staff and insufficient management oversight.

Examples of this type of fraud include misappropriation of cash in hand, embezzlement of money via forged cheques, payments to fictitious creditors, payments for fictitious invoices, purchase of phantom assets and direct theft of company assets e.g. inventory and equipment of the company.



2. What are the Types of Fraud (cont'd)

Receiving bribes from suppliers

Bribes received by staff from suppliers are like a cancer. It will slowly eat into the profits of a company as costs rise due to unseen costs being charged to the company. Bribery is an issue that has to be eradicated for a company to be run efficiently and profitably.

Concealment of assets

Concealment of assets such as objects and property that can be valued in money can be deliberately kept out of sight of the authorities or contending parties, especially in situations when the defending party is facing claims or undergoing bankruptcy proceedings.

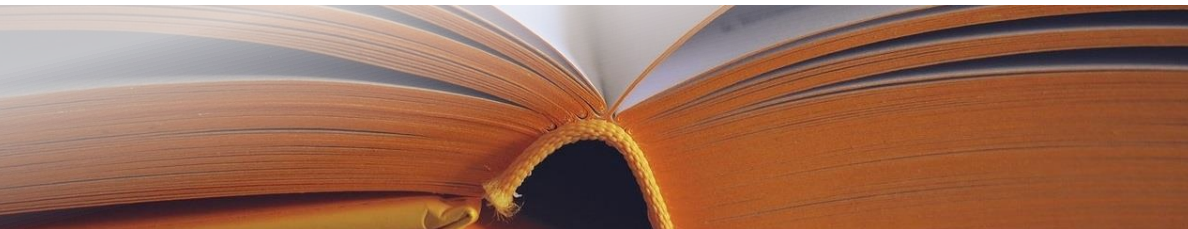
Falsification of documents

Falsification of documents can lead to fraud and cause losses to a company when the fraudulent documents are used to hide losses, inflate costs e.g. through false invoices, or embezzle money from the company e.g. through cheque tampering and false expense claims. Care therefore needs to be taken to authenticate business documents.

Conflict of interest

Being in a conflict of interest situation will render the decision maker not making a sound and independent judgment in the interest of the company that he is acting for. Many of these situations can arise in practice and it is not uncommon for many company officials to cross this thin line.

An example of this is a company director who sells his private loss making company to his own listed company.



3. How is Fraud Perpetrated

Fraud can happen when the right conditions intersect. These conditions may include loopholes in a company's system, temptation on the perpetrator due to personal needs or lack of limits on the authority of employees to transact on behalf of the company.

Fraud is usually committed in small amounts initially but which grow larger over a period of time. If this fraud is not nipped in the bud, it will gradually grow to strangle the host e.g. cashflow shortages, strangulated balance sheets, poor operating results, etc.

Fraud especially happens in the areas of procurement and bank transactions. Controls therefore need to be especially robust in these areas and may take the form of setting of limits of authority eg for cheque signatories, oversight of all staff's work, proper segregation of duties, robust physical controls over the assets of the company, implementation of a standard of corporate behavior, use of internal audit function, etc.

Fraud can be committed with the collusion of a group of staff and possibly with the assistance of outside parties. Fraud of this nature is especially insidious and can become extensive and well concealed over an extended period of time. Management can minimize this by adopting a policy of skepticism towards employees whilst auditing them at the same time.

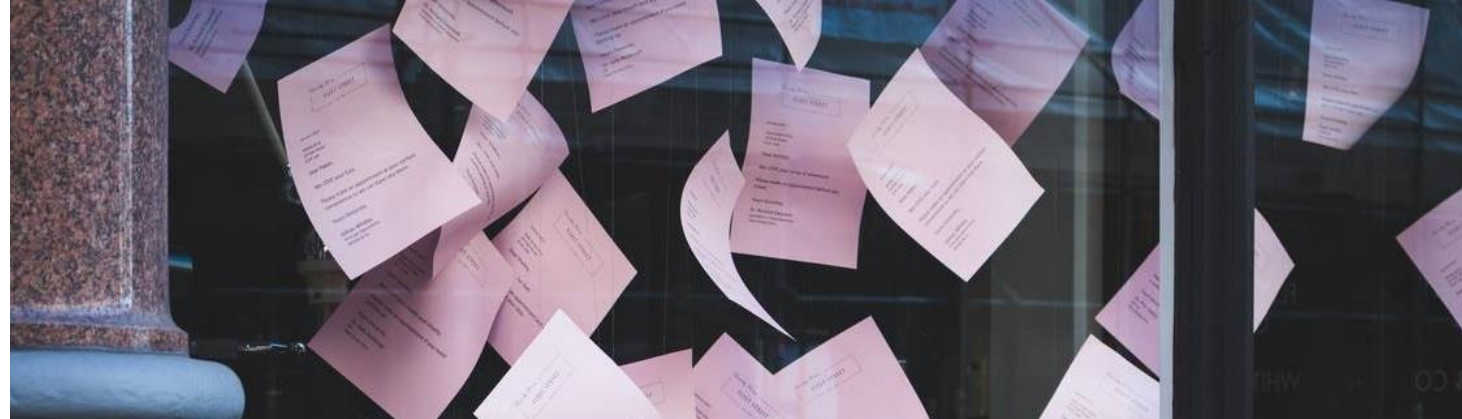


4. How to Detect Fraud

Detection of fraud requires a blend of skill and art. It involves getting into the underlying money and documentary trail via detailed review of documents, interviews and interrogations of suspected parties, obtaining information from third parties, use of IT tools to scan and trace all suspicious transactions, and observing for signs of fraud alerts or red flags (refer to next page for indicators of fraud).

In many cases, fraud is detected due to actions by whistleblowers and leaked confidential documents (e.g the Panama Papers).

Detection of fraud can therefore be enhanced via a good whistleblowing policy.



A Case of Leaked Confidential Documents

The Panama Papers leaked 11.5 million of encrypted confidential documents that were the property of a Panama-based law firm Mossack Fonseca. The document exposed the network of more than 214,000 tax haven entities involving people and entities from 200 different nations.

Some of the shell corporations set up by Mossack Fonseca were revealed by reporters to have been used for illegal purposes, including fraud, tax evasion, and the avoidance of international sanctions.

5. What are the Warning Signs of Fraud

Fraud is usually preceded by some warning signs or red flags. If noticed early, these indicators can be the trigger to further investigation.

Warning signs or red flags include:

- Lack of job segregation and staff supervision
- No independent checking of key transactions
- Missing approval or authorization signatures
- Extensive use of suspense accounts
- Inappropriate and unusual journal entries
- Large cash transactions
- Discrepancy between earnings and lifestyle of management personnel
- Inadequate access control to physical assets and IT security systems
- Abnormal justifications for transactions
- Extensive use of tax havens without clear business justification, along with complex transactions
- Unexpected low levels of cash or assets
- Poor accounting systems with backlog or messy accounts.

In the event of a suspected fraud case, the investigative procedures to be performed are as follows:

1. Investigate

To obtain the necessary evidence in support of the above;

2. Review

To review all available documents in respect of the above; and

3. Interview

To conduct interviews with the management and any other personnel who may have knowledge of financial matters.

6. Our Services

Should you require our assistance with fraud detection within your organization, we can assist by performing forensic audits and investigations to ascertain the nature and extent of fraud that had been committed. The fraud findings can then be used to support reports to the relevant authorities including the police. We can also appear in court as expert witnesses to attest to the crime committed in support of any litigation.

Finally, we can assist with advice and services in the implementation of internal controls to prevent future fraud occurrences.

Drawing from our extensive experience in forensic audits and fraud investigations, our consulting professionals are able to identify critical issues quickly and focus the investigation on the areas of greatest concern and potential impact.



The result is an investigation that is not only thorough and complete, but also *efficient* and *timely* – critical success factors in today's environment.



7. Notable Engagements by Crowe Malaysia

No.	Description of investigative audit assignments
1	To investigate losses of RM1.1billion for a company involved in Investments, Property Development and Power Barge.
2	To investigate losses of RM1.2 billion for a shipyard company.
3	To investigate losses of RM153 million for a Group involved in the manufacturing of batteries and in packaging.
4	To investigate misappropriation of funds via fictitious payroll payments amounting to RM66,000 for a medical center.
5	To investigate misappropriation of funds amounting to RM4.6 million for a plastic manufacturing and trading company.
6	To review the internal controls relating to sales and inventory for a Mongolian mining company to identify possible control lapses leading to loss of revenue and inventory.
7	To investigate whether there is conflict of interest in the subsidiaries in Malaysia, Thailand, Philippines and China for a Group of companies involved in end-to-end payment services.
8	To be an expert witness in the arbitration for a dispute involving the computation of profit element for a water concession.
9	To identify the root causes of mismatch between policies and premiums received that caused unreconciled unmatched premiums of approximately RM24 million for an insurance company
10	To investigate a RM25 million loss on investment in a packaging company.
11	To investigate insider dealing and misappropriation of funds amounting to more that RM1 billion.

8. Appendix: Laws & Regulations Relating to Fraud

The penalties or punishments under Malaysian law (excluding Penal Code) for various fraud offences are as follows:-

Laws of Malaysia	Committed offence under:	
Companies Act 2016	Offences regarding solvency statement	
	S114	A director who makes a solvency statement without having reasonable grounds for the opinion expressed in the statement commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding five hundred thousand ringgit or to both.
	Offences for making groundless or false statements	
	S121	A director making a statement under paragraph 119(2)(a) commits an offence if the statement— (a) is false; or (b) is not believed by him to be true, and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.
	System of internal control	
	S246(1)	The directors of a public company or a subsidiary of a public company shall have in place a system of internal control that will provide a reasonable assurance that— (a) the assets of the company are safeguarded against loss from unauthorized use or disposition and to give a proper account of the assets; and (b) all transactions are properly authorized and that the transactions are recorded as necessary to enable the preparation of true and fair view of the financial statements of the company. Any director who contravenes this section commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding three years or a fine not exceeding one million ringgit or to both.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Companies Act 2016	Offences by officers of companies in liquidation
	<p>S536(1) Every person who, is or was an officer or a contributory of a company which is being wound up, commits an offence if he—</p> <ul style="list-style-type: none"> (a) does not disclose to the liquidator all the property of the company, and how and to whom and for what consideration and when the company disposed of any part of the property of the company, except such part as has been disposed of in the ordinary way of the business of the company; (b) does not deliver up to the liquidator, whether or not being directed to do so by the liquidator— <ul style="list-style-type: none"> (i) all the movable and immovable property of the company in his custody or under his control and which he is required by law to deliver up; or (ii) all books and papers in his custody or under his control belonging to the company and which he is required by law to deliver up; (c) within twelve months before the commencement of the winding up or at any time after the commencement— <ul style="list-style-type: none"> (i) has concealed any part of the property of the company to the value of fifty ringgit or upwards, or has concealed any debt due to or from the company; (ii) has fraudulently removed any part of the property of the company to the value of fifty ringgit or upwards; (iii) has concealed, destroyed, mutilated or falsified, or has been privy to the concealment, destruction, mutilation or falsification of, any book or paper affecting or relating to the property or affairs of the company; (iv) 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; (v) has fraudulently parted with, altered or made any omission in, or has been privy to fraudulent parting with, altering or making any omission in, any document affecting or relating to the property or affairs of the company; (vi) by any false representation or other fraud, has obtained any property for or on behalf of the company on credit which the company has not subsequently paid for; (vii) has obtained on credit, for or on behalf of the company, under the false pretence that the company is carrying on its business, any property which the company has not subsequently paid for; or (viii) has pawned, pledged or disposed of any property of the company which has been obtained on credit and has not been paid for, unless the pawning, pledging or disposing was in the ordinary way of the business of the company;

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Companies Act 2016	Offences by officers of companies in liquidation (Cont'd)	
	S536(1)	<p>(d) makes any material omission in any statement relating to the affairs of the company;</p> <p>(e) fails to inform the liquidator of a false debt within thirty days from the date he knows or believes that the false debt has been proved by any person;</p> <p>(f) prevents the production of any book or paper affecting or relating to the property or affairs of the company;</p> <p>(g) within twelve months before the commencement of the winding up or at any time after the commencement, has attempted to account for any part of the property of the company by fictitious losses or expenses; or</p> <p>(h) within twelve months before the commencement of the winding up or at any time after the commencement, has been convicted of false representation or other fraud for the purpose of obtaining the consent of the creditors of the company or any of them to an agreement with reference to the affairs of the company or to the winding up.</p>
	S536(3)	A person who commits an offence under this section shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.
	S536(5)	Where any person pawns, pledges or disposes of any property in circumstances which amount to an offence under subparagraph (1)(c)(viii), every person who takes in pawns or pledge or otherwise receives the property knowing it to be pawned, pledged or disposed of in those circumstances commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding three million ringgit or to both.
Falsification of books and etc.		
	S538	Every officer or contributory of any company being wound up who destroys, mutilates, alters or falsifies any books, papers or securities, or makes or is privy to the making of any false or fraudulent entry in any register or book of account or document belonging to the company with intent to defraud or deceive any person, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Companies Act 2016	Responsibility for fraudulent trading	
	S540(1)	If in the course of the winding up of a company or in any proceedings against a company it appears that any business of the company has been carried on with intent to defraud the creditors of the company or creditors of any other person or for any fraudulent purpose, the Court on the application of the liquidator or any creditor or contributory of the company, may, if the Court thinks proper so to do, declare that any person who was knowingly a party to the carrying on of the business in that manner shall be personally responsible, without any limitation of liability, for all or any of the debts or other liabilities of the company as the Court directs.
	S540(2)	Where a person has been convicted of an offence under subsection 539(3) in relation to the contracting of such a debt as is referred to in that section, the Court on the application of the liquidator or any creditor or contributory of the company may, if the Court thinks proper so to do, declare that the person shall be personally responsible without any limitation of liability for the payment of the whole or any part of that debt.
	S540(3)	When the Court makes any declaration under subsection (1) or (2), the Court may give such further directions as it thinks proper for the purpose of giving effect to that declaration, and in particular may make provision for making the liability of any person under the declaration a charge on any debt or obligation due from the company to the person, or on any charge or any interest in any charge on any assets of the company held by or vested in the person or any corporation or person on his behalf, or any person claiming as assignee from or through the person liable or any corporation or person acting on his behalf, and may from time to time make such further order as is necessary for the purpose of enforcing any charge imposed under this subsection.
	S540(4)	For the purposes of subsection (3), “assignee” includes any person to whom or in whose favour by the directions of the person liable the debt, obligation or charge was created, issued or transferred or the interest created, but does not include an assignee for valuable consideration and consideration by way of marriage, given in good faith and without notice of any of the matters on the ground of which the declaration is made.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Companies Act 2016	Responsibility for fraudulent trading (Cont'd)	
	S540(5)	Where any business of a company is carried on with the intent or for the purpose mentioned in subsection (1), every person who was knowingly a party to the carrying on of the business with that intent or purpose, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one million ringgit or to both.
	False and misleading statements	
	S591(1)	Every corporation which advertises, circulates or publishes any return, report, certificate, financial statements or other document required by or for the purposes of this Act makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false or misleading or intentionally omits or authorizes the omission or accession of any matter or thing which makes the document misleading in a material respect and every officer of the corporation who knowingly authorizes, directs or consents to the advertising, circulation or publication commits an offence, and shall, on conviction – (a) in the case of a corporation, be liable to a fine not exceeding three million ringgit; and (b) in the case of officer of the corporation, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.
	S591(2)	Every person who in any return, report, certificate, financial statement or other document required by or for the purposes of this Act— (a) makes or authorizes the making of a statement false or misleading in any material particular knowing it to be false; or (b) misleads or intentionally omits or authorizes the omission or accession of any matter or thing making the document misleading in a material respect, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.
	S591(3)	If a person at a meeting votes in favour of the making of a statement referred to in this section knowing it to be false, he shall be deemed to have authorized the making of that statement.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Companies Act 2016	False reports	
	S592(1)	<p>An officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to—</p> <ul style="list-style-type: none"> (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; (b) in the case of a corporation that is a subsidiary, an auditor of the holding company; (c) a stock exchange whether in or outside Malaysia or an officer of the stock exchange; or (d) the Securities Commission, relating to the affairs of the corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.
	S592(2)	<p>In subsection (1), “officer”, in addition to the definition under section 2, includes a person who at the time the offence was committed is an officer of the corporation.</p>
False report or statement to the Registrar		
	S593	<p>A person who makes or furnishes, or knowingly authorizes or permits the making or furnishing of, any false or misleading statement, information or report to the Registrar relating to—</p> <ul style="list-style-type: none"> (a) the affairs of a corporation; (b) any matter or thing required by the Registrar for the implementation of this Act; or (c) the enforcement of this Act, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Companies Act 2016	Fraudulently inducing persons to invest money
	<p>S594(1) Any person who, by any statement, promise or forecast which he knows to be misleading, false or deceptive or by any dishonest concealment of material facts or by the reckless making of any statement, promise or forecast which is misleading, false or deceptive, induces or attempts to induce another person to enter into or offer to enter into— (a) any agreement for or with a view of acquiring, disposing of, subscribing in or underwriting marketable securities or lending or depositing money to or with any corporation; or (b) any agreement the purpose or pretended purpose of which is to secure a profit to any of the parties from the yield of marketable securities or by reference to fluctuations in the value of marketable securities, commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.</p>
	<p>S594(2) Every officer or agent of any corporation by any deceitful means or false promise and with intent to defraud, causes or procures any money to be paid or any chattel or marketable security to be delivered to that corporation or to himself or any other person for the use of benefit or on account of that corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding three million ringgit or to both.</p>
	<p>S594(3) The opinion of any properly qualified auditor or accountant as to the financial position of any company at any time or during any period in respect of which auditor or accountant has made an audit or examination of the affairs of the company according to recognized audit practice shall be admissible during the proceedings as evidence, either for the prosecution or for the defence of the financial position of the company at that time or during that period notwithstanding that the opinion is based in whole or in part on book-entries, documents or vouchers or on written or verbal statements by other persons.</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Companies Act 2016	Fraud by officer	
	S592(1)	<p>An officer of a corporation who, with intent to deceive, makes or furnishes or knowingly and wilfully authorizes or permits the making or furnishing of, any false or misleading statement or report to—</p> <ul style="list-style-type: none"> (a) a director, auditor, member, debenture holder or trustee for debenture holders of the corporation; (b) in the case of a corporation that is a subsidiary, an auditor of the holding company; (c) a stock exchange whether in or outside Malaysia or an officer of the stock exchange; or (d) the Securities Commission, relating to the affairs of the corporation commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding ten years or a fine not exceeding three million ringgit or to both.
	S592(2)	<p>In subsection (1), “officer”, in addition to the definition under section 2, includes a person who at the time the offence was committed is an officer of the corporation.</p>
Capital Markets and Services Act 2007	False statements in relation to application for grant, or variation of license	
	S71	<p>A person who, in connection with an application for the grant, or variation of a licence, makes a statement that is false or misleading in a material particular knowing it to be false or misleading or wilfully omits to state any matter or thing without which the application is misleading in a material respect commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding five years and shall also be liable to a fine not exceeding one million ringgit.</p>
	False or misleading statement to the Commission (Private retirement scheme industry)	
	S139ZK(1)	<p>For the purposes of this Part, any person who makes or submits to the Commission any statement or information that is false or misleading or wilfully omits to state any matter or thing without which the statement or information is misleading in a material aspect, commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.</p>
	S139ZK(2)	<p>Where a statement or information under subsection (1) has been submitted or provided to the Commission and a person becomes aware before the private retirement scheme is launched that the statement or information may be false or misleading, that person shall forthwith notify the Commission and shall take such action as the Commission may require.</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	False statements in relation to application for grant, or variation of license	
	S139ZO (1)	A person shall not (a) make, orally or in writing, or sign any declaration, return, certificate or other document required by this Act or the rules of a private retirement scheme administrator, which is false, misleading or from which there is a material omission; or (b) provide any information or furnish any document which is false, misleading or in which there is a material omission, to a private retirement scheme administrator or an approved private retirement scheme provider.
	S139ZO (2)	A person who contravenes subsection (1) with the intention to deceive a private retirement scheme administrator or an approved private retirement scheme provider commits an offence and shall, on conviction, be liable with imprisonment for a term not exceeding three years or to a fine not exceeding one million ringgit or to both.
	S139ZO (3)	A person who is convicted of an offence under subsection (2) in relation to withdrawal of accrued benefits shall, within six months from the conviction date, return the entire amount withdrawn.
Use of manipulative and deceptive devices (Private retirement scheme industry)		
	S139ZQ	It shall be unlawful for any person directly or indirectly to— (a) use any device, scheme or artifice to defraud; (b) engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or (c) make any untrue statement of a material fact or to omit to state a material fact which is necessary in order to make the statements, in the light of the circumstances under which they were made, not misleading, in connection with the— (A) acquisition or disposal of beneficial interest under a private retirement scheme; (B) making of contributions to a private retirement scheme; or (C) withdrawal of any sums from a private retirement scheme.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Capital Markets and Services Act 2007	Penalty for offences under section 139ZP and 139ZQ (Private retirement scheme industry)
	<p>S139ZP A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce any person to make a contribution to a private retirement scheme if, when he makes the statement or disseminates the information—</p> <ul style="list-style-type: none"> a) he does not care whether the statement or information is true or false; or b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular..
	False trading and market rigging transaction (Prohibited conduct – Securities)
	<p>S175(1) Subject to section 180, no person shall create, or cause to be created, or do anything that is calculated to create, a false or misleading appearance of active trading in any securities on a stock market within Malaysia or a false or misleading appearance with respect to the market for, or the price of, any such securities.</p>
	<p>S175(2) A person shall not, by means of purchases or sales of any securities that do not involve a change in the beneficial ownership of those securities, or by any fictitious transaction or device, maintain, inflate, depress, or cause fluctuations in, the market price of any securities.</p>
	<p>S175(3) Without affecting the generality of subsection (1), a person who—</p> <ul style="list-style-type: none"> (a) effects, takes part in, is concerned in or carries out, either directly or indirectly, any transaction of sale or purchase of any securities, being a transaction that does not involve any change in the beneficial ownership of the securities; (b) makes or causes to be made an offer to sell any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to purchase the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price; or (c) makes or causes to be made an offer to purchase any securities at a specified price where he has made or caused to be made or proposes to make or to cause to be made, or knows that a person associated with him has made or caused to be made or proposes to make or to cause to be made, an offer to sell the same number, or substantially the same number, of securities at a price that is substantially the same as the first-mentioned price, <p>shall be deemed to have created a false or misleading appearance of active trading in securities on a stock market.</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	False trading and market rigging transaction (Prohibited conduct – Securities) (Cont'd)	
	S175(4)	In a prosecution of a person for an act referred to in subsection (3) it is a defence if the defendant establishes that— (a) the purpose for which he did the act was not, or did not include, the purpose of creating a false or misleading appearance; and (b) he did not act recklessly, whether or not he created a false or misleading appearance, of active trading in securities on a stock market.
	S175(5)	A purchase or sale of securities does not involve a change in the beneficial ownership for the purposes of this section if a person who had an interest in the securities before the purchase or sale, or a person associated with the firstmentioned person in relation to those securities, has an interest in the securities after the purchase or sale.
	S175(6)	In a prosecution for an offence against subsection (2) in relation to a purchase or sale of securities that did not involve a change in the beneficial ownership of those securities, it is a defence if the defendant establishes that the purpose or purposes for which he purchased or sold the securities was not, or did not include, the purpose of creating a false or misleading appearance with respect to the market for, or the price of, securities.
	False or misleading statements, etc. (Prohibited conduct – Securities)	
	S177	A person shall not make a statement, or disseminate information, that is false or misleading in a material particular and is likely to induce the sale or purchase of securities by other persons or is likely to have the effect of raising, lowering, maintaining or stabilising the market price of securities if, when he makes the statement or disseminates the information— a) he does not care whether the statement or information is true or false; or b) he knows or ought reasonably to have known that the statement or information is false or misleading in a material particular.
	Fraudulently inducing persons to deal in securities	
	S178(1)	A person shall not— (a) by making or publishing any statement, promise or forecast that he knows to be misleading, false or deceptive; (b) by any dishonest concealment of material facts; (c) by the reckless making or publishing, dishonestly or otherwise, of any statement, promise or forecast that is misleading, false or deceptive; or (d) by recording or storing in, or by means of, any mechanical, electronic or other device, information that he knows to be false or misleading in a material particular, induce or attempt to induce another person to deal in securities.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	Use of manipulative and deceptive devices	
	S179	It shall be unlawful for any person, directly or indirectly in connection with the subscription, purchase or sale of any securities— a) to use any device, scheme or artifice to defraud; b) to engage in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person; or c) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements, made in the light of the circumstances under which they were made, not misleading.
Penalty for offence under Subdivision 1		
	S182	A person who contravenes section 178 and 179 commits an offence and shall be punished on conviction to imprisonment for a term not exceeding ten years and to a fine of not less than one million ringgit.
False trading (Prohibited conduct – Derivatives)		
	S202	No person shall create or cause to be created or do anything that is calculated to create a false or misleading appearance of active trading in derivatives on a derivatives market or a false or misleading appearance with respect to the market for, or the price of trading in, derivatives on the derivatives market.
Employment of devices, etc. to defraud (Prohibited conduct – Derivatives)		
	S206	No person shall, directly or indirectly, in connection with any transaction with any other person involving dealing in derivatives— a) employ any device, scheme or artifice to defraud that other person; b) engage in any act, practice or course of business which operates as a fraud or deception, or is likely to operate as a fraud or deception, of that other person; or c) make any false statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
False or misleading statements (Prohibited conduct – Derivatives)		
	S207	No person shall, directly or indirectly, for the purposes of inducing the entering into a derivative, make— a) any statement which, at the time and in the light of the circumstances in which it is made, is false, misleading or deceptive with respect to any material fact; or b) any statement which, by reason of the omission of a material fact, is rendered false or misleading.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	False or misleading statements, etc. (Application for Approval)	
	S215	<p>If any statement or information is required to be submitted to the Commission under this Division—</p> <ul style="list-style-type: none"> a) an issuer or an applicant or any of its officers or associates; b) financial adviser or an expert; or c) any other person, <p>shall not—</p> <ul style="list-style-type: none"> (A) submit or cause to be submitted any statement or information that is false or misleading; (B) submit or cause to be submitted any statement or information from which there is a material omission; or (C) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.
	False or misleading documents, information, etc. (Take-overs, Mergers and Compulsory Acquisitions)	
	S221(1)	<p>Where any document or information is required to be submitted to the Commission in relation to a take-over offer, merger or compulsory acquisition—</p> <ul style="list-style-type: none"> a) an acquirer, an offeror or a person making a compulsory acquisition or effecting a merger, its officers or associates; b) an offeree, its officers or associates; c) a financial adviser or an expert; or d) any other person, <p>shall not—</p> <ul style="list-style-type: none"> (A) submit or cause to be submitted any document or information that is false or misleading; (B) provide or cause to be provided any document or information from which there is material omission; or (C) engage in conduct that he knows to be misleading or deceptive or is likely to mislead or deceive.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Capital Markets and Services Act 2007	False or misleading documents, information, etc. (Take-overs, Mergers and Compulsory Acquisitions) (Cont'd)
	<p>S221(2) It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the provision of the document or information or engaging in the conduct was of the belief that—</p> <ul style="list-style-type: none"> a) the document or information was true and not misleading; b) the omission was not material; c) there was no material omission; or d) the conduct in question was not misleading or deceptive.
	<p>S221(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit.</p>
	Criminal liability for false statements, etc. in prospectus
	<p>S246(1) No person shall authorize or cause the issue of a prospectus which contains—</p> <ul style="list-style-type: none"> (a) any statement or information that is false or misleading; or (b) any statement or information from which there is a material omission.
	<p>S246(2) For the purposes of this Division, a statement shall be deemed to be in a prospectus if it is—</p> <ul style="list-style-type: none"> (a) contained in a report or memorandum that appears on the face of the prospectus; or (b) contained in a report or memorandum that is issued with the prospectus with the consent or knowledge of a person who authorized or caused the issue of the prospectus.
	<p>S246(3) A person who contravenes subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding three million ringgit or to imprisonment for a term not exceeding ten years or to both.</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Capital Markets and Services Act 2007	False or misleading statements or information to the Commission (Div. 3A – Application for authorization or recognition and 3B – Business Trust)
	<p>S256ZP (1) If any statement or information is required to be submitted to the Commission under Divisions 3A and 3B—</p> <ul style="list-style-type: none"> (a) a trustee-manager or, an applicant or, any of its officers or associates; (b) financial adviser or an expert; or (c) any other person, <p>shall not—</p> <ul style="list-style-type: none"> (A) submit or cause to be submitted any statement or information that is false or misleading; (B) submit or cause to be submitted any statement or information from which there is a material omission; or (C) engage in or aid or abet conduct that he knows to be misleading or deceptive or is likely to mislead or deceive the Commission.
	<p>S256ZP (2) If —</p> <ul style="list-style-type: none"> (a) a statement or information referred to in subsection (1) has been submitted or provided to the Commission, or a conduct referred to in subsection (1) has been engaged in; and (b) a person referred to in that subsection knows or becomes aware before the proposal in the application has been fully effected, carried out or implemented— <ul style="list-style-type: none"> (i) that the statement or information may be false or misleading or materially incomplete; or (ii) that the conduct may tend to mislead or deceive, <p>the person shall forthwith inform the Commission of the facts referred to in subparagraph (b)(i) or (ii), where applicable, and shall take such action as the Commission may direct.</p>
	<p>S256ZP (3) For the purposes of paragraph (2)(b), a person who knows or becomes aware includes a person who causes or does an act that causes such statement or information to become false or misleading or materially incomplete.</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	False or misleading statements or information to the Commission (Div. 3A – Application for authorization or recognition and 3B – Business Trust) (Cont'd)	
	S256ZP (3A)	It shall be a defence to a prosecution or any proceeding for a contravention of subsection (1) if it is proved that the defendant, after making enquiries as were reasonable in the circumstances, had reasonable grounds to believe, and did until the time of the making of the statement or provision of the information or engaging in the conduct, was of the belief that— (a) the statement or information was true and not misleading; (b) the omission was not material; (c) there was no material omission; or (d) the conduct in question was not misleading or deceptive.
	S256ZP (4)	A person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall be liable to a fine not exceeding three million ringgit.
False or misleading statements of a listed corporation		
	S320A (1)	A person shall not influence, coerce, mislead or authorize any person engaged in— a) the preparation of the financial statements of a listed corporation or any of its related corporations; or b) the performance of an audit of the financial statements of a listed corporation or any of its related corporations, to do anything which he knows or ought reasonably to have known may cause the financial statements or audited financial statements to be false or misleading in a material particular.
	S320A (2)	A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term which shall not be less than two years but not exceeding ten years and be liable to a fine not exceeding ten million ringgit.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Capital Markets and Services Act 2007	Falsification of records
	<p>S368(1) A person shall not, in any books in relation to the business of a stock exchange, derivatives exchange, an approved clearing house, a holder of a Capital Markets Services Licence or a listed corporation or any of its related corporations whether or not kept under this Act or the regulations made under this Act –</p> <ul style="list-style-type: none"> a) in any manner enter, record or store, or cause to be entered, recorded or stored, any matter that is false or misleading in any material particular; b) in any manner falsify or cause to be falsified, any matter that— <ul style="list-style-type: none"> (i) is entered, recorded or stored; (ii) has been prepared for the purpose of being entered, recorded or stored; or (iii) has been prepared for use in compiling other matters to be entered, recorded or stored; or c) fail to enter, record or store any matter with intent to falsify the records or any part of the records intended to be compiled from that matter
	<p>S368(2) A person who contravenes subsection (1) commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding one million ringgit.</p>
	False or misleading statement to Commission, exchange or approved clearing house, etc.
	<p>S369 A person who—</p> <ul style="list-style-type: none"> a) with intent to deceive, makes, furnishes or lodges; or b) knowingly causes, authorizes or permits the making, furnishing or lodging of, any statement, information or document that is false or misleading, to the Commission, a stock exchange, a derivatives exchange or an approved clearing house relating to— <ul style="list-style-type: none"> A. dealings in securities or derivatives; B. the affairs of a listed corporation; C. any matter or thing required by the Commission for the due administration of this act; D. any requirement imposed by the Commission under any guideline, practice note, written notice or term and condition; or E. any requirement under the rules of a stock exchange, derivatives exchange, or approved clearing house, <p>commits an offence and shall, on conviction, be punished with imprisonment for a term not exceeding ten years and shall also be liable to a fine not exceeding three million ringgit</p>

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Capital Markets and Services Act 2007	General penalty	
	S372(1)	A person who contravenes any requirement or provision of this Act, commits an offence under this Act and, where no penalty is expressly provided, shall, on conviction, be liable to a fine not exceeding one million ringgit or to imprisonment for a term not exceeding five years or to both.
	S372(2)	In the case of a continuing offence the offender, in addition to the penalties under subsection (1), shall, on conviction, be liable to a fine not exceeding five thousand ringgit for every day or part of a day during which the offence continues after conviction.
	Compounding of offences	
	S373(1)	The Chairman of the Commission may, with the consent in writing of the Public Prosecutor, compound any offence committed by any person under Part II, III, VI, VII, X or XII or any regulations made thereunder, by accepting from the person reasonably suspected of having committed such offence a sum of money not exceeding the maximum fine (including the daily fine in the case of a continuing offence, if any) for that offence.
	S373(2)	Upon receipt of the payment under subsection (1), no further proceedings shall be taken against such person in respect of such offence and where possession has been taken of any books or any other thing, such books or things may be released subject to such conditions as may be imposed in accordance with the conditions of the compound.
	S373(3)	All amounts received by the Commission under this section shall be paid into and form part of the Federal Consolidated Fund.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:	
Malaysian Anti-Corruption Commission (MACC)	Offence by commercial organization	
	S17A(1)	A commercial organization commits an offence if a person associated with the commercial organization corruptly gives, agrees to give, promises or offers to any person any gratification whether for the benefit of that person or another person with intent – (a) to obtain or retain business for the commercial organization; or (b) to obtain or retain an advantage in the conduct of business for the commercial organization.
	S17A(2)	Any commercial organization who commits an offence under this section shall on conviction be liable to a fine of not less than ten times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of pecuniary nature, or one million ringgit, whichever is the higher, or to imprisonment for a term not exceeding twenty years or to both.
	S17A(3)	Where an offence is committed by a commercial organization, a person – (a) who is its director, controller, officer or partner; or (b) who is concerned in the management of its affairs, at the time on the commission of the offence, is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised due diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.
	S17A(4)	If a commercial organization is charged for the offence referred to in subsection(1), it is a defence for the commercial organization to prove that the commercial organization had in place adequate procedures to prevent persons associated with the commercial organization from undertaking such conduct.

8. Appendix: Laws & Regulations Relating to Fraud (cont'd)

Laws of Malaysia	Committed offence under:
Financial Services Act 2013	Offences in relation to entries in documents
	<p>S248(1) No person shall—</p> <ul style="list-style-type: none"> (a) make or cause to be made a false entry; (b) omit to make, or cause to be omitted, any entry; or (c) alter, extract, conceal or destroy, or cause to be altered, extracted, concealed or destroyed, any entry, in any book or record, or in any report, slip, statement or other document whatsoever, relating to the business, affairs, transactions, condition, property, assets, liabilities or accounts, of an authorized person, a registered person or an operator of a designated payment system.
	S248(2) No person shall evade the provisions of this Act by altering, forging, destroying, mutilating, defacing, concealing or removing any document.
	S248(3) Any person who contravenes subsection (1) or (2) commits an offence and shall, on conviction, be liable to imprisonment for a term not exceeding eight years or to a fine not exceeding twenty-five million ringgit or to both.
	Offences committed by any person acting in official capacity
	<p>S249(1) Where an offence is committed by a body corporate or unincorporate, a person—</p> <ul style="list-style-type: none"> (a) who is its director, controller, officer or partner, or was purporting to act in any such capacity; or (b) who is concerned in the management of its affairs, at the time of the commission of the offence is deemed to have committed that offence unless that person proves that the offence was committed without his consent or connivance and that he exercised such diligence to prevent the commission of the offence as he ought to have exercised, having regard to the nature of his function in that capacity and to the circumstances.
	S249(2) An individual may be prosecuted for an offence under subsection (1) notwithstanding that the body corporate or unincorporate has not been convicted of the offence whether or not a prosecution has been initiated or a conviction has been obtained against the body corporate or unincorporate..
	S249(3) Subsection (1) shall not affect the criminal liability of the body corporate or unincorporate for the offence referred to in that subsection.
	S249(4) The penalty of imprisonment for an offence applies to an individual convicted of an offence by virtue of subsection (1), notwithstanding that the imprisonment does not apply to the body corporate or unincorporate by virtue of section 247.

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