殖民地法典在当今金融犯罪实务中的应用

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一部至今有效的1871年法典

殖民地立法机构于1871年颁布的《刑法典》至今仍以《1871年刑法典》（Penal Code 1871）之名在新加坡生效，尽管已经过多次修订。[1] 其中的欺诈、刑事背信、伪造和伪造账目等罪名，构成了新加坡金融和贸易领域适用于欺诈行为的刑法骨干。因此，在新加坡为欺诈案件辩护或提起公诉的执业者，所处理的条文其结构可以追溯到麦考莱为英属印度起草的草案，以及直辖殖民地的立法计划。

这种延续性具有实际影响。新加坡的欺诈罪由法典规定的构成要件界定，新加坡、马来西亚和印度数十年的判例法对这些要件作了解释。法典以自身术语定义的“不诚实地”（dishonestly）和“欺诈地”（fraudulently）等概念，在细节上与英国的欺诈法有所不同。因此，在英国接受法律训练的律师处理新加坡案件时，必须适应这部法典，而印度和马来西亚的判决作为具有说服力的先例仍有参考价值。

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兴隆案的例证

对兴隆贸易（Hin Leong Trading）创办人的起诉，说明了这部法典如何适用于现代贸易融资欺诈。H部分将考察该公司2020年的倒闭。2024年11月18日，他因两项触犯《刑法典》第420条的欺诈罪和一项触犯第468条（结合第109条）的教唆伪造罪，被判处十七年半监禁。他通过公司员工向汇丰银行表示，兴隆已订立两份石油销售合同，并以伪造文件作为佐证，从而使相关应收账款获得贴现，汇丰银行为此发放了111,683,939美元。[2] 2026年3月，高等法院在上诉中考虑到他的退赔努力和年龄，将刑期减至十三年半。[3]

此案表明，一项在1830年代为印度起草、1871年在海峡殖民地颁行的条文，如何在21世纪用于惩处以欺诈手段贴现石油应收账款的行为。贸易融资的技术已经面目全非。但其背后的不法行为，即以伪造文件支持的虚假陈述从贷款人处获取资金，始终未变，而法典的一般性定义已被证明足够灵活，能够将其涵盖。

执业者核对清单

- 在任何欺诈或侵占案件中，尽早确定适用的《刑法典》罪名，尤其是欺诈、刑事背信、伪造和伪造账目。
- 分析法典本身对“不诚实地”和“欺诈地”的定义，不要假定英国的欺诈概念可以原封不动地适用。
- 查阅新加坡、马来西亚和印度就同一条文作出的判决，因为这三个法域都继承了印度的范本。
- 在贸易融资纠纷中，查阅源于1893年《证据条例》的《证据法》，以确定文件和电子记录的可采性。
- 把法典化的刑法与未法典化的合同法和信托普通法区分开来，后者调整同一事实下贷款人和投资者的民事索赔。

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注释

1. Singapore Statutes Online, “Penal Code 1871”（2026年10月访问）；Wikipedia, “Penal Code (Singapore)”（2026年10月访问）：该法典现为《Penal Code 1871》（2020年修订版），并经《Criminal Law Reform Act 2019》实现现代化。 ↩
2. Singapore Police Force, “Founder of Hin Leong Trading sentenced and jailed for cheating and instigating forgery”， 2024年11月18日：两项触犯《刑法典》第420条的欺诈罪和一项触犯第468条（结合第109条）的教唆伪造罪；判处17.5年监禁；汇丰银行发放了111,683,939美元。 ↩
3. Malay Mail, “Singapore’s Hin Leong founder OK Lim has jail term cut to 13½ years after High Court appeal”， 2026年3月4日：高等法院（Hoo Sheau Peng法官）以退赔努力和上诉人84岁高龄为由，将刑期从17½年减至13½年。 ↩

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