

SINGAPORE'S EXPERIENCE IN THE FIGHT AGAINST CORRUPTION

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I. INTRODUCTION

1. From 1995 to 2016, Singapore has consistently been ranked as the least corrupt Asian country according to Transparency International's Corruption Perceptions Index (CPI). Singapore was ranked 7th among 176 countries / economies with a score of 84 on the 2016 CPI. This ranking gives credence to the widespread perception that Singapore is one of the most corruption-free countries / economies in the world.
2. However, the path to where Singapore is today was certainly not easy, and by no means taken for granted. Prior to self-government in 1959, corruption was rampant in Singapore because of a myriad of factors, including inadequate laws, insufficient manpower in the anti-corruption agency, great disparity in pay between the public and private sectors, lack of commitment amongst enforcement officers etc. Essentially, the entire socio-economic climate made it ripe for corruption to take root, and it took a feat of political will to exterminate the scourge of corruption.
3. Thus, the four pillars to Singapore's anti-corruption strategy rose from the strong foundation of the political will to weed out corruption wherever it may occur – effective laws, independent judiciary, effective enforcement and responsive public service.
4. Drawing from Singapore's experience in fighting corruption, this paper will reflect on three distinctive features of the key legislation in Singapore, before discussing the recent challenge in private-sector corruption and how it has been largely overcome.
5. The fight against corruption in Singapore is governed by two pieces of legislation – the Prevention of Corruption Act ("PCA") and the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act ("CDSA").
6. The PCA is the primary legislation that established the Corrupt Practices Investigation Bureau ("CPIB"), empowers CPIB investigators, criminalises corruption and provides for the punishment and penalties for corruption offences.
7. Beyond the predicate offence of corruption, the CDSA complements the PCA in terms of criminalizing the secondary aspect of corruption offences – the acquisition or use of the benefits of corruption, assisting another person to do so, and tipping-off and disclosing information that is likely to prejudice an investigation conducted under the CDSA to any person. The CDSA also serves the function of disgorging the benefits of corruption in providing for the pre-conviction restraint and post-conviction confiscation of such benefits.

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A. Presumption of Benefits of Criminal Conduct

8. Giving due recognition to the reality that benefits of criminal conduct are generally difficult to trace to the source and even harder to prove as such, both the CDSA and the PCA provide for a presumption that any property or pecuniary resources held by the accused which is disproportionate to his known sources of income (hereinafter referred to as “concealed property”) is presumed to be benefits derived from criminal conduct.

9. This presumption has different implications when applied under the two statutes. Under the PCA, this presumption operates to buttress a finding of guilt for an offence of corruptly receiving gratification. It allows evidence of concealed property to be admitted and taken into consideration by the Court as corroborating a witness’ testimony that the accused accepted or obtained gratification, and as showing that the gratification was accepted or obtained corruptly as an inducement or reward¹. The PCA goes further in providing that the concealed property need not even be held in the accused’s own name – the accused shall be deemed to be in possession of the concealed property if it were obtained by a person whom, having regard to that person’s relationship with the accused, there is reason to believe to be holding the concealed property on behalf of the accused or as a gift from the accused².

10. The former UK Prime Minister David Cameron highlighted this aspect of the PCA in his foreword delivered for the London Anti-Corruption Summit 2016:

“Second, we need to deal properly and comprehensively with the corruption we expose. That means bringing the perpetrators to justice, actively enforcing anti-corruption laws and working together across international borders to hunt down the corrupt, prosecute them and send them to jail.

One cutting-edge idea to explore here comes from Prime Minister Lee Hsien Loong. In Singapore, instead of prosecutors having to prove the guilt of the corrupt, they reverse the burden of proof so that the accused have to show that they acquired their wealth legally.”

(emphasis in underline added)

11. Under the CDSA, this presumption operates to expand the scope of a convicted person’s assets which may be subject to a confiscation order³. As the amount to be recovered from the accused under the confiscation order is the value of the benefits derived by the accused from corruption⁴, this presumption allows for the concealed property to be confiscated from the accused even if such concealed property may not be directly traceable to the predicate offence of corruption.

12. The twin operation of this reversal of burden of proof – one going towards guilt and the other going towards confiscation – maintain and sustain the “high risk, low reward” climate that is anathema to corruption in Singapore.

¹ Section 24(1), PCA.

² Section 24(2), PCA.

³ Section 5(6) CDSA.

⁴ Section 10(1) CDSA.

B. Extra-territorial Reach of the PCA

13. Section 37 of the PCA makes Singapore citizens liable for corruption offences committed outside of Singapore and be dealt with in respect of that offence as if it had been committed within Singapore. This is a distinctive feature of the PCA which relies on the nationality factor to criminalize extra-territorial acts of corruption.

14. This extra-territoriality feature linked to the nationality jurisdiction to prosecute was employed in the 2011 case of *Public Prosecutor v Ang Seng Thor*⁵. Ang, a Singapore citizen, was the CEO and joint-Managing Director of a company called AEM-Evertch Holdings Ltd which was listed on the Singapore Stock Exchange. He faced two charges of corruptly giving gratification, one of which involved Ang giving a bribe of S\$50,000 in Malacca to a director of a Malaysian company in order to secure a deal for AEM⁶. Though the bribe was handed over in Malaysia, Ang was nevertheless prosecuted in Singapore pursuant to Section 37 of the PCA.

15. Ang pleaded guilty to both charges and was initially sentenced by the District Judge to the maximum fine of S\$100,000 for each charge, for a total sentence of S\$200,000 fine. Although Ang paid the fine in full, the Prosecution appealed against this sentence and submitted that a fine was too lenient and that a custodial sentence should be imposed on Ang in addition to a fine and disqualification to act as a director.

16. The Prosecution's appeal was allowed, and Ang's sentence was enhanced to six weeks' imprisonment and S\$25,000 fine per charge, with both imprisonment terms to run consecutively. The total sentence was therefore 12 weeks' imprisonment and S\$50,000 fine. Ang was also disqualified from acting as a director for five years from the date of his release from prison.

17. *Ang Seng Thor*'s case is significant not only because of the successful invocation of the extra-territoriality provision under Section 37 of the PCA, but also because it allowed for a concerted effort by the Prosecution to dispel the notion that private sector corruption offences did not warrant imprisonment terms, a misconception that was hitherto unchallenged. This will be discussed in further detail below.

C. Presumption of Corruption in the Public Sector

18. A distinctive and unique feature of the PCA is the presumption of corruption where the public sector is involved⁷. Thus, in prosecutions of public servants or persons who have dealings or seeks to deal with the Government or public bodies for corruption offences, the Prosecution need only prove that gratification was given to or received by that person. Section 8 of the PCA then presumes that such gratification was corrupt, and the burden is then shifted to that person to prove that the gratification was *not* corrupt.

19. This presumption reflects the paramount importance of a clean and incorruptible public service in Singapore. Public servants and people who deal with the public administration are held to a higher standard than everyone else not only because of the important roles they play, but also because the confidence in Singapore's public administration cannot be undermined

⁵ [2011] 4 SLR 217.

⁶ The other charge against Ang was for corruptly giving S\$97,158 in cash in Singapore to an agent of another company as 'kickbacks' for each purchase order raised by this company to AEM.

⁷ Section 8, PCA.

lest the core values of equality and meritocracy be eroded – the public service cannot only be incorruptible, it must also be *seen* to be incorruptible. In the words of the late Mr Lee Kuan Yew:

“Singapore can survive only if Ministers and senior officers are incorruptible and efficient... Only when we uphold the integrity of the administration can the economy work in a way which enables Singaporeans to clearly see the nexus between hard work and high rewards.”

20. This presumption provides an effective deterrence against corruption in the public sector. When combined with a strict code of conduct applicable to all public servants, disclosure requirements in respect of investments, holdings, property (real or movable) and receipt of gifts in official capacity, strong ethical values advocated and practised at the leadership levels of Singapore’s public service, public sector corruption cases account for only 15% of all corruption cases investigated in Singapore in 2016.

21. Since Mr Lee Kuan Yew, the founding Prime Minister of Singapore, and his team formed government in 1959, there has been a conscious and sustained effort to develop a society and culture that eschews corruption. Singaporeans expect and demand a clean system of governance, and do not condone giving or accepting “social lubricants” just to get things done. This atmosphere of anti-corruption must be maintained by robust prosecution and deterrent sentences for errant public servants. Recent examples include the prosecution of Peter Lim, the former chief of the Singapore Civil Defence Force (“SCDF”) who accepted sexual gratification from a contractor in return for showing favour by advancing the business interest of her company with SCDF. Lim was sentenced to six months’ imprisonment in June 2013. More recently, a former Singapore Customs officer Mohamed Yusof Bin Abdul Rahman was charged with corruptly receiving S\$3,350 in bribes from four Indian nationals in exchange for processing fraudulent Goods and Services Tax (“GST”) refunds, and was sentenced in February 2015 to a total of 5 years’ imprisonment.

II. SENTENCING IN PRIVATE SECTOR CORRUPTION

22. Given the obvious harm and culpability in public sector corruption cases where the public interest in preventing a loss of confidence in Singapore’s public administration is automatically triggered, it naturally follows that stiff imprisonment terms are usually meted out for public sector offenders. How about private sector corruption cases? In allowing the Prosecution’s appeal in *Ang Seng Thor’s* case, Justice of Appeal VK Rajah (“Rajah JA”) commented that the District Judge erred in holding to an erroneous distinction between public sector corruption and private sector corruption which justified different sentencing benchmarks or starting points. He held that while there is certainly a public interest in preventing a loss of confidence in Singapore’s public administration which warrants a custodial sentence for public sector corruption, this did not automatically mean that this public interest was not present in private sector corruption. More importantly, triggering the public interest is not the only way that a private sector offender may be subject to a custodial sentence, and the custody threshold may be breached in other circumstances, depending on the applicable policy considerations and the gravity of the offence as measured by the mischief or likely consequence of the corruption. In addition, factors such as the size of the bribes, the number of people drawn into the web of corruption and whether such conduct was endemic will all be relevant to the consideration of whether a custodial sentence is justified. It is important to dispel the misconception that private sector offenders will not be punished to the same extent as public

sector offenders as it undermines the anti-corruption regime in Singapore, and the deterrence value is diluted even further when one considers that even the maximum fine of S\$100,000 per charge is of no great consequence to most private sector offenders like Ang.

23. Private sector corruption cases comprise a large portion (about 85%) of all the corruption cases investigated in Singapore, and it is imperative that the sentencing trend reflect the seriousness of such offences and underscore the zero-tolerance approach towards corruption in Singapore.

24. In early 2015, a comparative study was conducted on the sentencing trends in other common law jurisdictions, and the results of this study suggested that an upward revision of sentences for private-sector corruption cases in Singapore may be timely.

A. England and Wales

25. In England and Wales, the Sentencing Council issued a set of guidelines for offenders sentenced on or after 1 October 2014 (“the 2014 Guidelines”) which categorizes the assessment of the seriousness of an offence based on a “harm and culpability” matrix. The more serious the harm caused by the offence and the more culpable the offender was in the commission of the offence, the higher the starting point for sentencing the offender. It is significant to note that a minimum of 26 weeks’ imprisonment is the starting point sentence for all categories save for the one with the least culpability and lowest harm (or no actual harm) caused. In the first private sector corruption case successfully prosecuted and sentenced under the 2014 Guidelines, the Serious Fraud Office secured a sentence of six years’ imprisonment for the giver of bribes totalling £189,000, and four years’ imprisonment for the receiver.

B. USA

26. In the USA, the US Federal Courts are guided by the United States Sentencing Commission’s Guidelines Manual, which determines starting point sentences based on the “offence seriousness” and “defendant’s criminal history”. “Offence seriousness” includes the harm caused by the corruption, and in this regard the US courts do not merely look at the quantum of the bribe, but also at the intended/actual benefit to the offender and the intended/actual loss caused. This is significant because the latter two amounts (when ascertainable) often far outstrip the bribe amount. As for the range of sentencing for private sector corruption, 6 months’ imprisonment is the minimum, extending to 10-16 months’ imprisonment when the quantum crosses US\$10,000 and 15-33 months’ imprisonment for amounts between US\$30,000 to US\$200,000.

C. Australia (New South Wales)

27. In Australia (New South Wales), the maximum imprisonment sentence for a corruption offence is 7 years, which is higher than Singapore’s (5 years). While there are no sentencing guidelines like in the UK or USA, the NSW courts adopt a process of balancing aggravating against mitigating factors before arriving at the appropriate sentence (which is similar to Singapore courts). However, it appears from a review of the notable precedents that NSW adopts a tougher stance than Singapore vis-à-vis private sector corruption. Bribes of A\$120,000 and A\$124,000 attracted imprisonment terms of 3¼ years⁸ and 5 years⁹ imprisonment

⁸ *R v Potter* [2005] NSWCCA 26. The accused was the Chief Steward of the Greyhound Racing Control Board and subverted anti-doping procedures in exchange for bribes.

⁹ *R v Bradley David Cooper* [2006] NSWSC 609. The accused paid bribes to the Chief Investment Officer of an insurance firm to secure claims worth about A\$5 million before the firm collapsed.

respectively. In the recent case of *David Michael Wills v R*¹⁰, the accused received bribes totalling A\$1,395,950.50 over a period of 1½ years. He was convicted on, amongst others, 14 corruption charges. For the charges involving sums of A\$10,000-A\$20,000, he was sentenced to 6 months' imprisonment. For the charges involving sums of A\$100,000-A\$600,000, he was sentenced to 3-4 years' imprisonment. His aggregate sentence was seven years' imprisonment consisting of a non-parole period of four years.

D. Hong Kong

28. The courts in Hong Kong take a hard-line stance against public and private corruption alike, and do not recognize the public-private dichotomy for the purposes of sentencing¹¹. The starting point for an offence under Section 9 of the Prevent of Bribery Ordinance (the provision for private sector corruption) is imprisonment to achieve the desired effect of deterrence and sending a clear message to the community¹². The starting point for bribes involving sums of HK\$54,000 (about S\$10,000) to HK\$100,000 (about S\$18,000) was stated to be 21 to 24 months' imprisonment¹³.

E. Singapore

29. By comparison, the sentence of 12 weeks' imprisonment imposed in *Ang Seng Thor*'s case is relatively light. A similar case would have attracted a sentence of about 2 to 3 years' imprisonment in the four other jurisdictions reviewed above.

30. The 2014 case of *PP v Leng Kah Poh*¹⁴ was one of the most egregious cases of private sector corruption in recent history. Leng was a manager in charge of food and beverage at a company which operated the IKEA furniture stores in Singapore. He conspired with two others, Andrew Tee and Gary Lim, to skim money from IKEA by ordering food supplies exclusively from two companies owned by Andrew Tee and Gary Lim at inflated prices. These two companies added no value to the food supplies which were ordered from their supplier; they merely transported the supplies straight from the supplier to IKEA. Over a period of seven years, the two companies made a total profit of S\$6.9 million which was split equally between Andrew Tee, Gary Lim and Leng (i.e. S\$2.3 million each). Andrew Tee was sentenced to 40 weeks' imprisonment, Gary Lim was sentenced to 70 weeks' imprisonment, and Leng was sentenced to 98 weeks' imprisonment (close to 2 years' imprisonment). A similar case would have attracted an estimated minimum of 5 years' imprisonment in Hong Kong, and up to 9 years' imprisonment under US federal laws.

31. This sentencing trend prompted the Chief Justice Sundaresh Menon, in his 2015 judgment in *PP v Syed Mostafa Romel*¹⁵, to reaffirm the principle stated in *Ang Seng Thor*'s case that "there is no presumption in favour of a non-custodial sentence where private sector corruption is concerned", and the specific nature of corruption was of first importance in determining the appropriate sentence to be imposed. Where the private sector corruption

¹⁰ [2014] NSWCCA 253.

¹¹ *R v Wong Tat-Sang* [1986] HKCA 196 (at [4]): "[the Court of Appeal] cannot for a moment accept the suggestion that bribery in the private sector is in any way to be regarded as less culpable than bribery in the public sector".

¹² *HK SAR v Chow Kam Yuen* [2007] HKCU 835: "The clang of the prison gates would have had a very wholesome effect on this appellant. His receiving an immediate custodial sentence from the magistrate would have been a clear message to the community that anyone who commits a corruption offence, such as a section 9 offence, is facing an immediate custodial sentence."

¹³ *HK SAR v Nguyen Van To* [2007] HKCU 2053; *HK SAR v To Yiu Cho* [2009] 5 HKLRD 309.

¹⁴ [2014] 4 SLR 1264.

¹⁵ [2015] 3 SLR 1166.

involved (a) a significant amount of gratification; (b) gratification which had been received over a lengthy period of time; or (c) compromise of one's duty or serious betrayal of trust, the starting point was likely to be a custodial sentence. In this case, Romel was in charge of inspecting vessels seeking to enter an oil terminal by issuing inspection reports, and if the defects identified were considered "high-risk", the vessel would not be allowed into the terminal before rectifying the defects. Romel solicited and received a total of US\$7,200 over three occasions from two captains of marine tankers in exchange for favourable inspection reports. Romel pleaded guilty and was sentenced to an aggregate of two months' imprisonment, but this sentence was enhanced to six months' imprisonment on appeal by the Prosecution. *Romel's* case represents a landmark in the sentencing landscape for private sector corruption cases in Singapore, and since then the Prosecution has successfully secured custodial sentences in many other private sector corruption cases when the result might have been a fine before *Romel's* case.

32. While *Ang Seng Thor's* case sowed the seeds for a tougher punishment regime for private sector corruption cases, *Romel's* case has established a fertile climate for this regime to take root in Singapore's anti-corruption landscape. In discharging our sacrosanct duty to prosecute crimes without fear or favour, the Prosecution will strive to continue along this trajectory to protect and preserve the hard-earned gains in Singapore's fight against corruption regardless of whether it occurs in the public or private sphere.

III. CONCLUSION

33. In the words of Prime Minister Lee Hsien Loong: "Corruption is a scourge that can never be tolerated... [It is] a cancer in the society."¹⁶ Like cancer, corruption is a disease that spreads rampantly if unchecked, and debilitates every facet of society and the economy if untreated. While Singapore has made significant developments over the past decades in the fight against corruption, we must not rest on our laurels but continue to strive to maintain and uphold the high standards of integrity in the public administration as well as the marketplace. Investigators and prosecutors must work more closely than ever to effectively identify, investigate and prosecute corruption, and efforts at public outreach and community engagement must be maintained to preserve the zero-tolerance societal attitude towards corruption in Singapore.

¹⁶ PM Lee's speech at the London Anti-Corruption Summit 2016.