

# Court of Appeal reiterates zero tolerance policy towards corruption

In the recent decision of *Public Prosecutor v Teo Chu Ha* [2014] SGCA 45 ("**Teo Chu Ha**"), the Singapore Court of Appeal ("**CA**") reversed the Singapore High Court's ("**HC**") acquittal in a corruption case. This decision demonstrates that in line with Singapore's firm stance against corrupt activities, as schemes become more complex and sophisticated, the Courts will not hesitate to scrutinise the substance and context of a scheme to ensure that the anti-corruption regime is not circumvented.

## The material facts of the case

Teo Chu Ha was a former Senior Director of Seagate Technology International ("**Seagate**"). In return for helping Biforst Singapore Pte Ltd ("**Biforst**") secure several contracts from Seagate, Teo received various cash payments and shares in Biforst, (which he had paid for). Through these shares, Teo received periodic pay outs by way of dividend payments.

The District Court ("**DC**") found that Teo was guilty of various corruption offences under s 6(a) of the Prevention of Corruption Act (Cap 241) (the "**PCA**"):

### "Punishment for corrupt transactions with agents

6. If -

- a) *any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in*

*relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business;*

...

*he shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 5 years or to both."*

Teo's conviction was reversed by the HC. The HC held that there was no corruption unless the reason for the gratification was as an inducement for the act done by Teo in relation to Seagate.

In relation to Teo's receipt of the Biforst shares, the HC noted that, where the purported gratification consisted of shares which an accused person had paid for, the usual inference is that those shares were transferred to that person because he had paid for those shares and that it is for the

## Key issues

- Perpetrators are inventing increasingly complex and sophisticated schemes in a bid to evade the PCA.
- The CA recognised that the broader spirit and policy behind the PCA is to prevent corruption in all forms including by way of devious and sophisticated schemes and that the PCA must be interpreted such that it remains relevant in the modern context.
- The Courts will scrutinise the substance and context of transactions to ensure that the "*pith and marrow*" of the PCA is not undermined or circumvented by these schemes.
- In line with these broader policy objectives, the PP does not have to specifically prove that a particular transaction is a sham and/or that inadequate consideration was paid by the recipient before an offence under the PCA is made out.

Prosecution to prove, beyond a reasonable doubt, that the payment for the shares was a sham.

In this context, the HC observed that there was a reasonable doubt as to the true purpose of the share transfer and therefore, accordingly, the HC was not satisfied that there was an objective corrupt element in relation to the transfer of shares.

As to the cash payments made to Teo, the HC found that there was no correspondence in timing between the Biforst bids for two Seagate contracts and the cash payments. In this situation, since the Public Prosecutor ("PP") failed to show that the payments were given as an inducement, the cash payments could not be said to be an inducement to Teo to assist Biforst in securing the Seagate contracts and therefore could not amount to "*gratification*" for the purposes of the PCA.

### Criminal reference to the CA

In light of the HC's judgment, the PP referred two questions of public importance to the CA:

- a) For the purposes of s 6 of the PCA, in determining if a transaction was objectively corrupt where consideration was paid for the gratification, must the PP prove that the consideration was inadequate or that the transaction was a sham? ("**Question 1**")
- b) For the purposes of s 6 of the PCA, in determining if a transaction was objectively corrupt, must the PP prove that a reward to an agent corresponds in time with acts of assistance done or favours shown by the

agent in relation to his principal's affairs? ("**Question 2**")

### Scrutiny of the substance and context of an allegedly corrupt transaction

Reversing the decision of the HC, the CA held that Teo's Biforst shares constituted gratification within the meaning of the PCA, despite the consideration which he paid for the shares. The CA observed that the definition of gratification in the PCA is not exhaustive and is intended to be of wide application.

While the consideration paid by an accused person for an alleged gratification may be a relevant factor to be considered by the Courts, the

CA emphasised that this was not decisive in itself. Instead, the Courts will look at "*the substance of the entire scheme and its context rather than only at the actual (and more specific) transaction*".

In the present case, having regard to the overall context, the CA noted that:

- a) Since Biforst was a private company, Teo would not have been able to purchase the Biforst shares but for the assistance he rendered to Biforst in securing the Seagate contracts;
- b) Biforst was formed specifically to receive the benefit of the Seagate contracts as a result of Teo's influence within Seagate;
- c) The Biforst shares were only transferred to Teo after Biforst secured the first of several Seagate contracts even though Teo had paid for the shares much earlier, before the tender

exercise for this first contract had commenced.

In the circumstances, the CA disagreed with the "*narrow and technical*" approach taken by the HC. In the CA's view, it was the opportunity to purchase the shares and/or the assistance rendered in purchasing the shares which, together with the shares, constituted the gratification.

As regards the substance of the entire scheme, the CA also held that the gratification laid not merely in the Biforst shares, but also in what they represented: "*doors of opportunity for ... subsequent material gratification*" which were disguised as dividend payments from Biforst.

### PP not required to prove transaction was a sham

Answering Question 1 in the negative, the CA held that if the PP had to prove that a transaction was a sham, this would allow the PCA regime to be circumvented by sophisticated schemes, thereby undermining the "*pith and marrow of the [PCA]*".

The CA observed that corruption was a "*huge social evil*" and that it was all the more important for the PCA regime to apply to more sophisticated and devious schemes.

### Requirement of correspondence in time between alleged gratification and acts of assistance

In the CA's view, Question 2 did not have to be answered in light of its finding in relation to Question 1. However, notwithstanding that, the CA noted that the PP need not prove correspondence in time between the

alleged gratification and the acts of assistance in certain situations, including:

- a) If there was an understanding or arrangement to the effect that gratification would be furnished in return for the acts of assistance concerned and the gratification was actually paid either before or after the acts of assistance had been rendered in accordance with that understanding or arrangement; or
- b) Where the PP has already proved that an agent has been "*bought over*" by a third party.

## Conclusion

Singapore maintains a zero tolerance policy towards corruption and corruption-related activities. This tough stance coupled with the strict enforcement and the deterrent judicial policy in conviction and sentencing is integral in maintaining Singapore's pristine international reputation for an honest and efficient business climate.

As corrupt schemes become more complex and devious, the CA in *Teo Chu Ha* demonstrates that the Courts are prepared to scrutinise the substance and context of the impugned transactions to ensure that the PCA remains relevant in the modern context.

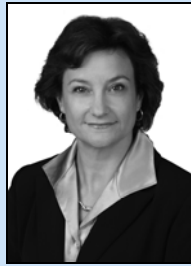
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SINGAP-1-217181

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