

# When the boss asks you to do something illegal

Employees under duress can turn to an approach called ‘principled rebellion’. BY BEN CHESTER CHEONG

ON Jan 17, 2023, Agritrade International’s former chief financial officer (CFO), Lulu Lim, was sentenced to 20 years’ imprisonment. She had been convicted of 11 counts of cheating under section 420 of the Penal Code and one count of falsification of accounts under section 477A of the Code.

In her capacity as CFO, Lim had made false representations and submitted fictitious documents to various financial institutions. She deceived 16 financial institutions into believing that the consolidated financial statements for Agritrade and its subsidiary companies for the financial years ended June 30, 2016, 2017 and 2018 were audited when that was untrue.

Believing that the audited financial statements were genuine, the financial institutions then extended credit facilities to Agritrade. Lim had also instructed her subordinate to insert the auditor’s signature into a document that falsely reported Agritrade’s audited consolidated financial statements for the financial year ended Jun 30, 2018.

The 16 financial institutions extended over US\$580 million in credit facilities to Agritrade between January 2017 and November 2019. Agritrade eventually defaulted on these loans and the total loss suffered by the financial institutions amounted to some US\$460 million.

In Lim’s mitigation plea, one of the reasons cited by her for committing the offence was that her long-time superior, Agritrade’s founder Ng Say Pek, had significant control and influence over her and had pressured her to commit the offences.

While the district judge acknowledged that these factors were relevant to ensure proportionality in sentencing, the judge pointed out that Lim had worked for many years and should have known from the outset that what she was instructed to do was illegal.

The judge said that Lim could have refused to comply with Ng’s instructions and, if need be, leave Agritrade.

## Legal consequences of doing an illegal act

In the course of work, employees are often asked to perform various tasks. When an employee refuses to do something that an employer, or superior, asks him to do, that may be insubordination.

Under section 14 of the Employment Act, an employee may be dismissed if he behaves in a way inconsistent with fulfilling the conditions of his service. However, if an employee is directed to engage in illegal activities, that could constitute a legitimate reason for the employee’s non-compliance.

There are many difficult psychological battles to navigate when an employee is asked to do something illegal or unethical. If an employee refuses, he risks being fired or suffer personal consequences, such as a sullied relationship with the employer. The employer may also threaten the employee’s personal safety for refusing to comply with his demand.

But if the employee agrees to carry out the illegal task, there are serious ramifications. For instance, in Lim’s case, cheating and falsification of accounts are very serious offences with punishing legal consequences.

In addition, if an employer asks an employee to pay a bribe to a third party, that employee would be liable to be charged with corruption under section 5 of the Prevention of Corruption Act.

If an employer asks an employee to do something illegal and threatens the employee with death if he does not comply, the employee may



**Principled rebellion: The approach suggests eight steps for how employees can say no to their bosses, systematically and sequentially.**

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be able to argue duress as a defence under section 94 of the Penal Code. But this is a very narrow defence since there must be a threat of instant death which is difficult to prove.

Additionally, there is a necessity defence under section 81 of the Penal Code that the employee may raise if he believes that the harm and consequences to be avoided were so imminent as to justify the risk of doing an act that is illegal.

Again, this is a narrow defence because it is inexcusable for a person to justify the act of cheating various banks in order to keep a failing company afloat. One cannot be acting in good faith if he intends to cheat another person, even if the reason behind it may be altruistic.

Furthermore, if directors or officers of a company commit an illegal act, they would be liable for breaches of directors’ duties under section 157 of the Companies Act.

There are serious consequences for breaches of directors’ duties as errant directors would be liable to compensate the company for any losses the company has suffered as a result of their breach. This means the director can be subject to unlimited personal liability.

If directors had made payments to third parties and these were disguised as bribes to further business opportunities, the Singapore courts have held that these actions will be a breach of directors’ duties as the company would be committing an offence. Directors who caused their company to carry out an illegal act cannot be said to have acted in good faith in the best interests of the company.

## Practical solutions

To deal with bosses who ask employees to break the rules, Columbia professor Peter Coleman and psychologist Robert Ferguson in their 2016 *Harvard Business Review* article recommends an approach called “principled rebellion”.

They suggest eight steps on how one can say no to their bosses, both systemically and sequentially.

The first two steps are less drastic, which include appealing to the self-interests of those in

charge and their better angels. Hopefully, the employer can take a different route. The third and fourth steps are to say no and to say it even louder if necessary by involving other colleagues and friends.

The fifth step is to blow the whistle outside. For credibility, they recommend that the employee forgo his anonymity and identify himself at the outset.

The sixth step is strength in numbers by assembling a group of colleagues together to speak to someone superior to that employer.

The seventh step is to oppress those who do wrong by making things difficult for them in a way that exposes their own bad deeds. The final step is to take power through legal action.

If an employer dismisses an employee because the employee refuses to carry out an illegal act, the employee may be able to file a wrong-

ful dismissal claim with the Tripartite Alliance for Dispute Management.

Singapore does not have an overarching legislation on whistleblowing in Singapore. However, under section 424 of the Criminal Procedure Code, if an employee is aware that his employer has committed, or intends to commit, an illegal act, he has a legal duty to immediately report that matter to the police in the absence of a reasonable excuse to not do so.

Ultimately, if an employer asks an employee to perform an illegal act, the employee should not do it. It is better to resign with one’s integrity intact than to risk committing an offence and going to jail for it.

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