
WIRECARD AG

Preliminary Report on Corporate Governance

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I. INTRODUCTION

1. We refer to the above matter.
2. We are instructed to undertake an independent review of corporate governance within Wirecard Asia Holding Pte Ltd (“**WDAH**”) (see *ACRA BizInsights Business Profile search annexed hereto as **Appendix 1*** and Wirecard Singapore Pte Ltd (“**WDSG**”) (see *ACRA BizInsights Business Profile search annexed hereto as **Appendix 2***, following a whistleblower’s report on certain irregularities. In particular, these irregularities pertain to transfers of monies pursuant to purported contracts entered into by various entities including WDAH and WDSG.
3. We are also instructed to put up a preliminary report of our findings and advise you of potential risks and/or exposure, if any, arising from the irregularities. This report will be subsequently augmented or amended as the investigation progresses and further facts emerge (and are verified from time to time).
4. In essence, the whistleblower has disclosed that one Mr. Edo Kurniawan (“**Edo**”) (see *ACRA BizInsights People Profile search annexed hereto as **Appendix 3***, the VP Controlling & International Finance and director of WDAH has been creating and/or issuing instructions for the creation of false contracts and false invoices to deliberately conceal round-tripping of monies amongst Wirecard entities and/or affiliates of Wirecard and/or third parties.
5. To maintain his anonymity, the whistleblower shall be referred to as “Bobby” for present purposes. Prior to 26 April 2018, Bobby had informed Mr Pavandeep Gill (Senior Legal Counsel, APAC) (“**Pavandeep**”) and Mr Royston Ng (VP Global Regulatory Compliance) (“**Royston**”) of the irregularities.
6. For the purposes of our independent review, we have been provided with (and are still in the process of reviewing):
 - a. email archives of one James Wardhana (“**James**”), who holds the job title of International Finance Project Manager, Finance & Controlling Asia Pacific in Wirecard SG;
 - b. email archives of one Chai Ai Lim Irene (“**Irene**”), who is the Head of Finance (APAC) in Wirecard SG; and
 - c. email archives of Mr. Edo.

7. We have not commenced a full review of:
 - (i) Irene's emails prior to her re-joining Wirecard late last year (2017); and
 - (ii) Edo's non-archived emails which will be his emails for the last 12 months.
8. We have also interviewed Bobby extensively on 27 April 2018 at our premises and formally recorded his evidence.

II. SUMMARY OF OUR FINDINGS TO DATE AND OUR RECOMMENDATION

9. The documents that we have reviewed to date independently corroborate Bobby's disclosures, and in addition, reveal further potential misdeeds by Edo, James and Irene. The findings below are based on instructions we have received as well as documents reviewed.
10. In particular:
 - a. There is evidence to suggest that Edo, James and Irene have knowingly worked together to create and backdate agreements in order to support invoices that have been billed by Wirecard SG up to three years prior. The e-mails reviewed which discussed the agreements appear to have no involvement outside of Finance or even the counterparties. To date, we have not seen a single e-mail from any of the counter-parties which, given the nature and size of the deals, raises doubt as to the authenticity of the same. There are strong reasons to believe that both the agreements and invoices may be fictitious.
 - b. There is evidence to suggest that Edo, James and one Widhayati Darmawan (who we understand to be a director of PT Aprisma) have worked together to sign backdated agreements in order to support invoices that have been billed by PT Aprisma to third parties such as MILE & Associates, Right Momentum Consulting Sdn Bhd, Flexi Flex Abrasives, and Matrimonial Global.
 - c. There is evidence to suggest that Edo, Irene and one N R Venkatesan (who we understand to be a director of Hermes) had worked together to create and backdate an agreement relating to Hermes and a third party named Orbit Corporate Leisure Travels I Private Limited.
 - d. There is evidence to suggest that the share capital injection of €2 million by Wirecard AG into Wirecard HK was premised on a misrepresentation perpetuated by Edo that Wirecard HK had revenue of €3 million. We understand that these financials were submitted to the Hong Kong Monetary Authority ("HKMA") as part

of Wirecard HK's application to be licensed to carry out merchant acquiring business in Hong Kong.

- e. On the face of the evidence uncovered so far, these acts appear to bear out at the very least serious offences of forgery and/or of falsification of accounts/documents under section 477A of Singapore's Penal Code. As these acts were intentional, there are reasons to suspect that they may have been carried out to conceal other misdeeds, such as cheating, criminal breach of trust, corruption and/or money laundering.
11. As such, we strongly recommend a full-scale investigation to be conducted, given:
- a. the high quantum of sums involved in the transfers of monies;
 - b. the serious nature of the breaches as they appear; and
 - c. the potential triggering of strict reporting obligations under Singapore law (and potentially German law).
12. We first set out briefly the background facts below, based on revelations made by Bobby.

III. DISCLOSURES MADE BY BOBBY

A. General overview

13. Firstly, Bobby has revealed that he suspects that Edo has been creating or issuing instructions for the creation of false contracts and false invoices to cover up, amongst others, round-tripping of monies amongst Wirecard entities and/or affiliates of Wirecard and/or third parties.
14. In particular, Bobby has mentioned the following entities:

Wirecard entities/affiliates

- a. Wirecard Hong Kong Limited ("**Wirecard HK**");
- b. Wirecard Payment Solution Malaysia Sdn Bhd ("**Wirecard Malaysia**");
- c. Hermes I Tickets Private Limited ("**Hermes**");
- d. PT Aprisma Indonesia ("**PT Aprisma**");
- e. GI Philippines Corp ("**GI Philippines**") (see ACRA BizInsights Business Profile search annexed hereto as **Appendix 4**); and

- f. GI Technology Private Limited (“**GI Tech**”).

Third parties

- g. Centurion Online Payments International (“**Centurion**”);
- h. Maxcone Ltd (“**Maxcone**”);
- i. Flexi Flex Abrasives Sdn Bhd (“**Flexi Flex**”), which we understand to be a water pump company providing hydraulics, hoses, fitting, tubing, valves and piping solutions with no financial technology-related capability (see <http://flexiflex.sg/about-us/>);
- j. Inventures Technology Online Pte Ltd (“**Inventures**”) (see ACRA BizInsights Business Profile search annexed hereto as **Appendix 5**); and
- k. Beroe Singapore Pte Ltd (“**Beroe**”) (see ACRA BizInsights Business Profile search annexed hereto as **Appendix 6**); and
- l. International Techno Solutions Pte Ltd (“**International Techno**”) (see ACRA BizInsights Business Profile search annexed hereto as **Appendix 7**).
15. Notably, GI Philippines, Inventures and International Techno all share the same company secretary, one R. Shamugaratnam (ID No. S1775936A). It may be worth exploring the extent and nature of Edo’s relationship with Shamugaratnam and whether there is any reason behind appointment of the same company secretary for these three companies.
16. Secondly, Bobby has informed that the Finance team in Singapore is in charge of consolidating the reporting packages of regional Wirecard offices, and sending the consolidated report(s) to Wirecard AG. Bobby has informed that he has seen documents that indicate that certain members of the Finance team in Singapore intentionally adjust the figures without proper basis in the reporting packages provided by the regional Wirecard offices before forwarding the same to Wirecard AG. In particular:
- a. Bobby has seen documents indicating that the contents of the reporting package sent by Wirecard New Zealand Limited (“**Wirecard NZ**”) to Wirecard SG, and the contents of the report that was subsequently sent by Wirecard SG to Wirecard AG, are materially different.
- b. Furthermore, Bobby informs that an accounting staff member has told him that the Finance team had made adjustments to figures, resulting in WDSG’s external auditors, Ernst & Young, refusing to sign off on the 2016 annual report. In particular, Bobby said that instead of the margin revenue being reported, the gross revenue was instead reported. Bobby did not specify which Wirecard entity this relates to. We understand the gulf of the impairment differential to be in the region of SGD22 million. We also understand from Pavandeeep and Royston that it is imperative that the 2016 audited financial statements for WDSG are issued without qualification and as soon as possible, as this is one of the key prerequisites for certain partners such as Visa, who require it to provide Wirecard Singapore with a

license to operate as a principal member. Failure to do so might materially jeopardise Wirecard's business in Singapore and in parts of the region.

17. Bobby suspects that Edo is assisted by James Wardhana. Bobby informs that Edo has referred to James as his "*secret agent*".

B. Centurion and Maxcone

18. Bobby has seen documents that indicate that Wirecard SG has been owed monies amounting to several million dollars for several years, yet it appears that Wirecard SG has not reclaimed and/or demanded these Account Receivables. We understand that some efforts have been made, albeit in vain. In particular, Bobby has seen documents that show that several millions are owed by Centurion and Maxcone to Wirecard SG. Centurion's office and Maxcone's office are both purportedly located in the Philippines. We understand that no one in the Finance team is seemingly aware of these accounts except Edo and possibly Irene.

C. PT Aprisma

19. Bobby has on "*a couple of*" occasions personally witnessed James typing out contracts on his computer. One such contract was on PT Aprisma's header. Bobby does not recall the contents of the other contracts that he saw James creating. We also understand that there are various emails between James, Irene and Edo containing drafts of such documents, indicating active turns of drafts.
20. Bobby has recently seen PT Aprisma's liquidity forecast. He has noted that PT Aprisma's outflow is high, yet its inflow is low.
21. Bobby has also recently seen PT Aprisma's Account Receivables (Aging), which listed both the figures due and owing to PT Aprisma from its customers, as well as the names of the customers. Most of the customers named are banks, which did not give rise to concern as Bobby believes that PT Aprisma's nature of business is such that its customers ought to be banks. However, the document also names International Techno as one of PT Aprisma's clients. Bobby conducted a Google search and realised that International Techno is a company based in Singapore. Bobby pointed out that it is suspicious that International Techno is named as a customer of PT Aprisma.
22. Apart from International Techno, Wirecard Malaysia, Right Momentum, etc. as non-bank entities should also have no place in the AR schedule for PT Aprisma.

D. Wirecard HK, Inventures, Hermes and GI Tech

23. Bobby has informed that sometime in or around January 2018, Edo called a meeting amongst 5 or 6 members of the Finance team in Singapore, including Bobby. During the meeting Edo told the participants of that meeting that they were required to take certain steps to engineer an increase of €2 million of the share capital of Wirecard HK. The steps were written down by Edo on a presentation board.
24. The steps included finding a company to which Wirecard HK would bill, in order to increase Wirecard HK's revenue to €3 million. The purpose of this was to convince Wirecard AG to increase Wirecard HK's share capital.
25. Wirecard HK is a dormant entity. Such volume of revenue is hence inexplicable.
26. During the meeting, Edo also instructed James to come up with an agreement.
27. Bobby has informed that Wirecard HK's share capital was in fact increased by €2 million, through an injection by Wirecard AG. Wirecard AG subsequently paid \$/€2 million to Inventures. We understand that Inventures may have then paid money to Hermes, which needs to be verified. The concern here is that monies originally intended for a share capital increase as part of the HKMA license application appears to have left Wirecard HK for an unrelated third party. Bobby has informed that from what Edo has told him, Hermes is to pay a certain sum to GI Tech. The payment to GI Tech is intended to assist GI Tech in clearing its overdraft. The Inventures invoices and cover email are annexed hereto as **Appendix 8**.
28. Bobby further understands from Edo that although GI Tech has a cash deposit in its bank account, this cash deposit cannot be used to clear its overdraft. Edo did not tell Bobby the reason for this.

E. Wirecard Malaysia, Beroe, Hermes and GI Tech

29. In around March 2018, Edo showed Bobby an invoice from a company named Beroe to Wirecard Malaysia. The invoice is for the sum of USD 500,000, for "*Market Intelligence Support*". However, there is evidence that the GM of Malaysia, Chan Chun Fee, does not know who Beroe is and does not know of any services provided in relation to "*Market Intelligence Support*". It is questionable whether any report was prepared for purposes of such market intelligence.

30. WDAH's funds were to be used to pay the Beroe invoice. Bobby questioned why WDAH was required to make the payment, since the invoice was made out to Wirecard Malaysia. Edo replied that the cash would be eventually returned to WDAH.
31. Edo further said that after payment was made from WDAH to Beroe, Beroe would then pay a sum to Hermes. Hermes would then pay a sum to GI Tech. Either Hermes or GI Tech would then subsequently make a payment of a sum to Wirecard Malaysia. Finally, Wirecard Malaysia would then make payment back to WDAH.
32. Edo explained that the purpose of these transactions was to assist Hermes to hit its EBITDA target. (Separately, David Lau, GM of Wirecard Hong Kong, has also confirmed, in respect of software sales there, that there are no actual sales and these are simply adjustments given for EBITDA purposes.)
33. On 3 April 2018, Edo sent an email to certain members of the Finance team in Singapore, stating that the total payable to Beroe was €2,080,000, and that it would be paid by WDAH on behalf of Wirecard Malaysia.
34. Bobby informed that to date, USD 1 million has been paid by WDAH to Beroe.
35. The remaining balance is to be paid to Beroe by this week (week of 30 April). There is a supporting agreement between Wirecard Malaysia and Beroe with a contract value of €2 million.
36. Edo had instructed the payment to Beroe to be €2 million and 4% of the same, amounting to €2.08million. The 4% does not appear to be included in the contract.
37. As both WDAH and WDSG did not have the funds to pay for USD1.5 million, Edo, upon Irene's consultation with him, suggested the routing of funds from "WD India". The intended flow, as per Edo's email dated 2.5.18 (12:40pm) to one Manoj Sahu, copying NR Venkatesan, Srinivasan Chellaiah (Head of Finance & Controlling, WD India), Irene and James, is as follows: USD 1million from "Mindlogicx" → Hermes → Wirecard India (for JPPL project) → WDSG → WDAH → Beroe → Mindlogics → Hermes.
38. It is unclear whether there will be accounting entries booked for the flows. Edo is likely to get cash from the group on a monthly basis and that the agreement is currently being drafted.

F. GI Philippines

39. Bobby has informed that on or about 5 April 2018, GI Philippines asked WDSG for transfer of funds amounting to PHP 38,285,148 (equivalent of US\$ 737,672 as at the date of the request) to GI Philippines's bank account. GI Philippines further informed that this request was "*as per the guidance of Sir Edo.*"
40. Bobby eventually learned that the funds were intended to be used for GI Philippines to pay taxes. However, Bobby has informed that GI Philippines did not have sufficient revenue to warrant this amount of tax. If so, then the revenue reported to the tax authorities in the Philippines must have been artificially inflated.
41. Nevertheless, the payment was eventually made from WDSG to GI Philippines on Edo's directions.
42. We further understand that the agreement between WDSG and GI Philippines (apparently to cover the USD700,000 tax penalty) for GI Philippines to supply software to Wirecard SG to enable Wirecard SG "*to sell products of the travel sector in B2B platform*" was executed in March 2018 but notarised with a notarised stamp dated October 2017.
43. We understand that Wirecard E-money Philippines's funds were used (without the current new GM's, Martha Borja's, knowledge, who subsequently found out the following day after the bank gave her a ring to inform her) as an advance. Martha was a senior employee in Citibank and recently hired by Wirecard to be the GM in PH. She has raised queries to date on this transaction and has not received a response. The bank instruction to process this payment was signed by Edo and Jeffry Ho.
44. The agreement/documents between GI Philippines and WDSG, request of funds to pay the tax based on the agreement, and confirmation through Telegram messages between Pavandeep and Arun Babu (one of the signatories to the agreement) that the agreement was only just signed this year, are annexed hereto as **Appendix 9**.

G. Flexi Flex, Wirecard HK and PT Aprisma

45. Bobby disclosed that Edo sent an invoice on the Flexi Flex corporate header to a member of Wirecard SG's Finance team allegedly for the sum of €15,000 (although our records show amounts of €600,000 for a Flexi Flex invoice to Wirecard HK and PT Aprisma), and told him to effect the payment from WDAH's bank account on behalf of Wirecard HK and PT Aprisma. The team member effected the payment online.
46. After the payment was processed, Edo told the team member to change the name of the beneficiary from "*Flexi Flex Abrasives Sdn Bhd*" to "*Flexi Flex Abrasives*". James signed

off on the request to the bank for the amendment. Bobby does not know the reason for Edo's request for the amendment, nor whether the amendment was effected by the bank.

IV. OUR FINDINGS TO DATE

47. We undertook the task of reviewing documents and emails independently, to determine whether they corroborate the disclosures made by Bobby. We set out our findings below:

A. Beroe

48. We have reviewed several documents and they support Bobby's revelations described above:

- a. We have seen an invoice dated 30 October 2017 from Beroe to Wirecard Malaysia, for payment of US\$ 500,000 for "Market Intelligence Support".
- b. We have reviewed emails between Edo and a staff member of WDAH dated 26 March 2018, in which Edo gave confirmation of the instruction that WDAH was to pay for the invoice on behalf of Wirecard Malaysia. The payment was initiated on the same day, and successfully completed on 3 April 2018, from WDAH's bank account.
- c. We have seen an email from Edo to a staff member of WDAH dated 3 April 2018, in which Edo stated:

Wirecard group engaged vendor Beroe Singapore Pte. Ltd to do market analysis in Malaysia particularly. The work have done on March 2018, for total amounting to equivalent EUR 2.080mil. ... Meantime, due to limitation EUR amount in the bank of Malaysia, WD Asia Holding will pay on behalf.

49. Beroe is a Singapore company. The documents referred to above are annexed hereto at **Appendix 10**.

50. It is curious that Edo's email refers to payment of 2.08 million **euros**, when the invoice by Beroe was set out in **US dollars**.

51. We also observed that although the invoice was issued from Beroe to Wirecard Malaysia, the invoice stated that the payment due was "USD Five Lakhs Only". A "lakh" is a unit in the Indian numbering system equal to 100,000 (not usually used in Singapore commercially). This appears to corroborate Bobby's disclosure that the sums transferred

to Beroe were intended to eventually end up with Hermes/GI Tech (which are both Indian companies).

52. As it is not likely that the invoice is genuine, it is necessary to trace the monies to determine whether as a matter of fact, they ended up with the intended recipients. Tracing the monies would also reveal the true purpose behind the transfer of the funds.
53. Finally, considering that only US\$ 1 million has been paid so far by WDAH to Beroe, Wirecard AG may wish to place greater urgency on this aspect of the inquiry in order to prevent a further potential loss of US\$ 1.08 million from WDAH's bank account.

B. Centurion and Maxcone

54. On 31 October 2017, James sent an email to Edo, which *inter alia* stated:

Maxcone Centurion, current agreement is between WD Bank and them, we have not amend or sub-contract signed between WDS and WD bank. Can we draft it and backdate the agreement? Who can we get signature on behalf of WD bank?

55. On 25 January 2018, four Word documents were created by Irene. These documents are:
 - a. An Independent Sales Organization Agreement between Centurion and Wirecard SG (the "**Centurion-Wirecard SG Agreement**"). According to the document's properties, it was created by Irene on 25 January 2018 at 6.59pm, and it was last saved on 6 February 2018 at 11.43am. Irene has inserted a comment at the top of the agreement, which states "*Must dated in 2014 since first billing is done in 2014*". This strongly suggests that the agreement has been created later to account for bills that have been issued since 2014.
 - b. An Addendum to the Centurion-Wirecard SG Agreement, which sets out the amount payable by Centurion to Wirecard SG. According to the document's properties, it was created by Irene on 6 February 2018 at 10.51am, and it was last saved on 6 February 2018 at 11.43am.
 - c. An Independent Sales Organization Agreement between Maxcone and Wirecard SG (the "**Maxcone-Wirecard SG Agreement**"). According to the document's properties, it was created by Irene on 25 January 2018 at 6.59pm, and it was last saved on 6 February 2018 at 11.42am. Irene has inserted a comment at the top of the agreement, which states "*Must dated Jan 2015*".
 - d. An Addendum to the Maxcone -Wirecard SG Agreement, which sets out the amount payable by Centurion to Wirecard SG. According to the document's

properties, it was created by Irene on 6 February 2018 at 10.51am, and it was last saved on 6 February 2018 at 11.43am.

(collectively, the “**Centurion and Maxcone Agreements**”)

56. On 6 February 2018, Irene emailed the Centurion and Maxcone Agreements to Edo “for [his] review”.
57. The documents referred to above are annexed hereto at **Appendix 11**.
58. It would appear that Irene had created the Centurion and Maxcone Agreements upon Edo’s and/or James’ instructions. Irene’s reference to “*first billing...in 2014*” in the Centurion-Wirecard SG Agreement would also suggest that more than one bill has been issued since 2014. This may account for the “*several millions*” that is recorded as due and owing from Centurion (and also Maxcone) to WDSG, as disclosed by Bobby.
59. Under the circumstances, it is necessary to undertake a full review of the Centurion and Maxcone invoices that have been issued by WDSG to date. It is also necessary to question Irene, James and Edo in order to determine why the invoices were issued, whether payment has been made (and if so, by what mode and of what amount), and why the Centurion and Maxcone Agreements were created and backdated.

C. PT Aprisma

60. Three sets of documents have thus far been identified in relation to PT Aprisma.

(1) Bijlipay/Skilworth Technologies Private Limited

61. An email chain containing emails dated 15 March 2016 to 16 January 2018 refers to an “*SPA between Bijlipay and PT*”. We are instructed that Bijlipay is the brand name of an mPOS solution by a company called Skilworth Technologies Private Limited (“**Skilworth**”). We also understand that Skilworth has a partnership with Wirecard AG to provide Bijlipay to the Indian market.
62. It does not appear to us that the sale and purchase agreement (ie. SPA) between Bijlipay and PT Aprisma is genuine, based on the nature of the business relationship between Skilworth and Wirecard AG.
63. The email chain is annexed hereto at **Appendix 12**.

(2) MILE & Associates

64. We have seen a purported Purchase Agreement dated 25 July 2017 for the supply of a product named “Prisma Digital Modular” by PT Aprisma to a Maldivian company named MILE & Associates (“**MILE**”). Based on the agreement, the agreed price for the sale is €2,500,000. We have not yet located a signed copy of the Agreement, but the person named on the document as PT Aprisma’s signatory is Widhayati Darmawan (“**Widhayati**”) as PT Aprisma’s director.
65. A Word copy of the Purchase Agreement was emailed by James to Edo on 17 January 2018 “for execution”, and was sent again by James to Edo via email dated 5 February 2018. Considering that the Agreement is dated 25 July 2017, but requests for execution took place thereafter, we suspect that the agreement is not genuine.
66. The documents referred to above are annexed hereto at **Appendix 13**.

(3) Right Momentum Consulting Sdn Bhd

67. A Purchase License Agreement dated 25 October 2017 for the supply of a product named “Prisma Mobile Platform” by PT Aprisma to Right Momentum Consulting Sdn Bhd (“**Right Momentum**”) indicates that the agreed price for the sale is €2,500,000. The Agreement is signed by Widhayati and Edo as PT Aprisma’s directors.
68. Very oddly, the letterhead and footer of this Agreement contain WDAP’s details. Yet, the Agreement is purportedly signed between PT Aprisma and Right Momentum only. Given that Bobby has suggested that James had a hand in creating agreements, this Agreement appears likely to have been created by James, who neglected to change the details in the letterhead and footer. In this regard, we have seen an email dated 14 March 2018 where James Wardhana has e-mailed the logo of Right Momentum to himself.
69. On 22 February 2018, James emailed a Word version of the Agreement to Patricia Irmalia (“**Patricia**”), Widhayati and Edo. Later that same day, Patricia (whose email signature states that she is Widhayati’s Executive Assistant) emailed a PDF version of the Agreement to James; the PDF version now contains Widhayati’s signature. Considering that the Agreement was dated 25 October 2017, but was signed by Widhayati only on 22 February 2018, it is necessary to determine whether or not the Agreement is genuine.
70. It also remains to be discovered as when Edo signed the Agreement, and when Right Momentum’s signatory (a Chan Chee Pong who is purportedly Right Momentum’s director) signed on the Agreement.
71. PT Aprisma has issued 2 invoices dated 5 and 29 December 2017 to Right Momentum, requesting total payment of €2,500,000.

72. Strangely, a letter by PT Aprisma to Right Momentum dated 9 March 2018 asks Right Momentum to provide direct confirmation of the amount owed by Aprisma to Right Momentum to Aprisma's auditor. It is also indicated that €2,500,000 is due from PT Aprisma to Right Momentum (instead of the other way around, as reflected by the invoices).
73. To add to the confusion, an email dated 20 March 2018 by an employee of WDAH refers to IDR 39,953,500,000 (ie. €2,460,324) owed by Right Momentum to PT Aprisma.
74. We do not think that the underlying issue is one of administrative error. In the premises, it is necessary to determine (i) whether Right Momentum in fact owes money to PT Aprisma, and if yes, (ii) the amount due and owing, and (iii) the reason for PT Aprisma asking Right Momentum to confirm to PT Aprisma's auditors that Aprisma owed €2,500,000 to Right Momentum (instead of the other way around).
75. The documents referred to above are annexed hereto at **Appendix 14**.

(4) Flexi Flex

76. Based on documentation, Flexi Flex (which is described on its website - <http://flexiflex.sg/> - as providing hydraulics, hoses, fitting, tubing, valves and piping solutions) had purportedly provided 3D secure tokenisation to PT Aprisma in exchange for payment of €3,000,000:
- a. A Software Purchase Agreement between Flexi Flex and PT Aprisma dated 5 February 2018 (the "**Flexi Flex-Aprisma Agreement**"). The agreed price is € 3,000,000, to be paid in 3 tranches (20%, 50% and 30%). The agreement is purportedly signed by Widhayati and Edo, as directors of PT Aprisma. It is also purportedly signed by Mr Fred Pong, as director of Flexi Flex.
 - b. An invoice from Flexi Flex to PT Aprisma dated 5 February 2018, requesting payment of €600,000 for "*3D Secure Tokenisation – Signing*".
 - c. An invoice from Flexi Flex to PT Aprisma dated 5 March 2018, requesting payment of €1,500,000 for "*3D Secure Tokenisation – Integration*".
 - d. An invoice from Flexi Flex to PT Aprisma dated 14 March 2018, requesting payment of €75,000 for "*3D Secure Tokenisation – O.P.E.*".
77. In the same email dated 22 February 2018 that is described at paragraph 69 above, James emailed a Word version of the Software Purchase Agreement to Patricia, Widhayati and

Edo. Later that same day, Patricia emailed a PDF version of the Agreement to James; the PDF version now contains Widhayati's signature. Considering that the Agreement was dated 5 February 2018, but was signed by Widhayati only on 22 February 2018, it does not appear to us that the Agreement is genuine. We have also sighted an e-mail dated 14 March 2018 in which James has emailed the logo of Flexi Flex to himself.

78. The documents referred to above are annexed hereto at **Appendix 15**.

D. Wirecard HK

(1) Agreement with Right Momentum

79. Several documents suggest that Wirecard HK (a dormant entity) had provided services in exchange for payment of €3 million:

- a. An Issuing Advisory Support Agreement between Wirecard HK and Right Momentum dated 28 August 2017, under which Wirecard HK has agreed to provide an Issuing Advisory Platform for Right Momentum's mobile payment platform (the "**Wirecard HK-Right Momentum Agreement**"). The agreed price is EUR 3,000,000, in 2 tranches (30% and 70%). The agreement is signed by Edo purportedly as Wirecard HK's director. Mr Chan Chee Pong is named as the signatory for Right Momentum, as its director. His signature is not appended in the copy of the Agreement that we have located (which is in PDF format).
- b. An invoice from Wirecard HK to Right Momentum dated 29 August 2017, requesting payment of €900,000 for "*Issuing Advisory Support (30% upon Signing)*".
- c. An invoice from Wirecard HK to Right Momentum dated 29 December 2017, requesting payment of €2,100,000 for "*Issuing Advisory Support (70% upon UAT)*".
- d. A document titled "*User Acceptance Test (UAT) Sign-Off, Right Momentum Consultancy Sdn Bhd*", for Right Momentum to sign off in relation to an "Issuing Advisory Platform" provided by Wirecard HK. Edo has signed as Wirecard HK's director.

80. However, we have also sighted an email from one Chew Shu Yin to James Wardhana on 22 March 2018, showing that the Wirecard HK-Right Momentum Agreement was still in the process of being signed as at that date.

81. The documents referred to above are annexed hereto at **Appendix 16**.

82. As described at paragraph 23 above, Bobby has disclosed that Edo told 5 or 6 employees of Wirecard SG that they were to find a company to which Wirecard HK would bill, in order to increase Wirecard HK's revenue to €3 million. The Agreement between Wirecard HK and Right Momentum happens to be for the exact same amount.
83. As described at paragraph 26 above, Bobby has also revealed that Edo instructed James to come up with an agreement. Despite strong suspicions to the contrary, it is necessary to directly question Edo and James as to whether the Issuing Advisory Support Agreement is genuine, and whether Right Momentum has paid the €3 million to Wirecard HK.

(2) Agreement with Flexi Flex

84. Several documents appear to suggest that Flexi Flex had agreed to provide consultancy services to Wirecard HK for the cost of €4 million:
- a. A Consultancy Agreement between Flexi Flex and Wirecard HK dated 5 January 2018. The agreement is signed by Edo, purportedly as director of Wirecard HK. Mr Fred Pong is named as the signatory for Right Momentum, as its director. His signature is not appended in the copy of the Agreement that we have located (which is in PDF format).
 - b. An invoice from Flexi Flex to Wirecard HK dated 5 February 2018, requesting payment of € 600,000 for "*Issuing Platform Consultation – Signing*".
 - c. An invoice from Flexi Flex to Wirecard HK dated 5 March 2018, requesting payment of €1,500,000 for "*Issuing Platform Consultation – System Readiness*".
 - d. An invoice from Flexi Flex to Wirecard HK dated 14 March 2018, requesting payment of €900,000 for "*Issuing Platform Consultation – UAT & Certification*".
 - e. An invoice from Flexi Flex to Wirecard HK dated 14 March 2018, requesting payment of €60,000 for "*Issuing Platform Consultation – O.P.E.*".
85. However, we have also sighted an email from one Chew Shu Yin to James Wardhana on 22 March 2018, showing that the Consultancy Agreement between Flexi Flex and Wirecard HK was still in the process of being signed as at that date.
86. The documents referred to above are annexed hereto at **Appendix 17**.
87. As described at paragraph 25 above, Bobby has informed that Wirecard HK is a dormant entity and it is unlikely that the Consultancy Agreement is genuine.

(3) Increase in share capital of Wirecard HK

88. An email chain containing emails between certain members of the Finance team in Singapore and Wirecard AG dated between 31 January to 15 February 2018 makes it clear that the plan to increase Wirecard HK's share capital was known to representatives of Wirecard AG (including Mr George-Alexander Truemper, Ms Dagmar Schneider, and Mr Thorsten Holten). The email also clarifies that it was Edo who had first spoken to Wirecard AG about the plan. The email chain is annexed hereto at **Appendix 18**.
89. This email chain supports Bobby's disclosure that Wirecard HK's share capital was in fact increased by €2 million, through an injection by Wirecard AG.
90. We understand that these financials were submitted to the Hong Kong Monetary Authority ("HKMA") as part of Wirecard HK's application to be licensed to carry out merchant acquiring business in Hong Kong.

E. Wirecard SG

(1) Agreement with Flexi Flex

91. On the face of several documents, it appears that WDSG had provided a product to Flexi Flex in exchange for payment of €3 million:
- a. An Issuing Advisory Support Agreement between Wirecard SG and Flexi Flex dated 17 August 2017, under which WDSG agrees to provide an Issuing Advisory Platform for Flexi Flex's mobile payment platform (the "**Wirecard SG-Flexi Flex Agreement**"). The agreed price is EUR 3,000,000, in 2 tranches (30% and 70%). The agreement is signed by Edo as WDSG's director. Mr Fred Pong is named as the signatory for Flexi Flex, as its director. His signature is not appended in the copy of the Agreement that we have located (which is in PDF format).
 - b. An invoice from Wirecard SG to Flexi Flex dated 28 August 2017, requesting payment of €900,000 for "*Issuing Advisory Support (30% upon Signing)*".
 - c. An invoice from Wirecard SG to Flexi Flex dated 29 December 2017, requesting payment of €2,100,000 for "*Issuing Advisory Support (70% upon Signing)*".

- d. A document titled “*User Acceptance Test (UAT) Sign-Off*”, for Flexi Flex to sign off in relation to an “Issuing Advisory Platform” provided by Wirecare SG.
92. The documents referred to above are annexed hereto at **Appendix 19**.
93. Very curiously, we have observed that the text of the Wirecard SG-Flexi Flex Agreement appears to be identical to the Wirecard HK-Right Momentum Agreement (described at paragraph 79(a) above), but for the different party names and different date. Furthermore, the signatory portion of the Wirecard SG-Flexi Flex Agreement names Edo as director of Wirecard **HK**, not Wirecard **SG**. There is a strong possibility that the Wirecard SG-Flexi Flex Agreement was directly copied from the Wirecard HK-Right Momentum Agreement, and hence it may not be genuine.
94. The invoices issued by Wirecard SG to Flexi Flex, and the invoices issued by Wirecard HK to Right Momentum, also appear to be largely similar barring differences in the date, party names, and bank account details.

(2) Agreement with Right Momentum

95. Several documents appear to suggest that Right Momentum had provided a 3D secure tokenisation to WDSG in exchange for payment of €2,500,000:
- a. A Software Purchase Agreement between Right Momentum and Wirecard SG dated 5 February 2018 (the “**Right Momentum-Wirecard SG Agreement**”). The agreed price is €2,500,000, in 2 tranches (30% and 70%). The agreement is signed by Edo as WDSG’s director. Mr Chan Chee Pong is named as the signatory for Right Momentum, as its director. His signature is not appended in the copy of the Agreement that we have located (which is in PDF format).
- b. An invoice from Right Momentum to WDSG dated 5 February 2018, requesting payment of €500,000 for “*3D Secure Tokenisation – Signing*”.
- c. An invoice from Right Momentum to WDSG dated 5 March 2018, requesting payment of €2,000,000 for “*3D Secure Tokenisation – Completion*”.
- d. An invoice from Right Momentum to WDSG dated 5 March 2018, requesting payment of €60,000 for “*3D Secure Tokenisation – O.P.E.*”.
96. The documents referred to above are annexed hereto at **Appendix 20**.

97. The Flexi Flex-Aprisma Agreement and the Right Momentum-Wirecard SG Agreement appear similar to each other, with the only differences being party names, party signatories dates and consideration. We have strong suspicions that the Agreement may not be genuine.

F. Wirecard Malaysia

98. We also understand that there are emails between Edo and James; and Beehong and Chan Chun Fee in which James had initially sent them certain agreements concerning Flexi Flex and Right Momentum to sign. In brief, the Consultancy Agreement Managed Services between Wirecard Malaysia and Flexi Flex dated 14 December 2017 is an agreement for Wirecard Malaysia to provide maintenance, support and consultancy services for Flexi Flex's mobile platform, for an agreed price of EUR4 million in one tranche. The Software Purchase Agreement between Right Momentum and Wirecard Malaysia dated 5 February 2018 is an agreement for Right Moment to provide 3D secure tokenization to Wirecard Malaysia for an agreed price of EUR 3 million to be paid in three tranches.
99. We understand that these agreements were drafted with Beehong named as the rightful director and signatory of Wirecard Malaysia. After Chan and Beehong questioned these agreements and refused to cooperate/partake in their signing, we understand that James/Edo confirmed to them that these agreements would not be executed and processed. In this regard, we have sighted an email dated 23 March 2018 from James to Edo containing an e-mail chain between James and Beehong regarding the cancelled agreements. The draft agreements attached contain Chan's name as the draft signatory.
100. We understand that Beehong's name was subsequently removed from these agreements and replaced with Edo as director of Wirecard Malaysia. Edo is neither a director of Wirecard Malaysia nor a director of Wirecard Hong Kong (which he also signed off on behalf of in some of the agreements as director).
101. Chan has raised his objections to Jeffrey Ho and Ng Fook Sun as well as Edo that he refuses to be part of these kind of activities and if he were to find out that his company WDPSM is being used to facilitate such transactions, he would immediately relinquish his role as director. The documents referred to above as well as the WhatsApp messages with Pavandeep - see attached at **Appendix 21**.

G. Hermes

102. We have located a Word version of a Service Agreement between Orbit Corporate Leisure Travels I Private Limited ("**Orbit**") and Hermes dated 20 January 2017. Under the agreement, Orbit agrees to "*be the exclusive service provider to Hermes for the Travel Business and travel related services*" that Hermes provides to its customers and travel

agents. The document is saved under the file name “*Orbit Peacock agreement*”. According to the document’s properties, it was created and last saved on 2 January 2018 at 9.59pm by “NRV”. NRV is the initials of NR Venkatesan, who we understand to be a director of Hermes.

103. We have also located a Word version of an amended copy of the agreement. The document is saved under the file name “*Orbit Peacock agreement (amended)*”. According to the document’s properties, it was created on 3 January 2018 at 10.54am, and last saved on 3 January 2018 at 5.53pm. The author’s name is “*Wirecard*”.
104. An email chain between Edo and Irene containing emails dated 2 and 3 January 2018 suggests that Edo had sent himself the draft of the Service Agreement, and subsequently forwarded it to Irene. Irene appears to have amended the draft, and returned it to Edo “*to discuss*”.
105. The documents referred to above are annexed hereto at ***Appendix 22***.
106. Considering that the Service Agreement is dated January 2017, yet is being created, edited and amended in January 2018, there are also strong suspicions concerning whether this Agreement is genuine.
107. We have also had sight of further exchanges of e-mails involving Edo, in which he has orchestrated the backdating of documents, with a third party being provided a stamped backdated document to execute (see documents annexed hereto at ***Appendix 23***). For instance, there is an email dated 11 April 2018 sent by Edo to one Rajan Puri, copying one Varun Gupta, in which he requests Rajan to “[p]lease confirm that you are agreeable with the content and the signed copy of the attached agreement has been executed on 4th January 2017 with regards to addendum 1 and on 3rd April 2017 with regards to addendum 2 of the services agreement.”

V. POTENTIAL BREACHES

108. To date, this matter involves at least five identifiable jurisdictions: Germany, India, Malaysia, Hong Kong and Singapore.
109. Based on our preliminary review of the facts, further investigation is required to verify Bobby’s disclosures, trace the monies purportedly paid pursuant to various agreements and verify the authenticity of the agreements.
110. Nevertheless, we may draw strong and irrefutable inferences from the documentary evidence there has been at the very least several accounting irregularities that take the shape of forged agreements. In the best case scenario, the purpose behind these deliberate

acts may be limited to the false creation of revenue, with no wrongful misappropriation of the monies. In the worst case scenario, those acts may be committed to deliberately conceal more sinister wrong-doing, such as:

- a. Cheating;
- b. Criminal breach of trust;
- c. Corruption; and/or
- d. Money-laundering.

111. The list of offences identified above is non-exhaustive and we may expand the list further as the investigation progresses. Further, this advice is limited to Singapore law of general application at the date of this advice, as currently applied by the courts of Singapore. At the appropriate stage, we may be required to seek advice on German and Indian law.

112. The Singapore legislation referred to below are as follows:

- a. The **Penal Code** (Cap. 224);
- b. The Prevention of Corruption Act (Cap. 241) ("**PCA**"); and
- c. The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap. 65A) ("**CDSA**")

A. Falsification of Accounts/Documents

113. At the most basic level, the accounting irregularities and forged agreements amount to criminal offences under section 477A of the Penal Code. Section 477A of the Penal Code provides that: an employee who wilfully and with intent to defraud destroys, alters, conceals, mutilates or falsifies any book, electronic record, paper, writing, valuable security or account which belongs to or is in the possession of his employer, or has been received by him for or on behalf of his employer, would be guilty of an offence.

114. From the matters described above, several contracts, invoices and other documents seem to have been created to give the appearance of business having taken place by/with several Wirecard entities/affiliates. These documents may have been created, for example, to satisfy audit requirements, and may not reflect genuine business.

B. Forgery

115. Forgery is an offence under section 465 of the Penal Code. It is deemed to have taken place where a person makes any false document or electronic record or part of a document or an electronic record with intent (*i*) to cause damage or injury to the public or to any person,

(*ii*) to support any claim or title, (*iii*) to cause any person to part with property, (*iv*) to enter into any express or implied contract, or (*v*) with intent to commit fraud.

116. The Penal Code also clarifies that a person “makes” a false document or electronic record where he dishonestly or fraudulently —

- a. makes, signs, seals or executes a document or part of a document;
- b. makes any electronic record or part of any electronic record;
- c. affixes any electronic signature on any electronic record; or
- d. makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that the document or electronic record or electronic signature was made, signed, sealed, executed or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed, or at a time at which he knows that it was not made, signed, sealed, executed or affixed.

117. For example, if a person named as signatory to any of the agreements described above had not actually signed that agreement, but his/her signature had been appended to the agreement without his/her authority, then an offence of forgery would be made out.

C. Cheating

118. To prove cheating as defined under section 415 of the Penal Code, the following ingredients must be established:

- a. Firstly, a deception on any person; and
- b. Secondly, that the party deceiving:
 - i. fraudulently or dishonestly induced the deceived (*i*) to deliver any property, or (*ii*) to consent that any person shall retain any property; or
 - ii. intentionally induced the deceived to (*i*) do or omit to do anything which he would not do or omit to do if he were not so deceived, and (*ii*) which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

119. For example, if it is determined that Wirecard AG had been induced to make a share capital injection to Wirecard HK after considering false documentation and/or false

representations perpetuated by Edo and/or his associates, then an offence of cheating may be made out if any of the acts had a Singapore nexus.

120. Bobby has disclosed that WDAH is a new entity that recently enjoyed a share capital injection. If this injection was provided by Wirecard AG after false information was conveyed by Edo and/or his associates to Wirecard AG, then an offence of cheating could be established.
121. Bobby has also informed that Wirecard SG has obtained funds from Wirecard AG by either taking a loan from Wirecard AG (which it did in 2015 and 2016), or by charging Wirecard AG for services rendered (which was done in 2017). If, for example, Wirecard SG did not perform the services supposed to have been rendered, then Wirecard AG may be deemed a victim of cheating.
122. Further, if Edo has signed off as director of Wirecard Malaysia and Wirecard Hong Kong when he is director of neither company, in any agreement for the purposes of fraudulently or dishonestly inducing the delivery of property, this may amount to an offence of cheating under s420, Penal Code. Further, as mentioned above, the creation of such false documents in order to establish a false documentary basis for the transactions (whether in an attempt to hide the false transactions from auditors or otherwise) are also likely to amount to offences under s477A, Penal Code. We understand that it appears that Edo has been internally and occasionally informing his team the intentions behind the said agreements and empowering the same team to make the corresponding transfers.

D. Criminal Breach of Trust

123. Under Singapore law, the elements that must be established in respect of a criminal breach of trust (“CBT”) offence under section 405 of the Penal Code are:
 - a. The offender was entrusted in such capacity with property or dominion over property;
 - b. The offender dishonestly misappropriated or converted to his own use that property.
124. In turn, “dishonestly” is defined in section 24 of the Penal Code to mean that the accused did something with the intention of causing wrongful gain to one person or wrongful loss to another person. Section 23 of the Penal Code defines “wrongful gain” as “*gain by unlawful means of property to which the person gaining it is not legally entitled*” and “wrongful loss” as “*loss by unlawful means of property to which the person losing it is legally entitled*”.

125. For an offence under section 408 of the Penal Code, the two elements set out at paragraph 123 above, and the element that the accused was a clerk or servant, or employed as such, must be proven.
126. CBT offences tend to arise where an employee is entrusted with his employer's monies, and makes improper use of them, for example, by using them for his own purposes.
127. From the documents thus far uncovered, it is at this point premature to determine whether or not Edo and/or his associates dishonestly misappropriated monies from Wirecard entities/affiliates for his/their own use. Nevertheless, it seems unlikely that Edo and his associates would have perpetuated the various breaches for purely altruistic reasons and purely for Wirecard AG's benefit. Further investigations would be required to ascertain whether criminal breach of trust has occurred.

E. Corruption

128. The PCA is Singapore's primary source of anti-corruption and anti-bribery legislation. It applies to both private- and public-sector bribery offences.
129. The key provisions of the PCA are sections 5 and 6, which make it an offence for a person (including an agent) to (i) corruptly solicit, receive, agree to receive, give, promise or offer gratification, (ii) whether for his own benefit or for the benefit of another person, (iii) as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction, actual or proposed.
130. As defined in section 2 of the PCA, "gratification" can take various forms, including but not limited to: money; any gift, loan, fee, reward, commission, valuable security, property or interest in movable or immovable property, employment, contract, service, favour, advantage; and any offer, undertaking or promise of any of the aforementioned.
131. In assessing whether an offence of corruption has been committed under sections 5 or 6 of the PCA, there must have been giving, promising or offering, or soliciting, accepting or agreeing to receive a gratification in the belief that it is meant as a *quid pro quo* for conferring a dishonest gain or advantage. There must be a corrupt element in the transaction according to the ordinary and objective standard, followed by the offender's guilty knowledge that what he was doing was, by that standard, corrupt.
132. There is no exhaustive definition of a 'corrupt' transaction. To determine if a particular transaction is corrupt, the circumstances surrounding the provision of the benefit have to be examined. The courts will generally consider several factors, including:
 - a. Purpose behind the provision of the gratification;

- b. Proximity of time between the giving of gratification and the act of the receiver;
 - c. Any furtiveness or surreptitious element in the transactions;
 - d. Nature and frequency of the gratification;
 - e. Quantum of gratification;
 - f. Relationship between the parties; and
 - g. Whether there was any prior communication / solicitation before payment of gratification.
133. At this stage, there is insufficient information to determine whether or not Edo and/or his associates have committed corruption.
134. For instance, the fact of payment of USD 500,000 under the invoice dated 30 October 2017 from Beroe to Wirecard Malaysia in and of itself may serve as a potential red flag for corruption as we have not been shown any information to justify why such a large sum would be paid for “*Market Intelligence Support*”. This payment of US\$500,000 is the first of four payments which should amount to EUR 2.08m. We have sighted an e-mail dated 3.518 (3:24pm) from Irene to Edo listing out the repayment schedule to Beroe (see annexed hereto as “**Appendix 24**”).
135. Further, it may be that the round-tripping of monies has been used to cover up improper payments to third parties. Further investigations would be required to ascertain whether any corruption has taken place.

F. Money-laundering

136. Money-laundering is an offence under section 44 (assisting another to benefit from criminal conduct) and section 47 of the CDSA (acquiring, possessing, using, concealing, or transferring benefits or criminal conduct).
137. In particular, section 47(1), CDSA criminalises money-laundering a person’s own benefit from criminal conduct whereas section 47(2) criminalises money-laundering another person’s benefits from criminal conduct.
138. If, for instance, it is shown that Edo had instructed the creation of false agreements and invoices, and monies were transferred as a result of those false agreements and invoices, potential offences under section 47, CDSA may arise.

VI. POTENTIAL CIVIL CLAIMS

139. Based on the present facts, it is unclear whether Wirecard has in fact suffered any losses as a result of wrongdoing.
140. However, if these allegations are subsequently verified and it is shown that Wirecard has suffered loss as a result, Wirecard may consider potential civil claims against Edo for, among other things, breach of directors' duties and/or fiduciary duties and/or breach of his employment agreement and/or conspiracy to defraud. We will expand on this as required at the appropriate stage.

VII. POTENTIAL CORPORATE LIABILITY

141. In brief, under Singapore law, a parent entity may be liable for acts of its subsidiary if: (a) the corporate veil is pierced; (b) the subsidiary was acting as an agent of the parent at the material time; or (c) the parent entity was acting in conspiracy with its subsidiary. These principles apply to both civil and criminal liability.

A. Preliminary point: Attributing corporate liability

142. As a preliminary point, in the context of the attribution of liability to a corporation, Singapore courts apply the identification approach, namely, if a particular person represents the company's directing mind and will, then his acts are regarded as the company's acts.
143. In deciding whether the acts and state of mind of a particular employee or officer can be attributed to the company, the court must consider the language of a particular statute, its content and policy. There may be situations where the knowledge of a junior employee would be sufficient to fix the company with the requisite knowledge.
144. A company may be guilty of a crime even if the person whose knowledge and intention are attributed to it is acting in fraud of the company.

B. Piercing the corporate veil

145. Given that Edo is a director of the subsidiary WDAH, and not *qua* the parent entity Wirecard AG, the issue is whether acts of the subsidiary may be treated as acts of the parent entity.
146. It is trite that a company and its owner are two separate entities and the acts of the former will not be imported to the latter.

147. However, separation of legal personality may be ignored if the corporate veil is pierced. There are generally two justifications for doing so at common law — (a) where the evidence shows that the company is not in fact a separate entity; and (b), where the corporate form has been abused to further an improper purpose.
148. In *PP v Lew Syn Pau* [2006] 4 SLR(R) 210 [2006] SGHC 146, the Singapore High Court (per Sundaresh Menon JC, as he then was) held that the order of companies within a broader group structure did not mean that one could dispense with the need to view and understand each entity in the group as a separate legal entity.

C. Agency

149. A company may act as an agent for another (i.e. its members or controllers). If so, the parent company is liable for the subsidiary's acts on normal agency principles (i.e. on the basis of actual or apparent authority).
150. A company will be estopped from denying the authority of its agent if the three following elements are satisfied:
- a. The company has represented to some person that the agent in question has authority to do the act in question.
 - b. The representation must have been made by someone who has authority to make such representations on behalf of the company.
 - c. The person who wishes to enforce the contract against the company must have relied on the representation.

D. Conspiracy / Abetment by conspiracy

151. In respect of criminal liability, the parent entity may face an offence of abetment in Singapore, if there are any relevant acts of abetment (e.g. by conspiracy) by the parent entity taking place within Singapore: section 108A, Penal Code.
152. There are three forms of abetment recognised in Singapore under section 107 of the Penal Code: abetment by instigation; abetment by intentional aiding; and abetment by conspiracy. In practice, the charge of abetment by conspiracy is frequently used by the prosecution, especially in cases such as corruption, which is difficult to detect.
153. Although the parent company need not be equally informed as to the details, the parent must at least be aware of the general purpose of the plot and that plot must be unlawful.

The test of guilt is whether having regard to the immediate object of the conspiracy, the act done by the principal is one which (according to ordinary experience and commonsense) the abettor must have seen as foreseeable.

154. Further, it is necessary for a conspirator to play some role in the conspiracy, as mere knowledge or consent to a criminal scheme involving other individuals should not attract liability for criminal conspiracy.
155. There are no local reported cases involving omissions in the context of abetment by conspiracy. However, there is a Singapore High Court decision which has held that indifference or silence can suffice to constitute the offence of abetment by instigation (in the context of a personal injury matter): *Balakrishnan S and another v Public Prosecutor* [2005] 4 SLR(R) 249; [2005] SGHC 146. In that case, the Court held that the second appellant's failure to intervene when he witnessed the conduct of the instructors in dunking military trainees and preventing them from catching their breath, was tantamount to his encouragement and support of the offences. However, the Court observed that the accused person's mere presence at or near the water tub without awareness that an offence was being committed would not in itself amount to abetment.
156. For completeness, we should add that while there exists an offence of criminal conspiracy (i.e. an agreement to commit an offence) under Singapore law (section 120A of the Penal Code), court prosecutions under this provision are extremely rare, as compared to abetment by conspiracy (section 109 of the Penal Code), which is frequently used by the prosecution.
157. In respect of civil liability, the parent may face a claim in the tort of conspiracy, which may take one of two forms, *viz*, conspiracy by lawful means or by unlawful means. Generally, it must be proved that the defendants have combined to execute an injurious course of conduct. However, for conspiracy by lawful means, the test is more stringent as the alleged conspirators must have also acted with the predominant purpose to injure the claimant.
158. Combination does not require proof of a concrete or tangible agreement, and consent or agreement may be inferred from the parties' knowledge of the facts on which the conspiracy is founded, even if they did not appreciate the legal effect of those facts.
159. However, mere proof of the agreement is not sufficient and each of the alleged conspirators must also have acted or taken some step to further a common design.
160. It is not necessary for all of the conspirators to join in the scheme at the same time. Nor is it necessary for each to know what the other conspirators have agreed to do so long as they are sufficiently aware of the circumstances and have in mind the same object. In each case, the critical question is the extent to which they were aware of the plan and took part in its execution.

161. A conspirator need not know all the details of the plot as long as he is aware of the common objective and what his role in bringing it about involves. The question is whether a particular defendant, having regard to his knowledge, utterances and actions, was sufficiently party to the combination and the common design.

VIII. POTENTIAL REPORTING OBLIGATIONS

Reporting obligations under the CDSA

162. Section 39(1) of the Corruption, Drug Trafficking, and other Serious Offences Act (“CDSA”) provides that where a person “*knows or has reasonable grounds*” to suspect that any property was, inter alia, used in connection with any act which may constitute “*criminal conduct*”, that person shall lodge a report with the Suspicious Transaction Reporting Office (the “STR”) as soon as reasonably practicable.
163. “*Criminal conduct*” is in turn defined in the CDSA to include, inter alia, any act involving obstructing, preventing, perverting or defeating course of justice (section 204A, Penal Code), dishonest misappropriation of property (section 403, Penal Code) criminal breach of trust by clerk or servant (section 409, Penal Code) and falsification of accounts (section 477A, Penal Code).
164. In the circumstances, the local Wirecard entities may be obliged to lodge a STR pursuant to section 39(1) of the CDSA as soon as reasonably practicable, once it is established that there are reasonable grounds to suspect that monies have been moved in connection with criminal conduct.
165. Even if the local Wirecard entities do not lodge an STR, Wirecard’s auditors, may do so if they have reasonable grounds to suspect suspicious transactions.
166. Notably, the failure to lodge a STR pursuant to section 39(1) is an offence under section 39(2) punishable by a fine not exceeding S\$20,000. Further, the offender (and, where the offender is a company, its officers) could also be exposed to liability for assisting another to retain benefits from criminal conduct (section 44, CDSA) and/or acquiring, possessing, using, concealing or transferring benefits of criminal conduct (section 47, CDSA), for which the punishment could be (in the case of the company) a fine of up to S\$1,000,000 or (in the case of the officers) S\$500,000 and/or imprisonment of up to 7 years.

IX. CONCLUSION

167. Having examined Bobby's disclosures in detail, we find no reasonable basis to doubt his credibility. It does not appear to us that he has any motive to make false allegations. In fact, according to Bobby, he remains on good terms with Edo. We are also mindful of the fact that in making these disclosures, Bobby had inevitably also implicated himself. According to Bobby, he is driven by the desire not to perpetuate the wrongdoing.
168. Be that as it may, documentary evidence independently corroborates Bobby's disclosures. The manner in which documents and agreements were created (and falsified) raise very serious concerns. The fact that Edo signed off various purported contracts as a director of various entities (when he is not) is also a serious concern with potentially grave consequences. Whether there existed a genuine commercial relationship between the companies and various third parties remains unknown.
169. As mentioned above, we strongly recommend a full-scale investigation to be conducted, given: (a) the high quantum of sums involved in the transfers of monies; (b) the serious nature of the breaches as they appear; and (c) the potential triggering of strict reporting obligations under Singapore law (and potentially German law).
170. It is not difficult to verify at first instance with the various third-party companies purportedly involved whether the commercial relationships existed in the first place. Upon receiving your confirmation to proceed, we will work towards preparing an action plan moving forward and completing the inquiry.
171. Please let us know if you have any questions or require any further clarifications.

RAJAH & TANN SINGAPORE LLP
4 May 2018