

# Anything of value: Is Singapore providing a new definition?

Singapore is generally known for its low risk of corruption, consistently ranking among the top five countries in Transparency International's Annual Corruption Perception Index. One of the reasons for this strong showing is Singapore's willingness to prosecute a wide range of conduct aimed at gaining an unfair advantage. In particular, in the last year, the Singapore Corrupt Practices Investigation Bureau (the "CPIB") has enthusiastically enforced its anti-corruption laws where the alleged gratification accepted was in the form of sexual favours.

Other jurisdictions could do so as well based on the language of their anti-corruption laws, which contemplate both tangible and intangible benefits. To date, however, while prosecutions have included a laundry list of things of value offered as bribes, particularly in Asia Pacific countries, the number of actual prosecutions alleging corruption in exchange for sex do not approach that of Singapore.

## The Prevention of Corruption Act, Singapore ("PCA")

It is an established position in Singapore that in order for corruption to be made out under the PCA, it must be shown both that there was an objectively corrupt element in the transaction (i.e. an objective test) and that the accused had the requisite guilty knowledge (i.e. a subjective test). The nature of the transaction is to be examined by the Singapore courts in order to ascertain: (i) the intention of the giver or receiver of the gratification, and (ii) whether such an intention tainted the transaction with an objectively-corrupt element, given the factual matrix.

"Gratification" is widely defined in the PCA to include money, gifts and "any other service, favour or advantage of any description whatsoever". This description approximates that of other anti-corruption laws which describe bribes as "anything of value," such as in the US Foreign Corrupt Practices Act ("FCPA") or "financial or other advantage," as in the UK Bribery Act. Clearly, there is a recognition that a bribe can be much more than a payment of money.

### Key issues

- The Prevention of Corruption Act, Singapore
- Singapore prosecutions of "Sex for contracts"
- Is anything of value so broadly defined elsewhere?
- Looking forward: What amounts to "corrupt: behaviour?"

## Singapore Prosecutions of “Sex for Contracts”

There have been several recent investigations by the CPIB where sexual favours were allegedly obtained corruptly as inducement for civil servants to show favour by assisting to further the business interests of companies through the approval of commercial contracts.

The former Director of the Central Narcotics Bureau in Singapore, Ng Boon Gay, faced corruption charges for sexual gratification received from an IT salesperson allegedly as an inducement to show favour to her employers as vendors of IT products. The alleged favours related to Ng Boon Gay approving on behalf of the Central Narcotics Bureau the award of contracts for IT procurement to the IT vendors.

On 14 February 2013, Ng Boon Gay was acquitted of all four charges against him as the Singapore court found that the parties were in an intimate consensual relationship at all material times. The Court found no corrupt intent nor guilty knowledge. To date, the Singapore court has not released its written grounds of decision. An appeal by the Prosecution may be filed upon the release of the written grounds of decision.

The second case remains pending as the former chief of the Singapore Civil Defence Force, Peter Lim Sin Pang, faces corruption charges for sexual gratification received from three women allegedly as an inducement to show favour to the business interests of the women’s employers in their dealings with the Singapore Civil Defence Force.

Just last week, three soccer referees were arrested for accepting sexual favours to fix an Asian Football Confederation Cup match and in another recent case, an associate professor of law at the National University of Singapore faces corruption charges for receiving gratification (including gifts and sexual favours) from a student allegedly as an inducement to show favour in his assessment of her academic performance. The trial is currently ongoing.

## Is Anything of Value So Broadly Defined Elsewhere?

Under the US FCPA, companies operating in Asia Pacific have been charged with offering government officials travel to Hawaii, Las Vegas, and Disney World, as well as country club memberships, fur coats, flowers, expensive bottles of wine, executive training programs, work visas, internships, cars, loans, and promises of future employment. See, e.g., SEC v. UTStarcom, No. 09-cv-6094 (N.D. Cal Dec. 31, 2009); SEC v. Lucent Technologies, Inc. No. 07-cv-2301 (D.D.C. Dec. 21, 2007). This broad reading of the term “anything of value” is explained in A Resource Guide to the US FCPA, jointly published by the US Department of Justice and the US Securities and Exchange Commission in 2012. While the FCPA does not provide a definition, the Guide refers to the identical phrase in the domestic bribery statute, citing first to a case in which the court upheld a jury instruction defining sex as a “thing of value.” See Guide at footnote 86.

On the other hand, Indonesia announced in January 2013 that it planned to modify its corruption law to include bribes offered of other than monetary value, including sexual favours, to allow a broader mandate to eliminate corruption in whatever form it developed.

## Looking forward: What amounts to “corrupt” behaviour?

It is often difficult to identify in advance all conduct that might infringe anti-corruption laws. The recent active application in Singapore of prosecuting sexual favours as corruption has been monitored by other jurisdictions, suggesting an all-encompassing approach to what behaviors may be deemed corrupt. It is thus important for companies and their employees to be aware of their anti-corruption responsibilities and implement effective compliance programmes going beyond targeting the receipt of tangible gifts or money.

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